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Transportation and Telecommunications Committee
February 05, 2008

[LB845 LB867 LB917 LB919]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 5, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB867, LB845, LB917, and LB919. Senators present: Deb Fischer, Chairperson; Arnie Stuthman, Vice Chairperson; Ray Aguilar; Carol Hudkins; Scott Lautenbaugh; LeRoy Louden; Dwite Pedersen; and DiAnna Schimek. Senators absent: None. []

SENATOR FISCHER: Good afternoon. Thank you and welcome. Welcome to the Transportation and Telecommunications Committee. I'm Deb Fischer, I am the senator from the 43rd District, Valentine, and I am Chair of the committee. I would like to introduce our committee members that are present: On my far left, we have Senator LeRoy Louden from Ellsworth; next to Senator Louden we have Senator Carol Hudkins from Malcolm; to my immediate left is our committee clerk, Mrs. Pauline Bulgrin; to my immediate right is our committee counsel, Mr. Dustin Vaughan; to his right is Senator Ray Aguilar from Grand Island; next we have the Vice Chair of the committee, Senator Arnie Stuthman from Platte Center; next we have Senator DiAnna Schimek from Lincoln; and on the end, our absolute favorite who has been in that chair now for 16 years, Senator Dwite Pedersen from Elkhorn. Our pages are Matt Pederson from North Platte and Rhianna Needham from Bellevue. We will be hearing the bills in the order that they are listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify as soon as someone finishes testifying in order to keep the hearing moving. Please complete the yellow sign-in sheet at the on-deck table so it is ready to hand in when you testify. We do have a computerized transcription program that is being used, so it is very important that you follow the directions on the sign-in sheet. You will need to hand the sign-in sheet to our clerk, Mrs. Bulgrin, before you testify. For the record, at the beginning of your testimony, please spell your last name and also your first name if it can be spelled several different ways. I would ask that you keep your testimony concise and try not to be repetitive of a previous testimony. If you don't want to testify but you want to voice your support or opposition to a bill, you can indicate so at the on-deck table on the sheet provided. This will be part of the official record of the hearing. If you want to be listed on the committee statement as a testifier at the hearing, you must complete the yellow sign-in sheet and actually testify, even if you just state your name and your position on the bill. If you do not choose to testify, you may submit written comments and they will be read into the official record. With that, I would ask that you turn off all your cell phones. This committee does not allow cell phones or any text messaging to be going on during our hearings. So, thank you very much. And I see Senator Adams is here, so with that I will open the hearing on LB867. And good afternoon, Senator Adams. []

SENATOR ADAMS: (Exhibits 1, 2) Thank you. Senator Fischer and members of the Transportation Committee, the bill that you have before you, to make it as simple as I

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can and protect your time, was brought to me by village and city attorneys. And I think it was brought to me primarily, but not exclusively, by village attorneys because that's typically where the problem is at. And let me briefly explain the problem as simple as I can. Under Nebraska existing statute, there are several definitions of an "abandoned vehicle," what constitutes an "abandoned vehicle." And if the vehicle is abandoned, the municipality that takes possession of it can then very simply dispose of that vehicle without all the titling problems that may accompany it. What we're finding is in municipalities and particularly in villages is that there is another class of vehicle that I'd like you to consider adding to the definition of "abandoned." That's the vehicle that may be sitting on someone's private property; it's licensed; it's been sitting there for a prolonged period of time; typically there are rodents, there are animals living in it; the windows may be broken out; it may very well be licensed, it may not be; and it's sitting there. Adjacent property owners have filed complaints, not only because of the depreciation of their property but also because it may very well present a health and safety issue to the surrounding property, but it's not technically, under the statute, considered an abandoned vehicle. Now, all classes of cities in the state of Nebraska right now, by statute, have the power to pass nuisance ordinances, and the cars like I've just described to you would fall under the category of a "nuisance," and they could go out then and take possession of that vehicle. But when they take possession of it under the nuisance statute, the vehicle is not abandoned; it belongs to somebody. And what cities will do, and rightly so, they will properly notify the owner of the vehicle; tell them where the vehicle is at; tell them what it's going to cost to recoup the towing charge; there is a process for due process if the owner of the vehicle believes in some way they have been treated unfairly; and they could get the vehicle back. But what we're dealing with here in many cases is that when the city, particularly in these villages, will go out, they get complaints, here's the car, it presents a health and safety issue, it's depreciating local property, it sits there. They tow the car away under the nuisance ordinance, they notify the owner of the car, the owner of the car says, thank you, now I don't have to pay to move it away. And do I want it back? Heck no, just keep it. Well, the city in the meantime is paying the storage on it, the towing, and if the owner of the property doesn't come forward and hand over the title, which quite often they won't, then that vehicle can sit there for the longest period of time in the salvage yard or an impoundment yard while the city or the village pays for the storage of that vehicle. What this bill would simply say is that a vehicle that is taken and impounded under the city's nuisance ordinances, after they have noticed the owner, allowed for due process, if the owner doesn't want to recover the vehicle, then the vehicle is considered abandoned. And in which case, the city has got the title on it and the city can rid themselves of the vehicle rather than continue to pay the storage on it. I'd try to answer some questions. By the way, I did have a couple of city attorneys who were going to come in and testify today, but the weather has prohibited that. I think you have a letter on the record from at least one of them, and as well as from the League of Municipalities. Thank you, Mrs. Chair. [LB867]

