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Judiciary Committee  
February 20, 2008

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[LB781 LB843 LB868 LB909 LB1128 LR234]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 20, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB781, LB843, LB868, LB909, LB1128, and LR234. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: Good afternoon, everyone. Welcome to the Judiciary Committee. My name is Brad Ashford. I represent Legislative District 20. Senator Vickie McDonald is to my left from St. Paul, Nebraska; Senator Pete Pirsch from Omaha; and of course Senator Schimek from Lincoln; Senator McGill from Lincoln; and Senator Ernie Chambers. Stacey Trout is my legal counsel, to my right; and Jonathan Bradford is the committee clerk. Let me go over some of the...our ground rules. We have six bills to hear today. Each bill will have a one-hour time limit. And Senator Rogert has the first bill. He will open on LB781, and then the testifiers will have three minutes to make their comments. We have a light system that has a yellow light that will indicate...ask you to sum up your comments, and then a red light, we'd ask you to conclude your comments. So with that, the hour...we're going to try to keep to an hour per bill. If there are a lot of questions and we go over a little bit, so be it, but we're going to try to keep with that sort of rule. Senator Steve Lathrop is here from Omaha as well. So with that, Senator Rogert. []

SENATOR ROGERT: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Senator Kent Rogert. I represent the 16th Legislative District. I am here today to introduce LB781, in partnership and cooperation with the Attorney General's Office. LB781 seeks to ensure consumer protection in the statutes under the Uniform Deceptive Trade Practices Act, relating to scam and fraudulent activity or, more specifically, those practices having to do with the sending of unsolicited checks and invoices to recipients that include, but that are not limited to, small businesses, nonprofit organizations, churches and charities in Nebraska. It is most certainly true that many legitimate businesses can fall victim to or be exposed to a variety of scam and fraudulent activity in Nebraska. In light of consumer complaints filed with the Attorney General's Office, this is currently happening in at least two ways that I now understand: one, by sending an unsolicited check to be cashed or deposited; or two, by sending an unsolicited billing invoice to be paid in hopes that sometimes and in both circumstances, for example, the fine print will not be read in its entirety or at all, which ultimately binds the recipient into a contract that they would not have originally intended to make agreement upon. Had the recipient understood the implications or, more importantly, if the conditions had been appropriately and effectively communicated to them before cashing, depositing or submission of payment, it would seem to me, based on the consequences of the action, the circumstances in question and complaints having been

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filed, that most of them would not have chosen to be entered into that particular agreement. I believe these techniques are unethical, many times leading to undue stress and embarrassment from a barrage of continual harassing phone calls, letters and faxes, in addition to possible court and legal fees at the expense of the business' financial growth, vitality, and expectation. You may have seen these types of live incentive or promotional checks before, usually sent out by certain on-line or yellow page advertising companies. You get them in the mail; you cash or deposit them and then you're entered into a contract for a period of time that obligates additional payments for services that may have no real benefit or actual return. In response to this problem, LB781 seeks to expand the definition of the Uniform Deceptive Trade Practices Act to include the sending of unsolicited checks, and we feel that this is an appropriate reaction to the 50 complaints received by the Attorney General's Office over the last five years regarding this issue. Now we see these advertising companies moving into the sending of unsolicited invoices or billing statements, and in the multitude of every day-to-day transactions, the recipients are tricked into making payments on an invoice received that they were never obligated nor required to make payment upon. The very make and appearance of an invoice resembles some kind of documented accountability, an obligation to make payment or such seemingly evidence to procuring a payment, and under these circumstances is unethical, misleading and disproportionate to any legitimate business claims or billing transaction statements made within our state. In order to resolve this problem, LB781 seeks to expand the definition of what we call our Uniform Deceptive Trade Practices Act to include the sending of unsolicited billing invoices in order to be more proactive and deter those advertising companies from the initiation and proliferation of such schemes. That being said, I'd like to submit to you that any schemes may evolve or progress into newer versions of fraudulent activity that are just as misleading, and may clearly take advantage of small business owners and nonprofit organizations in Nebraska in the future. For this reason, we have included a general catchall provision, one that will permit us to be able to combat general fraud, such as fake cashier checks, magazine subscription sales, and charitable solicitations, and to pursue those innovative and new schemes that may lead to more fraudulent activity in the future. Once again, it is my intention with this bill, in partnership and cooperation with the Attorney General, to provide more specific consumer protection in light of these schemes and consumer complaints, and to put a stop to scam artists and unethical businesses in Nebraska. With that, I'd be happy to entertain a few questions from the members of the committee; however, Leslie Levy, the Assistant Attorney General and chief of the Consumer Protection and Antitrust Division, is here to testify in support and answer any of the technical questions you may have in regards. She will have some specific examples to hand out and which will illustrate effectively what exactly we are dealing with. I also understand that there may be a concern with inserting a word to more narrowly describe one of those portions coming up from a testifier in the back, and I'd be happy to work with them to get the language the way they like it. Any questions from there? [LB781]

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SENATOR ASHFORD: Any questions of Senator Rogert? Thank you, Kent. [LB781]

SENATOR ROBERT: Yeah. [LB781]

SENATOR ASHFORD: Let me ask, how many testifiers do we have on this bill, Senator Rogert's bill? Oh, it shouldn't take an hour then. How about...why don't we have the first proponent up here. Good afternoon. [LB781]

DAVID POTACH: (Exhibit 1) Good afternoon. My name is David Potach, P-o-t-a-c-h. Thank you for the opportunity to meet with you today to discuss LB781 and the changes to the Uniform Deceptive Trade Practices Act. I am the majority owner of a physical therapy clinic in Omaha, Omaha Sports Physical Therapy. Senator Rogert asked me to relay our experience with a particular group that deceived one of my employees into, quote, agreeing to purchase advertising with them. I have attached a letter that this employee mailed to me...e-mailed to me on October 27, 2007. I have Xed out the name of the group, as I understand there is an ongoing investigation by the Attorney General's Office into their practices and I do not want to interfere with their process. So given all that, I will quickly summarize our experience with this group. Last fall, the aforementioned company called our office and spoke to one of our employees. The group asked her to confirm our address for a listing in some type of advertising list. They told her that they had already spoken to me, and told her that I had given my approval, which I did not, for this advertising. They then told her that she would be transferred to a different person and she was to say that she was authorized to give our company's approval for the listing. She eventually did say that but, again, she thought she was giving that approval because I already had, which I hadn't. They apparently have an audio recording of only part of the conversation with her in which they say, doing so orally makes it a, quote, legal contract. In an effort to remedy the situation, I spoke with multiple persons with this group on multiple occasions. Those I spoke with were unwilling to cancel the order that we did not make. Apparently this was sent to collections immediately and they were, quote, demanding payment of \$299 or they would take us to court. Neither I nor the minority shareholder authorized such a service. We should not be forced to pay for something we do not want. I did some research last fall and found multiple complaints against this group throughout the country. Therefore, I believe some type of control should be put in place to limit this type of deceptive, unethical practice. It seems they are merely traveling from state to state to prey on different companies and possibly individuals. In closing, while the \$299 this group attempted to collect from us is admittedly not a large sum, allowing this type of activity can easily mutate or shift into something that amounts to something much more significant to other businesses or individuals. It is wrong. Again, thank you for the opportunity to meet with you today to discuss this. [LB781]

SENATOR ASHFORD: Any questions of David? Seeing none, thanks, David. And we have your letter here, so...second proponent. [LB781]

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LESLIE LEVY: (Exhibit 2) Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Leslie Levy, L-e-v-y. I'm an Assistant Attorney General and chief of the Consumer Protection and Antitrust Division for the Attorney General's Office. I'd like to thank Senator Rogert for bringing LB781 and working with our office on this important legislation. State Attorneys General investigate, enforce, address...and address unfair and deceptive acts and practices in the marketplace. Every year consumers are faced with an onslaught of new frauds and scams. A growing concern for the Attorney Generals is that the frauds morph and change so quickly that we do not have the statutory tools that we need in order to combat the fraud and to protect our consumers. LB781 is a step in the right direction. This bill modifies our current Uniform Deceptive Trade Practices Act, an act that is the cornerstone of our consumer protection efforts here in the state. Senator Rogert did a great job of explaining the circumstances surrounding the check and billing invoice scams that brought these proposed modifications. After my testimony, I will have some examples of some of the checks and billing invoices that our office has received over the past five years that will kind of help illustrate why consumers, and mostly businesses, can become susceptible to these types of frauds. Our office has received complaints against eight different companies doing this type of solicitation. These companies have been the subject of multistate investigations by our office, working in conjunction with other Attorneys General. In 2006, our office participated in two separate investigations that resulted in agreements being filed against two of the aforementioned companies. One I want to point out is, while we had complaints against eight different companies, some of those companies were core companies and they were doing business as other companies. So although we entered into two agreements, it took...and dealt with approximately four of those or five of those companies. To highlight just how prevalent this problem is, of those companies, one sent out over 50,000 incentive checks to Nebraskans. Of those, almost 1,200 were cashed. Luckily, consumers were only...actually only paid into the businesses about \$48,000 out of \$216,000 that were billed. Currently, our office is involved in two more investigations and we're looking at a third that's on the radar of about 12 different states. The reason we're here is this practice needs to stop. It doesn't matter that we're entering into these agreements. The business practice is not stopping, and LB781 will help do that. I also wanted to bring to your attention that we have added a provision, a section to clarify when consumers can receive restitution and make that perfectly clear that consumers, when they are part of a fraud that has begun in Nebraska, even though they live in other states such as Kansas, Iowa, South Dakota, that our statutes do allow for restitution when the scheme or the fraud originates in Nebraska. And I would be happy to answer any questions that you may have. [LB781]

SENATOR ASHFORD: Any questions of Leslie? Yes, Senator Pirsch. [LB781]

SENATOR PIRSCH: This language in the bill here, is that patterned off another jurisdiction? [LB781]

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LESLIE LEVY: Which specific language? [LB781]

SENATOR PIRSCH: Well, I'm just...the whole bill concept. Is that an amalgam of this and that from different states or is this pretty much borrowed distinctly from one state in particular? [LB781]

LESLIE LEVY: The information...the sections that pertain to the billing invoices and the activation checks, we looked at Oregon and Alaska's language. Currently eight states have that language. The general fraud provision is based on a couple of federal statutes, and then the language as far as the clarifying restitution for consumers who are victims of fraud, that is language that our office came up with. [LB781]

SENATOR PIRSCH: Okay. With respect to the experiences, you say eight different companies have engaged in this type of activity in the state over the last two years, three years? [LB781]

LESLIE LEVY: No, it's been closer to four or five. [LB781]

SENATOR PIRSCH: Four or five years. As a practical matter, what...we've been entered into...the state has entered into agreements with them to curb that. Have there been any, I guess, criminal actions that were able to be taken against any of these, or was it...has it been handled in civil matter thus far? [LB781]

LESLIE LEVY: It has been handled civilly. [LB781]

SENATOR PIRSCH: Okay. Does that seem to be effective thus far in curbing these particular eight companies, the existing... [LB781]

LESLIE LEVY: Yes. It has pretty much put them out of business. [LB781]

SENATOR PIRSCH: Okay. [LB781]

LESLIE LEVY: Unfortunately, while we're investigating it and bringing those actions, while we're stopping those particular companies, other businesses will see that, you know, it's worth their while to do it for however many years it takes our office to be put on notice that they are operating within our state and doing that type of business practice before they, you know, investigate. I mean it's years in the making. [LB781]

SENATOR PIRSCH: So newer companies are doing it, but it doesn't seem to be slowing them to the current law, the law of... [LB781]

LESLIE LEVY: Right. Right. [LB781]

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SENATOR PIRSCH: Okay. [LB781]

LESLIE LEVY: Right. Which is why we're asking to stop it completely. [LB781]

SENATOR PIRSCH: Thank you. [LB781]

LESLIE LEVY: Any other questions? [LB781]

SENATOR ASHFORD: No. [LB781]

LESLIE LEVY: Great. [LB781]

SENATOR ASHFORD: Thank you, Leslie. [LB781]

LESLIE LEVY: Thank you. [LB781]

SENATOR ASHFORD: Next proponent. Yes, sir. [LB781]

MARK INTERMILL: (Exhibit 3) My name is Mark Intermill, last name is spelled I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP Nebraska. We do support LB781. Our members have run into the same situations that have been addressed. Older persons tend to be over represented in terms of the victimization of fraud, but we're particularly interested in a paragraph, paragraph (15) on page 3 of the bill, that we believe will provide consumers with some important protections against unfair trade practices, and this relates to the implementation of the Medicare Modernization Act which authorized Medicare Advantage plans to be marketed throughout the United States. Through these plans, a consumer can effectively have a company to provide their healthcare coverage and essentially remove themselves from the Medicare program. This is a situation that has some fairly serious consequences for some individuals. We have seen in Nebraska, over the last year and a half, a number of problems in the marketing of Medicare Advantage plans, and we see this general provision in this act as one way of addressing some of those problems. We've included several examples of problems that we have seen in the marketing, for example, a private Medicare Advantage plan being marketed to someone who is eligible for Medicaid, a situation that the person would pay \$85 a month for a plan that they don't need. We've seen other situations where an individual would be sold a plan, then get out of the plan because they recognized it has some shortcomings for their situation, but then being marketed plan again without their knowledge. So an agent would have sold them a plan without their knowledge and, again, having severe consequences for their healthcare coverage. We believe that the language in paragraph (15) would provide a means by which state government could get involved in the oversight of Medicare Advantage plans, oversight that they don't really have the authority currently because

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Medicare Advantage plans are regulated by the federal government. We believe this provides additional protections for consumers of the state who are Medicare beneficiaries and we would encourage the committee to report this favorably. [LB781]

SENATOR ASHFORD: Any questions? Thanks, Mark. [LB781]

MARK INTERMILL: Thank you. [LB781]

SENATOR ASHFORD: Any other testifiers on LB781? Senator Rogert. Do you have a neutral? Oh. To quote Senator Chambers, there are no neutral testifiers. [LB781]

LARRY RUTH: Senator Ashford and members of the committee, my name is Larry Ruth, L-a-r-r-y R-u-t-h, appearing on behalf of AT&T, a cellular telephone company providing services in Nebraska. We do appear in a neutral position. I do want to just bring your attention to what I think is an inconsistency that's kind of creeping into the Uniform Deceptive Trade Practices Act. If you look at page 3 in the new (15), it says "uses any scheme or device to defraud," and then at the top of page 4, "obtaining money or property by false or fraudulent pretenses." AT&T looks at these kinds of bills pretty carefully and suggests that the word "knowing" would be appropriate on line 1, before the word "false," so you have knowledge as a requirement to prove defrauding. I mention that this...there's a little bit of inconsistency cropping in. If you go to the previous subsection, which is current law, it starts out, on subsection (14), requiring knowledge, "Knowingly makes a false or misleading statement." Interestingly enough, if you go up further there are some other just "false or misleading statements," and just think it would be good if you made some consistency here. And I suggested in this particular case the knowledge requirement is appropriate because we are talking about a fraud statute and fraud, I believe, going back a few years now, but I think fraud is an intentional tort that you would normally want to keep as an intentional tort, meaning knowledge would not then prove intent...or would be needed to prove the intention. Just bring that as a suggestion. [LB781]

SENATOR ASHFORD: So noted. Any questions of Larry? [LB781]

SENATOR CHAMBERS: Just for the record. [LB781]

SENATOR ASHFORD: Yes, Senator Chambers. [LB781]

SENATOR CHAMBERS: Mr. Ruth, when the law uses the term "knowledge," it means you know or should know. It doesn't mean necessarily actual knowledge, because sometimes that's difficult to prove, but you can determine or impute it based on the surrounding circumstances. So that say somebody in a particular industry knows what the standards are that might be...that would need to be met and could allege, well, I didn't actually know that what I was doing was wrong, but by virtue of being in that

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industry, knowing how it operates, you can impute knowledge of certain practices without actually proving that the person concretely knew. [LB781]

LARRY RUTH: Yeah, I think you're right, Senator, knowledge is oftentimes imputed in the law or inferred from the conduct of the parties and knowledge of the circumstances otherwise surrounding it. [LB781]

SENATOR CHAMBERS: And that's just to reassure people that when you want the term "knowledge" put in, because I often want that also, knowledge and intent, it's not giving a way out because you can, from the circumstances,... [LB781]

LARRY RUTH: Sure. [LB781]

SENATOR CHAMBERS: ...determine what they should have known. [LB781]

LARRY RUTH: Sure. [LB781]

SENATOR CHAMBERS: Okay. [LB781]

LARRY RUTH: And I had suggested "knowingly." Perhaps "intentionally" would be another word to add there, but I think if it is an intentional defraud, it's an intentional attempt to defraud. Thank you. [LB781]

SENATOR CHAMBERS: I understand you. [LB781]

SENATOR ASHFORD: Thank you, Larry. [LB781]

LARRY RUTH: Thank you. [LB781]

SENATOR ASHFORD: Any other neutral testifiers? (See also Exhibit 25.) Okay, Senator Rogert, I believe, waives, so that concludes the hearing on LB781. I believe...are we ready for Senator Pedersen? Is that the next? Senator Pedersen. What bill is this? How many testifiers do we have on LB843? [LB781]

SENATOR PEDERSEN: There's quite a few in the hallway. [LB843]

SENATOR ASHFORD: Okay. We're at 2:00, so this hearing will last until 3:00, proponents and opponents. Senator Pedersen. [LB843]

SENATOR PEDERSEN: (Exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15) Thank you, Senator Ashford and colleagues on the Judiciary Committee. For the record, I am Senator Dwite Pedersen, representing the 39th Legislative District, and I'm here today to introduce to you LB843. This bill would prohibit a court from sentencing a person who



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was under the age of 18 at the time of the crime to life in prison without possibility of parole. Current law prohibits a person under the age of 18 who commits first-degree murder from receiving the death penalty but allows for a sentence of life without possibility of parole. At the present time in the state of Nebraska, there are 24 people who were under the age of 18 when they committed their crimes who are serving a life sentence with no parole eligibility date. LB843 would change the statute so that any person convicted of a Class I or Class IA felony, who was at least 16 but under 18 years of age at the time of the crime, would be sentenced to 50 years to life in prison. If the person is under the age of 16 at the time of the crime, the sentence would be 40 years to life in prison. The practical effect of this bill is that a person between the ages of 16 and 18 would be eligible, underline eligible, for parole in 25 years. And those who were under the age of 16, at the time of the crime, would be eligible for parole in 20 years. LB843 also changes the minimum sentence for any person who is convicted of a Class IB felony to say that the minimum sentence shall be to not exceed 40 years. The current penalty for a Class IB felony is a 20-year minimum, to a maximum of life imprisonment. The reason for changing this section of law is to make sure that the time a person could spend in prison for a second-degree murder does not exceed the penalty for those convicted of first-degree murder. Let me emphasize that this bill only provides that a person who was very young when they were convicted of these crimes can be eligible for parole, not that they will automatically receive parole. The maximum sentence is still life in prison. And if these offenders do not convince the Parole Board that they have matured and taken responsibility for their actions, they will not be given parole. This bill simply states that parole is still a possibility some time in the future. In this my last year in the Legislature, I am pleased that I have the chance to take a stand in support of what I have come to believe in nearly 40 years of working with young people in trouble with the law. I have had the opportunity to see many, not all, young men and women emotionally, intellectually, and psychologically mature and turn their lives around after committing terrible crimes. Some of those who were not given life sentences have been lucky enough to gain the opportunity to gain parole and have gone on to lead productive lives in their communities. In my opinion, to say to a young person under the age of 18 that there is no hope for ever getting out of prison is tantamount to saying we have given up on you as a person. And I do not believe that we should ever give up on anyone, no matter what they have done. This is especially true of our young people. All of the child advocacy groups agree with me, and some are here today to testify in favor of LB843. I am sure that you will also hear from some former inmates and their families. Unfortunately, you will be unable to hear from Terrence Johnson, one who passed away this last month; would have been 25 people under the age 18 that was sentenced for life. Terrence died at the age of 32 from AIDS after being incarcerated since the age of 15. He had written me late last year to express his hope that a bill would be introduced to prohibit life without possibility of parole for young people. I have shared copies with you of his letter. Even though he is no longer with us, his words can be heard by this committee in that letter. Terrence no longer has a chance, but it has been my experience that many of those who have turned their lives around have been the most

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powerful force for change in others. And it is my hope that those of you here on the Judiciary Committee with me will join me in convincing the majority of our colleagues that we should be in the business of bringing hope instead of simple revenge and retribution, particularly when it involves our young people. It is extremely important to note that this bill does not guarantee parole to anyone. It simply states that there is a possibility, after many years behind bars, that young people who do change have the opportunity to be paroled. If these people do not change their behavior, they will not be considered for release and will not be recommended for release. And some may not even make it to the Parole Board, and I have no problem with that. While I believe that parole should be a possibility, I do not believe that it should be automatic simply based on age. In closing, I believe in rehabilitation and I believe in hope. I believe that LB843 should become law in the state of Nebraska. I believe so strongly in this that I have made LB843 my priority bill for this session. I hope that you will carefully consider this legislation and that you will forward it to the full Legislature for further debate. Following me, the first testifier I would like to be Tom Riley, the public defender for Douglas County, who was very gracious in helping us draft this bill. Thank you for your attention. And if there are any questions, I'd be glad to try and answer them for you. [LB843]

SENATOR ASHFORD: Any questions of Senator Pedersen? Yes, Senator Pirsch. [LB843]

SENATOR PIRSCH: I appreciate you explaining an outline of the bill. I think that was very helpful. Do you know, is somebody planning on testifying here today from a medical standpoint about mental...developmental stages or anything of that sort? [LB843]

SENATOR PEDERSEN: There is a lot of people here, Senator Pirsch. I don't know if any of them have shown. You'll see in the handouts, we've had many, many letters of support. Our committee clerk, Jono, has already handed out...or has letters to go in the record that have come. And there have been some that you've probably already have received from people who are against the bill too. Take it all into consideration, please. I'm sure there are agencies who have written to us, some of them mental health. And I don't know if they're here to testify, but I know there are letters from some. [LB843]

SENATOR PIRSCH: Very good. Thank you. [LB843]

SENATOR ASHFORD: Thank you, Senator Pedersen. Thanks for all your years of work on this issue,... [LB843]

SENATOR PEDERSEN: Thank you. [LB843]

SENATOR ASHFORD: ...these related issues. Mr. Riley. I might add, Tom, before you get started, if we run out of time on this hearing and you would like to note your support

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or your opposition or neutral testimony on this bill, you may come up to the table and put your name down and give us...either your concurrence or your opposition. And we'll note that for the record as well, if we run out of time. Tom. [LB843]

TOM RILEY: Thank you, Mr. Chairman, members of the committee. My name is Thomas Riley. I am in the Public Defender's Office in Douglas County and I am here to urge support for LB843. Frankly, this is a bill that reflects somewhat of a trend across the country. I don't mean to imply that it's yet a majority of states that have done this. And as many of you know, there is a plethora of different approaches from state to state on how they handle sentencing, parole eligibility, pardons, etcetera. But this bill addresses something that is almost, in many ways, common sense, and that is that individuals under the age of 18, and even more so under the age of 16, have not fully matured and developed. Yet unfortunately, in the world that we live in these days, they, on occasion, end up committing extremely serious crimes, including first- and second-degree murder. As Senator Pedersen indicated, what is most important to recognize is the simple fact that all this bill does is create the possibility of parole for individuals who are in that special age. The Legislature, the state of Nebraska has set aside many different rules defining the difference between juveniles and adults in the criminal justice system. As a matter of fact, the juvenile court was created for individuals under the age of 18. And by the way, we're the only state left in the Union that doesn't initiate all cases for juveniles in juvenile court. But this bill, in reviewing it, I can't understand what a policy argument would be or a criminal justice procedural argument would be to oppose it. It presents little or no danger to society. All it does is say, after 20 years, if you're 16 or under, you have a chance at parole, and if you're under 18, after 25. Let me just say that I don't like being anecdotal about things, but the felony murder rule in this state is something that requires, if you're convicted of felony murder it's first-degree murder, and if you're under 18 you're getting life without parole, even though the felony murder doesn't distinguish between the actual shooter or killer and the getaway car driver, etcetera. And I think, as a policy matter, one must ask themselves, should we really be treating these people in the same fashion? If, for instance, I'm on the Parole Board and I realize under this bill that after 20 years a 15-year-old or 16-year-old who was driving a getaway car for his uncle or his older brother, went into the store and ended up killing someone, should he really be put in prison forever with no hope? And as I said, I don't like to be anecdotal, but that's a reality. And many of you know that you can name cases right here in Nebraska that fit that bill. I have a red light here, so I will stop. If there are any questions, I'll be more than happy to respond. [LB843]

SENATOR PIRSCH: I'd just like to say, if you had something...some other comments that you'd like make but were cut off because of the red light, I think we'd appreciate your input. [LB843]

TOM RILEY: Well, actually I think that Senator Pedersen's introductory statement was

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very eloquent and addresses what I think are the most important things for you to consider. As I said, the most stressing thing that I want to make to you, stressful thing that I want to make to you is that you shouldn't stress that if you do this people who get convicted of these crimes are going to be walking the streets. That is not the case. We know the political realities of individuals who are convicted of first-degree murder in this state a chance of getting the Pardons Board to commute the sentence to a term of years is slim and none, and that's been so for the last 30 or so years. I think this bill addresses that problem for kids under the age of 18, and I think it's a wise policy and should be considered and passed. [LB843]

SENATOR ASHFORD: Thank you, Tom. Any other questions of Tom? Thank you. [LB843]

TOM RILEY: Thank you. [LB843]

SENATOR ASHFORD: How many...come on up. How many opponents do we have to this bill? Okay. [LB843]

JONATHAN BRADFORD: And there's some overflow (inaudible.) [LB843]

SENATOR ASHFORD: Okay. What we're going to do, just so we keep this on track, Senator Pedersen took about 10 minutes to introduce the bill. So we will add 10 minutes to the proponent side, which will be about 20 minutes of 3:00. And then the opponents will have a half hour to respond. Okay. [LB843]

MEL BECKMAN: (Exhibit 19) Thank you, members of the Judiciary Committee. My name is Mel Beckman, B-e-c-k-m-a-n. I live at 3636 Lafayette Avenue in Omaha. The bill we're looking at...and I represent Family and Friends of Inmates in Omaha. The bill we're looking at today is about children and young teenagers, it's about their human right to continue to develop and grow to maturity in our society, even after they do something very bad. And the bill is also about our attitude toward children. Are we willing to give them a second chance after they've done something very bad? Will we do that or won't we? Usually our answer is yes. In most cases we go the extra mile, but in 25 cases, since 1971, we've said no; we left them in prison to die. All were 18 when they...under 18 when they committed their crimes, the youngest was 13, all are still there today, except one who has died after being in prison, the oldest is now 52. Some of the members of our group are the parents, or brothers, or sisters of the 25 who remain in prison. We want them to have a second chance someday, and we ask for a law which will restrain courts in Nebraska from handing down any more life sentences for teenagers and children. To condemn boys and girls to prison we think is almost incomprehensible. We have to put that on the same level as burning witches, approving of slavery, and denying women the right to vote. For some time we thought these practices were okay and now we think, how could we ever have done that? We urge

