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Transcriber's Office

Judiciary Committee
January 21, 2009

[LB76 LB123 LB148 LB151]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 21, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB151, LB123, LB76, and LB148. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: Brenda Council. []

SENATOR ASHFORD: Why don't we get started. Welcome, everyone, to the Ernie Chambers Judiciary Hearing Room. This will actually be the first hearing to be held in the Ernie Chambers Hearing Room, and the first hearing without Senator Chambers in 38 years, so that's quite an event. But we welcome you all, especially the students from Syracuse. Thanks for coming. We have...I'd like to introduce my colleagues, and this will be the first time I've had an opportunity to do that, at least the new colleagues: Senator Coash, a newly-elected senator from Lincoln who is here. Welcome. Good luck. (Laughter) Senator Lautenbaugh from northwest Omaha in Blair and territory in between, so; the Vice Chair, Senator Lathrop from Ralston in Omaha; and Senator McGill who is also from Lincoln, so welcome. My name is Brad Ashford. I am from Omaha and I'm the Chair of the committee. LaMont Rainey is the legal counsel; Christina Case is the...what is your exact title? []

CHRISTINA CASE: Committee clerk. []

SENATOR ASHFORD: Committee clerk. I get those mixed up. Senator Stuthman, you've got the first bill, LB151. [LB151]

SENATOR STUTHMAN: Good afternoon, Senator Ashford and members of the Judiciary Committee. It seems to be a real privilege to be the first one to be introducing a bill in this newly-named hearing room. LB151, which I have introduced, is to eliminate provisions relating to ephedrine under the Uniform Controlled Substance Act. LB151 is cleanup legislation. It amends Section 28-456.01 so that sales and purchase limits of pseudoephedrine are 3.6 grams per 24 hours. The legislation changed the sales and purchase limits to 3.6 grams per 24 hours in 2007 under LB218 to mirror the federal law. Section 28-456.01 was accidentally missed and overlooked when the changes were made. LB151 also removes exemptions in the law for ephedrine, its salts, its optical isomers as a Schedule IV drug. This includes the exemption ephedrine that is sold as a dietary supplement. Currently, such supplements can be sold in quantities less than 25 milligrams over the counter as long as they are properly labeled as a dietary supplement. It has been discovered that some stores have been selling these dietary supplements without the proper labeling and in large quantities. Ephedrine is also a key component in making and producing meth. In summary, LB151 cleans up a section of law that was missed in 2007 and also promotes consumer and patient safety. There are several other individuals behind me that will have a lot of information, and

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they will be able to answer any questions that I maybe will not be able to answer.
[LB151]

SENATOR ASHFORD: Thanks, Senator Stuthman. Any questions for Senator Stuthman? Let me...for the young people from Syracuse, you may recognize Senator Stuthman because he was on national TV several times this summer and fall defending our Legislature for the work we did in the safe haven bill. And I think all of us much appreciate Senator Stuthman's leadership on addressing those issues. So you might have seen him on...as I did one morning on CNBC and woke up to...or NBC (laughter) or CBS or one of those places (laugh) on a live. But Senator Stuthman did such a great job in working on that issue...how many of you heard about the safe haven law? All right. Well, there's your man right there. He's the guy that got it... [LB151]

SENATOR LATHROP: I thought you were asking us. [LB151]

SENATOR ASHFORD: No, no. (Laugh) Thanks, Senator Stuthman, very much. [LB151]

SENATOR STUTHMAN: Okay. Thank you very much, and I will waive closing. [LB151]

SENATOR ASHFORD: Okay. Bob? Let's...just a few little rules. We have a light system that most of or many of you have been here frequently and know about it, but we ask you to confine your testimony to three minutes and the yellow light will kind of tell you that we'd ask you to start summing up and then from there. How many of you are here to testify on LB151? Oh my! I hesitate to give you five minutes, Bob, since you're the only one, but go ahead. [LB151]

BOB HALLSTROM: (Exhibit 1) Chairman Ashford, members of the Judiciary Committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Pharmacists Association in support of LB151. I do want to take just a moment, Senator Ashford. I'm glad that you noted that the kids from Syracuse are here in an organized event. I am from Syracuse. I know these kids, and I'm glad they're not playing hooky today. With regard to the bill... [LB151]