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SENATOR FISCHER: Am I Mrs. Chair? [LB867]

SENATOR ADAMS: Yes, Mrs. Chair. [LB867]

SENATOR FISCHER: Thank you, thank you... [LB867]

SENATOR ADAMS: I'm struggling, you got me all flustered. You got me flustered. [LB867]

SENATOR FISCHER: It's okay. Thank you, Senator Adams. Are there questions? Senator Stuthman. [LB867]

SENATOR STUTHMAN: Thank you, Senator Fischer. Senator Adams, we're speaking about an abandoned vehicle on private property. [LB867]

SENATOR ADAMS: Correct. [LB867]

SENATOR STUTHMAN: Okay. What difference is there between an abandoned vehicle and, let's just say, a small feed shed, let's say, a side delivery rig that somebody pulls in front the house they live...in a community but they just pulled it right there and the thing has set there for two years. Does the city...does the village or the city have jurisdiction to take that property also? Because, you know, the definition between "vehicle" or something unsightly to the environment... [LB867]

SENATOR ADAMS: Um-hum. [LB867]

SENATOR STUTHMAN: ...is the thing that I'm concerned about. [LB867]

SENATOR ADAMS: Right. This bill speaks specifically to vehicles. However, I would tell you that, by statute, cities that pass nuisance ordinances are given latitude to enter property and dispose of property and to clear property other than just vehicles. And my experience in city government is that those ordinances strictly written really are not very broad. It's pretty tough. You have to have awfully good cause, the municipality has to awfully good cause to go onto a property, to remove it. And typically notice has to be given to correct the problem before any kind of impoundment or anything like that is done. But sure, you could have a house on the outside that is in bad shape, but there's pretty high standards that have to met before a city could really do anything. This bill speaks, though, to vehicles. [LB867]

SENATOR STUTHMAN: Just the vehicles, is what it is. [LB867]

SENATOR ADAMS: Right. Right. [LB867]

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SENATOR STUTHMAN: Because I know of an instance in a local community that's in my legislative district where there's a backhoe that's just right up against a house and it's been there for five years. [LB867]

SENATOR ADAMS: Yep. [LB867]

SENATOR STUTHMAN: I mean it's very unsightly, but I don't know how, you know, you can approach that to remove that. [LB867]

SENATOR ADAMS: Right. [LB867]

SENATOR STUTHMAN: And it's on private property, that's the issue. [LB867]

SENATOR ADAMS: It is the issue, and I don't think there is a community in the state where you can't drive around and find those kinds of things, and I think generally what we do is say, okay, I may not like it, but there it is. What this would do would give leverage in those circumstances where there needs to be some leverage to do something. [LB867]

SENATOR STUTHMAN: Okay, thank you. [LB867]

SENATOR ADAMS: Um-hum. [LB867]

SENATOR FISCHER: Thank you, Senator Stuthman. I'd like to note for the record that we have been joined by Senator Scott Lautenbaugh from Omaha. Senator Aguilar, you had a question? [LB867]

SENATOR AGUILAR: Yes, thank you. Senator Adams, you talked about a scenario where the vehicle has been declared abandoned and then you said, and the owner doesn't want it back. What if the owner does want it back? Does that appeal process that is in place for the nuisance vehicles still apply in this situation? [LB867]

SENATOR ADAMS: Yes. Yes, it would. This would just simply give the village for that person that doesn't want it back or doesn't respond to the notice an opportunity to dispose of the vehicle. [LB867]

SENATOR AGUILAR: Very good. [LB867]

SENATOR FISCHER: Other questions? Senator Louden. [LB867]

SENATOR LOUDEN: Yeah, thank you, Senator Fischer. Senator Adams, when it's on private property, now, how do they handle it if it's these guys with their antique cars and it's a work in progress, it takes five years. You've seen them drag those old things home

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and leave them set there for quite a while... [LB867]

SENATOR ADAMS: (Laughs) Yeah. [LB867]

SENATOR LOUDEN: ...before they start working on them. Is that through the notification process or how do you handle that? [LB867]

SENATOR ADAMS: Right. It's...some of it is just good old human communication that you hope takes place. There is the notice process, there is the due process. One person's antique is somebody else's junk or the reverse of that, and that's always an issue. [LB867]

SENATOR LOUDEN: Okay, thank you. [LB867]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB867]

SENATOR ADAMS: Thank you. [LB867]

SENATOR FISCHER: Will you be staying for closing? [LB867]

SENATOR ADAMS: I think I'll waive closing. [LB867]

SENATOR FISCHER: Okay, thank you. Are there proponents for the bill? Any proponents wishing to step forward? I would like to note that we have received a letter from the League of Municipalities from Gary Krumland, the assistant director and legal counsel, in support of LB867. We also have a letter from Michael...Mullally, Mullally? M-u-l-l-a-l-l-y, attorney at law from Seward, Nebraska, and that is also in support. Any opposition to the bill? Anyone wishing to testify in the neutral capacity? Senator Adams waived closing, so we will close the hearing on LB867 and I will open the hearing on LB845. Good afternoon. [LB867]