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you to advance LB843. [LB843]

SENATOR ASHFORD: Thank you, Mel. Any questions? Good to see you again.  
[LB843]

MEL BECKMAN: Thank you. [LB843]

AMY MILLER: (Exhibits 16, 17, and 18) Good afternoon. My name is Amy Miller, that's A-m-y M-i-l-l-e-r. I'm an attorney with ACLU Nebraska. ACLU Nebraska issued a report today that I'm handing out to you called "No Second Chance: Nebraska Children Sentenced to Die in Prisons." We consider this issue one of the primary focuses of our legislative efforts this year. As Mr. Beckman pointed out, we do have a relatively large number of children who have been sentenced, literally a death sentence, although it's not a death sentence by execution, it's a death sentence to die behind bars with no possibility of ever being reviewed. We think this violates the Eighth Amendment, cruel and unusual punishment provision of the constitution. But we also think that we need to take a serious hard look at what's happening in Nebraska courts under the Fourteenth Amendment's prohibition of racial discrimination. In the report, which is the more homemade looking item, you're also getting a glossy report prepared by one of our national partners. But in the homemade looking report, made only by yours truly, page 7 has a graph that shows the breakout on racial factors for what's happening in Nebraska. We know that minorities are overrepresented in the criminal justice system overall, but it's a glaring problem when you look at what's happening in who gets sentenced to life without parole for children: 53 percent of the children that we are sentencing to die behind prison bars are children of color, this in a state that only has about a population of 12 percent of people of color. These numbers are off the charts. As long as judges and prosecutors have human biases, whether known or unrecognized, we're going to continue to have a racial problem. These children are being sentenced to what literally means they will never get the opportunity to ever show any rehabilitation. One has to ask what, if any, motivation they have to behave themselves in prison. The report also then gives you some individual stories. We've told the story on page 4 of Darren McCracken, who is the youngest lifer. He was 13 when he committed his crime. He doesn't deny that he committed his crime, he doesn't offer any excuses, but I think the explanation at least is clear. Darren was being abused by a family member for years, sexually, emotionally and physically, before he finally struck out and he killed his mother. He killed her in a way that is completely unforgiveable, but he was 13 when he committed his crime. And we think that there should be a point at which a Parole Board should have the opportunity to at least look at Darren again and decide whether or not he's improved, whether he deserves to be released. The last thing that I want to draw your attention to is the national report that I handed out is from the Equal Justice Initiative called "Cruel and Unusual: Sentencing 13- and 14-year-olds to Prison." It's got the nationwide statistics; it also has the international statistics. Literally, America is the last place...last civilized place on the Earth that does put children behind bars for life. It

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violates the United Nations conventions, it violates treaties that the United States has signed onto. We think it's time that Nebraska needs to join our sister states who have moved away from this barbaric practice. Do you have any questions for me? [LB843]

SENATOR LATHROP: Very good. Thank you, Amy. Are there any questions? Oh, Senator Pedersen. [LB843]

SENATOR PEDERSEN: Thank you, Senator. Amy, has your agency done any studies about the ones that have committed comparable type crimes and have got the second-degree murder sentences of 20 to 50 years and are now out? [LB843]

AMY MILLER: That's a good question. We only have anecdotal evidence. And as this progresses, we're continuing our research in the hopes that we'll have additional information to provide you when this reaches floor debate. Right now, we only have anecdotal information. As you may know from other things, other issues that appeared before the committee, there is no one, central location that collects data in Nebraska about sentencing. You have to sort of do this piecemeal. We do know that you can see a trend that sometimes, and even in some of the cases that we know about there was an older codefendant who was assigned to a term of years, while the minor was sentenced to do life. One of those most recent ones came out of Douglas County, and I'm afraid I've forgotten the name of the individual, but the adult codefendant was released after doing about ten years in prison, while the minor will die in prison. That individual, after his release, was then killed, you know, just a few months later at a drive-by shooting. So this is one of those things, older codefendants do end up in Nebraska, and nationwide, sometimes copping a plea before the child does and finding themselves with a lighter sentence. We also see some minors who commit horrible crimes, murder being the primary one, sometimes first-degree murder, who are not sentenced to life without parole. Again, this has a lot of resemblances to the debate on the death penalty. There is not fairness in who is being given the harshest of the sentences and who is not. But at this point we don't have hard statistics, we only have that anecdotal information. [LB843]

SENATOR PEDERSEN: For the record, I communicated with one of those young men, whose name is Brett Reider. He came from Omaha. He murdered his mother brutally some years ago. He did 12 years in prison. He's been out since, been paroled, off parole, off paper. He has two children, a wife, and has got a very successful life going out on the East Coast; communicates with me every Christmas. So I'm...just that there are some that do, you know, this is one of those who...of many who has done really, really well. [LB843]

AMY MILLER: There are. I think you'll find in the national report that I handed out, "Cruel and Unusual," there are statistics and studies about the fact that youth who offend, even when they commit very violent murders, have a much higher rehabilitation

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rate than adult offenders. It doesn't mean that we need to be harsher on adults. It just means we need to be aware of the fact that the capacity for change is much greater among a juvenile offender than an adult one, even when their crime is very appalling. [LB843]

SENATOR PEDERSEN: I thank you for your work on the races, race type statistics, also. That shows a lot. [LB843]

AMY MILLER: Thank you. [LB843]

SENATOR PEDERSEN: Thank you much. [LB843]

SENATOR LATHROP: Thanks, Amy. No other questions? No. Okay, thank you. [LB843]

SARAH ANN LEWIS: (Exhibit 20) Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Sarah Ann Lewis, L-e-w-i-s, and I am the policy coordinator and registered lobbyist for Voices for Children in Nebraska. Voices for Children in Nebraska would like to commend Senator Pedersen for introducing LB843. We strongly support this bill because children can and do commit terrible crimes, but we believe they should be held accountable in a manner that reflects their capacity for rehabilitation. Research surrounding brain development of adolescents confirms a guiding principle: The distinction between youth and adults is not simply one of age but one of motivation, impulse control, judgment, culpability, and physiological maturation. Adolescents simply do not have the same capacity to understand long-term consequences as adults. The difference between adults and youth is widely recognized internationally, and has been recognized by the U.S. Supreme Court. Even insurance companies understand the difference between adolescents and adults. Why do most 16-year-olds drive like they are missing a part of their brain? Because they are, concludes a full-page ad for Allstate Car Insurance. Even bright, mature teenagers do things that are stupid, the ad continues, with a discussion of the underdeveloped part of a 16-year-old's brain that deals with decision making, problem solving and understanding future consequences. I share this information with you because the system that is supposed to best protect our youth, a system we refer to as the juvenile justice system, has yet to recognize the difference between adolescents and adults. We believe life without parole is poorly designed punishment that negates everything we know about adolescent brain development. It is not rehabilitation, nor is it justice. LB843 is not soft on crime, per se. It is geared toward providing justice to those that can be rehabilitated. It is not intentioned to release persons not prepared to reenter society safely. The bill still allows for life sentences, but it also allows for hope. I have shared with you a copy of longer written testimony, a copy of a recent report published by Voices for Children that goes more in-depth on the scientific research of brain development, and a one-page information sheet with the recent information on life

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without parole around the world and in Nebraska. Also for the record, I have letters of support from the Pendulum Foundation, Roxanne Vergata, Michael Garza, Sr., La Verne Belt, and Darren McCracken. And with that, I would respectfully urge you to advance LB843. Thank you. [LB843]

SENATOR LATHROP: Very good. Thanks. Are there any questions? Senator Pirsch. [LB843]

SENATOR PIRSCH: Thank you. Ann, I think Ms. Miller talked about...I'm not sure if it was an international compact. What was that again? I don't know if you heard. [LB843]

SARAH ANN LEWIS: The UN Convention on the Rights of the Child. If...in your longer written testimony, there is a bit on this treaty, which all countries in the world have signed onto. We stand alone with Somalia. We have not signed nor ratified it, but every other country has. And it prevents the death penalty or life without parole for youth. [LB843]

SENATOR PIRSCH: Okay. What is...I guess from your testimony, you said that there is differing physical maturations and impulse controls. [LB843]

SARAH ANN LEWIS: Um-hum. [LB843]

SENATOR PIRSCH: With the treaty's approach, where do they set the age at? [LB843]

SARAH ANN MILLER: Eighteen. With the UN Convention on the Rights of the Child, they consider 18 and anyone above 18 to not be a child. [LB843]

SENATOR PIRSCH: Is that...how did they arrive at the 18 or figure as opposed to, say, 19, or 20, or 23? [LB843]

SARAH ANN MILLER: That I cannot answer, but I'd be happy to look into that because the most recent brain research shows that the brain doesn't fully mature until about the age of 25. [LB843]

SENATOR PIRSCH: Right, and I guess that's the point. [LB843]

SARAH ANN LEWIS: Um-hum. So, I mean, if you want to go higher, I'm fine to go higher. [LB843]

SENATOR PIRSCH: (Laugh) [LB843]

SARAH ANN LEWIS: But that's what the research says. I don't know how they came to that conclusion, but I'd be happy to look more into that. [LB843]



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SENATOR PIRSCH: I'd be interested in getting that. [LB843]

SARAH ANN LEWIS: Okay, sure. [LB843]

SENATOR PIRSCH: So appreciate it. [LB843]

SARAH ANN LEWIS: Sure. [LB843]

SENATOR LATHROP: Okay. Thanks, Sarah. [LB843]

SARAH ANN LEWIS: Thank you. [LB843]

PEGGY ADAIR: (Exhibit 21) My name is Peggy Adair, A-d-a-i-r. I represent the League of Women Voters of Nebraska. The League of Women Voters supports the abolition of sentencing child offenders to life in prison without the possibility of parole. One can argue against sentencing children to die in prison on a number of legal and moral grounds. As our society matures, our sense of decency evolves as it relates to the treatment of child offenders. In 1885, our federal government invoked the hanging of James Arcene, a Cherokee Indian, who had participated in a robbery and murder. He was ten years old. We don't hang ten-year-old children anymore. We don't execute 16- and 17-year-olds either, but we did until 3 years ago, when the U.S. Supreme Court held such practice to be unconstitutional. We have evolved. Today, over 2,000 youth offenders are serving sentences of life without possibility of parole in the United States. It is estimated that there are about 15 such offenders serving life sentences in the rest of the world. Either the rest of the world is wrong-headed or we are. The United Nations Human Rights Committee has confirmed that the United States is violating its legal obligations whenever a child offender is given a sentence of life without parole. The League of Women Voters supports full and active participation of the United States in the United Nations system, including UN efforts to ensure respect for human rights and promoting the well-being and potential of children. To that end, the League supports efforts to end sentencing child offenders to life in prison without the possibility of parole. And the League urges this committee to send LB843 to General File for full debate. And I welcome any questions. [LB843]

SENATOR ASHFORD: Any questions? Thanks, Peggy. [LB843]

PEGGY ADAIR: Apparently, I've said it all. [LB843]

SENATOR ASHFORD: (Laughter) Apparently, you have. We have your letter, too, so we can read it. Good afternoon. [LB843]

MARGE SCHLITT: Good afternoon, Judiciary Committee. I'm Marge Schlitt. I'm not

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here representing anybody but myself. I am a volunteer in Nebraska prisons. I regularly go to the penitentiary and to the Lincoln Correctional Center with a program called The Alternatives to Violence Project. This is a program where we help people learn how to react to conflict situations in ways that don't end in violence. It's a very popular program and a very effective program and I'm very proud to be with it. But I was absolutely blown away when I read in the "Nebraska Criminal Justice Review" that two of the people on that list were active, very fine facilitators in this program. And both of them are people I would be delighted to have as my next-door neighbor. They definitely have grown up. They are definitely responsible and I don't know the others, so I can't speak for them. But I do know that our society is making a mistake if we keep these people in prison for the rest of their life because they have a lot of contribute to society. And so I just wanted to tell you my personal experience. And I only have four fliers about our program. If anybody is interested, I can... [LB843]

SENATOR ASHFORD: Well, we can make copies and get them around. [LB843]

MARGE SCHLITT: If you want it, I don't know. Thanks. [LB843]

SENATOR ASHFORD: Thanks, Marge. Thank you for coming down. Jim. [LB843]

JIM CUNNINGHAM: Senator Ashford and members of the committee, good afternoon. For your record, my name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I am here as representing the Nebraska Catholic Bishops Conference in support of LB843. I also come to you from the hallway caucus in favor of LB843. Lot of good discussion going on out in the hallway today. I want to indicate to you that last evening I had an opportunity to read the report that Amy Miller referred to from Equal Justice Initiative. And it has a number of case studies in there from other states in particular. I have to tell you that it is chilling, alarming, and compelling. And for me it helped give some context to something else I had read in preparation, a statement from the year 2000 from the U.S. Catholic Bishops Conference on Crime and Criminal Justice. And one of the statements in there, and I'll quote it to you: Our society seems to prefer punishment to rehabilitation, and retribution to restoration, thereby indicating a failure to recognize prisoners as human beings with inherent human dignity created in the image and likeness of God. The Nebraska Catholic Conference is in support of LB843 and commend Senator Pedersen for bringing it to the Legislature because we view...our view is that the current policy on juvenile life imprisonment without parole is in need of reform, for in those instances in which it applies it eliminates opportunity, not just opportunity for parole review, but even more significantly, much more significantly, all meaningful opportunity for redemption, reform, rehabilitation, and reintegration. Our view of this is that this legislation does not offend or deny the balance between the necessity of responsibility, accountability, and corrective punishment on the one hand, and efforts for healing, forgiveness, and rehabilitation on the other hand. Rather, this legislation upholds and enhances that balance. It is worthy of your support and your advancement of the bill to the full

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Legislature. And let me close just by adding that in no way does support for this bill in any way minimize the seriousness of crimes or the compassion and concern unquestionably due to victims of crime and their families. Thank you. [LB843]

SENATOR ASHFORD: Any questions of Jim? Seeing none, thanks, Jim. [LB843]

JIM CUNNINGHAM: Thank you. [LB843]

SENATOR ASHFORD: Good afternoon. [LB843]

JOHN KREJCI: (Exhibits 22 and 23) Good afternoon, Senator Ashford. My name is John Krejci, that's K-r-e-j-c-i. I represent Nebraska Chapter of the National Association of Social Workers. As you now, the National Association of Social Workers have strong commitment to protect juveniles and to work for policies that do not threaten their welfare. There are many groups, and you have heard from some. There are many, many groups who oppose this. Most nations do not have this, and it violates United Nations treaties. I've enclosed my testimony and an editorial from The New York Times, and then a copy of our "Nebraska Criminal Justice Review." The first man who testified here, Mel Beckman, is a very humble man. He said, I don't want to give them...but he's done wonderful work, this "Criminal Justice Review." You get it and you probably don't always read it, though, some of you do. And I just want you to make...there are several articles...a letter from Father Val Peter supporting the bill, some background material, and something I wrote talking about there's a sea change, moving away from sentencing juveniles. I won't go through the reasons why this bill should be supported, you've heard those and I don't want to repeat them. And I do believe that people that do wrong should be punished, but life sentences and life without parole, for all practical purposes, any life sentence in Nebraska is without parole. I believe there has been one commutation and pardon in the last...since in the 1980s. I'm a professional sociologist, social worker. I've studied this. I've worked with young people. I raised three children and I think I know something about young people and they talk about brain development. Sometimes I like to talk about not juvenile delinquency but parental delinquency. Most kids that commit violent crimes have been abused sexually or physical, and certainly they have not been loved and cared for. They're just developing. Let me just quote Elie Wiesel, famous Holocaust survivor. He said, every child needs someone to be crazy about them, and these kids were not. And let me finish by saying, put yourself in their place; you're 16 years old, you're 18 years old, you say to yourself, I'm a teenager, I'm going to jail for the rest of my life, I'm going to die in prison. Do we want to do that in the state of Nebraska? Thank you. [LB843]

SENATOR ASHFORD: Thank you, John. Any questions of John? Thank you, sir. [LB843]

JOHN KREJCI: Just a moment of privilege. Senator Pedersen, and Senator Chambers

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is not here, have done so many wonderful things, advocates for inmates. And we're really going to miss them and we hope someone will take their place, even though they can't. So thank you. [LB843]

SENATOR ASHFORD: Well, there are probably some candidates for that, but thank you, John. Thank you for those good words. [LB843]

JOHN KREJCI: Thank you. [LB843]

SENATOR ASHFORD: Loran. This will be the last proponent testifier. Then we'll move to the opponents. Loran. [LB843]

LORAN SCHMIT: (Exhibit 24) Thank you, Chairman Ashford, members of the Judiciary Committee. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I am speaking here today on behalf of LB843 and I am speaking on my own behalf. Again, I want to thank Senator Pedersen for introduction of the bill. The young man I'm going to refer to today has been...has met Senator Pedersen and I appreciate what you've done for him, although thus far we've been unsuccessful. LB843 recognizes that individuals who are under 18 years of age or under 16 years of age do not have the mature judgment of older persons. Each of us can recall action during our youth that we would not have performed at a mature age. Fortunately, most of that youthful activity did not have tragic results. On those occasions where such action on the part of a person younger than 18 years of age resulted in the loss of life and a murder conviction, I believe that young person committing that murder should not be treated as an incorrigible or habitual criminal and be sentence to life without parole. I would like to cite the case of Joe McDonald whose aunt and uncle live across the street from me in Bellwood, Nebraska. Joe's parents were divorced and at the age of 16 he was living with his father in Omaha, Nebraska. After a night of drinking beer and using drugs, not an unusual activity for many young people, events took a tragic turn. Joe and an accomplice robbed an individual and placed him in his car trunk. Joe's story is that they then tried unsuccessfully to find the car keys to release the victim from the trunk but were unable to do so. Then they tried to find some tool to open the trunk, but before they could do so, the car was engulfed in flames and the victim died. Joe was charged with murder while the accomplice, a young man named Johnson, was allowed to make a deal if he would turn state evidence. Johnson wound up spending six months in Kearney, Nebraska, and was released. Joe was found guilty of felony murder and sentenced to life imprisonment without parole. I believe a major difference in the sentencing was that Joe McDonald was represented by a court appointed attorney, while Johnson's parents were able to hire their own attorney. Obviously, Mr. Johnson's attorney, in the words we have heard before in this committee, beat Joe's attorney to the courthouse. Joe was found guilty and has spent more than 32 years in prison. During the trial, Joe was offered a deal by the prosecutor to plead guilty to the offense of manslaughter. He refused to accept that offer, another example which I believe is additional evidence of

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his lack of effective counsel and his immaturity. I've spoken before about my abhorrence of drastically different sentences for the same crime. In my opinion, this is the most glaring example of that system of lack of equal justice. Mr. Chairman, in view of time, and my light has gone on, I will conclude my testimony there and you have the balance of it before you. I'd be willing to answer any questions, but I ask you to advance this bill to General File. [LB843]

SENATOR ASHFORD: Thank you, Loran. Any questions of Loran? Thank you, Loran. [LB843]

LORAN SCHMIT: Thank you. [LB843]

SENATOR ASHFORD: Opponents, opponent testimony? We have until 10 after 3:00. Do we have any neutral testifiers? Okay. [LB843]

JEFF LUX: Good afternoon, everyone. Chairman Ashford, members of the Judiciary Committee, my name is Jeff Lux. I'm a deputy Douglas County Attorney in the Douglas County Attorney's Office. I am here to represent the Nebraska County Attorneys Association and at least...opposition to at least part, or at least to bring out a point of concern that we have about some of the language of the bill, and just to bring an additional perspective to just consider. I read the language of this bill to a group of prosecutors. Of course, we were all in there charging crimes. And the first thing everyone said, whether they were black, white, or male or female, was, why are we giving an incentive to gangs to use their younger members to carry out their most violent crimes? And that concern was based on the capping provisions of the sentences, not the parole provisions but the caps. That could potentially have an unintended effect of leading gang members to use their youngest members to perform their most violent crimes, to carry those out. And this thought process is already out there on the streets. Younger gang members are used as drug mules, lookouts, you know, carry out assaults, you know, shooting at other gangs or turf battles, drug issues, that kind of thing. And to potentially add homicide to that list is concerning. These crimes that I mentioned before sometimes they've done...a lot of times gang initiations, to move up in the gang, hierarchy by committing more violent crimes. And the language of the bill seems to...it could play into or support that gang thought process that's out there with regard to who commits the violent crimes on behalf of that gang. And we don't...we're concerned that there could be a situation where, yeah, the caps in this bill, you know, gets out there on the street. Hey, we're going to have this individual perform this because if somebody else would do it, they get life, they could potentially get death, and you wouldn't. And if this person, this individual wants to move up that hierarchy, that might be something that they want to do. And it's just a situation where I don't know how a bill could dismantle that gang process, but we don't want to encourage it either. And there could be an unintended effect here because of the caps. And so just wanted to bring that to the attention of the committee that that was a concern of ours. And, you

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know, granted, we were in a room full of prosecutors, but it's the first thing that came up in everybody's head. And so that's basically why I came down this afternoon. Thank you. [LB843]

SENATOR ASHFORD: Thanks, Jeff. And those are meant to be floor, I guess. It's not so much a cap as it's more of a...it's intended to be a floor. Isn't it? You talking about the 20-year and the 25-year sentence? [LB843]

JEFF LUX: The cap on potential 50-year life imprisonment. [LB843]

SENATOR ASHFORD: Oh, okay. [LB843]

JEFF LUX: But then, you know, the floor would be for the parole provisions of that. [LB843]

SENATOR ASHFORD: For the parole provisions. [LB843]

JEFF LUX: Right, 25 and 20. But the top end caps... [LB843]

SENATOR ASHFORD: So you're not talking about that part? [LB843]

JEFF LUX: Not about the parole, no. [LB843]

SENATOR ASHFORD: Okay. Thanks, Jeff. Appreciate it. Thank you. [LB843]

JEFF LUX: Thank you very much. Have a good day. [LB843]

SENATOR ASHFORD: You too. Yes, sir. [LB843]

KIRK DRAKE: (Exhibit 26) Good afternoon, Senators. My name is Kirk Drake. And I've been a lifelong resident of Nebraska in Cass and Lancaster Counties. Today I'm here as an opponent of LB843 on behalf of my family and friends and for my brother-in-law and sister, Wayne and Sharmon Stock. While we do recognize the needs of our youth that are entering the state penitentiary system, we also recognize the needs of law-abiding, productive citizens that need to be protected and need to live in society where justice is applied and not just talked about in all criminal cases. It is our understanding that the intention of this bill is to set a time limit for any felon under the age of 18 who is currently incarcerated, as well as any of this age group that commits a crime in the future. The bill assumes that these felons will be rehabilitated. Might I remind you senators, rehabilitation is like tomorrow; it is granted to no one. Are we willing to put innocent people's lives in danger because we thought they would or should be rehabilitated after a certain number of years? While it is true no one can read the future, we can read the present. If they have done it once, they are capable of doing it again. This bill would

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give the undeserving a second chance at life that the victims of their cruel and senseless acts will not receive. Proponents of this bill have been quoted that not all felons affected would be released. According to lawyers and to senators we have consulted, the wording in this bill implies that they would all be released after they'd served a minimum of 20 to 25 years. My sister, Sharmon Stock, and my brother-in-law, Wayne Stock, were viciously murdered while in the sanctity of their own bedroom on April 17, 2006. The two teenagers charged with their murder were 17-year-old Jessica Reid and her boyfriend, 19-year-old Gregory Fester, and they were both from Wisconsin. And during a multistate crime spree they supposedly selected the Stock's home at random. Although there are references these two individuals may have been using drugs, there is no actual evidence of that as they were not arrested until June. We also don't...and after Jessica Reid's arrest, at 17 years of age, after she and Gregory Fester had quoted, they didn't need the money, this was a thrill kill, my sister and my brother-in-law was a thrill kill, and when it was found, after she'd been arrested, she kept a shotgun slug shell and entries in her diary that stated that "I killed someone. I loved it. I wish I could do it every day. If Gregory doesn't look out, I will go out on my own and continue this." Is this the type of person we want back out in society after 20 years? [LB843]

SENATOR ASHFORD: Kirk, I'm going to ask you sum up, if you would, please. [LB843]

KIRK DRAKE: You bet. It has been publicized that this bill would give teenagers an incentive to be rehabilitated since it would ban life sentences for minors. Is it not true that all felons currently in the state penitentiary serving life sentence have the possibility of being heard before a Parole Board? there are currently 30 felons who have committed a crime under the age of 18. Don't they all have the opportunity to be heard in front of a Parole Board? Is LB843 not an attempt to bypass the Parole Board hearing and release these 30 felons once they've served the 20 to 25 years? These felons still would be heard before a Parole Board under LB843. And why do we need to have this bill become law if it's already in place? The victims and the crimes of these 30 felons committed are owed an answer and they're owed justice on whether these felons' fates will rest with the Parole Board or just their age determining the actual sentence. We hope today that this hearing exposes to the voting public the true intentions of LB843 and why the friends and family of Wayne and Sharmon Stock oppose it. Thank you. [LB843]

SENATOR ASHFORD: Any questions of Kirk? Thank you, Kirk. [LB843]

KIRK DRAKE: You bet. [LB843]

SENATOR ASHFORD: Next opponent. [LB843]