SENATOR ASHFORD: They're going to stay here all afternoon. If they think they're going somewhere else...(laughter) [LB151]

BOB HALLSTROM: If they didn't know what I did before, they'll be confused after my testimony. (Laughter) With regard to LB151, Senator Stuthman has done a nice job of explaining to the committee exactly what the bill does. What I'd like to do is perhaps give you a little bit of a background. The Nebraska Pharmacists Association has been actively involved in state legislation and also engaged in federal legislation to address the issues of ephedrine and pseudoephedrine as a precursor to the manufacturing of methamphetamine. In the late nineties, we came in with the law to make ephedrine a

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Schedule IV controlled substance. At that time, there were a couple of items, Bronkaid Dual Action tablets, Pazo hemorrhoidal ointment, and Primatine tablets that were exempted from the Schedule IV designation. We also at that time had exempted dietary supplements subject to many restrictions on quantity limitations, advertising, and marketing limitations and the makeup or components of them to minimize their use as precursor for the manufacturing of methamphetamine. Since that time the federal law, as you're aware, has changed. Pseudoephedrine and ephedrine have been addressed with quantity limitations, log book signature requirements, behind the counter treatment, and so forth. We no longer see the need with regard to the ephedrine exemptions to be on the books of our state law because the feds have taken care of them in other respects. Also, as Senator Stuthman has indicated, we have more recently seen some of the dietary supplements stores that are out marketing these products containing ephedrine in violation of state law. I think part of it is an enforcement issue. We have filed complaints with the department and with the state patrol regarding those activities, but I think if we remove these provisions from state law, it will remove any necessity for the state patrol to interpret whether or not these stores are properly or improperly utilizing the ephedrine products for dietary supplement purposes. We have received word from the Consumer Healthcare Products Association that they have concerns with regard to the three products being removed from the exemption to Schedule IV controlled substances, and we have agreed to work with them on an amendment that we would have to the committee hopefully by next week to reinsert them in the law, but subject them to the requirements under federal law which have to do with quantity limits, having them behind the counter, and subject to the signature log book requirements of federal law. With that, I'd be happy to take any questions. [LB151]

SENATOR ASHFORD: Any questions for Bob? This is simply going back to the federal standard? [LB151]

BOB HALLSTROM: Senator, with regard to the two technical changes that Senator Stuthman on the grams and on the pediatric formulation exemption, that will put us in line with the federal requirements in that regard. With regard to the ephedrine products, what it will do it will take the dietary supplements out completely. They will be subject to Schedule IV requirements with regard to prescription and so forth with... [LB151]

SENATOR ASHFORD: And as a practical matter, what is that for the edification of our students here? What are we talking about when we're talking about dietary supplements that would now have to be obtained with a prescription? How does that... [LB151]

BOB HALLSTROM: Well, the dietary supplements that contain ephedrine are... [LB151]

SENATOR ASHFORD: Like what? [LB151]

BOB HALLSTROM: Senator, there are names for some of these products that have

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been used at convenience stores over the years... [LB151]

SENATOR ASHFORD: Right. [LB151]

BOB HALLSTROM: ...that I would not repeat in front of the students, but...(laugh)
[LB151]

SENATOR ASHFORD: Oh. Is there like a...go ahead. I'm sorry. Just so we know for the...now, we're talking about a series of products, a lot of products, five products, one product? [LB151]

BOB HALLSTROM: Well, any product that contains ephedrine under current law, Senator, they would have to satisfy the particular limitations: sold in 25 milligrams or less per tablet... [LB151]

SENATOR ASHFORD: As to content. Right. [LB151]

BOB HALLSTROM: ...properly marketed... [LB151]

SENATOR ASHFORD: Right. [LB151]

BOB HALLSTROM: ...not used for weight loss purposes, which obviously they are being marketed for currently. We've been out and about and seen... [LB151]

SENATOR ASHFORD: Right. [LB151]

BOB HALLSTROM: ...that they're violating the law as it's written today. [LB151]

SENATOR ASHFORD: So you would be then simply saying none of those products would be... [LB151]

BOB HALLSTROM: Those products would then be designated as Class IV or Schedule IV controlled substances, one of the requirements of which is to be issued pursuant to a prescription. [LB151]

SENATOR ASHFORD: Okay. Do they have generic names...do they have product names? [LB151]