DUSTY VAUGHAN: Good afternoon, Senator Fischer, members of the Transportation and Telecommunications Committee. For the record, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I am the legal counsel for the committee. LB845 authorizes civil penalty against a commercial driver who violates an out-of-service order or a motor carrier who knowingly allows a driver to violate the order. The bill requires the Superintendent of Law Enforcement and Public Safety to issue an order imposing a civil penalty against a commercial motor vehicle driver who violates an out-of-service order. A first violation incurs a fine of \$2,500 to \$5,000 and any subsequent violation risks a fine of \$5,000 to \$7,500 dollars. The superintendent shall also impose a civil penalty against the motor carrier who knowingly allows, requires, permits, or authorizes the operation of a commercial motor vehicle in violation of an out-of-service order and this penalty shall be anywhere from \$2,750 to \$25,000. A state CDL compliance review was

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conducted in May of 2005. LB845 was born out of this review due to a federal requirement that needs to be addressed. It is intended to bring Nebraska statutes into compliance with federal regulations. Noncompliance can result in withholding of federal funds of up to 5 percent for the first year and up to 10 percent for the second and subsequent years. And the Nebraska State Patrol has estimated that translates to approximately \$9.4 million of lost funds the first year and \$18.8 million for subsequent years. With that, I will close my testimony. [LB845]

SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? Thank you very much. Are there proponents for the bill? Good afternoon. [LB845]

GERALD KROLIKOWSKI: (Exhibit 1) Good afternoon, Senator Fischer. Senator Fischer and members of the Transportation and Telecommunications Committee, my name is Captain Gerald, G-e-r-a-l-d, Krolikowski, K-r-o-l-i-k-o-w-s-k-i, and I serve as the commander of the Carrier Enforcement Division. I am here today on behalf of the Nebraska State Patrol to testify in support of LB845. I want to thank Senator Fischer for sponsoring this bill on behalf of the Nebraska State Patrol. This proposal is being introduced as a result of an audit of Nebraska's commercial drivers license laws conducted by the Federal Motor Carrier Safety Administration in 2005 and the subsequent action plan approved by FMCSA. This change is required to be addressed in 2008 in order to endure the state's compliance with the Federal Motor Carrier Safety Regulations as required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act a Legacy for Users, commonly called SAFETEA-LU, and amended in part 384.301 of the title 49 Code of Federal Regulations. For Nebraska, this means civil penalties for violation of out-of-service orders must be placed into law by July 2008, which is three years after the 2005 audit. The levels of penalties in the bill are the level which must be met by September 2010. Noncompliance may result in the withholding of up to 5 percent of the state's Federal Aid Highway Funds for the first year and up to 10 percent the second and subsequent years. At the current funding rate, these percentages translate to approximately \$9.4 million and \$18.8 million respectively according to a Nebraska Department of Roads controller. This proposal would give the Nebraska State Patrol the authority to assess a civil penalty against a driver of a commercial motor vehicle who violates an out-of-service order as defined in state statute 75-362, and against a motor carrier who knowingly allows, permits, requires, or authorizes a driver to violate such an order. Specific language for a violation of any out-of-service order will be created by adding a new subsection (11) in state statute 75-363. The new language in statute 75-369.03 will allow the Superintendent of Law Enforcement to impose civil penalties to a driver and/or motor carrier for violating an out-of-service order. The proposed violations and their penalties are substantial; as a result, it is imperative to clarify the processes that will be used to assess such penalties. When the Nebraska State Patrol receives information that a driver has violated an out-of-service order, an administrative investigation will be conducted. If the administrative investigation determines such a violation has occurred, a civil penalty will

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be assessed to the driver. If information is obtained that the motor carrier may have allowed or required a driver to violate an out-of-service order, a compliance review may be conducted on the motor carrier. The decision on whether a compliance review will be conducted is based on the degree of validity of the information received or discovered. If a compliance review is conducted and it is determined that the motor carrier knowingly allowed, required, permitted, or authorized such a violation, then a civil penalty will be assessed to the motor carrier. The federal regulations also allow federal investigators to conduct compliance reviews or investigations. The Nebraska State Patrol works cooperatively with the Federal Motor Carriers Safety Administration to avoid duplication of reviews. The intent is either the state or the FMCSA would conduct the compliance review, but not both. I would also like to provide clarification regarding the word "knowingly allows," found on page 7, line 16 of the bill. The Nebraska State Patrol conducts compliance reviews based on guidelines set forth by the Federal Motor Carriers Safety Administration's field operation training manual. The guidelines in the FOTM indicate that penalties for motor carriers whose drivers violate out-of-service orders are based on whether the motor carrier had knowledge, i.e. "knowingly allows," of the violation. The FOTM also states "Acting knowingly means acting or failing to act while having actual knowledge of the facts giving rise to the violation or having the knowledge that a reasonable person acting in the same circumstances and exercising due care would have had." This is the foundation of how the Nebraska State Patrol determines if a motor carrier has knowledge. This definition sets a very high standard of proof to be established by the Nebraska State Patrol in a civil penalty situation. I would like to acknowledge and thank the Nebraska Trucking Association for their willingness to work with the Nebraska State Patrol to address this issue. Thank you for the opportunity to testify in support of LB845 and I encourage you to move this bill to General File. I will be happy to answer any questions you may have. [LB845]

SENATOR FISCHER: Thank you, Captain Krolikowski. Are there questions? Senator Stuthman. [LB845]

SENATOR STUTHMAN: Thank you, Senator Fischer. Captain Gerald, explain to me an "out-of-service order." [LB845]