SHARON HANKE: Good afternoon. My name is Sharon Hanke, H-a-n-k-e. I am here

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today to beg you, as a victim, to not allow LB843 to pass. My sister, Sacha, at age 12, was brutally murdered by Sydney Thieszen on September 17, 1987. It's been 20 years, but to me it might as well have been yesterday. A violent crime like murder is not something you ever get over. It changes who you are, it changes everything forever, the way you live your life, the way you think, the way you go about your day-to-day life. Sydney might have been 14 when he brutally murdered my sister, but he did know what he was doing. He had been planning this for months, according to the testimony by several classmates and friends of Sydney. He knew right from wrong. He had many options. He chose murder. This was not a spur of the moment decision he made, this was carefully planned and executed. He took the time to steal a gun from a locked bedroom and a locked gun case. He wants people to believe that 30 seconds out of his life was the only mistake he ever made. However, in the months prior to the murder he had continually raped one of our little foster girls we had in the family, and he also tried to climb into my other sister Stephanie's bed, and attempt to rape her. However, as she was in high school, she was able to fight him off. He was also continually killing off family pets on the farm and was also getting in trouble in school. He has vowed to kill the rest of the family when he gets out. Is this someone you want living on the streets next to you? Senator Pedersen, in your response to my letter you said you wanted these juveniles to have hope. What about the hope for me and my family and the other families that this has affected? I want and need hope that I'm not going to be killed before I see my children grow up. How about the hope for my kids that they won't ever get the phone call that Sydney is out of jail and killed their parents? What about my hope to live without fear? I don't believe anyone who has never taken responsibility for their actions can be rehabilitated, especially when it comes to murder. I live in fear every day of my life that Sydney will some day get out of jail and finish off the rest of my family. No offense to any of you senators, but to you LB843 is just another bill you can put your name on and something you can walk away from and never give it another thought. To me LB843 is reliving the entire nightmare again, beginning with the awful phone call I received that my cherished sister was dead, having to go through all the emotions again, to relive the trial in my mind, and remembering what he did to her all over again. To me LB843 is having to face my fears of Sydney getting out again. Sleepless nights, the crying, the anger, all the stages of emotions that you go through when something like this happens to you, it happens all over again. This is not something I can walk away from, gentlemen; this is something I have to live with forever. I need the hope that I don't have to attend parole hearings on a yearly basis and have to relive everything all over again. This bill is aimed towards the perpetrator. What about us victims? I hope and pray that this is something you will think about when you go to vote on LB843. [LB843]

SENATOR ASHFORD: Thank you, Sharon. Any questions of Sharon? Thank you for coming down, Sharon. Next opponent. [LB843]

ANDREW STOCK: (Exhibit 27) My name is Andrew Stock, last name S-t-o-c-k. I'm the



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youngest son of Wayne and Sharmon Stock. I was born March 15, 1979, to the most loving and committed parents that anyone in this world could ask for. I'm here today to voice my opposition to LB843. My parents Wayne and Sharmon Stock of rural Murdock, Nebraska, were murdered April 17, 2006, by Gregory Fester and Jessica Reid. At the time of the murders, Jessica Reid was 17 years of age. That means that if LB843 passes it would affect the sentence that she received by our court system. I think it's critical to keep Jessica Reid out of society as some form of justice for the horror and pain forced upon my parents. I pray that as you hear the opposing statements today that God will allow you to understand what we, as innocent victims of these malicious people, have to now live with for the rest of our lives. These two people had every opportunity to rethink their decision before they entered my parent's home that night. Not only did they wrongly take the lives of my parents, Reid blatantly wrote about how they enjoyed the fear and pain that they inflicted on them. For someone to take two lives and then be calm enough to collect shell casings as souvenirs, stop at my parent's kitchen sink, wash the blood off their hands and face, and calmly drive away shows that they have no respect for human life whatsoever. Jessica Reid wrote in her journal, as part of the evidence, that she would like to commit a crime similar to this again. They left my parents' house at night and continued on with their joy ride, with no guilt or thought of what they had done. They left my parents lying on the floor in their bedroom for me to find the next day. Now I'm forced to live with the image of my parents' deformed heads and the blood covered walls of the home I grew up in forever. This is an image that's horrifying to most, but yet Reid found joy in seeing this take place. The events of April 17th were a life-changing experience that no one should have to go through. Jessica Reid violated my parents, our family, and the loving home that's been in our family for four generations. The pain that my family and I feel every day is impossible to express to you or anyone. I realize that as a democratic nation our judicial process needs to be updated, however, I do not believe that we should put society at risk by releasing convicted murderers. I believe we have a court system in place that addresses the same matters as LB843. The way it's been explained to me that, as of this date, Nebraska does not have a true life sentence. Every inmate in the Nebraska Correction System has an opportunity to request a Parole Board hearing. It's my feeling that we should leave this process to releasing felons back into society to the Parole Board on a case-by-case matter, not making legislation that gives a get-out-of-jail-free card to every felon in our state correction's system who committed a crime as a minor. I have no doubt that there are some juveniles in our state system that can be rehabilitated and released, but I think we need to look at their prior actions to see how they perform with the opportunities given to them before they were placed in state custody. For example, Jessica Reid and her lawyer will tell you that she was an honor roll student, and just a normal, everyday girl. [LB843]

SENATOR ASHFORD: Andrew, could I just ask you to sum up, because we're...we've got...I'm sure there are some others that would... [LB843]

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ANDREW STOCK: Okay, thank you. [LB843]

SENATOR ASHFORD: And we have your testimony as well, so we can read that. [LB843]

ANDREW STOCK: Okay, perfect. [LB843]

SENATOR ASHFORD: Thank you. [LB843]

ANDREW STOCK: I am forced to bandage the scars that these two have inflicted on my life. I now live a life that revolves around the aftermath of Reid and Fester's decisions. I ask you to put yourselves in my shoes and consider what punishment would be suitable for this crime if your parents' God-given gift of life was taken by two people out of pleasure. Would 20 to 25 years be enough if it was your parents? I'd like to close with a quote from my mother, Sharmon, that I heard many times as I was growing up. You must stand up and take responsibility for your actions, no matter what the consequences are. I plead with you that you, too, would ask Jessica Reid to stand up and take responsibility for her actions on April 17, 2006, by dropping LB843 and forcing her to spend the rest of her life in prison. Thank you. [LB843]

SENATOR ASHFORD: Thank you, Andrew. Do we have any questions of Andrew? Thank you for coming down. Next opponent. [LB843]

MICHAEL HANKE: Senator, my name is Michael Hanke, H-a-n-k-e. I'm here today to speak out against LB843. I am one of the Thieszen family survivors. If this bill becomes law, it has the potential to release these killers after just 20 and 25 years. You folks already know that they give 2 years credit for every year served. In our case, that would mean Sydney Thieszen would be eligible for parole already. And I know that if LB843 passes, it would not be retroactive right away, but there will be appeals if this law comes to pass, and I'm sure somebody is going to agree, and then it will be...it will apply to the current 30 killers that are in our penitentiary. Eleven of these killers, including Sydney, would be eligible for release as soon as LB843 becomes retroactive. Senators, these are not children, they are convicted killers. When these people were convicted of murder they were not sentenced without regard to their age or innocence. When a judge imposes a sentence, they must consider age, mentality, education, experience, past criminal history, amount of violence involved, and several other factors. After the conviction and sentencing, a defendant gets a whole new set of appeals that seems like it goes on forever. These killers have had their cases looked over and over by the courts and their own lawyers. These people were deemed to be the most dangerous and the most likely to kill again, that is why they got the second most severe sentence that the law allows in Nebraska. Society has a right to be protected from these people, and I believe it is your responsibility to uphold the law and to protect the people you serve. By making these sentences shorter I believe you are cheapening the lives of our

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murdered family members. Thank you. [LB843]

SENATOR ASHFORD: Thank you, Michael. Any questions of Michael? Thank you, Michael. Any further opponent testimony? Any neutral? Is there someone outside that may want to testify? Is that what...why don't you check and then we'll...sir, are you a neutral testifier? Come on up. [LB843]

GERAD SEGGER: Hello, Committee. My name is Gerad Seggers and I'm author of a new book called Protect Yourself from Criminal Intent. This book just recently got on the market, November '07. I think the point is today that...what I wish to testify is that I, myself, am an ex-felon. I have served three terms in the California state penitentiary system. I have served three terms here in the Nebraska state penitentiary system. I think what we're looking at today is an age group of individual youngsters between the ages of maybe from 11 up to about maybe 15 to 16 years of age, basically do not have any guidance or structure basically in the home. Take myself, for instance. My family came...I came from a background, from a family that believed in hustling. They believed in getting the money the old-fashioned way as far as bootlegging liquor back in the days when I was a little youngster, when I was about 3, 4, or 5 years old. I can remember those days, having gambling houses and all sorts of illegal activities growing up in my household. And basically what I'm trying to get at, that when you also grow up in a disturbed household, basically you get kind of basically immune to the streets. You get immune to the type of crimes that is committed in your neighborhood. A lot of kids today have a lot of leeway from...I figure from their parents' perspective because parents, in some light, do not give their children the punishment they deserve. As I was growing up, I got whoppings, spankings, I got hit with frying pans and extension cords and these type of things. In the school systems the principal was authorized to beat the kids in school when they did wrong. When those type of programs and when those type of things came upon and was taken away from the school, I think that society itself kind of lost hope to the kids today, and which me being one. Because of my stint as a criminal kind of maybe messed up my life and put a lot of other people's lives in danger, and it caused me to go inside a prison system to basically pay my debt to society. But there are such things that we hear, rehabilitation, because I rehabilitated myself. When I was NSP, back in 1992 to 1995, they had a collegiate program at Southeast Community College and I was able to attend that college. And I was able to get my associate's arts degree. And upon that, I looked on to try to better myself because sometimes inmates, they go into the system, and some of them do not want rehabilitation. Some of them want to become and stay career criminals. A lot of people, inmates, in their dreams is to become criminal rich as far as becoming productive society successful. And I think today is that we have lost structure in our schools and we lost structure in our homes and in our communities. And it's based on where you really grew up at. If a person grew up in a real society neighborhood, basically, he would probably do all right, and the polls and census shows that. When a person is growing up in poverty and in an lower middle class neighborhood... [LB843]

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SENATOR ASHFORD: Gerad, let me just interrupt you just briefly to ask you to sum up, if you could, because time has run here. [LB843]

GERAD SEGGERS: No problem. I understand. Basically, what I'm trying to say that a lot of crime that is committed is committed by a lot of people just in poverty. And a lot of...5 percent of the crime that's committed is committed by those that is basically successful in their family background. The system basically is not fair, you know. I think that the Legislature does a fine job in trying to distinguish what is fair in law and what is not in law. But you got to understand and remember that everybody does deserve a chance. And I give my heart out and my condolences to all the victims in here that have lost people to murders and things like that but, you know, that's just part of life. Things happen like that in life. I mean, it happens in war every day. [LB843]

SENATOR ASHFORD: Gerad, I'm going to ask you to...that's...we're going to... [LB843]

GERAD SEGGERS: No problem. [LB843]

SENATOR ASHFORD: But thank you for coming. And I believe that...any other neutral testifiers? That concludes the hearing. Senator Pedersen, do you wish to... [LB843]

SENATOR PEDERSEN: Being a member of the committee, I will...on the committee, I'm not going to take up any time. I'll waive the closing. [LB843]

SENATOR ASHFORD: Thanks, Senator Pedersen. Thank you all for coming on this bill. And we'll move now to LB868. Senator Nantkes. How many testifiers do we have on LB868? Okay, behind the pillar. Senator Nantkes, welcome. I don't think...they didn't indicate they were here for your bill. Okay, LB868. Senator Nantkes. [LB868]

SENATOR NANTKES: (Exhibits 28 and 29) Good afternoon, Chairman Ashford, members of the committee. My name is Senator Danielle Nantkes, that's D-a-n-i-e-l-l-e N-a-n-t-k-e-s, and I represent the "Fightin' 46th Legislative District." I'm here today to introduce LB868. LB868 would prohibit the operation of delayed deposit services in the state of Nebraska, and any person found guilty of violating this act would be guilty of a Class IV misdemeanor...or felony, I'm sorry. I have received multiple questions about why I am interested in this issue. And I basically have two reasons that I am bringing this legislation before you today. The first is, there's a concentration of these businesses within my district in north Lincoln, and that, in part, has prompted communications from constituents who are concerned about the predatory nature of these businesses. These businesses are outside the financial mainstream that reputable businesses, like credit unions and banks, operate within. Payday lenders or cash advance businesses target and prey upon our society's most vulnerable citizens, including the working poor, the elderly, and military families. The end result of this predatory behavior is windfall profits

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to the industry and a spiraling trap of debt and potential for numerous additional civil and criminal penalties for individual and families who are struggling to provide ways to meet their basic needs. Second, I've been working on consumer protection issues throughout my career as a public interest attorney, and have done research over the course of many years about the state of our laws on this issue in Nebraska and in other states, while also trying to identify ways to improve our public policy in terms of consumer protection. This research has concluded that, at the very least, additional statewide regulation is needed on this issue. And I applaud and admire Senator McGill's alternative approach to curbing the abuses perpetrated by this industry through the legislation that she has introduced this session. However, it is my opinion and I believe the evidence is clear from a variety of nonpartisan consumer protection groups that have evaluated different approaches on this issue in different states, that the only way to stop the exploitation of loopholes existing in existing regulation, and the only way to stop the financial exploitation of individuals and families in crisis is to prohibit these predatory practices altogether. I'm asking for your support of a statewide prohibition of these activities for two reasons. One, additional regulation has not worked in Nebraska or in other states. According to a December 2007 report by the Center for Responsible Lending, renewal bans, cooling off periods, payment plans, loan caps, databases, and other mechanism have not stopped payday lenders from trapping them into long-term debt. In fact, leaders within the industry brag in their national publications about how in Nebraska the legislative side is pretty easy. I'm quoting the interview with Trina Thomas, president of Nebraska Check Cashers Association, and a payday lending business owner that I've had the clerk pass around for your review. Two, states who have enacted a straight prohibition of these businesses altogether have not, in fact, experienced the claims the industry predicts will befall needy citizens if these services are ended. Twelve states that are geographically and politically diverse currently follow this consumer-friendly approach. In those states, the credit union and community bankers have stepped forward and created and offered responsible products to individuals and families in need of addressing short-term financial crisis without exacerbating or creating additional long-term financial insecurity. I'm confident the same will happen in Nebraska if we were to enact a payday lending ban, and I think there's going to be some people following my testimony this afternoon to talk about some of those alternative products. It is not the one-time borrower or user of these services who is most in need of protection. According to the research, true one-time borrowers account for only a small percentage of actual customers and fees generated. A concentrated and deliberate strategy by the industry instead amasses 90 percent of its windfall profits from fees stripped and trapped from amongst repeat borrowers. The typical payday lender pays back \$793 on a \$325 loan according to a November 2006 report from the Center for Responsible Lending. The report further notes that the predatory payday lending industry costs American families \$4.2 billion per year in excessive fees, and that states that ban payday lending save their citizens an estimated \$1.4 billion in predatory fees each year. On a final note, I want to address in my opening some recent media attention that has been brought to this issue, as well. Questions and

negative feelings about the fairness and propriety of this business abound within our public dialogue. To combat this, the industry has recently launched a \$10 million advertising campaign to resurrect their image. That's one thing that I want to note. Additionally, many of you have received communications from alleged customers about the need for these services to continue. And thanks to the crafty detective work from a member of Senator McGill's staff and as documented by a story appearing in today's Lincoln Journal Star, I believe these communications are suspect and their voracity is at issue. I would caution you to look at these communications with a discerning eye. Colleagues, ask yourselves this: If the industry is willing to submit false testimony to this Nebraska Legislature, you can only imagine how far it will go to exploit vulnerable Nebraska families. With that, I look forward to an interesting discussion this afternoon, and I'm happy to answer any questions and I plan to be present to close. (See Exhibits 30-44) [LB868]

SENATOR ASHFORD: Thank you, Senator Nantkes. Yes, Senator Lathrop. [LB868]

SENATOR LATHROP: Can I ask just to better understand the issue, these are the outfits, you see them all over, that essentially a person goes in and writes a check because they don't have the money in the account, and they postdate the check, and the person that cashes it agrees to hold the check for X number of days and then run it through. [LB868]

SENATOR NANTKES: That's right, Senator Lathrop. [LB868]

SENATOR LATHROP: That's how it works? [LB868]

SENATOR NANTKES: That's the basic strategy involved. [LB868]

SENATOR LATHROP: And if a person...and I'm just asking if you know this typically...if you typically need a \$100, how much is that person...? How many days do they get the use of that \$100, and what do they have to write the check for? In other words, what are they paying for the privilege of using the \$100? [LB868]

SENATOR NANTKES: It varies state to state. Here in Nebraska there are caps on the top limit for what fees can be charged in relation to what's loaned out. There is also a limit, I think, of 31 days currently for the amount the loan period can be, and again these are attempts, in recent history, basically since the '90s, to try and really put some legal parameters on this previously unregulated financial service market that's outside of the mainstream here. And, you know, there's...I think the important thing to remember though, in addition to the regulations that exist, is that in a mainstream financial service product the purveyor of that product looks at things like ability to repay and a variety of other factors I think that help to distinguish a responsible product from a product that causes great concern amongst those of us in the consumer protection community. And

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so those are some aspects that differ. [LB868]

SENATOR LATHROP: Going back to my question though, you said that the average person, on a \$350 loan, pays \$700 and something back? [LB868]

SENATOR NANTKES: Yes, and those are...admittedly, those are national statistics from a 2006 report that the Center for Responsible Lending put out. I could get you some specifics about what happens here in Nebraska. But again, it's not what we want to look at in terms of the kind of one-time borrower. It's when that splits and the annual percentage rate rises to a point that's far...that rises far above what we normally consider to be a usurious rate of interest, when that flipping and borrowing, multiple borrowing, occurs. [LB868]

SENATOR LATHROP: So the fact that the average person typically pays about twice, two times the amount on a \$350 loan, that average person may be somebody that rolls and rolls and... [LB868]

SENATOR NANTKES: Yes. I'd say at the very least, Senator Lathrop, those will be the fees that will be incurred. And I think that there are some people here who could...who will be able to share some concrete examples about their experiences in Nebraska with their clients or otherwise. [LB868]

SENATOR LATHROP: Okay. I have another question for you. [LB868]

SENATOR NANTKES: Yes. [LB868]

SENATOR LATHROP: Do you know what the typical person is? Is it someone with a gambling problem or is it somebody that just comes up short a few bucks on stretching their paycheck from...? [LB868]

SENATOR NANTKES: I think that families and individuals turn to these products and these services for a variety of different reasons. Normally, families that live...or who are stuck in low-wage work, for example, and who live paycheck to paycheck to provide for their family's basic needs, can occasionally, when a major catastrophe will occur that upsets their delicately balanced budget, a medical issue, a car repair, something of that nature, is usually what will get them to enter into one of these transactions and then that they have difficulty climbing out of. For the most part, these businesses are targeted with a neighborhood that have high minority populations, high instances of poverty, and thus high instances of the unbanked consumer overall. I've heard a variety of different communications from the industry that, in fact, it's not just low-income consumers who rely upon these, but, in fact, many middle-income families utilize these services, as well. And again, I think that those are really more maybe the people that almost statistically in significant number, that utilizes as a true one-time service, but otherwise they're going

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to utilize their bank or credit union services, and really would have no need for these services. So anecdotally that may be true, that a wide variety of socioeconomic levels of individuals and families may utilize these services. I think for the most part the concentration and location of where these services are provide a...paint a pretty clear picture about the types of consumers that utilize the services. [LB868]

SENATOR LATHROP: Thanks. [LB868]

SENATOR ASHFORD: Thank you, Senator Lathrop. Any other questions? Thanks, Senator Nantkes. Do we have any proponent testimony? People who are for the bill? How many proponents do we have, those who are supporting the bill? Okay. [LB868]

LEA WROBLEWSKI: (Exhibits 45 and 46) My name is Lea Wroblewski. I'm a supervising attorney at Legal Aid of Nebraska, and my specialty is bankruptcy and consumer law. In my capacity as a consumer law specialist, I train and supervise attorneys across the state of Nebraska. I actually brought with me copies of the report that Senator Nantkes referenced, which is a report put out by the Center for Responsible Lending. With regard to this topic, I recall training an attorney that was out of civil practice for quite awhile. She was in criminal practice. And she was completely shocked when she got her first payday loan case, and she was incredulous, and said, aren't there laws against this; this is usury; how can they charge this much interest? And in the time that she had been practicing criminal law, this entire industry had been created, and we have laws in the state of Nebraska that allow these businesses to charge people APRs that are outrageous. I do call them loans, because in my opinion that's what they are, and the industry will tell you that they operate a delayed deposit service, and that they're not a loan, and that the APR is irrelevant because these aren't long-term loans. But the reality is that for most consumers that use these services, these are long-term loans. And their ability to repay those loans is severely compromised because of the interest rate, because we're talking about a very short time period, because the individuals that access these services have very limited funds to begin with, and in some instances there is no room in their budget to repay these. And I've attached several case summaries which are cases that just happened to be on the top of my desk. I do not have to look real hard for these, and they're pretty typical of cases that I see or talk to other attorneys about on a daily basis. The delayed deposit service industry will tell you that they help people, and I guess in my experience that's not the case at all. And I think that there is absolutely no way you can help people by loaning them money with such a way that they can never repay it. One of the more interesting inclusions in the Center for Responsible Lending's report is a table that essentially outlines the math, that the loans cannot be repaid, even on an income of \$35,000 a year. And as some of the case summaries that I've attached show, another growing market for these lenders are people who are on Social Security or receive VA benefits. These aren't individuals that can go out and get a part-time job or work extra hours to repay that loan. And they frequently find themselves writing checks at multiple



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places just so that they can keep going back to pay the original lender. And there are no limits in those regards in the state of Nebraska. We're not able to answer some questions about how many of these transactions occur or the amounts, because those records are not kept in the state of Nebraska. Senator McGill's bill addresses that issue. I am here testifying in support of this bill because I agree with Senator Nantkes' position, that the only solution is to prohibit these delayed deposit service industries. I do not see these as a service to the citizens of Nebraska, and we would ask you to support this bill, and I'd welcome any questions. [LB868]

SENATOR ASHFORD: Any questions of Lea? Senator Chambers. [LB868]

SENATOR CHAMBERS: How do they go about collecting from a person? [LB868]

LEA WROBLEWSKI: They will...when you write the check and leave it with them, you have the option of coming back and paying cash or you could have the check deposited. If you don't come in to pay the check, they will call your bank on a daily basis until they can put that check through. I've had clients who have had multiple checks bounced because their delayed deposit check was deposited. And it becomes a priority debt. You know, I tell my clients, pay your rent, buy food, take care of your medical issues. If you're in financial crisis those should be your priorities. But when you have these live checks out there that can be deposited into your account at any time, it's difficult to prioritize your debts because the payday loan has to come first. [LB868]

SENATOR CHAMBERS: But suppose a person just simply refuses to pay back, then what happens? [LB868]

LEA WROBLEWSKI: Well, there's several things that can happen. Obviously, you can...the debt can be civilly collected. I have been accused of creating this scenario, but I am convinced that there are individuals that are criminally prosecuted because they do not pay back their payday loans, and I have specific examples of that where the county attorney has filed a criminal case against someone for not repaying this loan. [LB868]

SENATOR CHAMBERS: And how can the county attorney do that if it's a civil matter and a debt, and a person can't be punished criminally for debt in America? [LB868]

LEA WROBLEWSKI: I don't have an answer for that. [LB868]

SENATOR CHAMBERS: What county was this in? [LB868]

LEA WROBLEWSKI: That was in Hall County. [LB868]

SENATOR CHAMBERS: At some time I'd like to talk to you about that, but I won't take the time here. Thank you. [LB868]

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SENATOR ASHFORD: Senator Pirsch. [LB868]

SENATOR PIRSCH: Yeah. If when you get that information I'd be appreciative to have that, too, because obviously that shouldn't be taking place. [LB868]

LEA WROBLEWSKI: And interestingly enough, there are protections against collections against Social Security funds. That's a federal law that protects Social Security funds and veterans' benefits. But if you have one of these live checks to collect a loan, you can essentially, in my opinion, take that Social Security money, which in some ways, in my opinion, circumvents the federal protection of those benefits, as well. [LB868]

SENATOR CHAMBERS: Thank you. [LB868]

SENATOR ASHFORD: Thanks, Lea. [LB868]

LEA WROBLEWSKI: Thank you. [LB868]

SENATOR ASHFORD: Yes, Senator Lathrop has a question. [LB868]

SENATOR LATHROP: The criminal matter would just be a matter of them cashing the check and then turning it over to the county attorney when it bounces, right, just like any other bad check you write to the grocer? [LB868]

LEA WROBLEWSKI: This isn't any other bad check though. This is a loan. [LB868]

SENATOR LATHROP: But I mean, as far as getting it prosecuted. It's that simple though, isn't it? [LB868]

LEA WROBLEWSKI: Right. Thank you. [LB868]

SENATOR ASHFORD: Thank you, Lea. Any other proponents? [LB868]

AMANDA GWIRTZ: (Exhibit 47) My name is Amanda Gwartz. Chairman Ashford, members... [LB868]

SENATOR ASHFORD: Could you...? We would ask that you spell your last name for us. [LB868]

AMANDA GWIRTZ: It is G-w-i-r-t-z. [LB868]

SENATOR ASHFORD: Thanks. [LB868]

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AMANDA GWIRTZ: Chairman Ashford and members of the Judiciary Committee, on behalf of the Nebraska Chapter of the National Association of Social Workers, I urge you to support LB868. Payday lenders target low-income working individuals who live paycheck to paycheck and have little to no savings. These individuals think they are getting a one-time loan, but instead end up trapped in debt. Research shows that payday lending business model is designed to keep borrowers in debt and not to provide one-time assistance during a time of financial need. Borrowers who receive five or more loans a year account for 90 percent of lenders' business, rather than one-time borrowers dealing with a short-term financial problem. A typical payday borrower pays \$793 back for a \$325 loan. Borrowers are paying more in interest, at annual rates as high as 400 percent, than the amount of loan they originally borrowed. Seventy-five percent of these borrowers are unable to repay the loan amount within two weeks, forcing them to roll over their loan at additional costs. The societal cost of payday lending is great. Borrowers fall behind on other bills and slide deeper and deeper into debt. As borrowers fall into this debt trap, payday lenders still get paid while other merchants do not. In many cases, social service agencies and faith-based agencies end up picking up the tab for individuals and families in trouble. Payday lenders cost American families \$4.2 billion every year in predatory fees. States that ban payday lending save their citizens an estimated \$1.4 billion in predatory payday lending fees every year. Revolving payday loan fees increase debt loans and financial hardship, leading individuals and families into bankruptcy rather than helping them get back on their feet. The most vulnerable members of our community are consistently devastated by the debt trap of payday lenders. They use payday lenders to meet a short-term need for cash, and end up caught up for months and even years paying very large fees for small loans. Driven by fear of bounced checks and the false threat of prosecution, payday borrowers are forced to pay loan fees before they pay basic living expenses. Please protect the citizens of our state and promote self-sufficiency by supporting LB868. Thank you for your consideration. Any questions? [LB868]

SENATOR ASHFORD: Any questions of Amanda? Seeing none, thank you, Amanda. [LB868]

AMANDA GWIRTZ: Thank you. [LB868]

SENATOR ASHFORD: Any further proponent testimony? Opponent? [LB868]