GERALD KROLIKOWSKI: An out-of-service order, sir, is typically when we have officers doing roadside inspections. We have two different levels of violations: A simple equipment violation or a simple driver violation would just be that, a violation and you'd note that violation on the inspection report. On the inspection report...and that, in turn, goes on a carrier profile. Out-of-service violations are those violations that reach a certain degree based on input from the industry and other law enforcement agencies across the nation that it meets the criteria that jeopardizes the safe operation of that vehicle or that driver on the roadway. In that instance, an out-of-service order is placed on a vehicle or driver and the violations must be corrected before the vehicle or driver can operate again. So, violating an out-of-service order would be that if the driver is

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placed out-of-service for ten hours because of hours of service regulations, however they don't wait for their ten hours but leave two hours into that out-of-service violation or out-of-service order. That's what we're talking about. They've now violated an out-of-service order. [LB845]

SENATOR STUTHMAN: Captain, would you say that...I'll give you an illustration. [LB845]

GERALD KROLIKOWSKI: Okay. [LB845]

SENATOR STUTHMAN: I'm a mile away from ADM corn plant, I'm hauling corn... [LB845]

GERALD KROLIKOWSKI: Um-hum. [LB845]

SENATOR STUTHMAN: ...and a belt comes off of one of my rear tires and I have only the bead left on the tire and you stop me a half a mile away from the ADM plant. Would that be an out-of-service order that I would have to get it fixed there, or could I continue on to ADM to unload the load? [LB845]

GERALD KROLIKOWSKI: I wish my answer was real simple. And it often depends upon...and I don't mean to complicate this, but it depends upon whether you're talking about a single tire setup or a dual tire setup configuration. [LB845]

SENATOR STUTHMAN: Duals. [LB845]

GERALD KROLIKOWSKI: Duals and the bead, if it's an out-of-service violation...say it's an out-of-service violation. We certainly do not want our officers to leave a vehicle roadside, on the shoulder of a highway, which is now a safety concern for all the general motoring public upon that roadway. We usually escort them to the first place safekeeping, which in this case if they're going to ADM...in fact, we've done that working 84th Street out there. We've escorted them to ADM, placed them out of service there. They call a repair truck to fix that violation. Now, they go into ADM, they neglect to honor that and now drive back to West Point or wherever without getting that corrected, they would be violating an out-of-service order. Did that answer your question, Senator? [LB845]

SENATOR STUTHMAN: Yes. Yes, it does. The thing that I'm considering is in Columbus there where you'd have to go four miles to Bill's Tire to get the tire fixed and they could fix it there, otherwise they would have to get somebody there to fix the tire, which would cost hundreds of dollars and probably a half a day. And you know, and I hope that you would, you know, take all of that into consideration as far as time is concerned and miles and safety to the people on the road. [LB845]

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GERALD KROLIKOWSKI: Senator, I know what you're saying and I trust that our officers, at least we instill in them, that we don't put a person in a position of disadvantage...I mean, in a position like that. However, there is limitations. I mean, we're not going to escort them...sometimes we constantly get requests that we escort them from Kearney to Minden or...so that they can do it at their shop. But we stress for our officers to do the right thing and common sense. [LB845]

SENATOR STUTHMAN: Okay. Thank you. Thank you very much. [LB845]

SENATOR FISCHER: Other questions? Senator Louden. [LB845]

SENATOR LOUDEN: Yeah, I was curious, too, when you talked about "out-of-service order." Did I read someplace in this green copy that this includes anything over 10,000 pounds? [LB845]

GERALD KROLIKOWSKI: Once again, whatever the regulations apply to, this would apply to. So if you have a vehicle or driver operating commerce that the state statutes and federal regulations apply to, if they're given an out-of-service order and they violate that out-of-service order, they would be subject to this. [LB845]

SENATOR LOUDEN: Then that would probably take in most any heavy-duty pickup that's on the road, when you go 10,000 pounds if they had any load on or pulling anything. [LB845]

GERALD KROLIKOWSKI: It depends upon whether you're talking interstate commerce or intrastate commerce. If it's intrastate commerce, we're only dealing with vehicle violations that are over the 10,000 up to those vehicles that require a CDL. So, if it's a violation on a vehicle and they're in commerce subject to the regulations, if they violate that out-of-service order, then yes, they'd be subject to this. [LB845]

SENATOR LOUDEN: Okay, now and that would include somebody who was going down Interstate 80 from (inaudible) Colorado or some place, Iowa, they're hauling cattle or something through there, and if their trailer brakes weren't working properly on a gooseneck trailer, then would they receive an out-of-service order? [LB845]

GERALD KROLIKOWSKI: Very well could, sir. That's the reason why they're there is for uniformity that we treat everybody that falls within the regulations the same as everybody else. [LB845]

SENATOR LOUDEN: And then how far could they go to get that fixed, or would they have to park it immediately? You said something about going to the next closest place to get it off the road, but there isn't always those places that will service electric brakes

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on a horse trailer and I was wondering how far they're allowed to go. [LB845]

GERALD KROLIKOWSKI: Certainly. And once again, our main operation is we have two different scenarios, typically. These roadside inspections by reportable units or those weigh stations, you've seen them at North Platte or Waverly area on the interstate. Certainly we have the inspection facilities, the parking abilities there to park vehicles and we constantly have vehicles there, semis, pickups pulling trailers, straight trucks, whatever the case might be. If it's an out-of-service violation, they're going to be placed out of service and treated the same. [LB845]