KURT YOST: Senator Ashford, members of the Judiciary Committee, my name is Kurt Yost, K-u-r-t Y-o-s-t. I'm a registered lobbyist for Midwest Check Cashing, Inc. I appear here today in opposition to LB868, but more so I appear here as the historian of sort of the payday lending legislation. I will reference Senator Chambers in a few minutes because he also was involved 14 years ago when we passed the initial legislation. I got involved quite by accident by a group of payday lenders who felt that the industry needed to get into the light of day and become licensed, regulated, examined, and

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bonded. That has happened, and the Department of Banking does so on a regular basis with all payday lenders in the state of Nebraska. We have created a scenario that we work diligently with the Department of Banking on a continual basis. The original language was tweaked or is tweaked on an annual basis as the department sees fit. Fourteen years ago, four senators were in our Legislature, three of which happen to sit here in this committee today. I referenced Senator Chambers; you, Senator Ashford; you, Senator Schimek; and Cap Dierks, the other senator, were here then. We worked diligently with Senator Landis, who was then Chairman of the Banking Committee; Bill Marienau; the department--Jim Hansen was the director, Patty Herstein was legal counsel; and various interested parties to craft the legislation to do exactly what we've been trying to do and create an environment where everything is looked at, everything is examined. I realize that in these times not everything in the world of credit is an easy situation. But we are here in opposition, and I would take any questions. There will be some people, Mr. Chairman, that will follow me that are technicians of the industry. [LB868]

SENATOR ASHFORD: Any questions of Kurt? Senator Chambers. [LB868]

SENATOR CHAMBERS: Are you suggesting that I had something to do with drafting that legislation you're talking about? [LB868]

KURT YOST: No, sir, Senator. But if you will recall, you were involved in the setting of the fee. [LB868]

SENATOR CHAMBERS: So I was trying to restrict what they're doing. I was not trying to give them a free hand. And I was not complicit with these people becoming what they are today, and I want that clear in the record. There was not to be the kind of fee that I've managed to get into the bill. Is that true? [LB868]

KURT YOST: We changed the fee from the original bill. [LB868]

SENATOR CHAMBERS: Did you lower it, or raise it? [LB868]

KURT YOST: Yes; yes. [LB868]

SENATOR CHAMBERS: Yes, what? [LB868]

KURT YOST: We did lower it. [LB868]

SENATOR CHAMBERS: And what was the result of that bill being introduced? What happened to the industry? You are the one who said these things, so explain to the committee what that bill did. [LB868]

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KURT YOST: The bill allowed the industry to become a regulated part of the financial services industry. [LB868]

SENATOR CHAMBERS: And who drafted that bill? [LB868]

KURT YOST: It was drafted with the work of Senator Landis, the industry, and the department... [LB868]

SENATOR CHAMBERS: But not me. [LB868]

KURT YOST: No, sir; no, sir. [LB868]

SENATOR CHAMBERS: Okay. [LB868]

KURT YOST: No. You got involved, Senator Chambers, on Final Reading. [LB868]

SENATOR ASHFORD: Senator McGill. [LB868]

SENATOR MCGILL: During the formula of my bill, I sat down and talked to Senator Landis. At that time, he could not even perceive how much the industry would boom over those last 14 years. I mean, in my district, as I said yesterday in the Banking Committee, there are now seven within one square mile. I mean, can you explain why that need is...why they've boomed like that? I mean, you can see three of them from standing at one. [LB868]

KURT YOST: Senator...and I understand what your question is...I'm not sure I have an answer for that. But the needs of the consumer has evidently driven it. I don't know. But it...and I won't disagree that the industry has boomed, so too has the credit card industry and a lot of the financial services industry. [LB868]

SENATOR ASHFORD: Yeah, Senator Chambers. [LB868]

SENATOR CHAMBERS: How many banks do you know of that are that many that close together, or how many credit unions are legitimate operations? How many grocery stores do you know that exist in one block? This is unusual, the way they have proliferated, isn't it? [LB868]

KURT YOST: Senator, they do seem to cluster in some areas. I won't disagree with that. [LB868]

SENATOR CHAMBERS: Okay. Do you know the meaning of bandit? [LB868]

KURT YOST: Bandit? [LB868]

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SENATOR CHAMBERS: Bandit, b-a-n-d-i-t. [LB868]

KURT YOST: Um... [LB868]

SENATOR CHAMBERS: Do you know what a bandit is? [LB868]

KURT YOST: I think I do. [LB868]

SENATOR CHAMBERS: Do you know what banditry is? Banditry is that which is committed by a bandit. So maybe some of those who follow you can help me understand the meaning of those terms. But that's all I have of you, Mr. Yost. Thank you. [LB868]

SENATOR ASHFORD: Thanks, Kurt, very much. Any other opponents? Oh, I'm sorry. Kurt. Senator McDonald. [LB868]

SENATOR McDONALD: Can you tell me who funds these check places? Where does the money come from that they loan out? [LB868]

KURT YOST: It's private enterprise. It's private enterprise. [LB868]

SENATOR McDONALD: So anyone could have an account in a bank, and then set up a business and loan that money out? [LB868]

KURT YOST: That's correct. You have to become licensed. You have to be bonded, that kind of thing. Yes, Senator. [LB868]

SENATOR McDONALD: So this is kind of like... [LB868]

KURT YOST: But it is all strictly private enterprise. [LB868]

SENATOR McDONALD: That do this. Okay. [LB868]

SENATOR ASHFORD: Thank you, Kurt. Any further opponents? [LB868]

RICHARD HORNER: Good afternoon. My name is Richard Horner, and the last name is spelled is H-o-r-n-e-r. I'm with Wyoming Financial Lenders, and we operate 15 stores across the state of Nebraska, and I've been with the company for about seven years, so. You know, I've heard our opponents...or the proponents of this bill, you know, make a few comments, and I'd like to specifically address those and then, if I have time, make a couple more points. I believe the senator introducing the bill indicated that we tend to target the unbanked, low-income population, and I think that's a misconception because

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by definition if we're advancing money to a consumer that's coming in, they must have an open bank account and they must have a job and a source of repayment for us to advance them the money. Another point was made that, I think Senator Lathrop asked the question, how much is the fee for this payday advance that you've given? On a \$100 advance, by law in Nebraska, you're not allowed to charge in excess of 15 percent of the face value of the check. So if a customer comes into one of our stores and needs to borrow or advance \$100, they would write a check for \$117.50. By law, that check must either be paid off or deposited within 34 days, and that loan or that advance is done. There is no rolling of this loan. So when they talk about predatory 400 percent APRs, it's simply a...it's not true. You...the law...the regulations currently in the state of Nebraska allow a check to be held for a maximum of 34 days. If that check is not paid off by the customer and it's deposited into their bank account, and it bounces, there are not late fees, there is no interest accrual. They owe us \$117.50, whether they pay it in 34 days or whether they pay it in 12 months. The most that they will ever owe us is the \$117.50, period. So I think those are a couple of points. Who comes in and borrows the money? It's someone...it's an underserved consumer who has a check that's either bounced or about to bounce at their bank. If they come in and borrow \$100 and pay us a \$17.50 fee to do that, they're going to avoid a \$35 NSF fee at their bank, a \$30 or \$35 NSF fee at the merchant, and potential criminal charges stemming from writing a bad check. So they're weighing the alternatives. Do I pay \$50 or \$60 or \$70 in overdraft or NSF fees, or do I pay a \$17.50 fee to cover this for a short period of time? It's as simple as that, so that's all I've got today, and I'll take any questions if you have them. [LB868]

SENATOR ASHFORD: Any questions? Yes, Senator Chambers. [LB868]

SENATOR CHAMBERS: If the person doesn't pay, what steps do you take to get the money? [LB868]

RICHARD HORNER: If the person does not come in and pay us cash to pick up their check, we have to deposit the check by the 34th day. That is required by the Nebraska law. If the check bounces, it's NSF; then we are able to...you know, you can present...you're still holding a negotiable instrument. If the customer...we'll make contact with the customer, and see if they would set up payment, \$20 a week, or a month, or whatever, to pay it off. If we're not able to get anywhere with them, we are legally allowed to present that item at their bank if it will clear, and get that check to clear for us. [LB868]

SENATOR CHAMBERS: And if it doesn't ever clear, what is the hammer? [LB868]

RICHARD HORNER: If it never clears, what our company will do is eventually we'll turn that over to a collection agency, who will... [LB868]

SENATOR CHAMBERS: And if they don't pay the collection agency? [LB868]

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RICHARD HORNER: That's it. There is no criminal prosecution. There may be a civil judgment which could result in a garnishment, but... [LB868]

SENATOR CHAMBERS: And if they don't pay the garnishment, and if they don't have any wherewithal? How many judgment-proof people have you obtained a judgment against in your...you called them stores in Nebraska, right? [LB868]

RICHARD HORNER: Right. [LB868]

SENATOR CHAMBERS: What do you sell? [LB868]

RICHARD HORNER: We're selling a service. [LB868]

SENATOR CHAMBERS: And money, right? [LB868]

RICHARD HORNER: Right. [LB868]

SENATOR CHAMBERS: The product you sell is money. You said the maximum that can be charged is \$15. Is that called interest? [LB868]

RICHARD HORNER: It is not interest. It's a one-time fee. [LB868]

SENATOR CHAMBERS: Well, where does the additional \$2.50 come in? [LB868]

RICHARD HORNER: It's 15 percent of the face value of the check that they postdate with us. [LB868]

SENATOR CHAMBERS: So if it's \$100, it would not be \$117.50; it would be \$15. Is that correct? [LB868]

RICHARD HORNER: No, \$17.50 divided by \$117.50 is just under 15 percent. [LB868]

SENATOR CHAMBERS: So it's not just 15 percent of the face value. If I have \$100...what is 15 percent of 100? If I have 100 pennies, what is 15 percent of 100 pennies? [LB868]

RICHARD HORNER: The law says... [LB868]

SENATOR CHAMBERS: No, I'm just asking you, between you and me, so you can improve my education, just on ordinary math. [LB868]

RICHARD HORNER: Okay, 15 percent of 100 is 15. [LB868]



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SENATOR CHAMBERS: Okay. Now, explain the additional \$2.50. [LB868]

RICHARD HORNER: The way that the statute is written is it allows for no more than \$17.50 per \$100 advanced... [LB868]

SENATOR CHAMBERS: So why did you say 15? [LB868]

RICHARD HORNER: ...or 15 percent of the face value of the check. [LB868]

SENATOR CHAMBERS: Whichever is more. You get to choose? [LB868]

RICHARD HORNER: Whichever is less. You're not allowed to charge more than that. [LB868]

SENATOR CHAMBERS: So...and then I'm going to leave you alone. I just want to be sure I understand you. You do not allow a person who has made a deal with your store to get an additional loan while that first one is outstanding. Is that true? [LB868]

RICHARD HORNER: The law does not allow that. [LB868]

SENATOR CHAMBERS: Well, I'm asking about how your store operates. The law doesn't allow me to put a gun on you, and say, give me your money, but I can do it. So I'm asking you how you operate. You are telling me that your stores never allow a person with an outstanding loan to get another loan from one of your stores. Is that what you're telling me? [LB868]

RICHARD HORNER: That is correct. [LB868]

SENATOR CHAMBERS: Okay. [LB868]

RICHARD HORNER: That is correct. [LB868]

SENATOR ASHFORD: Yes, Senator McGill. [LB868]

SENATOR MCGILL: Are you claiming that the majority of your customers are just people who, ooh, I have this bad check out there, or I don't want to overdraw on that one account? [LB868]

RICHARD HORNER: Exactly. They have a check that's about to hit their... [LB868]

SENATOR MCGILL: Can you prove that with any sort of statistics that that's the case? Because, as Senator Nantkes said, and other findings show that there are a large

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percentage of people who use the service, either every month or month after month. Can you prove that it's a bunch of these one-time situations for the majority of people? [LB868]

RICHARD HORNER: I don't have any statistics. I would have to go back and query our records to get those. [LB868]

SENATOR MCGILL: And do you have any explanation, going back to the question that I asked earlier, for the growth of the industry and how much it's boomed, tripled really over this decade? [LB868]

RICHARD HORNER: I think it is a business that is relatively easy to start up. It doesn't require a tremendous amount of capital to open a store, put in a counter and a safe and a cash register. You are required to become licensed by the Banking Department, and bonded. And if you can meet those fairly minimum standards, then you can receive a license and open a store, and I think that's what's fueled it. [LB868]

SENATOR MCGILL: And then there would be three on one block? [LB868]

RICHARD HORNER: I think there are parts of the city that they are excessive, but... [LB868]

SENATOR MCGILL: You said...and the law does state that there are no rollover loans, but someone can pay off a loan and then turn around and take out another loan. [LB868]

RICHARD HORNER: And reborrow. Correct. [LB868]

SENATOR MCGILL: Yes, and reborrow. And so...I mean, if somebody already...their car breaks down and they need to take out a loan real quick to pay that off, they're not going to magically just have an extra \$300 the next month either. And they're living paycheck to paycheck already. I'm going to use a cash advance really quick to help me with my car that just broke down. [LB868]

RICHARD HORNER: Sure. [LB868]

SENATOR MCGILL: But they're already living paycheck to paycheck then. [LB868]

RICHARD HORNER: Sure, the... [LB868]

SENATOR MCGILL: They're not going to have that extra money, and then they're just going to retake out loan after loan, aren't they? [LB868]

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RICHARD HORNER: Well, in that scenario that you've described, the short-term need is not a 30-day need. It might be a 90-day need. So they may need to reborrow it again because the point of borrowing it initially hasn't been cured. [LB868]

SENATOR MCGILL: And that's where that APR goes up, when people have to keep reborrowing like that. [LB868]

RICHARD HORNER: Right. No, I understand that. [LB868]

SENATOR MCGILL: Okay. [LB868]

RICHARD HORNER: I understand that. [LB868]

SENATOR ASHFORD: Yes, Senator McDonald. [LB868]

SENATOR McDONALD: Is it a state law that they cannot have more than one loan at a time? [LB868]

RICHARD HORNER: They are allowed to have a maximum of two loans, not to exceed a total of \$500. [LB868]

SENATOR McDONALD: And that's at each business... [LB868]

RICHARD HORNER: At each... [LB868]

SENATOR McDONALD: Location. [LB868]

RICHARD HORNER: No. That's...for our company, that's statewide. Every store that we have in the state, they're all tied together, so at each company. Wyoming Financial Lenders is not allowed to have more than \$500 out to Rich Horner regardless of which store they're at throughout the state. [LB868]

SENATOR McDONALD: Those are your stores. Like Senator McGill said, that there were seven within a certain area of blocks. Can't have more than two at yours, but they can have two there and two there and two there. Could that be the reason there are so many in one location, because you've already done your requirement at this location, so now we go to this location, now we go to this location so we can continue the cycle? [LB868]

RICHARD HORNER: It's possible, but I don't have any knowledge of that, because I don't know what our customers do at other businesses, so. [LB868]

SENATOR ASHFORD: Any other questions? Senator Chambers. [LB868]

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SENATOR CHAMBERS: Has anybody in your store ever torn up a check or given it back to the person, then allows that person to write a new check and start all over again, for a fee? [LB868]

RICHARD HORNER: I'm not sure I understand the question. [LB868]

SENATOR CHAMBERS: Okay. I write you a check. You give me the money. I come back and I tell you, give me...don't go deposit that check, let's pretend that didn't happen, and I'm going to write you another check to cover that one, plus what I'm getting now, and an additional fee, because I'm not going to be able to pay that first check. [LB868]

RICHARD HORNER: No. That is specifically prohibited. [LB868]

SENATOR CHAMBERS: Why? [LB868]

RICHARD HORNER: The law specifically prohibits that because that, in essence, becomes a rollover. You're just taking the fee and rolling the original amount of the advance, and that's not allowed in Nebraska. [LB868]

SENATOR CHAMBERS: And are you in contact with other people who are in your line of work in Nebraska? Is what you're saying you do what happens with all of these operations in Nebraska, to your knowledge? [LB868]

RICHARD HORNER: I can only speak for what we do at our company. I don't speak with people at other companies. [LB868]

SENATOR CHAMBERS: Do you live in Nebraska or Wyoming? [LB868]

RICHARD HORNER: No, I live in Omaha. [LB868]

SENATOR CHAMBERS: But you said your firm is called the what, the Wyoming something or other? [LB868]

RICHARD HORNER: Wyoming Financial Lenders. Our parent company is located in Casper. [LB868]

SENATOR CHAMBERS: In Casper, Wyoming. [LB868]

RICHARD HORNER: Yes, sir. [LB868]

SENATOR CHAMBERS: So how many of these operations does your parent company

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have all over the country, if you know? [LB868]

RICHARD HORNER: We have 52 stores in ten states. The majority of our stores are in Nebraska. [LB868]

SENATOR CHAMBERS: And your stores are not clustered together, or they are close together, in Lincoln, for example? How many stores do you have in Lincoln? [LB868]

RICHARD HORNER: We have three stores in Lincoln. [LB868]

SENATOR CHAMBERS: How far are they from each other? [LB868]

RICHARD HORNER: Probably three miles apart. One on 10th and South, one on... [LB868]

SENATOR CHAMBERS: I'll take your word for it. You don't have to locate them. Thank you. [LB868]

SENATOR ASHFORD: I doubt if there is anybody here from the Department of Banking, but do you file annual reports with the Department of Banking? [LB868]

RICHARD HORNER: Yes, we do. [LB868]

SENATOR ASHFORD: And do you...if the Department of Banking were to audit you, would you have information on individual accounts, by name? [LB868]

RICHARD HORNER: Yes. [LB868]

SENATOR ASHFORD: And do they ever provide you or ask you for that information? [LB868]

RICHARD HORNER: They ask...they audit each of our licenses at least annually, and as part of that audit they request a combined listing of every customer that we have at that time regardless of location throughout the state. [LB868]

SENATOR ASHFORD: All right. And the rule is \$500 outstanding at any one time. [LB868]

RICHARD HORNER: Correct. [LB868]

SENATOR ASHFORD: But there is no limit on, let's say, a 12-month period of time; there is no top limit or...? [LB868]

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RICHARD HORNER: No. [LB868]

SENATOR ASHFORD: Okay. And it's \$15 or \$17.50 per \$100, whichever is less. [LB868]

RICHARD HORNER: It's 15 percent... [LB868]

SENATOR ASHFORD: Or 15 percent or \$17.50, whichever is less. [LB868]

RICHARD HORNER: Correct. [LB868]

SENATOR ASHFORD: And that's per \$100, so if there were...is that correct? [LB868]

RICHARD HORNER: That is correct. [LB868]

SENATOR ASHFORD: So if it's \$500 at any given time, it's \$75 or whatever it is. [LB868]

RICHARD HORNER: It's a 70...yeah, it's a little under \$75. [LB868]

SENATOR ASHFORD: And that's due and owing within 30 days. [LB868]

RICHARD HORNER: Thirty-four days, correct. [LB868]

SENATOR ASHFORD: So the effective interest rate would be significantly greater than a credit card or a bank or... [LB868]

RICHARD HORNER: Correct. [LB868]

SENATOR ASHFORD: Okay. I guess that's all. Any other questions? Thanks, Mr. Horner. Any other opponents? [LB868]

KEVIN BERNADT: My name is Kevin Bernadt, B-e-r-n-a-d-t, and I'm co-owner of a small, family business here, Cash Solutions. My brother and I started them up back in 1999. We, kind of fresh out of college, figured, well, we would like to be business owners; let's look into this industry. It took us about three solid months of simply just putting the research together, putting together an extensive business plan, which you need to present to the loan officer in order to get the cash in order to do this, and worked very hard. You know, we had a regular job to come in the evening and you get together and work on this. Finally put things together, going through the licensing procedures. In the fall, in September 1999, we were finally able to open our doors, our first store here in Lincoln on South 48th Street. And I don't know how other ones did it, but how my brother did it, we looked at the industry and saw where the stores were in

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Lincoln, and said, well, we want to be away from those guys, so that's kind of...maybe we were dumb about the way we went about it but that's how we did it. And after we came in, there were some guys trying to come and crowd our space, but...so we worked really hard. The first couple months, things got pretty shaky because we cashed checks, as well, which is totally separate, but...so we got taken for some money by some people, and then we were running out of cash, so I just want to tell this personal story. There was one time, it was a Saturday, we hardly had any cash in our store. I took my credit card and I went and took a personal...I took a credit card advance for cash for \$500 out of my personal credit card so I could have cash in my store to give out to my customers so I could continue my business. We started up at great financial risk, our financial futures, my brother and I. We were in our twenties and worked very hard, weekends, evenings. You go to your regular job and then you come and work at your business and you have an employee during the day. And it's just hard for me to sit up here because you put a lot of time into it. It's nine-plus years of our life that we put into this store. For the first 5 years we held regular jobs, just like, you know, just any working stiff out there. And finally we were able to open up a second branch here in Lincoln which we were very proud of, that we expanded enough that we were able to, you know, expand our business, and so now we currently have two branches. And after 5 years we were finally sufficient enough to support ourselves, my brother and I, and currently have one employee. There's a lot of benefits to our service. Now, I'm not sitting here blowing smoke anywhere, saying we're these guardian angels or anything, but we have helped many a family. There's...I've got so many stories. I've got one guy, kind of touched my heart because I've got a daughter who plays softball, and this guy had his son, a 14-year-old son, I remember, that was going to a baseball tournament. He had no money to get down to it. He said he had a credit card that was maxed out. He had nowhere to turn. He wanted to get to his boy's baseball game, and we gave him the advance, and he was just happy as heck. I've got another lady who was taking her daughter to a beauty pageant, and that was in Chicago, and she needed extra money. And she came in, and to tell you the truth, I don't think I ever did see that money back. But we take a great risk. We deal with...the majority of my customers are making between \$10 and \$18 an hour, and I've got...if anybody wants to stop by my store, I've got proof, because they've got to show me an income statement, their income statement. So most of my customers are working people. I've got teachers, state workers. I've had customers from this building, legislative aides. [LB868]

SENATOR ASHFORD: Kevin, I'm going to ask you to sum up if you could, please. [LB868]

KEVIN BERNADT: Yes, sir. Just...I urge you to kill this bill in committee. I'm just a small business guy, my brother and I, working hard, and we think you should be rewarded for your hard work. [LB868]

SENATOR ASHFORD: Thank you, Kevin. Any questions of Kevin? Yes, Senator

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Chambers. [LB868]

SENATOR CHAMBERS: Kevin, you are a very engaging person. What is your last name? [LB868]

KEVIN BERNADT: Bernadt. [LB868]

SENATOR CHAMBERS: Mr. Bernadt, it's hard for me to call somebody by their first name when I don't know them. I tried it and I just can't do it. Mr. Bernadt, do you know what the meaning of bandit is? [LB868]

KEVIN BERNADT: No, sir. [LB868]

SENATOR CHAMBERS: This fellow who got money from you to go to the baseball tournament, how much did he get from you? [LB868]

KEVIN BERNADT: He did \$200. [LB868]

SENATOR CHAMBERS: And how much did he pay you back? [LB868]

KEVIN BERNADT: \$235. [LB868]

SENATOR CHAMBERS: Over what period of time? [LB868]

KEVIN BERNADT: I can't remember specifics. It was within 31 days. [LB868]

SENATOR CHAMBERS: So he was maxed out with his credit card and couldn't get any money. He got that money from you, and then someplace he was able to get money. Did he go to your brother's store and get the money and come pay you? [LB868]

KEVIN BERNADT: Um... [LB868]

SENATOR CHAMBERS: He couldn't get it on his credit cards, if what you told me is true. [LB868]

KEVIN BERNADT: Yeah. That's the story he told me. He was maxed out on his credit card. [LB868]

SENATOR CHAMBERS: But you accepted it as true, so as men of the world we're going to discuss it on the basis of what you told me. Where do you think he got that money? Or didn't it matter to you? [LB868]

KEVIN BERNADT: The \$235? [LB868]



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SENATOR CHAMBERS: Yes. [LB868]

KEVIN BERNADT: He got it when he got paid from his job. [LB868]

SENATOR CHAMBERS: But his job was not going to pay him in time for him to have the money to go to this baseball tournament. [LB868]

KEVIN BERNADT: Correct. [LB868]

SENATOR CHAMBERS: You are quick. Thank you. That's all that I would have. [LB868]

KEVIN BERNADT: I've got sweaty palms. I don't know. [LB868]

SENATOR ASHFORD: Yes, Senator McGill. [LB868]

SENATOR MCGILL: I just have a quick question. I know you started this family business before the big boom and these developed all across Nebraska. I'm just wondering what impact that's had on your business, as you've seen more and more of them pop up. [LB868]

KEVIN BERNADT: My brother and I take great pride and concern for our customers. Like I said, we ain't saints but I think we've held our own because we give a personal touch. I get to know my customers. I get to know their family. A lot of repeat customers, Senator, a lot of repeat customers, that's one thing about business. You want your customers to come back to you. And so, yeah, we've been squeezed a little bit, but I think we offer...we don't offer really cheaper rates unless you've been a repeat customer of mine for awhile. You get nice discounts and stuff. But it's just like two blocks from my house there's about six fast food restaurants. I go downtown, there is a bar this way, there's bars that way. And, you know, people use the term "trapped," and my brother and I said, well, we ain't got no traps set up outside or anything. We just think we're helping people out. And one thing I always tell my customers, to all you senators, and my brother does as well, if they've been with me a few times, if they've used me a few times, almost always I ask them, do you want to take this down a little bit? I say, I understand you can't go without \$500. I can't go without \$500 for a month; I'd be bouncing checks. I said, but maybe you could do without \$25; maybe you would like to lower it \$50; maybe \$100. A lot of them say, yeah, maybe next time I'll do that, or a lot people say, when they get their taxes this time of year, you'll see in our industry, this time a year our receivables will go down because people receive their tax rebates, and a lot of them will come pay the check and won't be back for awhile. You know, I've had one fellow say he using his on a big screen TV, but he'll be back to see me, you know, so. Big guys, you know, sometimes they squeeze us, but I think my brother and I do

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pretty well. [LB868]

SENATOR MCGILL: Thank you for your testimony. I mean, I do have some issues with the industry obviously; I have a bill as well. But I do appreciate, of all the research we've done, you're the only business that has offered a lower rate, for instance, for some customers, which I do think should be acknowledged. [LB868]

KEVIN BERNADT: Thank you. [LB868]

SENATOR ASHFORD: Thank you. Thank you, sir. How many other opponents do we have here? Walter. [LB868]