SENATOR LOUDEN: Then they would stay there at that weigh station or your scale station until they got fixed. Then is that what you're telling me? [LB845]

GERALD KROLIKOWSKI: Yes, sir. But believe it or not, sometimes they sneak out on us and we learn a couple hours later that they're gone and in Iowa. They neglected to adhere to our orders, so. [LB845]

SENATOR LOUDEN: Um-hum. [LB845]

GERALD KROLIKOWSKI: But yes, to answer your question, they would be there at that weigh station until it's repaired. [LB845]

SENATOR LOUDEN: Now, then this bill mostly puts in what the fine, describes how much you're going to fine him for doing that like that, is what this bill is mostly all about? [LB845]

GERALD KROLIKOWSKI: The bill mostly is about that we come into compliance with federal regulations, but part of that compliance does set the limits on what the state must apply and the amount of civil penalties. That is correct. [LB845]

SENATOR LOUDEN: Are those set in federal guidelines or anything? [LB845]

GERALD KROLIKOWSKI: Yes. [LB845]

SENATOR LOUDEN: In other words, when you...what do you have here, \$7,500 or up to \$25,000 or something, is that in federal regulations? I think that's on page 7, number (4). That was the last...if a motor carrier knowingly allows something, I mean, is that all set in federal guidelines how much they can be fined? [LB845]

GERALD KROLIKOWSKI: Yes. It's through SAFETEA-LU, which set those guidelines and incorporated them into federal regulations. And I believe the regulation actually is 383.53 of the federal regulations, and then the state through our CDL audits must come into compliance with that. [LB845]

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SENATOR LOUDEN: Okay. Thank you. [LB845]

GERALD KROLIKOWSKI: Yeah. [LB845]

SENATOR FISCHER: (Exhibit 2) Other questions? I see none. Thank you very much. Are there other proponents for the bill? Anyone speaking in opposition to the bill? Anyone wishing to speak in the neutral capacity? I do have a letter from the Nebraska Cooperative Council from Robert C. Andersen, president. And at this time they are in a neutral position on the bill. With that, I will close the hearing on LB845... [LB845]

LARRY JOHNSON: Oh, I'm sorry, Senator Fischer. We do have a neutral. (Laughs) [LB845]

SENATOR FISCHER: Mr. Johnson, I thought you were going to get ready for the next bill. (Laughter) [LB845]

LARRY JOHNSON: No, I get to do all three. [LB845]

SENATOR FISCHER: Good afternoon. [LB845]

LARRY JOHNSON: Good afternoon, Senator Fischer and members of the committee. [LB845]

SENATOR FISCHER: I thought he was trying to rush me along here, so I had to go, okay, I'll close the hearing on... [LB845]

LARRY JOHNSON: (Laughs) You're doing fine. [LB845]

SENATOR FISCHER: Good afternoon. [LB845]

LARRY JOHNSON: Good afternoon. Thank you for allowing us the opportunity this afternoon. In regard to this... [LB845]

SENATOR FISCHER: Could you state your name and spell it, please. [LB845]

LARRY JOHNSON: Oh, yes. I'm sorry, I forget. My name is Larry Johnson, L-a-r-r-y J-o-h-n-s-o-n, and I'm the president of the Nebraska Trucking Association based out of Lincoln. [LB845]

SENATOR FISCHER: Thank you. [LB845]

LARRY JOHNSON: Thank you. We're testifying as a neutral third party, interested third

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party, on this bill. We think overall it is good legislation and one that we certainly encourage commercial truck lines to follow. And the only thing we were a little concerned with, and we appreciated the opportunity to work with the State Patrol on some of the language, and they've 'satisfactorily' included some of those points in there, so. We've been assured that this bill will not open up carriers to the potential for double jeopardy for penalties in which both the feds or the state people would come after a particular carrier on the same occasion. And that everything else looked pretty good; we didn't want to stand in the way of possibly losing state highway funds, so. Any questions? [LB845]

SENATOR FISCHER: We appreciate that, thank you. [LB845]

LARRY JOHNSON: Yes. [LB845]

SENATOR FISCHER: Are there questions? Senator Stuthman. [LB845]

SENATOR STUTHMAN: Thank you, Senator Fischer. Larry, the fines, the dollar amount of the fines, what was it prior to this, or has that been a floating fine? Or, you know, explain...the first violation is \$2,500; in my opinion, that's pretty hefty. But I don't know where they've been. So, could you tell me? [LB845]

LARRY JOHNSON: Senator Stuthman, I didn't bring those with me, and from memory I do know that this does increase them. But it brings it to the federal standard required by the SAFETEA-LU that Captain Krolikowski mentioned. In terms of concern of it being large, we would agree that it is healthy fine, but one that is important to deter offenders from acting like that and violating an out-of-service. It certainly, you know, for \$250, if that were the case before, this certainly gets their attention and one that would help them understand the importance of complying with it, so. [LB845]

SENATOR STUTHMAN: Okay. Thank you. [LB845]

LARRY JOHNSON: Thank you. [LB845]

SENATOR FISCHER: Other questions? Senator Lautenbaugh. [LB845]

SENATOR LAUTENBAUGH: Thank you. [LB845]

LARRY JOHNSON: Yes. [LB845]