WALTER RADCLIFFE: Senator Ashford and members of the committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e. I'm appearing before you today as a registered lobbyist on behalf of Community Financial Services of America, which is a national trade association of these organizations. It's acronym is CFSA. I want to respond to two questions, one by Senator McDonald, the other by Senator Lathrop, and then make a general statement concerning LB868, and then I'll be happy to answer any questions. Senator McDonald, your question of Mr. Yost as to where the money came from, I'm not trying to read your mind, but I think perhaps you were wondering if this was deposited. This is not deposit-generated money. It's individual investor money. So unlike a bank or a credit union or lending institutions, this is not a situation where any depositor's money is put at risk. I don't know if that's where you were going with that, but I thought it might have been. Senator Lathrop, your point, and I think Senator Chambers touched on this too, directly or indirectly, regarding criminal prosecution, Section 28-611 of the Criminal Code would preclude prosecution on these types of checks, because at the time they are written they have no present value. And so, therefore, you...I mean, somebody files...if you were to have a...anybody tried to prosecute you criminally on this, I think you've got an affirmative defense right from 28-611. And I'm totally unaware of anyone who makes it a practice--and that's too much of a hedge--I'm totally unaware of anybody who goes to county attorneys and tries to get these collected. I know we have one case in Hall County that's been presented to you, and I am somewhat familiar with that just from the standpoint we've talked about it before. My comment regarding the bill, what you're being asked to do here to take a licensed and regulated industry that's existed in this state for about 14 years, and all of the sudden make it a felony. I would submit to you, if I were a good lawyer and this were a court, this is where I would move for a summary judgment because there hasn't been evidence presented to justify eliminating and making a felony out of a licensed and regulated industry. You've had some opinions expressed but, quite frankly, no evidence presented that would suggest that this is in order. With that, I see my red light is about to come on and I'd be happy to try answer any questions. [LB868]

SENATOR ASHFORD: Senator Chambers. [LB868]

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SENATOR CHAMBERS: Mr. Radcliffe, I understand you, but so that somebody who is watching may not, the Legislature doesn't act on the basis of weight of evidence as a court does. Do you agree with that? [LB868]

WALTER RADCLIFFE: I think there are some members who do, Senator. I think the Hergert impeachment case was one example where the Legislature acted on evidence. I think that... [LB868]

SENATOR CHAMBERS: But that's not my question. [LB868]

WALTER RADCLIFFE: Well, I'm sorry. [LB868]

SENATOR CHAMBERS: The Legislature, when we act, we don't weigh evidence, and say, is it this way beyond a reasonable doubt, by a preponderance of the evidence or substantial evidence. We discuss it, and if we think a policy decision should be taken, we take that decision. [LB868]

WALTER RADCLIFFE: Unfortunately, the Legislature has no evidentiary standard, Senator. That's correct. [LB868]

SENATOR CHAMBERS: No. That's what I wanted to be clearly in the record. We don't operate on the basis of... [LB868]

WALTER RADCLIFFE: You have no evidentiary standard. I agree with that. [LB868]

SENATOR ASHFORD: (Laugh) We do have three trials though. [LB868]

WALTER RADCLIFFE: You do have multiple trials, and... [LB868]

SENATOR ASHFORD: All right. So there are balances. [LB868]

WALTER RADCLIFFE: I think perhaps I'd take the value of your opinion many times more than the weight of the evidence, Senator. [LB868]

SENATOR ASHFORD: Thank you, Walter. Thank you. [LB868]

WALTER RADCLIFFE: Thank you. [LB868]

SENATOR ASHFORD: Do we have any neutral testimony? Are you a neutral testifier or an opponent? [LB868]

BRANDON LUETKENHAUS: Neutral. [LB868]

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SENATOR ASHFORD: Okay. [LB868]

BRANDON LUETKENHAUS: Thank you, Mr. Chairman and members of the Judiciary Committee. My name is Brandon Luetkenhaus, L-u-e-t-k-e-n-h-a-u-s. I am here today on behalf of the Nebraska Credit Union League. Our association represents both state and federally chartered credit unions in Nebraska. I appear before you today in a neutral capacity to LB868. I would like to thank Senator Nantkes for initiating the dialogue on this topic. Credit unions are not-for-profit financial institutions that are owned by their members, consumers. It's our unique structure that makes credit unions a positive alternative to cash advance operations. Today, many working families live from paycheck to paycheck, so when these families experience unforeseen expenses, they see cash advance operations as a solution to their current financial state, but these cash advance shops almost invariably lead these families further into financial crisis. Research shows that payday lending, also known as cash advance or delayed deposits, fails to help families solve their financial crises. Instead of benefitting borrowers, oftentimes payday advances trap them in high-cost debt. Payday advances are expensive debt traps targeted to vulnerable consumers who have trouble making ends meet. The financial success of payday lenders depends on their ability to convert... [LB868]

SENATOR ASHFORD: Mr. Luetkenhaus, let me just interrupt you for a second. [LB868]

BRANDON LUETKENHAUS: Yeah, sure. [LB868]

SENATOR ASHFORD: This is neutral testimony and you're not giving me neutral testimony, so I think if you would just sum up for me. [LB868]

BRANDON LUETKENHAUS: Sure. Well, I'll just say that credit unions are in the business to serve their members. They are not for profit and, therefore, they can offer their members low interest rates, and I think they can be an alternative to these payday shops by offering these low loans, \$500 or \$1,000 loans. And credit unions, one of the top things that credit unions do when their members come in with loan requests are educate their members on their financial status and how they can pay down their debts and that type of thing. Credit unions offer free services that help them budget their money, get financial help from the credit union, and look at where they're spending their money and how better they can spend it. So I guess that sums it up. [LB868]

SENATOR ASHFORD: Thanks. Any questions of Mr. Luetkenhaus? Thank you. Senator Nantkes, you waive? That concludes the hearing. Senator Pirsch, LB909. Senator Pirsch, well, we'll wait a second for everybody to move in and out of here. Hi, Senator Pirsch. I'm sorry to keep you sitting there. I know a lot of you have been sitting a long time, and I appreciate your patience, but we're going to get started here with

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LB909. And I know my bill, LB1128, will only take a few minutes. So hopefully we'll get to your bill here pretty quick. Go ahead, Senator Pirsch. [LB868]

SENATOR PIRSCH: Good afternoon. Full house, I suspect probably not here to... [LB909]

SENATOR ASHFORD: Not for me probably. [LB909]

SENATOR PIRSCH: Yeah, not here to testify on my bill as well. But I am State Senator Pete Pirsch, representing the 4th District, the initiator of LB909. Just at the outset, I just want to point out LB909 has nothing to do with the checks we've talked about in prior hearings here today. They have nothing to do with bad checks. This bill deals solely with certain types of fraudulent criminal activity involving forged checks, checks where I'm not writing a check on my account. I've stolen or somehow obtained other people's accounts or perhaps fabricating those checks and writing checks on those accounts. So this deals strictly with forged accounts. Currently, Nebraska criminal law provides for a felony penalty for one who makes a forged check with the face value of \$300 or above or a...and this is kind of a clarification, introducer statement of intent, there's a different level of delineation between misdemeanor and felony for possession of a forged check. It's not at a \$300 threshold level, it's at \$1,000 threshold level so a little typo there, but offenders can defeat the spirit of the criminal statutes that set delineations between misdemeanor amounts and felony amounts with either writing these forged checks or possessing these forged checks when each individual forged check is written or possessed in an amount just below that felony threshold level. Offenders can, therefore, issue or possess thousands and thousands of dollars of forged checks and still only face misdemeanor charges. So LB909 would allow prosecutors to aggregate the amounts of the individual forged checks made or possessed by the same individual during the same scheme or course of conduct. In allowing prosecutors to aggregate multiple forged checks made or possessed during the same scheme or course of conduct, the forged check statutes would become uniform with the bad check statute, which arguably that less culpable crime already includes an aggregating feature to it. So I do appreciate your time here today. There are going to be individuals who will testify after me. [LB909]

SENATOR LATHROP: Senator Schimek. [LB909]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Senator Pirsch, I'm looking at the fiscal note on this, and I don't know that you have it in front of you, but... [LB909]

SENATOR PIRSCH: I don't. [LB909]

SENATOR SCHIMEK: It just says that the Department of Correctional Services doesn't really have an estimate of how many people that this might...who might end up in our

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prison systems, maybe that's the way I should say it. Do you have any thoughts on that based on your practice? [LB909]

SENATOR PIRSCH: I do and thank you very much. I did practice as a prosecutor in Douglas County and so I can say just from the numbers that we had through the forged check I don't anticipate any material, especially in light of programs that I think Senator Pedersen and alternative to prison type of programs. But that aside, the numbers I don't think are going to be anywhere near an amount that would somehow lead to an increase in either the inmate...a significant increase in the inmate population or the amount of dollars that would need to be expended for that. [LB909]

SENATOR SCHIMEK: Well, the fiscal note mentions that there are 125 individuals per year over the last two calendar years whose primary offense was second-degree forgery, and they serve an average of three years. So if you're going to congregate these forgeries, are you telling me that you think that the sentences would be different for the people who have congregated forgeries over those who have larger amount forgeries? [LB909]

SENATOR PIRSCH: Well, I can work to give you more specific, I guess, projections. I guess the Fiscal Office or the responsible parties, and I don't know how they phrase that on it, but apparently...how did they phrase that, Senator, do you...on the... [LB909]

SENATOR SCHIMEK: They don't know how much it would cost is... [LB909]

SENATOR PIRSCH: Okay. I certainly can look into the matter a little bit more. But I would, just based upon my experience, I don't think we're going to see a material increase of dollars expended for individuals behind jails. [LB909]

SENATOR SCHIMEK: We can talk about it later then. [LB909]

SENATOR PIRSCH: Sure. [LB909]

SENATOR SCHIMEK: Thank you. [LB909]

SENATOR ASHFORD: Any proponent testimony on LB909? How many proponents do we have? And any opponents? Okay. Good afternoon. [LB909]

JASON OWENS: (Exhibit 49) Good afternoon, Chairman and senators of the committee. My name is Jason Owens. I represent Hy-Vee grocery stores in Omaha, Nebraska. We have proactive training in trying to track down and stop sources of criminal activity that is brought into our stores. We pride ourselves in trying to stay ahead on technology to ensure our customers' safe and helpful experience with Hy-Vee. Despite technologies, Hy-Vee grocery stores have taken considerable losses in the past

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few fiscal years. I have three examples of several that Hy-Vee and surrounding Omaha businesses have taken losses on. In 2006, an individual that will be named as Steve Doe was counterfeiting false bank accounts. The following types of merchants were victims: gas stations, grocery stores, retail stores, restaurants, and fast food establishments. Steve advised that he knew these checks were only going to be misdemeanors and was not too worried about it. Total damages were just under \$32,000. Unfortunately, numerous businesses did not file reports because it was only going to be misdemeanor charges. Four businesses filed and followed up on these misdemeanor charges. As a result, Steve spent two and a half months of a five-month sentence. When he got out of jail, Steve started passing fraudulent checks again and is pending charges at this time. In 2007 an individual that will be named as John Doe was being pulled over by a local law enforcement agency. This agency discovered numerous receipts and stolen checks in the vehicle along with four counterfeit Nebraska identifications and one stolen driver's license that looked a lot like John Doe. Visa gift cards were purchased with these stolen checks from the victims, leaving Hy-Vee with these misdemeanor losses that when aggregated total as follows: On the handout it has this is a dollar amount and the checks were aggregated like there's ten checks for \$882.02. They also discovered receipts from another location such as Baker's, No Frills, Walgreens, Pamida, and PetSmart and losses for Hy-Vee were \$3,991.82. In the summer of 2007, an individual referred to as Paul Doe was identified through investigation by Hy-Vee, a local law enforcement agency, and a law enforcement agency in Oklahoma. Paul had been making his way through states passing numerous fraudulent checks in a rental car under another person's name. This vehicle had been totaled in pursuit with an Oklahoma law enforcement agency. Paul was transported to the nearest hospital by ambulance out of their jurisdiction and was able to escape custody. Paul then came back to Omaha and passed more fraudulent checks, leaving Hy-Vee with these misdemeanor losses aggregating to \$4,577.85. While attempting to pass one of the checks, one of Bob's checks, Paul was able to get out to the parking lot to his car while I was verifying the validity of the check with the bank. I was not able to reach him before he got into his car. When I approached to confirm the license plate, the information, and to get a good look at him, he attempted to strike me with his car. Police weren't able to... [LB909]

SENATOR ASHFORD: Jason, could you sum up for me, please. [LB909]

JASON OWENS: Yeah. I got a couple of sentences left. Police weren't able to locate the car. A search warrant of the mother's house found drugs, checks, and disguises that were being used to pass fraudulent checks. This person has not been found today. [LB909]

SENATOR ASHFORD: Thank you. Any questions of Jason? Seeing none, thanks, Jason. Good afternoon. [LB909]

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KATHY SIEFKEN: Senator Ashford and members of the committee, my name is Kathy Siefken representing the Nebraska Grocery Industry Association. And I would like to thank Senator Pirsch for bringing this bill. We've brought it a couple of times in past sessions. The reason it's important is because several years ago a bill was introduced. It was one of those days similar to today where I had about four hearings in four different rooms, and Judiciary never ends early and that day it did. It was the last day of...or it was the last bill on the agenda. By the time I got here, Judiciary was just adjourning and so we weren't able to testify in opposition. As a result, there was no one in opposition on that bill. Senator Brashear took about ten bills that had no opposition on them and put them into one bill and in the last days of the session it was thrown in and advanced. [LB909]

SENATOR ASHFORD: What's going on here? [LB909]

KATHY SIEFKEN: I don't know. [LB909]

SENATOR ASHFORD: No, I'm sorry. I'm just kidding you a little bit. [LB909]

KATHY SIEFKEN: You know, something, it was one of those things that through... [LB909]

SENATOR ASHFORD: Okay, you're getting us to where we are now. [LB909]

KATHY SIEFKEN: Yeah, to where we are now. So it was one of those things that, through no fault of our own, suddenly instead of people being...instead of a felony being defined as \$75, suddenly it jumped up to \$300. And so we have people that are now going through our grocery stores, and they start at one end of town in Omaha and they go through and they write a check for \$290-some and they go to No Frills and then Cubby's and then Baker's and they're single offenses for those individual stores. And so we are not allowed at this point in time to aggregate those checks. And that's why we think it's important to have this bill. These are not people just making a mistake. These are people that have planned to take advantage of the retailers, grocery stores in a community. And so it's not a matter of an insufficient funds check. It's a matter of fraud where people are forging documents. They go dumpster diving. They steal checks that they find and then they start duplicating them. Our systems in our grocery stores--Hy-Vee is probably the most technologically advanced--and our systems in grocery stores cannot catch these people because there's a window of 10 to 14 days between the time they write a check and the time we know that it's bad, that they can go through and hit all of our stores. And what we're asking you to do is pass this bill so that we can stop those runs. With that, I guess that's all I have. If you have any questions, I'd be happy to try to answer them. [LB909]

SENATOR ASHFORD: Senator Chambers. [LB909]



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SENATOR CHAMBERS: Just one, maybe. Every time retailers fall behind in this technological race, they're going to come to the Legislature and say make it a more serious crime with a longer prison sentence to help retailers because they can't keep up when they choose to accept checks in payment for their products. That's what we're looking at, isn't it? [LB909]

KATHY SIEFKEN: I don't believe so. I think that before the Legislature passed the bill that redefined the level of a felony, we didn't have this issue. So it's not us that fell behind. [LB909]

SENATOR CHAMBERS: If you have this person who has gone to five or ten, however many, stores and wrote a check that would be a misdemeanor, and that person were caught, the prosecutor could charge each one of those separately, couldn't he or she? [LB909]

KATHY SIEFKEN: As misdemeanors... [LB909]

SENATOR CHAMBERS: Yes. [LB909]

KATHY SIEFKEN: ...and they don't go after misdemeanors. [LB909]

SENATOR CHAMBERS: Well, wait a minute. Who doesn't go after misdemeanors? [LB909]

KATHY SIEFKEN: The prosecutors. They want felonies. [LB909]

SENATOR CHAMBERS: Then that's on the prosecutor. Don't come to the Legislature and say make it a more harsh offense. Why don't you all try to bring pressure to bear on prosecutors to do their job? If the prosecutors don't do their job, you want us to make it a more serious offense because that's what they want. Is that what you're telling me? [LB909]

KATHY SIEFKEN: What we're asking for is to go back to the way it was, to go back to those days when we could prosecute and get a... [LB909]

SENATOR CHAMBERS: Well, I want to go back to the days when I was paying 29 cents for a gallon of gas. We're talking about crimes here increasing the prison population and retailers and nobody else is concerned about that when we have problems with overcrowding, lack of educational opportunities, lack of rehabilitation, and all the other things that happens when a Legislature mindlessly creates new offenses. Now a prosecutor can charge this person, isn't that true, who commits the offense and is caught writing these checks? [LB909]

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KATHY SIEFKEN: As a misdemeanor, yes, as a misdemeanor. [LB909]

SENATOR CHAMBERS: And a judge, if this person is convicted on all these misdemeanors, the judge could require each sentence to be served consecutively. Isn't that so? [LB909]

KATHY SIEFKEN: That's not happening. [LB909]

SENATOR CHAMBERS: Is it...can it happen? Can a judge require sentences to be served consecutively? [LB909]

KATHY SIEFKEN: Yes. [LB909]

SENATOR CHAMBERS: And the fact that they don't, you want us to change this very offense and make it something else that carries a heavier punishment. Isn't that in effect what we're doing? [LB909]

KATHY SIEFKEN: What we would like to do is try to stop those people that are stealing thousands and thousands of dollars, and those are dollars that are coming right out of that community. [LB909]

SENATOR CHAMBERS: I know what you said. I know what you said. I don't think you're hearing me at all. We're not talking about the person writing a check for a higher amount. We're talking about the same amount that is a certain offense now and you want to find a way to make that same amount into a higher level of offense so it's a felony and the person can go to prison. Isn't that what you're asking us to do? [LB909]

KATHY SIEFKEN: If that person is doing that multiple times, it is a planned event. It's not an accident. [LB909]

SENATOR CHAMBERS: I don't have anything else. I don't think we're communicating, but thank you. That's all I have, Mr. President, I meant, Mr. Chairman. [LB909]

SENATOR ASHFORD: Thanks, Kathy. Oh, Senator Schimek. [LB909]

SENATOR SCHIMEK: No, I just said wow, Mr. President. [LB909]

SENATOR ASHFORD: Oh, I accept it. No, I'm fine with that (laugh). I'm fine with that really. I respond to any of those things, president, any of them. [LB909]

SENATOR CHAMBERS: That's what we say on the floor when we're speaking. [LB909]

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SENATOR ASHFORD: Oh, I know. No, I understand. Yes. [LB909]

ANDREA BELGAU: Senator Ashford, members of the committee, I'm Andrea Belgau. I'm the Platte County Attorney. I am here to support LB909 on behalf of the Nebraska County Attorneys Association. LB909 is common sense, long overdue legislation to allow the aggregation of multiple offenses into a single offense, albeit, a higher grade offense, more accurately reflects the nature of the crime. It's legislation that is directed at an offender who has shown a pervasive pattern of criminal misconduct by engaging in multiple felonies. It does not lessen the prosecutor's burden of proof. We still must prove each of those aggregate felonies beyond a reasonable doubt. And as many of you are aware, proof beyond a reasonable doubt is proof so convincing that you would rely on it in making the more important decisions of your life. There is statutory precedent. As Senator Pirsch mentioned, the insufficient funds checks, we've been able to aggregate those particular offenses for eons. Both those particular offenses and forgery offenses are under Article VI in our Nebraska Revised Statutes. This body, this legislative body has always taken forgeries very seriously. And in fact, forgeries are one of the enumerated offenses in 29-110(5) along with arson, murder, certain sexual assaults, kidnapping that have no statute of limitations. Additionally, as the previous speaker pointed out, I believe it was 2003 the felony level offense for a forgery was \$76. It's now \$300 for a Class IV felony and \$1,000 for a Class III felony. Prior to 2003, the \$300 level made it the higher offense of the Class III felony. And very sensibly, this body did change those particular levels. But to allow the aggregation of these offenses is one that is expedient. It is one that is, frankly, fair. Again, it is one that would go after those individuals who write multiple types of forgeries. We would ask this body to advance this bill. Thank you. Are there any questions? [LB909]

SENATOR ASHFORD: Thanks, Andrea. Any questions? Senator Chambers. [LB909]

SENATOR CHAMBERS: The prosecutors want to punish cleverness and wiliness. Isn't that what we're looking at? [LB909]

ANDREA BELGAU: I don't believe so, Senator Chambers. It is very well documented that many individuals who are incarcerated or who have been convicted of crimes and even offered the benefit of probation are very intelligent individuals. They just... [LB909]

SENATOR CHAMBERS: I said cleverness. These people are clever, aren't they, in committing an offense just below a level which would make it a higher offense. [LB909]

ANDREA BELGAU: Actually, curiously, many individuals who are somewhat savvy in the criminal justice system, knowing the theft offenses trigger the felony level at \$500 or above... [LB909]

SENATOR CHAMBERS: If you can't answer the question that I asked you... [LB909]

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ANDREA BELGAU: I am answering your question. [LB909]

SENATOR CHAMBERS: Then let me ask you a different question. [LB909]

ANDREA BELGAU: I'm answering your question as to cleverness. [LB909]

SENATOR CHAMBERS: No, I don't want an answer. I'll ask you a different question because you take too long. [LB909]

ANDREA BELGAU: I just want to finish this one thing. They write checks for \$499 thinking that they're below on forgeries the felony level. They're confusing the theft statutes with the forgery statutes. So I hope that answers your question. [LB909]

SENATOR CHAMBERS: Did you hear the allegations made against your organization--the prosecutors will not bring prosecutions for misdemeanors because they want felonies? Did you hear that? [LB909]

ANDREA BELGAU: I heard that. [LB909]

SENATOR CHAMBERS: Is that true? [LB909]

ANDREA BELGAU: It's not true. There are sometimes misdemeanor complaints that are between 15, sometimes 30 counts of forgery. [LB909]

SENATOR CHAMBERS: Can a prosecutor, if this one person is caught, as you would have to do if you want to aggregate, if that person is caught, you would have to have several of these offenses that could be proved. Isn't that true? [LB909]

ANDREA BELGAU: Are you speaking to aggregate? [LB909]

SENATOR CHAMBERS: Right...the way it is right now. [LB909]

ANDREA BELGAU: I'm sorry. Would you say that again. [LB909]

SENATOR CHAMBERS: Okay. Have you read this bill? [LB909]

ANDREA BELGAU: Yes, I have. [LB909]

SENATOR CHAMBERS: It talks about various individual offenses that are part of a common scheme. [LB909]

ANDREA BELGAU: Yes. [LB909]

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SENATOR CHAMBERS: That means more than one of the same type of offense is committed. [LB909]

ANDREA BELGAU: Yes. [LB909]

SENATOR CHAMBERS: So you catch this person who has committed more than one of this particular offense. Correct? [LB909]

ANDREA BELGAU: Correct. [LB909]

SENATOR CHAMBERS: Now if that person is caught right now and you can see that there's such a scheme, there won't be an aggregation. But each one of those offenses can be charged separately. Isn't that true? [LB909]

ANDREA BELGAU: That is correct. [LB909]

SENATOR CHAMBERS: And if convicted on each one of those, the judge can require the sentences to be served consecutively. Isn't that true? [LB909]

ANDREA BELGAU: The sentencing parameters would allow consecutive sentences. [LB909]

SENATOR CHAMBERS: And if there were consecutive sentence for...how long a period of time can a person get in jail for a misdemeanor? [LB909]

ANDREA BELGAU: It depends on the level of the misdemeanor, but for a Class I misdemeanor, which is the highest level misdemeanor, is one year. However, courts, as are prosecutors, are interested in restitution. Very rarely are multiple, unless they have a criminal history... [LB909]

SENATOR CHAMBERS: But you're not answering my question. That's why I stopped. I'm asking questions to find out the way things are, not the prosecutors' rationalization for not doing their job. I will ask the questions... [LB909]

ANDREA BELGAU: I don't believe I've rationalized anything as far as not performing a job, Senator Chambers. [LB909]

SENATOR CHAMBERS: I will ask the question again. The judge can require each sentence to be served consecutively. Is that true or false? [LB909]

ANDREA BELGAU: That possibility exists. [LB909]

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SENATOR CHAMBERS: And the judges choose not to do that. Is that true or false?  
[LB909]

ANDREA BELGAU: In many cases that's true. In some instances it's not true, but...  
[LB909]

SENATOR CHAMBERS: Is that a choice that the court makes or is that the fault of the  
Legislature? [LB909]

ANDREA BELGAU: I don't believe anyone has accused the Legislature of being at fault,  
Senator. [LB909]

SENATOR CHAMBERS: Then let me use a different word. Is the responsibility for the  
judge not requiring sentences to be served consecutively when the judge has that  
authority, is the responsibility for not requiring consecutively served sentences the  
responsibility of the judge or the Legislature? Who makes the decision to not have these  
sentences served consecutively? [LB909]

ANDREA BELGAU: Senator Chambers, the spirit of this bill is not to circumvent any sort  
of judicial discretion. In fact, it is to simply allow an efficacious approach to an offense...  
[LB909]

SENATOR CHAMBERS: Can you answer my question, please? [LB909]

ANDREA BELGAU: I believe I am answering your question. [LB909]

SENATOR CHAMBERS: No, you're not. Here's the question I'm asking you and I'll  
phrase it differently. If the court has discretion to require sentences to be served  
consecutively or concurrently and a decision is made not to have them served  
consecutively but concurrently, who makes that decision? [LB909]

ANDREA BELGAU: Senator Chambers, in Nebraska, as I know you're well aware, the  
sentencing responsibility falls strictly on the judge. And the judge does listen to  
allocution from the prosecution. The judge listens to allocution from the defense  
attorney. And the judge takes into consideration this individual's... [LB909]

SENATOR ASHFORD: Andrea, time out, time out. [LB909]

SENATOR CHAMBERS: I'm just asking you the question. [LB909]

SENATOR ASHFORD: Andrea, just try to...we understand your desire to explain  
yourself on this, but just try to... [LB909]

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SENATOR CHAMBERS: And in the interest of the committee, I don't have any more questions. [LB909]

SENATOR ASHFORD: Okay. Thanks, Andrea. [LB909]

ANDREA BELGAU: Thank you. [LB909]

SENATOR ASHFORD: Any other proponents? Opponents? How many opponents do we have? Okay. [LB909]

COLEEN NIELSEN: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I'm testifying on behalf of the Nebraska Criminal Defense Attorneys Association. It's well settled that theft charges may be aggregated if they stem from one scheme or a course or conduct. But I'm unaware of any jurisdiction that currently allows aggregation of forgery charges. And the reason for this is that the crime of theft and the crime of forgery have an important distinction. One court put it this way: Unlike theft, forgery is not concerned with the end, what is obtained or taken by forgery; it has to do with the means, the act of signing the name of another with the intent of fraud and without authority or falsely making a document or of altering the document with intent to defraud. The designation of a series of forgeries as one forgery would be a confusing fiction. So I think that legally you're not going to find any other jurisdiction that currently does this. And in addition to that, I would think that many of these cases could probably be handled by theft...the charging of theft by deception and consequently could be aggregated if the prosecutor wanted to do that. I'd be happy to answer any questions. [LB909]