SENATOR LAUTENBAUGH: Mr. Johnson, so what you're saying is it might be a substantial increase, but it's one you can live with and you know why it's necessary. [LB845]

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LARRY JOHNSON: Yes, absolutely. [LB845]

SENATOR LAUTENBAUGH: Because it comes from the federal guidelines. [LB845]

LARRY JOHNSON: Yes. [LB845]

SENATOR LAUTENBAUGH: So you're fine with it. [LB845]

LARRY JOHNSON: Yes. [LB845]

SENATOR LAUTENBAUGH: Okay. [LB845]

SENATOR FISCHER: Other questions? Mr. Johnson, you are then also fine with how the captain described the "knowingly allows" on page 7 on the bill and his definition of that and how that would apply? [LB845]

LARRY JOHNSON: Yes, we are. [LB845]

SENATOR FISCHER: Okay. [LB845]

LARRY JOHNSON: Yes, thank you. [LB845]

SENATOR FISCHER: Thank you. Any other questions? I see none. Thank you very much. [LB845]

LARRY JOHNSON: Thank you. [LB845]

SENATOR FISCHER: Anyone else wishing to testify in the neutral capacity? I see none. With that, I will close the hearing on LB845 and open the hearing on LB917. Good afternoon. [LB845]

DUSTY VAUGHAN: Good afternoon again, Senator Fischer and members of the committee. For the record, my name is Dustin Vaughan, spelled V-a-u-g-h-a-n, and I am the legal counsel for the committee. LB917 provides an increase of up to 400 pounds for vehicles equipped with idle reduction technology from the maximum gross weight limit and the axle weight limit of a commercial motor vehicle. Idle reduction technology is defined by the bill as any system of devices that is designed to provide a truck or a truck-tractor services such as heat, air conditioning, or electricity that would otherwise require the operation of the main drive engine while the vehicle is temporarily parked or remains stationary. Truck engines are left running when truckers are sleeping, loading and unloading freight, stuck in traffic, or out-of-service according to law. Extended engine idling by diesel engines negatively affects air quality and health. It is estimated engine idling costs the trucking industry more than \$3 billion a year in fuel costs alone

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while releasing 11 million tons of carbon dioxide into the air. LB917 authorizes a maximum gross weight limit and the axle weight limit for any vehicle equipped with idle reduction technology to be increased by the weight of the technology, but in no case can it be more than 400 pounds. This additional weight is not in addition to the 5 percent in excess of maximum load provision permitted in current statute. With that, I will close my testimony. [LB917]

SENATOR FISCHER: Thank you, Mr. Vaughan. Are there questions? I see none. Thank you very much. First proponent for the bill, please. Good afternoon. [LB917]

LARRY JOHNSON: Good afternoon. My name is Larry Johnson, L-a-r-r-y J-o-h-n-s-o-n, and I'm the president of the Nebraska Trucking Association, testifying on behalf of our members in support of LB917. As Mr. Vaughan described in the bill that this is something that we would support in terms of the industry. It does help us to create somewhat of an incentive for our drivers to start complying and buying those units to help the environment and help us reduce fuel costs. There are a number of different efficiencies that will gain from that. And as one side note, we do notice that from an economic development standpoint, Thermo King out in Hastings is a plant that is manufacturing those particular units as well, so. We're going to be one of the fifth states to adopt it and we'll be joining Kansas, Oregon, Arkansas, and Maine. And with your approval and support, we would hope to create more momentum across the 50 states to adopt that plan. [LB917]

SENATOR FISCHER: Thank you, Mr. Johnson. Are there questions? Senator Louden. [LB917]

SENATOR LOUDEN: Yeah. Then on the side of these trucks, then, do you put something on there that 400 pounds of idle reduction load on there? How do you do that so that you don't use that in your gross weight? [LB917]

LARRY JOHNSON: I believe...that's a great question, Senator Louden, and I'm not exactly sure. But if I could turn around to our patrol. [LB917]

_____: You have to be able to provide the weight to the scale officer in the patrol. [LB917]

LARRY JOHNSON: It's a certificate from the manufacturer. [LB917]

_____: Yes. [LB917]

SENATOR FISCHER: You will have to repeat that into the mike. [LB917]

LARRY JOHNSON: (Laughs) Senator Louden, they will have a certification from the

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manufacturer that they would be able to show enforcement if that were to occur.
[LB917]

SENATOR LOUDEN: Oh, okay. That's what I was wondering. One other thing I noticed in this bill there that I was wondering if that had to be addressed. It says the system "that is installed on heavy-duty diesel-powered on-highway truck or truck-tractor..." Are these trucks going to be powered by diesel all the time or are we going to come around in something in the next few years and be powered by something else? Should that "diesel-powered" be stricken from your language? Or what about some of these...there are gas-powered trucks out there and they are coming out with some of them that have a lot better fuel consumption ratio than they used to be. Because right now, this is just in a diesel-powered truck. Is that correct? [LB917]

LARRY JOHNSON: As the bill is presented, yes. And we hadn't given that a lot of thought, but would be open to different language on that, I suppose. [LB917]

SENATOR LOUDEN: Should that be something the committee has to consider?
[LB917]

LARRY JOHNSON: Yes, I would say if they would be looking at opening that up, we would be supportive of finding other means of power or fuel on it. [LB917]

SENATOR LOUDEN: Okay, thank you. [LB917]

SENATOR FISCHER: Senator Hudkins. [LB917]