SENATOR ASHFORD: Any questions of Coleen? Seeing none, thanks, Coleen. [LB909]

COLEEN NIELSEN: Thanks. [LB909]

SENATOR ASHFORD: Senator Pirsch. Any neutral testifiers? Senator Pirsch. [LB909]

SENATOR PIRSCH: Thank you very much. I'd just like to thank everybody for the questions with respect to the bill and the testimony that was presented here today. Just briefly touch on the last point that was brought up by the opponent testifying with respect to the kind of concept that as an alternative prosecutors might employ a different statute, theft by deception. And obviously there's a difference in the elements of two crimes, and in many instances they do not overlap and so...a very substantive difference and that's why this particular crime, forged instrument, does exist in all the states to my knowledge. And the other substantive difference you can't aggregate with the theft by deception with respect to different victims in the theft by deception. That being said, I think it's important to kind of comment on the underlying rationale behind

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the bill which is those costs...these are people who are not just hapless, they're going about life. These are...there's a very severe element of culpability here. These people are out to...they're thieves essentially. And that cost does not go away to society and it is invisible, but it is passed along to you, to me, to everyone in this audience. It makes a material impact in people's lives. And so I think that the increased punishment for when you have these individuals who as, Senator Chambers, have I think learned the law and the limits, they do engage in that conduct where they go just below that limit. And knowing that can only be a misdemeanor and for whatever the reason, they are aware...the law doesn't have that deterrent effect as a result because that is how they are handled. And so I think that it does cost high...there is a high cost to society as a result of this. I think the increased punishment would help to deter that. And just further kind of mention of some other substantive difference between leaving it as a misdemeanor or a felony as a practical matter, we can't extradite a lot of these individuals, especially in the Omaha area where we're just sharing the border, we can't extradite those individuals on numerous misdemeanors (inaudible) there's 23 or 33 misdemeanors. And so there is another substantive practical difference. So for that reason, I appreciate your attention here today and the questions that were asked.  
[LB909]

SENATOR ASHFORD: Thank you, Senator Pirsch. Do you have...Senator Chambers.  
[LB909]

SENATOR CHAMBERS: Senator Pirsch, you were a prosecutor in Omaha. Is that true?  
[LB909]

SENATOR PIRSCH: That is true. [LB909]

SENATOR CHAMBERS: And you worked with the city attorney's office or the city prosecutor. Is that true? [LB909]

SENATOR PIRSCH: That is true. [LB909]

SENATOR CHAMBERS: The city attorney handles misdemeanors. Is that true? [LB909]

SENATOR PIRSCH: That is correct. [LB909]

SENATOR CHAMBERS: The county attorney handles felonies. Is that true? [LB909]

SENATOR PIRSCH: That is correct. [LB909]

SENATOR CHAMBERS: Why was your office not willing to pursue people charged with misdemeanor forgery? I heard testimony on your side, not from you, that this bill is wanted in order that prosecutors will file charges because they don't want to go after



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misdemeanors; they want felonies. Was that your experience as a prosecutor? [LB909]

SENATOR PIRSCH: I think that testimony that I think I heard was when the charges are filed the individuals are not receiving back-to-back maximum sentences. Is that the question? [LB909]

SENATOR CHAMBERS: Well, what I heard was that the prosecutors want felonies and they're not going after misdemeanors. Maybe I heard different, but we are on the same committee and we'll get the transcript and see what it said. [LB909]

SENATOR PIRSCH: Very good. Yeah, that would be okay. Sure. [LB909]

SENATOR CHAMBERS: That's all that I have. Thank you. [LB909]

SENATOR ASHFORD: Thank you, Senator Pirsch. Okay, that concludes the hearing on LB909. (See also Exhibit 48.) I'm up. Senator Lathrop. [LB909]

SENATOR LATHROP: Oh, forgive me. I was just having a little sidebar here waiting for you to get to the chair. []

SENATOR ASHFORD: Senator Lathrop or President Lathrop or whomever, I'm Brad Ashford from Legislative District 20. I'm introducing LB1128. This will be very brief introduction. The Nebraska Housing Agency Act deals with individual tenants of public housing facilities or units or homes in Nebraska. And there are special rules concerning when a tenancy may be terminated, and those rules apply solely to public housing in the state as a result of state law that was passed and revised and amended over the years. This bill, LB1128, simply says that a public housing agency may accept rental payments without raising their rights to evict tenants in certain cases. And George Ochola, who is with the Omaha Housing Authority, is the legal counsel for the housing authority, is here today to talk about the bill and why there are special circumstances arising out of public housing authorities under the Nebraska law. And with that, I would conclude my opening. [LB1128]

SENATOR LATHROP: Anybody have any questions for Senator Ashford? It doesn't look like it. [LB1128]

GEORGE ACHOLA: Good afternoon, Senators. I won't keep you long. I can see you guys have a long afternoon. Looks like you've got a lot more business to conduct after I'm gone. Mr. Ashford is correct. I am legal counsel for the housing authority. My name is George Achola. [LB1128]

SENATOR LATHROP: George, why don't we have you spell your last name. [LB1128]

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GEORGE ACHOLA: A-c-h-o-l-a is how you spell my last name. And Mr. Ashford is correct. We are a strange agency in that we are a creation of the state, but we receive a large share of our monies from the federal government, and with that receiving money from the federal government, we also have a host of rules and regulations that we have to abide by. So essentially you have a state political subdivision that has to abide by federal regulations as well as state regulations. So we've got two layers of rules and regulations and laws that we have to follow, and that's part of the reason that we're here. Under the federal legislation, and it's unique to public housing, it's not...it's different from private landlords. We are required, when we have notice of our nonpayment evict, to provide 14-day notice to our tenants. A private landlord has the right under state law to do a 3-day notice. Okay? And the problem that we have incurred in that regard is essentially when you're talking about a 14-day notice, HUD requires that we have a 7-day grace period to pay rent. So technically rent is due on the 1st, but we don't consider it late until the 7th of the month. At that point, as most of you are aware that have followed the process, we provide a 14-day notice to the tenant. That 14-day notice is what's unique to public housing agencies because that's federally required under the Housing Agency Act so now you're talking about going to the 21st of the month in order before you can proceed with an eviction. Assuming that you can file your eviction and get into court, you're going to be well within 2-2.5 months before you have the opportunity to evict a tenant. Now that causes a hardship in two ways. Number one, it causes a hardship for the housing agency just due to the fact of a time process. But it also causes a hardship to the tenant because sometimes a tenant may prevail on an issue. And under the current state of the law, we cannot accept that tenant's rent so if the tenant...the tenant's rent, we have to rebate that rent to the tenant, but the rent continues to accrue. So the fact that they do prevail and now they've got to make up the rent. And as those individuals that deal in public housing like myself are aware, once that money goes back, in all likelihood we're not going to get it back from the tenant. So now we have a situation now we've got to go back and attempt to collect more rent from that tenant. Another area that's really critical is in the area of criminal evictions. One of the duties that I have is to make sure that our tenants are protected. And under the current state of the law, we have a public housing agency. Our public housing, excuse me, a public safety department. Our public safety department may become aware of an incident that necessitates eviction, but we may not have sufficient information. But we have knowledge at that point. And if we accept rent at that point, we may waive our right to evict a tenant for criminal activity. But what we need to do is we need to have time to go out and investigate, look at police reports if there's police reports, talk to witnesses, and sometimes that takes time. And so what happens is when we become aware of an issue under the current state of the law, we immediately do not accept the rent because we may be deemed to have knowledge. And that is one of the positions that counsel for residents have been taking, that once our public safety department becomes aware of it, we have knowledge. So what we have indicated, any time we become aware of anything, we immediately stop and we start the investigative process. And depending on how long that investigative process takes, you know, you again may be looking at

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another 2-2.5 months before we proceed with an eviction. And if the tenant prevails at the court hearing, they still have not paid rent, but they have continued to get the benefit of a residence over their head. So essentially, once again, you follow the same situation where I discussed earlier in that now we're going to go back and ask for the rent. But, of course, under Nebraska law there is no way that we can accept that rent or even hold that rent pending the resolution of the case because we can be deemed to have waived our rights to go forward. And that can be a detriment not only to us but to some other public housing residents. So I see my time is up, but that's kind of a general overview and I think why we're a proponent of the bill. Clearly benefits us as an agency, but I also think that it does benefit our residents, especially giving us...allowing us the ability, for example, to take partial payments during a pending eviction. [LB1128]

SENATOR LATHROP: Very good. Are there any questions? I don't see any. I think it was well explained. Thanks, George. [LB1128]

GEORGE ACHOLA: Thank you. Thank you, Senator Chambers. (Laughter) [LB1128]

SENATOR LATHROP: Are there any other proponents of LB1128? Are there any opponents of LB1128? [LB1128]

WALTER RADCLIFFE: Senator Lathrop, members of the committee, my name is Walter Radcliffe and I'm appearing before you today as a registered lobbyist on behalf of Nebraska Realtors Association in opposition to LB1128. Having said that, I am also going to temper that opposition because, quite frankly, when the realtors looked at this, I wish we'd have had the benefit of the previous witness' testimony, Senator Ashford. I also perhaps wish I'd have been able to have gotten ahold of you this morning, which I was unable to. However, that was my fault, not yours. [LB1128]

SENATOR ASHFORD: Oh, I was going to say I don't remember. [LB1128]

WALTER RADCLIFFE: However, the realtors asked me to come and testify against it on the basis that they did not feel one entity should have different eviction proceedings than another. I have done that. I will...that's for the record. However, I...what? (Laugh) It's a small comedy act that I try to do, but I'm glad Senator Schimek caught the joke. But I honestly think that if they would have had the benefit of this explanation that their opposition would probably be different. I will go back to them. I will explain that. So if I'm going to pursue the opposition anyway, I will get back with you, Senator Ashford. [LB1128]

SENATOR ASHFORD: Thanks, Walt. [LB1128]

SENATOR LATHROP: Terrific. Are there any questions for Mr. Radcliffe? [LB1128]

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WALTER RADCLIFFE: And thank you and thank you, Senator Chambers. (Laughter)  
[LB1128]

SENATOR LATHROP: Any other opponents? Anyone here in a neutral capacity on LB1128? Senator Ashford waives closing so that will conclude that hearing on LB1128. And we will move then to LR234. [LB1128]

SENATOR ASHFORD: It's 10 of 5:00. Senator Chambers, I'm sorry, I just want to announce to the group it's 10 minutes of 5:00. We're going to try and conclude this hearing at around 6:00. So we will kind of go on the same--6:00, 6:15--so we're going to try to divide the testimony as equally...well, I will divide it equally after Senator Chambers gets done with his introduction. [LR234]

SENATOR CHAMBERS: Thank you. Mr. Chairman, members of the committee, I'm Ernie Chambers, representing the 11th Legislative District in Omaha. I am the introducer of this resolution. It would give complete retrocession where the Omaha Tribe is concerned. The term "retrocession" is based on a situation where the state in the past has been given authority to enforce criminal and civil laws on the reservation. And these are general statements. It can be refined by the representatives of the tribe and others, but I want to leave as much time for those who have come here to speak as possible. What this resolution would do where retrocession is concerned is ask the state to give back to the federal government that authority. When that authority would be returned to the federal government, the tribe would then work with the federal government to obtain jurisdiction over certain offenses that take place on the reservation. The Winnebagos and the Santee Sioux have complete retrocession. Although the Omaha Tribe was the first one in 1969 for retrocession to occur, it was a limited type where criminal and traffic law violations were not given back. So what is being asked for now is complete retrocession. Charles Dickens wrote a story called A Tale of Two Cities. This issue boils down to a tale between two cultures; one white, one Native American. And there's no need in pretending that it's anything other than what it is. If this resolution is adopted, you can turn to page 2 of the statement of intent, which is lengthy in order to provide an explanation and a historical chronology of retrocession in Nebraska. I'm not going to go through all that, but this is where you can find the effect of this resolution: page 2 in the fifth paragraph from the top. If this resolution is approved by the Legislature, the federal government will resume its jurisdiction within the exterior boundaries of the Omaha Indian Reservation. That term "within the exterior boundaries" is a term of art. It simply means within the perimeter of the reservation. So the federal government will resume jurisdiction within those boundaries. The state will continue to have exclusive criminal jurisdiction when non-Indians or white people are involved. When an Indian is involved as a defendant or a victim, the federal government will have jurisdiction, somewhat similar to a conflict between people of two different states. The federal court has the jurisdiction. So if it involves an Indian and a non-Indian, the federal government will have charge. The tribal courts would have concurrent jurisdiction with the federals when

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it was a minor offense committed by Indians. If you go to the next line, you will see that when an Indian is involved as a defendant or victim, the federal government will have that jurisdiction with the tribal court having concurrent jurisdiction if the government would allow it when minor offenses are committed by Indians. Now when we come to non-Indians, they cannot be prosecuted in the tribal court for any offenses, no matter how minor. White people will not be brought under the criminal jurisdiction of the tribal courts. The Bureau of Indian Affairs will have primary responsibility for the enforcement of federal laws, although that bureau may delegate that authority to tribal or state law enforcement officers if it chooses to do so. This resolution will not expand tribal jurisdiction but it will increase the responsibility on the tribe for handling the traffic law violations and the minor offenses that would fall within their jurisdiction. Now the Omaha Tribe already has cooperative agreements with the State Patrol. They have cross-deputized. And the Bureau of Indian Affairs of the Department of the Interior has these cooperative agreements with the tribe. The tribe have established courts, they've adopted the motor vehicle laws of the state, and would have the infrastructure necessary to carry out the responsibilities under retrocession, should it occur. This paragraph on the civil side might be of interest. The state courts will retain exclusive jurisdiction over actions on the Omaha Indian Reservation when both parties are non-Indian, in other words, two white people are squabbling. The white state will deal with their situation when both parties are non-Indian. Remember, the tribal courts have no jurisdiction over them. The federal courts will have civil jurisdiction over actions where either party is an Indian--the federal courts. The Omaha Tribe will have exclusive jurisdiction over civil actions on the Omaha Reservation affecting the health, safety, and welfare of its members. As far as the historical background, I don't think that is necessary for me to present because you can read it, and it is not the bone of contention here. It's where jurisdictional lines will stop. One of the problems is that counties and localities have said that the cost of policing what is called Indian country is too expensive, therefore, there is not the type of law enforcement that is needed. It is not going to be forthcoming. But under retrocession, the tribe will be in a position to have more say-so about this and these cooperative agreements with the state can be expanded if necessary. If you have questions of me, I will do my best to answer them without clouding the issue with too lengthy a response. [LR234]

SENATOR ASHFORD: Thank you, Senator Chambers. May I ask how many in the room are supporters of this bill? How many are not supporting the bill? All right. What I'm going to ask you to do, and you don't have to do this, but I'm going to ask a favor. There are a number of individuals outside who are...may want to testify who are supporting the bill. Would it be possible if some of you--and it's up to you--if some of you could change places with those in the other room because some of them may want to testify? It's up to you; I'm not going to require it. But if some of you would be willing to get up and maybe...and allow some of the people from the other room to sit in this room. [LR234]

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(GENTLEMAN FROM AUDIENCE): We've been sitting here all afternoon. [LR234]

SENATOR ASHFORD: All right, it's up to you. [LR234]

SENATOR CHAMBERS: Why don't we get more chairs, because I'm not going to have those people who want to be a part of this be kept outside this room because others got here first and filled up the room. [LR234]

SENATOR ASHFORD: I'm worried about the number of people in the room. [LR234]

SENATOR LATHROP: Or they can sit in my office. Let me see how many of them there are, because they could watch it from my office, too. [LR234]

SENATOR ASHFORD: Why don't we...here's what we're going to do. Here's what we're going to do. We're going to take about a five-minute break and we're going to bring in some chairs and put them in the... [LR234]

SENATOR LATHROP: Maybe they could fill out a form if they're not going to testify. [LR234]

SENATOR ASHFORD: Right. I just want to be able to have some people who are going to testify be able to come in here. [LR234]

SENATOR LATHROP: Right. We could spend that five minutes getting a list of people who agree with the... [LR234]

SENATOR ASHFORD: Right, we can do that, too. [LR234]

SENATOR CHAMBERS: Because this is not Thurston County. This is the Nebraska Legislature and we are going to make a fair proceeding here which may not occur and which shows why retrocession may be necessary. [LR234]

SENATOR ASHFORD: Well, let's take five minutes here and we're going to bring some other chairs in so that we have a few more of the people who support the bill have an opportunity to be in the room. [LR234]

RECESS [LR234]

SENATOR ASHFORD: It is 5 after 5:00. We are going to try to conclude around 6:15, so we'll divide the testimony accordingly. We'll make it absolutely equal by time. So with that, we're going to start with the proponents, those who favor this bill should speak first. And we need to have...those who are going to speak need to sign the sheet in the back. Who is going to...those that are going to speak need to sit at that table where the sign-in

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sheets are, so I would ask those that are seated there now to just move for now. And those that are going to speak, if the first speaker would go and sign in and then the person who's going to speak next would sit next to that person and sign in the sheet as well. And also, those in the room who don't get an opportunity to speak, we will send around sheets that they can sign and indicate their support or opposition to the bill, as well. Okay. Let's have the first proponent then, if we could. Now some of you were not in here earlier when I explained the light system. We have a light system in front of your...on the desk here. When that...we're asking you to limit your testimony to three minutes. When the light goes to the orange light, we'll ask you to start summing up, and the red light would be the light that indicates you should conclude your testimony. So with that, we'll start with the first proponent, the first person who is in favor of the bill. If you'd give us your name and spell your name for us. [LR234]

ANSLEY GRIFFIN: My name is Ansley Griffin, spelled A-n-s-l-e-y, my last name is G-r-i-f-f-i-n. Good afternoon, Chairman Ashford, Judiciary Committee. My name is Ansley Griffin and I'm an original person of this country. I am here today representing an entire nation, the Omaha Nation. We are a nation within a nation. We are a treaty tribe that has always had an inherent sovereign right for governance and law within its exterior boundaries. Generally, LR234 is the tribe's request through retrocession to simplify jurisdiction within its exterior boundaries. More specifically, the tribe supports LR234 and a complete retrocession because a partial retrocession in 1969 has created confusion and problems. The Omaha people was concerned about the state's exercise of authority over its tribal members. PL 280's exception for traffic offenses has given the state and county officers an opportunity to make sham arrests for purported traffic offenses. Furthermore, our nation views PL 280 as an infringement on our tribal sovereignty and PL 280 makes tribal members subject to state laws in addition to tribal law. Mr. Chairman and committee, contrary to popular belief, misinformation, the tribe is not seeking to expand its jurisdiction today. We, the tribe, simply want to ensure that tribal members are treated fairly and equally by having them prosecuted exclusively in tribal court for traffic and minor offenses. We share this concurrently with the state today. Our tribal members will be prosecuted in federal court for major crimes. Senator and committee today, this is a representation of our tribal...it's actually a maturation of our tribal court system, our law enforcement department and tribal code, which is the laws of our land, which includes all state and traffic laws as tribal laws. Senators and committee, in closing, the committee will hear much testimony about the Omaha Tribe in Thurston County today. But I ask you, committee, to focus not on specific tribe or county today and more on the state of Nebraska's government-to-government relationship with the tribes in Nebraska. Let me remind you that you should not treat one tribe differently than the other. You have already gone through this process in 1986 with the Winnebago Nation for complete criminal retrocession and again lately in 2001 with the Santee Sioux Nation for complete civil and criminal retrocession. Today, the Omaha Nation implores you to pass LR234. Thank you. Aho. [LR234]

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SENATOR ASHFORD: Thank you, Mr. Griffin. Do we have any questions of Mr. Griffin? Thank you, sir. The next proponent, the next person in favor of this bill, please. And then other testifiers, if they could go back to that desk and sign in so you'll be ready to go. [LR234]

MITCHELL PARKER: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Mitchell Parker. I'm a member of the Omaha Nation of Nebraska. I'm here to relate to you my experience in law enforcement. In February 1972, I became a law enforcement officer on the Omaha Indian Reservation. And since that time, I went to work for the Bureau of Indian Affairs as a police officer. During that time, I fulfilled obligations of a law enforcement officer by investigating among many of the misdemeanor-type violations. And included in there was traffic violations. And there I investigated vehicle accidents, all the things that go along with being a law enforcement official. Since that time, in 1979 I became a captain of police within the Bureau of Indian Affairs. My first duty station was on the Wind River Indian Reservation located at Fort Washakie, Wyoming. I supervised around 24 law enforcement people. We provided law enforcement services on approximately 4 million square acres located approximately 130 miles south of the Grand Tetons and the Yellowstone National Parks. Through there, we were able to utilize the enforcement tools of investigating all aspects of the Wind River Indian Reservation tribal code, which included traffic jurisdiction. Through there I also testified in tribal court on a misdemeanor. We had no jurisdiction of non-Indians because of the Oliphant v. Suquamish decision, which says that tribal court does not prosecute non-Indians. There I became a criminal investigator. I investigated major crimes, violation of the Major Crimes Act of the United States Code, Title 18. This was prosecuted by the United States Attorney for the district of Wyoming. I moved on to Pawhuska, Oklahoma, as a criminal investigator. Elko County, Nevada, as a criminal investigator--the fifth largest county in the United States--and I was charged with investigating allegations of violations of Title 18 or the Major Crimes Act. I provided testimony to courts as is required. I see my time is up. If you have any questions, I'll be happy to try to answer them. [LR234]

SENATOR ASHFORD: Thank you, Mr. Mitchell. Any questions? Thank you, sir. Yes, Senator Lathrop. [LR234]

SENATOR LATHROP: The previous witness came here, had a book with the code in it, and he suggested that the code for the tribe included an incorporation of the state's misdemeanor laws. Is that right? Would that be your understanding? [LR234]

MITCHELL PARKER: I believe, yes, that would...they adopted the laws of the state. [LR234]

SENATOR LATHROP: So if Nebraska has a statute, for example, the state law regarding reckless driving or regarding speeding, the tribe would have an identical law



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on its books governing misdemeanors and traffic offenses? [LR234]

MITCHELL PARKER: That's correct, Senator. That's correct. [LR234]

SENATOR LATHROP: Okay. Thank you. [LR234]

SENATOR ASHFORD: Thanks, Mr. Parker. [LR234]

SENATOR PIRSCH: Just a follow-up... [LR234]

SENATOR ASHFORD: Yes, Senator Pirsch. [LR234]

SENATOR PIRSCH: Has that already been adopted, or that's a proposal if it does happen? [LR234]

MITCHELL PARKER: We currently bring these violators in before our tribal court only on Native Americans and tribal members. [LR234]

SENATOR ASHFORD: Thanks, Mr. Parker. Thank you, sir. [LR234]

MITCHELL PARKER: Thank you. [LR234]

SENATOR ASHFORD: Next proponent. [LR234]

ED TYNDALL, JR.: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Ed Tyndall, Jr., chief of police for the Omaha Tribe. I'm an enrolled member of the Omaha Nation... [LR234]

SENATOR ASHFORD: Mr. Tyndall, I just...I don't want to...just spell your name for us, so we have it right. [LR234]

ED TYNDALL, JR.: Last name is T-y-n-d-a-l-l. [LR234]

SENATOR ASHFORD: Oh, it's right on your jacket. I apologize. [LR234]

ED TYNDALL, JR.: Been chief of police for the Omaha Tribe for approximately...going on eight years now. Started my law enforcement tenure in 1990. I worked with two state agencies of the state of Nebraska, as well as all three tribes in the state of Nebraska that have law enforcement agencies--be Santee, Winnebago, and Omaha. As a little background on where I've come and what I've seen over the years, I can tell you that it's very confusing, to say the least, on the Omaha Reservation with respect to enforcement of laws. What I've seen over the years has saddened me and hardened me when it comes to Omaha tribal members. There's nobody in this nation that gets prosecuted for

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the same crime in two different courts of law. This occurs on a day-to-day basis on traffic offenses within the Omaha Reservation. Statistics, I can give you a short kind of statistics. We're a very busy agency, probably one of the busiest in northeast Nebraska. Last year our court processed over 4,500 cases--criminal cases, traffic, civil. That's what we do. I have a staff of nine officers, including myself, seven detention officers and seven radio dispatch communication officers. This is a caseload that we handle. We're very effective and we're very proficient. We're very professional. Some of the training that we've received, all of my officers are trained, basic police training, through the federal law enforcement training academy. Three of our officers have attended Grand Island for the...in lieu of training, reciprocity training for the state of Nebraska. Currently we're working towards cross-deputization with the Winnebago Tribe. We provide law enforcement assistance to the Santee Tribe in the course of their trying to achieve retrocession back in 2001. I pray that the committee takes a good look at this and make an objectionable decision on this matter because it affects the entire Omaha people and it has for the last 35 years. Our retrocession is outdated. It needs to be updated and run more in line with the Santee and Winnebago Tribes. Thank you for your time. [LR234]

SENATOR ASHFORD: Thank you, Chief. Any questions of Chief Tyndall? Yes, Senator Chambers. [LR234]

SENATOR CHAMBERS: Just one. Chief, if I understood you correctly, you've worked with all three tribes--the Santee, the Winnebagos, and Omaha. [LR234]

ED TYNDALL, JR.: Yes, sir. [LR234]

SENATOR CHAMBERS: And you feel that if this retrocession resolution is adopted, whatever needs to be done in the way of law enforcement could be handled in the way that the resolution envisions? [LR234]

ED TYNDALL, JR.: Yes. Yes, I do. [LR234]

SENATOR CHAMBERS: Okay. [LR234]

ED TYNDALL, JR.: I'm very confident. [LR234]

SENATOR CHAMBERS: Thank you. [LR234]

SENATOR ASHFORD: Chief, how many residents do you...in the Omaha Tribe? [LR234]

ED TYNDALL, JR.: We went through the numbers. It ranges anywhere from the actual count of enrolled members living on the Omaha Reservation, but roughly between 3,500 and 5,000 members. [LR234]

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SENATOR ASHFORD: Okay. And the Santee, do you know how... [LR234]

ED TYNDALL, JR: I'm not real sure. It's probably right around 2,500 maybe. [LR234]

SENATOR ASHFORD: 2,500? Okay. Thanks, Chief. Next proponent? Good afternoon. [LR234]