SENATOR HUDKINS: Thank you. Mr. Johnson, this idle reduction technology, how is it powered? [LB917]

LARRY JOHNSON: Currently by diesel. It's a... [LB917]

SENATOR HUDKINS: So it's its own self-contained little thing, huh? [LB917]

LARRY JOHNSON: Yes. [LB917]

SENATOR HUDKINS: Okay, and that's better, obviously, than having the big engine running? [LB917]

LARRY JOHNSON: Right, uh-huh. [LB917]

SENATOR HUDKINS: Okay. Is there an upper limit as to how long this could provide power? [LB917]

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LARRY JOHNSON: I believe it's just the capacity of the fuel tank... [LB917]

SENATOR HUDKINS: Okay. [LB917]

LARRY JOHNSON: ...which I suppose would be at least that 10-hour period that you would have that rest period by law for. [LB917]

SENATOR HUDKINS: All right. Thank you. [LB917]

SENATOR FISCHER: Other questions? Senator Stuthman. [LB917]

SENATOR STUTHMAN: Thank you, Senator Fischer. Maybe I missed it if it was asked before, I was busy reading. But this 400 pounds, does that...that means the gross weight, they're going to be hauling 400 pounds less of commodity, then, to the destination? Because, you know, you get, what, 90,000 gross? [LB917]

LARRY JOHNSON: We would be asking for that exception specifically on... [LB917]

SENATOR STUTHMAN: So that you could go 400 more, then? [LB917]

LARRY JOHNSON: Yeah, yeah. [LB917]

SENATOR STUTHMAN: Okay. Okay, that might have been asked. Okay, thank you. [LB917]

LARRY JOHNSON: Yeah. [LB917]

SENATOR FISCHER: I don't believe that was the correct answer (laughs). Not 400 and...it's, yeah, it's not more than the 5 percent of the excess that you're allowed. So it's not that we're looking for extra weight to have truckers be able to carry that extra weight on the 400 pounds. [LB917]

SENATOR PEDERSEN: That's right. [LB917]

SENATOR FISCHER: Is that correct? [LB917]

SENATOR STUTHMAN: So if my maximum load... [LB917]

LARRY JOHNSON: That is correct, yes, Senator. [LB917]

SENATOR STUTHMAN: If my maximum load is 91,000 or say that, then can I haul 91,400? [LB917]

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SENATOR AGUILAR: You're getting a lot of head nods back there. (Laughs) [LB917]

LARRY JOHNSON: Are the heads nodding? Yes, yes. [LB917]

SENATOR FISCHER: But you can already go over 5 percent. They have a 5 percent limit. [LB917]

SENATOR STUTHMAN: But it just, it raises the total weight, then, on the highway by an extra 400 pounds, then, by that vehicle. [LB917]

SENATOR FISCHER: Not...I don't believe that's correct. I think you already can go over by 5 percent, that's allowed. [LB917]

SENATOR STUTHMAN: Um-hum. [LB917]

SENATOR FISCHER: The 400 pounds would be included in what you already can be over weight the 5 percent. [LB917]

SENATOR STUTHMAN: In that 5 percent allowed. [LB917]

SENATOR FISCHER: It is not in addition to the 5 percent allowance. [LB917]

SENATOR PEDERSEN: Yes, that's the way I would read it. [LB917]

SENATOR STUTHMAN: Okay. [LB917]

SENATOR FISCHER: Mr. Johnson is just going, whatever you guys want to do with this, right? (Laughter) [LB917]

LARRY JOHNSON: (Laughs) I apologize, I get a little confused on those large numbers myself once in a while and...yeah. Thank you for the help, everybody. [LB917]

SENATOR FISCHER: Okay. Other questions? Do you know if in the other five states where this bill has been approved and passed, has there been support from environmental groups for this concept since you're looking at cleaner air quality? [LB917]

LARRY JOHNSON: I think as a whole, Senator Fischer, yes. Certainly California, Arizona, some of those really high density truck states are looking at possibly mandating those things. And as far as it being on the federal level, they do see it as a great opportunity that would help everybody. [LB917]

SENATOR FISCHER: Right. Okay, thank you very much. [LB917]

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LARRY JOHNSON: Thank you. [LB917]

SENATOR FISCHER: Senator Hudkins. [LB917]

SENATOR HUDKINS: I just thought of something else. How much is this new technology going to cost when you mount it on a truck? [LB917]

LARRY JOHNSON: Great question. It runs anywhere from \$7,600 to \$9,000 depending on the unit that you buy, and that's installed on the truck. So it is a pretty hefty investment that...some people are waiting out there until they see the states approve them, so this would be very helpful in doing that. [LB917]

SENATOR HUDKINS: Thank you. [LB917]

LARRY JOHNSON: Thank you. [LB917]

SENATOR FISCHER: Other questions? I see none. Thank you very much. [LB917]

LARRY JOHNSON: Thank you. [LB917]

SENATOR FISCHER: (Exhibit 1) Other proponents for the bill? Any other proponents? Anyone in opposition to the bill? Anyone wishing testify in the neutral capacity? And I forgot a letter again. We have a letter in support from the Nebraska Cooperative Council, signed by Robert C. Andersen, president, in support of LB917. With that, I will close the hearing on LB917 and open the hearing on LB919. Good afternoon, Mr. Vaughan. [LB917]

DUSTY VAUGHAN: Good afternoon, Senator Fischer and members of the Transportation and Telecommunications Committee. For the record again, my name is Dusty Vaughan, spelled V-a-u-g-h-a-n, and I am the legal counsel for the committee. Our last bill today is LB919. LB919 changes refunds of registration fees for apportioned vehicles so that the refund is calculated from the date of the event involving the vehicle that triggers the refund instead of the date of the application for a refund. Transactions that may trigger a refund include: Transfer of ownership; loss of possession due to fire or theft; the vehicle was wrecked, junked, or dismantled; or the vehicle was disabled and removed from service. Currently, the amount of the refund due can vary widely with the date of application used to calculate the refund amount because the date of application is determined by the person applying for the refund. It would be more accurate to calculate the refund from the date of the event that triggered the...I'm having trouble saying "refund"...the date of the event that triggered the refund so that the refund amount could not be affected by the timing of the application. This has been the current practice regarding vehicles that are county plated in Nebraska. LB919 puts the

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same practice in place for apportioned vehicles. In addition, when a fleet owner adds a vehicle to the fleet, the proportionate registration fee shall be from the date the vehicle was placed into service; or if the vehicle was previously registered in another state, the date the prior registration expired or the date Nebraska became the base jurisdiction for the fleet, whichever is first. Under the current law, a motor carrier can limit the amount of registration fees by delaying the application date to add an apportioned vehicle to a Nebraska fleet. In contrast, there is a rebuttable presumption that all newly acquired motor vehicles and trailers plated at the county level in Nebraska are being operated and must be registered within 30 days of acquisition. The bill also requires the fleet owner to make a claim for the refund within the registration period or shall forfeit the refund. With that, I will conclude my testimony. [LB919]

SENATOR FISCHER: Thank you. Are there questions? Thank you very much. Could I have the first proponent for the bill, please? Good afternoon. [LB919]

BEVERLY NETH: (Exhibits 1, 2) Good afternoon, Chairwoman Fischer, members of the committee. I'm Beverly Neth, B-e-v-e-r-l-y N-e-t-h, director of the Department of Motor Vehicles. I am appearing today in support of LB919. I want to thank Senator Fischer for sponsoring the bill on behalf of the department. LB919 amends the statute that governs trucking companies registering apportioned vehicles for interstate commerce through the International Registration, or IRP, Plan. Legal counsel did a very good job of explaining the substance of the bill. In effect, what we wanted to do was to, one, bring the refund process associated with motor carriers in compliance or in tandem with the existing processes that exist for all other vehicles in the state of Nebraska. In attempting to do that, we put the initial language out for consideration to the Nebraska Trucking Association and we engaged in a conversation with them that I think was very beneficial for all of us. We spoke with Jack Peetz of Crete Carrier who explained kind of how the process of placing a vehicle in to service in Nebraska works for the large carriers. In our initial draft had some unintended consequences and so we very much embrace the suggestions of the Trucking Association and incorporated them into the draft you see today. What we wanted to do was make it clear that when an apportioned vehicle is placed into service in Nebraska, it must be registered in the program. If a motor carrier is coming here from another jurisdiction and their IRP credentials have expired in that jurisdiction, that we expect that they will register in this jurisdiction as soon as possible rather than running in this state until they are caught and then coming in and making an application. So, we want it to be clear that if you're operating in Nebraska as a base jurisdiction, you're going to pay Nebraska's registration fees as well as all the other registration fees you'd pay in the program. And then, of course, the third component is that if you move your fleet to Nebraska and assume the base jurisdiction of Nebraska, then you're going to register all your vehicles. We welcomed the conversation with the Trucking Association to help us make sure the bill didn't have the unintended consequences. However, when we did that, and we went back and redrafted the bill, there was some language that was inadvertently dropped and I'm offering AM1609 for

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your consideration, incorporation into the bill...I passed it out with my testimony today...but it certainly was not supposed to be removed from the statute and probably needs to be placed back into the statute. So, with that, Senator Fischer, I'd be happy to answer any questions the committee might have. [LB919]

SENATOR FISCHER: Thank you, Director Neth. Are there questions? I see none. Thank you very much. [LB919]

BEVERLY NETH: Thank you. [LB919]

SENATOR FISCHER: Are there other proponents for the bill? Welcome. [LB919]

LARRY JOHNSON: Good afternoon again. I think I'll get it right this time. Third time's the charm. My name is Larry Johnson, L-a-r-r-y J-o-h-n-s-o-n, and I'm with the Nebraska Trucking Association in Lincoln, representing our 800 members across the state. We're here to testify in support of this legislation. It does allow greater flexibility for trucking companies to claim refunds on apportioned vehicles no longer in service and it clarifies the requirements for when apportioned vehicles must register, provides us flexibility and clarity; and who can argue with those outcomes, so. [LB919]

SENATOR FISCHER: Any questions? I see none. Thank you very much. [LB919]

LARRY JOHNSON: Thank you. [LB919]

SENATOR FISCHER: Any other proponents? Are there opponents to the bill? Anyone wishing to testify in the neutral capacity? I see none. With that I will close the hearing on LB919 and we are closing the hearing for today. [LB919]

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Disposition of Bills:

LB867 - Advanced to General File.
LB845 - Advanced to General File.
LB917 - Indefinitely postponed.
LB919 - Indefinitely postponed

Chairperson

Committee Clerk