ED TYNDALL, SR.: Good afternoon, ladies and gentlemen. My name is Ed Tyndall, Sr. I'm a former police officer. I was approximately one of the first officers hired by Macy. Before that, they had a fellow by the name of Lee Gilpin (phonetic), was a deputy U.S. Marshal. And before that I have no idea who. But I started with Macy before their retrocession took effect. And after it took effect, we worked for approximately 6 or 7 months and we went for training at Roswell, New Mexico, which was approximately 13 weeks. We were certified, there was three of us, and I think we had three more back in Macy working. And after we came back from Roswell, I worked for the PD for a little over a year. And due to circumstances I don't really care to talk about, I quit and went to work for the state of Nebraska as a state deputy sheriff. And I was in that position for little over two years. And at that time, Thurston County took over my pay and the highway safety department furnished my vehicle and other equipment. But during my tenure as a law enforcement, we worked very well together with the Winnebago. Winnebago at that time only had one officer at the most. Walthill had one, two--one full-time, two part-time. Rosalie had none. Thurston had none. And I see my time is about up so that's all I have. Thank you. [LR234]

SENATOR ASHFORD: Thanks, Mr. Tyndall, for your testimony. Any questions of Mr. Tyndall? Seeing none, thank you. [LR234]

ED TYNDALL, SR.: Thank you. [LR234]

SENATOR ASHFORD: Next testifier, proponent? [LR234]

JOHN KEEN: I have written copies. [LR234]

SENATOR ASHFORD: Sure. [LR234]

JOHN KEEN: (Exhibit 52) My name is John Keen, K-e-e-n. I'm an enrolled member of the Omaha Tribe. I'm speaking in favor of the resolution. Chairman Ashford and committee members, I would like to thank you for the opportunity to address you today and for considering this resolution, as it is so very important to my people. Senator Chambers, it is an honor to speak in support of this resolution that you introduced, as myself and my family admire you and your accomplishments so much. To me, this resolution is about bringing uniformity to tribal-state relations, and will draw clear lines

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that lead to improved public safety and judicial process to the members of the Omaha Tribe and the citizens of the state of Nebraska who reside within the exterior boundaries of the Omaha Indian Reservation. Uniformity seems, to me, to be the best road map towards equality and fairness. In the recent past and the not-so-recent past, jurisdictional conflicts between states and tribes have brought about costly litigation and unnecessary conflict, not only between the Omahas and Nebraska residents, but all over the country. I believe this resolution will set the stage for a smoother road. Public Law 280 came about when the mind-set of Congress and other officials were not completely clear on the direction tribes and future elected officials were going to take. That direction seems to be clear now with the past retrocessions this body has moved for. I have seen the phrase "unfunded mandate" attached to discussions regarding Public Law 280. I believe that is one of the fundamental flaws of the law. When the federal government passed this law, it did so without fully exploring the ability of the mandatory states to effectively understand the cultural differences and tribal customs that can come into play in regards to adjudicating criminal and civil manners when reservation tribal members are party to the action without giving the states the funding or the ability to raise the funding via taxation to cover the immense social and cultural research needed for such a lot of work. The passing of the Indian Child Welfare Act is a good demonstration of Congress recognizing that tribes are better suited to adjudicate matters regarding their own members. I understand President Eisenhower expressed concern about signing the law due to the lack of required tribal consent and urged Congress to address tribal consent. Sometime later, Congress did address the issue of tribal consent if states were to option in. I am here to ask you to hear me with that in mind. I would not consent if I were asked as a tribal member today. I truly believe that with the great cultural differences we are better suited to have exclusive jurisdiction over our own members. Please remember that all I ask is that you look at the idea of uniformity and the road map that could provide equality and fairness and the clear lines that will lead to improved public safety and judicial process for all involved. Thank you for your attention to this matter and the opportunity you have afforded me, as a tribal member, to express my thoughts and ideas at the highest levels of our government. [LR234]

SENATOR ASHFORD: Thank you, Mr. Keen. Any questions of Mr. Keen? Thank you, Mr. Keen. Next proponent? Good afternoon. [LR234]

ROGER TRUDELL: Good afternoon, honorable Chairman and honorable committee members. My name is Roger Trudell, T-r-u-d-e-l-l. I'm the chairman of the Santee Sioux Nation, northeast Nebraska, and here as a proponent of LR234. I believe that it would justly serve the Omaha Tribe to be the same as Santee and Winnebago. And we have worked with the Omaha Nation, the Omaha Tribe on a number of occasions. They have, you know, provided us law enforcement and, you know, they've done a very professional job. I know that they've had a court for, you know, an extensive period of time. And I know that their court is professional. Their officers are trained and we relied

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on them for a period of time when we were kind of in limbo between obtaining Bureau of Indian Affairs law enforcement and the state had reduced their funding to the county where law enforcement used to come from back at that time that we retroceded. So they were, you know, very helpful to us. So we do support that effort for them. The tribe, the Santee Sioux Tribe, when we retroceded actually brought more resources into the county, Knox County, and brought more law enforcement officers into Knox County. So you know, it has helped not only the Santee Sioux Nation, the tribe, but also the county by providing additional law enforcement officers for, you know, that can work within the county. And we have, you know, worked mutually with Knox County. We work mutually with the Highway Patrol, the State Patrol, very good relationship with the Knox County sheriff and also with the State Patrol. We have continued to try to improve those relations as we go along. There are...as we were, you know, still developing our codes and stuff, our codes and laws and stuff that affect our people directly. I know that there was, you know, probably concern that non-Indian people would be subject to the tribal court. But they're not, not unless they would subject themselves to the jurisdiction of the court. But otherwise there would be no...the court doesn't have any jurisdiction over the non-Indian people. If a non-Indian commits a crime against an Indian person, then that is a federal offense and that would be handled by the federal people. So overall, you know, I think to bring the Omaha Nation to the same standard as the Winnebago and the Santee, then you know, this should be acted on and passed by the Nebraska Unicameral. Thank you. [LR234]

SENATOR ASHFORD: Thank you, Mr. Trudell. Any questions of Mr. Trudell? Thank you, sir. Good afternoon. [LR234]

ANTIONE PROVOST: Good afternoon, Senator Ashford, senators, committee. My name is Antione Provost, A-n-t-i-o-n-e, first name; last name, Provost, P-r-o-v-o-s-t. I am appointed by Governor Heineman to sit for the Omaha Tribe as a commissioner on the Commission of Indian Affairs for the state of Nebraska. Very proud to do that. And I'm here to testify as a proponent for LR234. It seems to me that this legislation resolution has already been passed in another similar situation. I also am the environmental protection department director for the Omaha Tribe. And this also was a main problem in that area as far as jurisdiction over environmental infractions when we had the tribal environmental office, the federal environmental office, and the state Nebraska Department of Environmental Quality. How we solved that problem is in a similar situation as LR234, whereas the United States took primary sole authority over environmental laws in consultation with the Omaha Tribe and has given certain areas of that delegation of authority to the tribe. So in that similar situation where everything was convoluted and confusing, where it laid it out rather plainly where the United States has the overall jurisdiction and the state secondary when consultation with the tribe and in some areas has a delegation of authority for them laws. So in a similar situation, I think it would clear everything up if we...and you have seen it being so to pass this legislative resolution. It's working very well in the environmental realm. We know who the authority

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persons are, we know who the primary responsibility parties of that are. So it cuts out a lot of confusion, which I think this legislative resolution will do for the Omaha Tribe. And again, I support...am a proponent of the resolution, and that's about all I have to say. [LR234]

SENATOR ASHFORD: Thanks, Mr. Provost. Any questions of Mr. Provost? Thank you, sir. [LR234]

DARREN WOLFE: Good afternoon, Senator Ashford. My name is Darren Wolfe, last name W-o-l-f-e. I am a member of the Thurston County Board of Supervisors. I am here today in support of LR234, and I also bring support of two fellow members of the county board that are not with me today. They are Danelle Smith and Paul Snowball. Us three represent a portion of the Thurston County board that are both the minority in racial background and in numbers. My effort today is to show to you that the proclamation statement that you may have already received or you may receive when the opponents of this effort are allowed to speak does not reflect the total of the whole county. This is why I am here today. Myself, I am a member of a family-owned business, Mrs. Smith is a member of the Nebraska Bar, and Mr. Snowball is a long-term representative of the Thurston County board. And I wanted to make sure that you understood that this proclamation statement, which you may have already been given or will receive, does not reflect the total board and its support. In fact, the resolution itself was placed on the agenda for our meeting and then moved up when myself and Mrs. Smith did not arrive on time. So discussion on the matter was never held with us in the room and if the discussion was held, more than likely we would have pointed out the major points of this resolution if we had been given the chance. So that is why I am here today as a proponent of LR234. And I'm... [LR234]

SENATOR ASHFORD: Thank you, Mr. Wolfe. Any questions of Mr. Wolfe? Thank you, sir. [LR234]

JUDI GAIASHKIBOS: (Exhibit 53) Thank you, Senator Ashford, Chairman, and members of the committee. I would first like to thank Senator Chambers for introducing this and working with me and the Omaha Tribe on this, LR234. My name is Judi gaiashkibos, and that is J-u-d-i g-a-i-a-s-h-k-i-b-o-s, and I am a proud member of the Ponca Tribe of Nebraska, and I'm also Santee Sioux. And today I'm especially proud to be here as a director of the Commission on Indian Affairs. This is my 13th year as the director and I am so proud of all of the tribal people sitting behind me that I represent. And I think you can tell that by them coming, taking this time today on a cold day to drive down here, that this is something that they are truly committed to. And I have had the pleasure and honor of working for the four tribes of Nebraska, and indeed I am humbled to be here before you. I would like to again thank Senator Chambers, and going back to 2001 when he introduced the retrocession for the Santee Sioux. So there is a precedent here. This is something that has occurred before and I believe, as the

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previous testifiers have said, that this would be in keeping with that and provide uniformity and consistency with implementation of the laws for Indian people in the state of Nebraska. I'm testifying also here on behalf of the chairman of the Ponca Tribe who wasn't able to stay due to the late hour. So he has asked me, if you would give me permission to read his brief testimony. [LR234]

SENATOR ASHFORD: What we'll do is we'll take his testimony... [LR234]

JUDI GAIASHKIBOS: You will. [LR234]

SENATOR ASHFORD: ...not have you read it. We'll just go ahead and take a copy of it. And if you want us to make copies, we'll do that. [LR234]

JUDI GAIASHKIBOS: Okay. I would rather read it, but if... [LR234]

SENATOR CHAMBERS: Just so that it's clear, the committee, no matter what they're hearing, will only let the testifier give his or her testimony. And if they bring that written by others, it's submitted into the record but they're not allowed to read for another person who's not here. So that is not being done just in connection with this hearing. [LR234]

JUDI GAIASHKIBOS: Okay, fine. [LR234]

SENATOR ASHFORD: And certainly not in connection with you. [LR234]

JUDI GAIASHKIBOS: Sure. Okay, well, Chairman Larry Wright of the Ponca Tribe does stand in support on behalf of the Ponca Tribe. And I would just like to say...I know we don't have a lot of time here. But the Governor of the state of Nebraska, Governor Heineman, does have a memorandum of government to government with our tribes. And the state of Nebraska was established by Congress pursuant to the Constitution of the United States as a sovereign state. The state of Nebraska recognizes that the four federally recognized tribes headquartered in Nebraska--the Omaha Tribe, the Ponca Tribe of Nebraska, the Santee Sioux Tribe, and the Winnebago Tribe--have a unique status that sets them apart from other groups and interests in Nebraska. That status adds a significant dimension of government-to-government relations to the manner and quality of state agency, officer, and staff interaction with the tribes and their components. So I'd like to remind the committee that the tribes are sovereigns within the state and within the United States. We have tri-citizenship. We are not a minority. I am a member of the Ponca Tribe. I vote in this elections and state elections and in federal elections. And lastly, I would just like to state, you will hear testimony from the opponents that will make some allegations and I won't have the opportunity to address that. So I'd just like to preface that. The purpose of LR234 is not for the purpose or intent to establish or define reservation boundaries. That will fall to the courts. So

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whatever happens with LR234, that has no bearing on those boundaries. And finally, this law would only impact Indian people. So I know there are a lot of fears out there and fear motivates people and we would hope that that doesn't muddy the water today. And we've been hearing in the national campaigns about we stand for change and, yes, we can. Well, I would encourage you to consider that and keep the first citizens in mind, that this change can be good for us and for the safety of all people in the United States of America. And we as tribal people have served and protected this country at a higher rate than anyone in the United States of America. So we truly are devoted veterans and Americans and the first peoples. We-bluh-ho, thank you. [LR234]

SENATOR ASHFORD: Any questions? Thank you. Next proponent? And we'll do...we'll take two more...one more person after this gentleman, and then we will go to the opponents. [LR234]

PAUL OLSON: Committee, Senator Ashford, Senator Chambers, I am Paul Olson. I am speaking on behalf of myself and behalf of Nebraskans for Peace. I wanted to call to your attention that the United Nations General Assembly adopted a declaration saying that native people have the rights to the recognition, observance, and enforcement of treaties concluded with states or their successors. United States voted against that. That was done in 2007. They voted against it, but said in its statement concerning its voting against it that we promote indigenous rights domestically under U.S. domestic law. The government recognizes Indian tribes as political entities with inherent powers of self-government as first peoples. In its legal system, the federal government had a government-to government-relationship with Indian tribes, and then it enumerates the areas in which the tribes have the right of self-government, including those which are in question here. The Treaty of 1854 was a treaty between the Omaha and federal government. It cannot be changed without an agreement...the development of a new treaty. It was superseded by armed force. But as an effort to try to return some of the sovereignty that was taken away from the Omaha wrongfully, the Indian Civil Rights Act of 1968 gave the Omaha Tribe the right to retrocession. The retrocession was partial. I was part of the discussions of that retrocession with the vice chairman person of the tribe, Leonard Springer. He knew that the retrocession was partial and that it had to be fully full before there would be a satisfactory situation. Senator Chambers provides for a satisfactory situation in his legislative resolution. All other tribes have full retrocession; why not the Omaha and why not give them the same privileges and opportunities that the other tribes have? This will clarify everything. I thank you for listening to me. I hope that you will clarify things. Thank you. [LR234]

SENATOR ASHFORD: Mr. Olson, could I ask you to spell your name for the record? [LR234]

PAUL OLSON: O-I-s-o-n, excuse me. [LR234]



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SENATOR ASHFORD: Okay. First name? [LR234]

PAUL OLSON: Paul, P-a-u-l. [LR234]

SENATOR ASHFORD: Thanks, Paul. Thank you. All right, this would be the last proponent testifier. [LR234]

THAYNE GLENN: Thank you. My name is Thayne Glenn, that's T-h-a-y-n-e, Glenn, G-l-e-n-n. And I'm sorry, I'm not attired properly. I didn't come here intending to testify today. Until two weeks ago, I was the tribal prosecutor for the Omaha Tribe for six and a half years. I no longer have that relationship with the tribe. I'm not here on behalf of anybody but me. My father raised me to do the right thing. Some things are just right. There is a lot of misconception and bad information. And this is not expanding the tribe's authority at all, this is not the tribe delving into areas it hasn't done. The tribe has inherent sovereign authority and has prosecuted traffic crimes for at least 15 years, that I'm aware of. They prosecute probably 100 DUIs a year. I know, because I did it. The codes that were shown earlier, that's codification that was done in 2003. Not all of the provisions are exactly the same as the state, but there is a catchall provision that was put in, in 1984, that anything that is not provided for in the tribal code will refer to state law. Those things are all in effect. Right now what you have is a situation where...on a DUI case, which is the majority of what we're talking about here today, it depends on whose jail the drunk wakes up in on who prosecutes him. And that's only because of kind of a gentleman's agreement between my former office and the county attorney's office. In theory, the county attorney could prosecute on behalf of the state of Nebraska and then they would be subject to prosecution by the tribe or vice versa. That is the state that it currently exists now. Both entities are maintaining this. This is...there is no impact on any non-Native citizen of the state of Nebraska, any person that is not a resident of the Omaha Indian Reservation, unless it's the county attorney's office that wouldn't have quite as much work to do. It wouldn't change the jurisdiction for anybody. It's simply a matter of what judge and what law you're...and that's it. You know, I'm here doing this because this is the right thing to do. You know, I'm probably going to get chewed out from my wife because you people run really late and it's my birthday. (Laughter) So understand, I'm, you know, I came here completely on my own. I don't have an axe to grind, I don't have a dog in this fight. I'm just telling you what's right and wrong. Right now, they're being subjected to an extra layer of bureaucracy and, to be quite honest, predatory practices by the county that every Native American defendant that they can bring into their court is dollar signs to keep the county running. That's it. If you walk into county court on court day, there is not a...if there's a white face in there, they work in the system. That's it. [LR234]

SENATOR ASHFORD: Any questions of Mr. Glenn? Thank you, Mr. Glenn. Okay. We'll now move to the opponents. And if we could ask the testifiers to come up to the table that has the sheets on it and sign the sheet before you come up, and ask two at a time

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to come to the table so that we can keep this process moving. It's quarter of 6:00. We'll go to around 6:20, which is the same 35 minutes we did with the other group. Good afternoon. [LR234]

TERI LAMPLOT: Good afternoon, or good evening. I'm not sure which to say at this point. [LR234]

SENATOR ASHFORD: We're in the interim, I guess. [LR234]

TERI LAMPLOT: (Exhibit 54) Yes. Thank you for allowing me to be here today. My name is Teri Lamplot, and it's L-a-m-p-l-o-t, and I'm a resident of Thurston County. I am currently serving my eighth year on the Thurston County Board of Supervisors, my fourth year as the chairperson. The Thurston County Board of Supervisors passed a proclamation statement dated February 5, 2008, opposing LR234, which I will submit in written official record. And contrary to Supervisor Wolfe's statement earlier, this proclamation statement simply states that the board was opposed to LR234 because we had no prior knowledge of this resolution. And it does greatly affect the law enforcement in our county and we were not given any courtesy of knowing about it. And at the same time, we were...Section 4 of the resolution requires us to enter into agreements. We weren't consulted, county attorney's office wasn't consulted, we had no knowledge. And upon discussing this later when Supervisor Wolfe did show up for the meeting, he exposes that he had known about it for three months and didn't share that with the board. The federal Indian policy has been a swinging pendulum going from promoting Indian assimilation to promoting Indian separatism. At least 48 percent of the citizens that reside in Thurston County aren't affiliated with the tribe whatsoever. Many are third- and fourth-generation farmers and are in Thurston County because the federal government during the assimilation swing promoted the settlement of non-Indians to assist in the civilization process of Indians. The federal government promoted this settlement with the full burden in the form of state taxation and the full rights of state jurisdiction. Property in Thurston County came into the hands of non-tribal members due to the sale of ceded tribal land, the sale of unrestricted land by individual Indians, or the purchase of surplus reservation land from the federal government. Is that land still reserved? Is it still part of the exterior boundary of the Omaha Indian Reservation? That is a big question. And if, in fact, it is perceived to be, will that have an effect with LR234? Will it apply to this land? We don't know. We really don't know much about this, it was just introduced. Non-tribal affiliated residents of Thurston County are United States citizens and citizens of the state of Nebraska. These citizens own over 75 percent of the exterior boundaries of the Omaha Indian Reservation--what I can only assume is synonymous with the areas that will be affected by this. Returning jurisdiction of the exterior boundaries of the Omaha Indian Reservation to the federal government who will then give that jurisdiction to the Omaha Tribe is the perceived right thing to do to wrong the rights of the past. In reality, this will wrong the rights of the present. Non-tribal affiliated residents of Thurston County should be subject to Nebraska laws no

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greater or no less than any resident residing anywhere else in the state of Nebraska. Indians are full citizens of the state: occupying seats on city and county boards; voting in city, county, state, and federal elections; utilizing county services; receiving state-issued driver's licenses; and receiving state aid. What real purpose is served by LR234 making Indian citizens not accountable to state law? And I see I'm out of time. [LR234]

SENATOR ASHFORD: Do you want to conclude your statement? [LR234]

TERI LAMPLOT: I do have a conclusion. LR234 is a resolution that will further confuse law enforcement, and its ramifications demand much greater study and examination before it is passed. An extensive study of the effects of LR37 which was passed in 1969 should be conducted before additional state jurisdiction is removed. And I respectfully ask the Judiciary Committee to carefully study the issue before making the decision about LR234. This is a serious issues and it requires a lot of study before we just pass it. And I'm concerned because it's a resolution, not a bill. You know, if it passes through this committee, it's one vote on the floor and we have not been afforded much time at all... [LR234]

SENATOR ASHFORD: Thank you. [LR234]

TERI LAMPLOT: ...to be involved in this process and provide our input. [LR234]

SENATOR ASHFORD: Okay, thank you. Do we have any questions? Yes. [LR234]

SENATOR MCGILL: The other tribe...these other regions have this and it's working okay. [LR234]

TERI LAMPLOT: Well, not all tribes are the same. Not...I mean, we talk about... [LR234]

SENATOR MCGILL: How so? [LR234]

TERI LAMPLOT: Well, the Santee, and not all what you consider exterior reservations are the same. The Santee is much different. I should get my map. Most of the exterior boundaries of the Omaha Indian Reservation is owned by non-Indian citizens. [LR234]

SENATOR MCGILL: But I don't understand how this would even affect non-Indian citizens. [LR234]

TERI LAMPLOT: It could affect non-Indian citizens because if the authority is given and it's presumed that the tribal police can patrol or investigate crime, if an Indian would break into my home and I am a non-Indian, that goes to federal court instead of state court. If that would happen at your home, that goes to state court, all based on race. I

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don't want to have to go to federal court. I'm a state citizen. I would like to go to state court just as you if I was living in Omaha. [LR234]

SENATOR MCGILL: Well, I wouldn't make that assumption that's what I would want, but... [LR234]

TERI LAMPLOT: I just think the laws of the state of Nebraska should be applied equally to the state's citizens. We talk about the Omaha Nation--it's part of the state of Nebraska. And within that Omaha Nation are people that have lived there in that area as Nebraska citizens for 100 years. The LR37 in 1969 actually caused the confusion we're talking about with law enforcement, it did, because law enforcement now is based on race--if you're a tribal member or if you're not a tribal member. And you can hear from our county attorney and our county sheriff how that works. It doesn't. It's not working. And the fact is we are all state citizens. Indians are citizens just as much I...you heard Mr. Wolfe talk about they have an opportunity to sit on the board. They do, just like anybody else. So why are we going backwards, I think, in civilization and saying because you're of a certain race the laws apply to you differently, you go to this court instead. It doesn't make a lot of sense. And why would the state promote such a thing, separate law enforcement by race? It's not working in Thurston County and had anyone consulted the people that live there and inquired about it, we could have had a lot more time than 20 days to get information together and share that with you. [LR234]

SENATOR ASHFORD: Thank you, Mrs. Lamplot. Any other questions? Thank you. [LR234]

TERI LAMPLOT: I have the proclamation statement that I'd like to enter as testimony. [LR234]

SENATOR ASHFORD: Sure. [LR234]

TERI LAMPLOT: (Exhibit 55) I also have a proclamation that was passed by the Pender Economic Development Group. Can I just lay those here? [LR234]

SENATOR ASHFORD: Okay. Yes, you may. [LR234]

TERI LAMPLOT: Thank you. [LR234]

SENATOR ASHFORD: Thank you. Okay, next opponent? Good afternoon. [LR234]

CHRIS KLEINBERG: Good afternoon, folks. Members of the Judiciary Committee, my name is Chris Kleinberg, K-l-e-i-n-b-e-r-g. I'm the sheriff of Thurston County. I worked as a deputy sheriff for eight years under Chuck Obermeyer and one year as a sheriff. I'm in my first year term, a little over my first year. I'm in opposition to LR234. It's only

because tribal police already have civil and traffic jurisdiction on tribal members. This isn't doing anything but taking it away from the state. Confusion...it's going to cause more problems, the way I see it as law enforcement. Confusion already exists in Thurston County. It's not a reservation...half of the reservation is non-Indian people, when they talk about the exterior boundaries. The problems that I've seen in the eight years that I've been there and that really upsets me is when a non-tribal member as a victim is told they need to go to a tribal court. As a victim, there's no rights or representation as a non-tribal member in a tribal court. There's no vote, there's nothing that mirrors a state or federal or district court as far as judges or any other type of repercussions for non-Indian people in tribal court. We have no vote or say in a tribal government. This also causes more racial divide. I know...I live on the east side of the county. My mother is a tribal member in a different tribe, a North Dakota tribe. I grew up around my grandfather who was also a tribal member not living on the reservation. I see it, when I came here, as more confusion and more problems. As far as the Winnebago Reservation, I still have civil jurisdiction on the Winnebago Reservation. They don't solely have civil jurisdiction. I do papers in the Winnebago Reservation on a daily basis. You've got to excuse me, I've got this to read (laugh) and I'm not reading it. How would this affect insurance companies, just insurance companies, for the people that live in Thurston County if they had to get repercussion through a tribal court rather than through a state court? I think insurance rates would probably go through the roof for the citizens of the county. Safety and the rights of the citizens of Thurston County are being given away by the very same government that's obligated to protect them. It's plainly obvious that retrocession has not worked at all. Walthill, Nebraska, a once blooming town similar to Pender, was 14 miles in the same county to the west, has deteriorated into a town of no hope and crime in a short 20 years. Only 14 miles away, Pender registered approximately 1,400 calls in 2007. In the same time frame, Walthill had approximately 4,000 calls. This is twice as many calls for fewer people. Folks, I got to tell you, this isn't something that...it's solely not about race. I live on the east side, like I said before. This is just about it's a mixed-race reservation. Everybody lives there, everybody needs to be treated the same. [LR234]

SENATOR ASHFORD: Thank you, Sheriff Kleinberg. Any questions of the sheriff? Seeing none, thank you, Sheriff. [LR234]

TAMMY MAUL-BODLAK: Good afternoon. I'm Tammy Maul-Bodlak, the Thurston County attorney. I was... [LR234]

SENATOR ASHFORD: Could you spell it, just so we can get it right here? [LR234]

TAMMY MAUL-BODLAK: (Exhibit 56) Sure. It's Maul, M-a-u-l-hyphen-B-o-d-l-a-k. I was born and raised in Thurston County. I returned to Thurston County after I graduated from law school and I've worked in the county attorney's office for eight years. I'm here to discuss with you my concerns of LR234 from a prosecutorial perspective. First and

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foremost, I think the current draft of this bill raises some jurisdictional issues. The Thurston County District Court rendered a decision in a criminal case, State v. Picotte, in August of 2000 in which Judge Quist found that the Omaha Indian Reservation had been diminished, and that Pender and the accompanying land west of the railroad right-of-way is no longer part of the Omaha Indian Reservation. Despite that ruling, the Omaha Tribe has attempted to enforce a tribal liquor tax on bar owners in Pender. Litigation is currently pending that will seek to establish whether Pender is part of the Omaha Indian Reservation or not. This bill, LR234, would retrocede jurisdiction extending to the exterior boundaries of the Omaha Indian Reservation. The problem is that the boundaries of the reservation right now are in dispute. Now is not the time to be introducing legislation that would further complicate the jurisdictional quagmire that we already find ourselves in. Another area of concern is the prosecution of driving offenses involving Native Americans on the Omaha Reservation. The tribe can and already does, when they have a prosecutor, prosecute driving offenses of Native Americans on the Omaha Reservation. What this, LR234, would do is deprive the state of jurisdiction to prosecute Native Americans for driving offenses on the Omaha Reservation. I've not seen an Omaha tribal conviction show up on a Nebraska driver's history or criminal history. Furthermore, there's no mechanism in place which I'm aware of that would allow a tribal court conviction to be used for purposes of enhancement on a DUI or a driving under suspension charge. For instance, if a Native American was arrested on the Omaha Indian Reservation and prosecuted in tribal court for a DUI, not only would his or her conviction not show up on his driver's abstract, but if that same person were then arrested later in another county in the state of Nebraska, instead of being charged with a second offense, as you or I would be, that Native American would instead presumably be charged with a first offense because: one, the tribal conviction isn't going to show up on their driver's history; and, two, even if it did show up there's no mechanism to allow that prosecutor to use that conviction for purposes of enhancement or to make that a second offense. I have a philosophical problem, I guess, understanding why we would apply rules that this Legislature has determined should apply to state citizens but exempt a certain group of the population from those rules that apply to the rest of us. I do need to dispute something that Mr. Glenn said. He indicated that when we prosecute in state court, we're prosecuting solely Native Americans and the only white faces in the courtroom are the people that work there. And that's just simply not true. I have statistics if you care to hear them that just flat out refute that. I think this LR234 is vaguely written. It doesn't give me a lot of direction as to where...what jurisdiction we're giving up. Where is the boundary? Where am I supposed to be prosecuting, where am I not supposed to be prosecuting if this passes? I think it's vaguely written and we need a little more time. It needs more work. Thank you. [LR234]

SENATOR ASHFORD: Any questions? Just one quick one. The court will determine...exterior boundaries would be...is adjustable to what the court would order, wouldn't it be? [LR234]

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TAMMY MAUL-BODLAK: I don't know. I mean, I would think you as a Legislature would want to know what you're giving up. [LR234]

SENATOR ASHFORD: I mean, it says exterior...I'm not refuting your point. [LR234]

TAMMY MAUL-BODLAK: Right. [LR234]

SENATOR ASHFORD: I'm just trying...it says exterior boundaries, so exterior boundary is the exterior boundary. I mean, whether it's determined by...if it's determined by a court, it's to be X and eventually it's X. [LR234]

TAMMY MAUL-BODLAK: That's right. So three years from now hopefully we'll have a federal court ruling that tells me. But in the meantime, what am I doing? [LR234]

SENATOR ASHFORD: I understand the confusion, but you have to start somewhere, I think is the argument. But I understand your point. [LR234]

TAMMY MAUL-BODLAK: Yeah. [LR234]

SENATOR ASHFORD: Thank you. Any other questions? Yeah. [LR234]

SENATOR MCGILL: I do. As you're talking about the driver's license and DUIs, you know, other reservations already fall under what we're looking at doing. I mean, do you think that we should be taking that away from them, what they currently have? [LR234]

TAMMY MAUL-BODLAK: I guess I wasn't part of the discussion with the Santee Reservation or the Winnebago Reservation. [LR234]

SENATOR MCGILL: Because we've already...yeah. [LR234]

TAMMY MAUL-BODLAK: But I don't know if the Legislature was aware of those issues when you made that decision. I don't know. I'm just telling you how it is. [LR234]

SENATOR MCGILL: You realize federal law...I mean, citizenship of Native Americans isn't the same as you and I. [LR234]

TAMMY MAUL-BODLAK: No, they're dual citizenships. Not only are they citizens of the state and should be subject to the same laws as all of us, but they're also tribal members and have the benefit of participating in that government as well. But I don't think they should be exempt from laws that bind the rest of us, because they are state citizens just like you and I are. [LR234]

SENATOR MCGILL: Well, right now different reservations have different rules they apply

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to them. [LR234]

TAMMY MAUL-BODLAK: Yes, they do. [LR234]

SENATOR MCGILL: And I do believe they should be more uniform. [LR234]

TAMMY MAUL-BODLAK: But this resolution doesn't make them all equal. The Winnebago Reservation doesn't have civil jurisdiction. So if you're trying to make them all equal, this isn't accomplishing that. [LR234]

SENATOR ASHFORD: Thank you. Thank you, Ms. Maul-Bodlak. [LR234]

TAMMY MAUL-BODLAK: Thank you. [LR234]

SENATOR ASHFORD: Any other questions? Thank you, appreciate it. We have your document...or the case, so...great. Yes, sir. [LR234]

JOEL LAMPLOT: (Exhibit 59) Good evening, Chairman Ashford, members of the Judiciary Committee. My name is Joel Lamplot, L-a-m-p-l-o-t, and I have lived on my family farm nearly all my life in Thurston County and I currently serve as the Thurston County Farm Bureau president. I will be submitting a resolution passed by the Thurston County Farm Bureau board of directors as testimony opposing LR234. A few highlights of the resolution is that we do quote the Constitution of the United States. That provides all citizens shall be treated equally. All citizens are guaranteed a republican form of government, and no person should be deprived of the equal protection of the laws. LR234 will subject citizens to a government they do not have representation in. LR234 will remove the entitlement of privileges and immunities that citizens in the rest of the state enjoy, and LR234 may deprive persons of life, liberty, and property. LR234 will deny persons in Nebraska the equal protections of the laws. A bit of a personal story: The first time I brought my wife home, Teri--she testified earlier--we were coming up Highway 77 and we came up to the point just north of Highway 51 where it says entering the Omaha Indian Reservation. She turned to me and said what's that mean? At that time, I was much younger. I turned to her and said nothing. If that question would be asked of me now, I would have to say, well, on the south side of the sign we have Nebraska law; on the north side of the sign we have both Nebraska and Omaha tribal ordinances. The state of Nebraska laws only apply to the people within what you would consider to be the reservation boundary...the state laws only apply to those people who are not tribal members. The Omaha tribal ordinances or laws would apply exclusively to tribal members, but they also can be applied on the civil side, I believe, to nonmembers as well. If I was to sell a car to a tribal member and the check came back to me for insufficient funds, I guess I would have two choices--one for on a criminal side of insufficient funds, one on a civil side as I just want to get my money back. I cannot go to state court. I would have to go to tribal court. I'm very unfamiliar with tribal court. I don't



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know if all of us need suddenly to get a crash course in tribal court to have civil procedures taken care of. I think what retrocession does is it creates confusion. I think we have the potential to have more lawlessness, and it also creates separatism. LR234 does not uphold the principles in the United States Constitution and I urge you to decline the passage of LR234 out of committee. [LR234]

SENATOR ASHFORD: Yes, Senator Chambers. [LR234]

SENATOR CHAMBERS: Why would there be more lawlessness? On what empirical evidence do you base that broad assertion? [LR234]

JOEL LAMPLOT: As of now, it seems if there is a crime, let's say speeding, how is either the tribal police or State Patrol or the county sheriff to know...are they supposed to determine ahead of time whether or not that person is of a race that they can pull over? Or if somebody breaks into my house and...will they have to come and check for verification whether they are a tribal member or a state citizen? [LR234]

SENATOR CHAMBERS: Well, that's irrelevant to what you said. You said it would create more lawlessness, not a jurisdictional question about a crime that was committed. How will retrocession create more lawlessness? [LR234]

JOEL LAMPLOT: I think because of the jurisdictional quagmire that some things will not be checked into because one entity may not know if they have jurisdiction or not and just leave it be. [LR234]

SENATOR CHAMBERS: And who will be the lawless people? [LR234]

JOEL LAMPLOT: I think all of us. [LR234]

SENATOR CHAMBERS: When you say all of us, what do you mean? [LR234]

JOEL LAMPLOT: Everybody who lives in Thurston County. [LR234]

SENATOR CHAMBERS: Indian and non-Indian? [LR234]

JOEL LAMPLOT: Yes. [LR234]

SENATOR CHAMBERS: Thank you. That's all I have. [LR234]

SENATOR ASHFORD: Thanks, Mr. Lamplot. Good evening. [LR234]

VIVIAN HARTWIG: (Exhibit 57) Good evening. I'm Vivian Hartwig, H-a-r-t-w-i-g, former Thurston County Assessor, July 1, 1981, to December 31, 2007. I've brought along

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copies of two maps. We've talked about that this is not a boundary issue, but one of the maps was provided to the assessor, Lyle Porter, before 1981 by the Omaha Tribal Housing Authority. It clearly is marked along the railroad right-of-way as Omaha Reservation boundary. The other map is a map from the United States Bureau of Indian Affairs. It's undated, but it also has written along the railroad right-of-way Omaha Reservation boundary. That's it. Do you have any questions? [LR234]

SENATOR LATHROP: Let's see. Anybody have any questions for Ms. Hartwig? So what you're telling us is there's some dispute over the boundary. [LR234]

VIVIAN HARTWIG: Yes, there is. [LR234]

SENATOR LATHROP: And I think we got that, but it doesn't affect...what this resolution does is say who is going to prosecute... [LR234]

VIVIAN HARTWIG: That's right. [LR234]

SENATOR LATHROP: ...Native Americans for minor traffic offenses. [LR234]

VIVIAN HARTWIG: The resolution is not clear as to... [LR234]

SENATOR LATHROP: The boundary. [LR234]

VIVIAN HARTWIG: ...the boundary. [LR234]

SENATOR LATHROP: Okay, thank you. Are there any other opponents that care to testify? Thank you. You may proceed. [LR234]

NAOMI BRUMMOND: (Exhibit 58) Okay. Thank you, sir. Mr. Chairman and members of the committee, my name is Naomi Brummond, N-a-o-m-i B-r-u-m-m-o-n-d. My address is 2666 S Ave., Rosalie, Nebraska 68055. I am a resident of Thurston County and I'm here in opposition to LR234. On April 19, 1864, the Senate and House in Congress assembled, passed an act to enable the people of Nebraska to form a constitution and a state government, and for the admission of such state into the Union on an equal footing with the original states. Section 4 below, we...they had a meeting and they adopted the Constitution of the United States and then they provided that the constitution, when formed, shall be republican and not repugnant to the Constitution of the United States and the principles of the Declaration of Independence. Next page, down in the middle, unlike the ending, the enabling act of Congress passed in 1889 that enabled Washington, Montana, North Dakota, and South Dakota become states, there is no provision in Nebraska's enabling act for the continued federal supervision of the Indian tribes located in the state of Nebraska or land owned or held by any Indian or Indian tribes, nor of Indian lands remaining under the absolute jurisdiction and control of

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the Congress of the United States. Nebraska was admitted into the Union on an equal footing with the original states. Why would the state of Nebraska want to toss its citizens around and give up power and become more dependent in its own self? Doing so would destroy the good order of our republican form of government. How could Congress make Nebraska a PL 280 state and give us jurisdiction that the enabling act did not withhold from us? Usually when you're talking to someone about federal Indian policy, that's being called that FIP, most will say that Congress has total power over Indian tribes' affairs because of the Commerce Clause. Now how can that be? The Commerce Clause gives Congress the power to regulate commerce with foreign nations and among the several states and among the Indian tribes. Are the tribal members themselves legally considered property? If they are, their total power over their affairs as commerce makes absolute sense. But if they are not themselves equally considered property, legally considered property, then the FIP shell game is alive and well, and it flies in the face of our republican form of government and the emperor has no clothes. Congress has played a masterful shell game with the federal Indian policy and LR234 is a move allowed by that policy. If adopted, it would add a lot more problems to an already hideous situation in a legitimate county of Thurston in the state of Nebraska. And I respectfully ask that this committee not advance LR234 in any form, but to retain the state power. [LR234]

SENATOR ASHFORD: Thank you, Ms. Brummond. Any questions? Thank you. We're going to take two testifiers more. [LR234]

RYAN KINNING: (Exhibit 60) Ladies and gentlemen of the Judiciary Committee, my name is Ryan Kinning, the last name is K-i-n-n-i-n-g. I'm here today on behalf of the Pender Betterment Group. The Pender Betterment Group is a nonprofit organization whose main focus is improving the quality of life for residents of Pender, Thurston, and the surrounding area. Our members are predominantly young with ages ranging in 21 to 45 years old. We have a diverse group of members. Our 62 members include doctors, business owners, and farmers. Our members hold public offices such as county attorney, village board, school board, and several other boards within our community. As a rule, the betterment group stays away from politics, but LR234 was addressed at our February meeting. Several concerns were raised and as a group we concluded that this resolution could and would affect every member of our organization. As a group, we approved a proclamation opposing LR234. Again, there are several reasons that we oppose this resolution. We do not support any action that does not involve the representative that we elected to office. Senator Rogert is familiar with the special conditions that exist in District 16. Our understanding is that Senator Rogert had no knowledge of this resolution which so drastically affects his district until after it was introduced. We feel that this issue is being pushed through legislation with no effort being made to educate the people who are affected by it. Had it not been for a few individuals opposing this issue, it would not have been revealed to us until it was too late to contest it. We oppose this resolution due to vague wording and no clear

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boundaries as to the area that is affected by it. As you know, the boundaries of the Omaha Reservation, or Indian country as it's referred to here, are currently being challenged in court. Without clear boundaries to the reservation, we feel that this is an unenforceable law. With racial tensions strained between Native Americans and whites in our area, this is merely a spark that could ignite a legal wildfire. Our ultimate concern is for the citizens and businesses of our area. Individuals in our group fear of having to go to a court in which we don't have any representation. We wonder and doubt if we would be fairly tried in any case pertaining to us in a judicial system so drastically different than ours. Our businesses worry that if we choose to do business with Native Americans, we would not be fairly represented in court should it come down to that. This would presumably lead to racial profiling of customers, which is an injustice to the Native Americans and would ultimately lead to fewer customers for area businesses. This seems to be a lose-lose situation. We don't see any reason that this resolution is needed. Throughout our discussion on this topic, not one person could find a positive outcome from this resolution. As you can see by the attendance here today, it is met with strong resistance. As a group, we respectfully ask that you vote against LR234. Thank you. [LR234]

SENATOR ASHFORD: Thank you, sir. Any questions of Mr. Kinning? Seeing none, thank you, sir. And after we finish with the opponents, we'll move to the neutral testifiers. Yes, sir. [LR234]

LAYTON JENSEN: Good evening. My name is Layton Jensen. I'm here on behalf of Pender Economic Development. I'm president and CEO of Thurston Manufacturing Company. And Pender Economic Development, Inc. focuses on stimulating economic growth within the Thurston-Pender area of the county and we have about 70 members. The myriad of issues surrounding LR234 would have a significant impact of the citizens of Thurston County and all of those who pass through the county. LR234 was read for the first time less than one month ago. There is no emergency situation at this time that the issue needs to go forward in a rush. We would request that a lot of careful consideration be made of this proposal before anything happens to negatively impact the citizens of the county. Thurston County is unique in that it contains two tribal reservations and the fact that the majority of the land is fee patent land and actually owned by non-Indians, and this does create some unique situations. In fact, most land within the disputed boundary of the reservation has never been Indian-owned. Adopting legislation that affects jurisdiction in areas of Indian country on the Omaha Reservation affected by LR234 without specifying what the areas of Indian country are would only lead to more jurisdictional confusion within the county, as you've already heard. Case in point, the issue of whether Pender and the land west of the railroad right-of-way is part of the Omaha Indian Reservation is currently being litigated in the Omaha tribal court, a venue in which non-Indians have no control in terms of elected officials or fairness in matters of U.S. or Nebraska law granting exclusive jurisdiction over transactions involving Native Americans. The vaguely defined Omaha Indian Reservation could have

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a negative impact on the local economy as people may discontinue actually doing business with Native Americans because making tribal court the only place to litigate a civil issue involving a Native American would not be an appealing option to all of those doing business and individuals currently transacting business with Native Americans. I respectfully request that you do not forward this resolution. [LR234]

SENATOR ASHFORD: Thank you, Mr. Jensen. Any questions of Mr. Jensen? [LR234]

SENATOR CHAMBERS: Are you Mr. Kinning or Jensen? [LR234]

LAYTON JENSEN: Jensen. [LR234]

SENATOR CHAMBERS: Oh. Mr. Jensen, I'd like to ask you one question. How many Native American judges are there in district or county court in your area of the state? [LR234]

LAYTON JENSEN: I do not know. [LR234]

SENATOR CHAMBERS: There are none. So if they don't have any judges in the state courts, then they could say the same thing about the state courts that you're saying about the tribal courts, couldn't they? [LR234]

LAYTON JENSEN: Perhaps. [LR234]

SENATOR CHAMBERS: Except that you're not subject to the tribal court's jurisdiction. But anyway, I just thought I'd make that little point. [LR234]

LAYTON JENSEN: Okay. [LR234]

SENATOR CHAMBERS: That's all I'd have. [LR234]

SENATOR ASHFORD: Any other questions of Mr. Jensen? Thanks, Mr. Jensen. [LR234]

LAYTON JENSEN: Thank you. [LR234]

SENATOR ASHFORD: Neutral? Senator Rogert, I see, is here and he is going to...indicated he would like to testify on a neutral. Are there any other neutral testifiers? Okay, one more? Senator Rogert, welcome. [LR234]

SENATOR ROBERT: (Exhibit 61) Hi, guys. I'm back. Well, you can see this is a pretty passionate story on both sides. I'm passing out some information that I asked the Attorney General's Office to research for me over the last couple of weeks defining the

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jurisdiction for civil and criminal prosecution over Indians and non-Indians within Thurston County and without Thurston County today and in the future if this resolution were to pass. You can look over that in your leisure. As I sat and listened today, this is my district that it would affect and I wanted to pass on some things, just some thoughts that I have as I was listening and through the calls and e-mails that I've received over the past couple...three weeks. Many conflicts between the Omaha Tribe and the non-Indians in Thurston County are evident. There has been a deep passion on both sides of this issue and I believe this conflict needs to be satisfied internally within the county. Will this resolution help those relationships? Will it hurt them? I don't think anybody knows. Both sides will say one way or the other. It concerns me when I see one side that it creates more confusion and lawlessness and the other side says the exact opposite, that it becomes more clear and more laws enforced. So I wonder if anybody knows, and that concerns me that we're looking at something that we're not sure what will happen with it. The lines may not be as clear as we think. This only does set what jurisdiction may be adopted by the Department of the Interior, the Department of Justice, not exactly what. They don't have to accept the full retrocession or any portion of it. They can or they cannot. It also concerns me when law enforcement officials on either side are concerned about the effects. They seem to me to be the unbiased professional folks that would make this work, and if they're concerned about, it concerns me as well. I do know that the cross-deputization agreements between all the tribes in the state, of those, the ones with the Omaha Tribe have been less successful and slower to progress. It also is of note that the boundaries of the Omaha Tribe are in dispute and I wonder, if this resolution were to pass, in those areas that are in dispute between what was at one time the Omaha Tribe and what is now maybe the Omaha Indian Tribe, those areas in the middle could be a legal jungle, per se, not knowing where to patrol or where to convict or where to let anything or anything happen. Another thing is, you know, it would make this uniform with all the other tribes. That is no doubt, no question in my mind. All tribes are different, they all have different philosophies. Once we do retrocede this jurisdiction, there is no going back. It is a one time only thing and that's the step we take. And if we decide to go that way, then we are committed to that forever. That's really all I had and I would answer any questions if you had any, but I thank you for listening to this important discussion today and for your time. [LR234]

SENATOR ASHFORD: Thank you, Senator Rogert. Any questions of Senator Rogert? Senator Chambers. [LR234]

SENATOR CHAMBERS: Senator Rogert, if my friend's little toy poodle were here and somebody else's little toy poodle were here and there was a Milk-Bone between them, if that Milk-Bone could talk I think it would say, Senator Rogert and I will sit down and have a cup of coffee together because that's where we're situated. [LR234]

SENATOR ROBERT: Yes. [LR234]

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SENATOR CHAMBERS: It is a difficult position you find yourself in, isn't it? [LR234]

SENATOR ROBERT: Yes. [LR234]

SENATOR CHAMBERS: Was this resolution handled differently from bills or anything else in terms of people not knowing for sure what they're going to be before they're introduced? [LR234]

SENATOR ROBERT: No. [LR234]

SENATOR CHAMBERS: And anybody who follows what happens in the Legislature, and they can do it on their computers, can find out everything that's introduced by the Legislature and where it's located in the process. [LR234]

SENATOR ROBERT: That's correct. [LR234]

SENATOR CHAMBERS: You've offered bills before; you've introduced them. [LR234]

SENATOR ROBERT: Um-hum. [LR234]

SENATOR CHAMBERS: Have you felt the need to notify every political subdivision that might be affected by your bill that you had introduced such a bill? [LR234]

SENATOR ROBERT: Not necessarily, no. [LR234]

SENATOR CHAMBERS: And we don't do that, do we? [LR234]

SENATOR ROBERT: No. [LR234]

SENATOR CHAMBERS: And the reason I'm pointing that out: this resolution was not hidden from anybody, it was out in the open once it's introduced. And until it's introduced nobody can really say what its form is going to be that the Legislature will consider. [LR234]

SENATOR ROBERT: Correct. [LR234]

SENATOR CHAMBERS: Okay. That's all I would have. Thank you. [LR234]

SENATOR ASHFORD: Thank you, Senator Robert. Do you have a question, Senator Pirsch? [LR234]

SENATOR PIRSCH: Just briefly. In the chart you've given us it talks about jurisdiction and it talks about the court's jurisdiction. With respect to the law enforcement itself, are

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they cross-deputized or would that be an issue? [LR234]

SENATOR ROBERT: Well, there's agreements in place for all the tribes to have cross-deputized officers on each side, but there's no mandate. There's an allowance to do so but it doesn't require that you have such officers in place to do that. If, per se, in Winnebago they have three cross-deputized officers that quit for some unknown reason at any one time, they at that point do not have anybody on staff that would be cross-deputized and they would need to go through the training programs and the cross-deputization process again. [LR234]

SENATOR PIRSCH: Okay. Thank you. [LR234]

SENATOR CHAMBERS: Just one other question. Senator Rogert, you're becoming the expert. If retrocession occurs, all it means is that authority given by the federal government to the state is being given back to the federal government by the state through this resolution. Do you agree with that? [LR234]

SENATOR ROBERT: Yeah. [LR234]

SENATOR CHAMBERS: It would be up to the federal government to determine what is going to happen in terms of how this resolution would be implemented. [LR234]

SENATOR ROBERT: Yes. [LR234]

SENATOR CHAMBERS: And if the federal government said no, then nothing would happen. [LR234]

SENATOR ROBERT: That is possible, yes. [LR234]

SENATOR CHAMBERS: So those who are opposed to the resolution would have the opportunity to offer input where the decision is going to be made. [LR234]

SENATOR ROBERT: And I think that would be the Department of Justice, yeah. [LR234]

SENATOR CHAMBERS: And if they could make their case, then they've made their case. [LR234]

SENATOR ROBERT: Correct. [LR234]

SENATOR CHAMBERS: Okay. That's all I would have. [LR234]

SENATOR ASHFORD: Thank you, Senator Rogert. [LR234]



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SENATOR ROBERT: You bet. [LR234]

SENATOR ASHFORD: I believe we have one more neutral person, raised their hand over there. Good evening. [LR234]

BEN THOMPSON: Hello, Chairman Ashford, members of the committee. My name is Ben Thompson, T-h-o-m-p-s-o-n. In full disclosure, I am a registered lobbyist for the Omaha Tribe. However, I am speaking for these three minutes as myself. I am an attorney, I practice in Indian law, I've done that for the last five and half years with the Omaha Tribe. I've had the pleasure of working with the Santee Sioux and the Winnebago Tribes in the past as well. And I've listened to this testimony and there are a few issues that I would like to clarify as someone who has studied this. I don't profess to be an expert. This is way too complicated for me to claim that. But I think it's important that you have this, and hopefully legal counsel will look into this further. I've been reading the newspaper articles and they're wrong. And that's why I'm here, is to clear up this misinformation. You have a lot of non-Indian residents of Thurston County here because they are afraid. They're afraid of the unknown, and I understand that because this is complicated. But to the extent that these fears are based on the possibility of being hauled into tribal court, criminally prosecuted, thrown in tribal jail, whatever the case may be; that is not true. It was mentioned earlier that the case of Oliphant v. Suquamish settles that. That is a United States Supreme Court decision. That's been settled for almost 30 years now. The citation is 435 U.S. 191. Tribes may not criminally punish non-Indians. Congress took that away from them. By virtue of their dependent status on the United States government, Congress deemed that they can no longer do that; done. That has also been settled by the Nebraska Supreme Court. There's a case that says...it's actually called Young v. Neth. The cite is 263 Neb. 20, came out in 2002. And it states, and I quote, it is settled law that the Indian tribes may not assert criminal jurisdiction over a non-Indian for a misdemeanor crime committed on the reservation. There is absolutely no question about this. This is not going to change that. However, that said, that doesn't matter because that's not what we're talking about here. This resolution does not affect the tribe's jurisdiction. I have one more cite for you, a case called Walker v. Rushing. This is an Eighth Circuit decision that controls here in Nebraska. It's from 1993. The cite is 898 F.2d 672. At page 675 it says we agree with the district court's conclusion that Public Law 280 did not itself divest Indian tribes of their sovereign power to punish their own members for violations of tribal law. So if public law, which gave jurisdiction from the feds to the state government, did not concern tribal jurisdiction, then a retrocession of that jurisdiction back to the federal government is not going to affect it either. I ask that you take that into consideration when you deliberate on this. Thank you. [LR234]

SENATOR ASHFORD: Thank you, Mr. Thompson. Any questions of Mr. Thompson? Thank you, sir. And that concludes the hearing. Thank you all for being so patient and

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have a good evening. [LR234]

SENATOR CHAMBERS: Suppose I want to close? [LR234]

SENATOR ASHFORD: Senator Chambers! [LR234]

SENATOR CHAMBERS: But I don't. (Laughter) (See also Exhibits 50, 51, 62, 63, 66, 67, and 70.) [LR234]

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Disposition of Bills:

LB781 - Advanced to General File, as amended.

LB843 - Held in committee.

LB868 - Advanced to General File, as amended.

LB909 - Held in committee.

LB1128 - Advanced to General File.

LR234 - Held in committee.

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Chairperson

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Committee Clerk