BOB HALLSTROM: Not as such, Senator. I can find out from the Pharmacists Association and tell you off mike. [LB151]

SENATOR ASHFORD: Okay. I mean, if you went into a store...I mean, if these people, if these youngsters went into a store, students went into a store today, what would they

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see that we would be taking off the shelves? [LB151]

BOB HALLSTROM: I will tell you later the specific names, Senator, but what they've...I've seen the marketing where they say ephedrine is back for weight loss and so forth. [LB151]

SENATOR ASHFORD: Okay, okay. Fair enough. Thanks, Bob. Any other questions of Bob? [LB151]

BOB HALLSTROM: Thank you, Senator. [LB151]

SENATOR ASHFORD: (See also Exhibit 6) Thanks. Any other...is that clear to everybody? (Laugh) Anyhow, Senator Christensen is also here, Mark Christensen. So welcome to Mark in his first Judiciary Committee meeting. Any opponents for LB151? Neutral testifiers? Okay. Senator Stuthman has waived, so that concludes the hearing on LB151. We will now go to Senator Karpisek, LB123. Here he is. [LB151 LB123]

SENATOR KARPISEK: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. I'm here before you today to introduce LB123 that deals with Salvia divinorum or the active ingredient Salvinorin A. This bill was introduced last year by Senator McDonald and through my marijuana bill, we attempted to attach it at the end of session, and that was met with great unhappiness. So I said... [LB123]

SENATOR ASHFORD: Even cry. (Laughter) [LB123]

SENATOR KARPISEK: ...I would bring it back again this year since Senator McDonald is gone, and here I am. Salvia divinorum is a hallucinogenic much like LSD. It can either be smoked or chewed. The effects usually do not last terribly long, maybe ten minutes to half an hour. But in my opinion that doesn't really matter because if you come down you could have another dose, so what is the difference if it lasts all day or just a few minutes? Some effects from Salvia are: visual alterations or visions; experiencing multiple realities; a contemplative sense of peace; sense of profound understanding; dream-like veneer over the world; sense of total confusion or madness; seeing or becoming part of a tunnel; loss of awareness of an individual; sense of flying, floating, twisting or turning; uncontrollable laughter; loss of physical coordination. There are many things that go along with this drug. My issue is that there is no rules against it right now, and I'm sure that most of you are aware that were on the committee last year the case in Lincoln where it was sold here in Lincoln. I've been told by other senators that it's sold in other communities around the state also. There's no age limit, of course; anyone could buy it. I think it's another gateway drug; it's a problem. I don't think that we need just anyone to be able to get this. In my opinion, it should be in the Schedule I of the drug law which would mean that possessing it would be considered a Class IV

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felony with a penalty of up to five years. Trafficking would fall under a Class III felony with up to 20-year penalty. Other legislation has been passed in nine other states, and other countries also regulate these issues. There are people following that will have more statistics on it or more knowledge of it, but at this time I'd be glad to take any questions from the committee. [LB123]

SENATOR ASHFORD: Any questions of Senator Karpisek? [LB123]

SENATOR LATHROP: Yeah. [LB123]

SENATOR ASHFORD: Yes. [LB123]

SENATOR LATHROP: Can I just ask this, Senator. They sell this stuff on the Internet? [LB123]

SENATOR KARPISEK: Yes. That was one thing I missed. It's sold on the Internet. You can find many sites to find it. [LB123]

SENATOR LATHROP: And if it's sold on the Internet, how do we prohibit that in Nebraska if they're shipping it from you-name-it, California, wherever they make this stuff? [LB123]

SENATOR KARPISEK: Well, that would be hard...it would be hard to prohibit the sale, but then if we would...if law enforcement would catch someone with it, then it would at least be a crime. Right now, they can have it and it's no crime. I mean, this is...there's less of a regulation on it than tobacco, again. So obviously there would be more...I wish...I would like to do more on many Internet things and I think that's another day's fight. But just to say that we can't stop it doesn't mean that we should just leave it to be legal either. [LB123]

SENATOR LATHROP: So as you see it, if somebody orders it on the Internet from a place in California or some other place where it's not unlawful yet, the crime doesn't happen until a person comes into possession. [LB123]

SENATOR KARPISEK: Under this bill, that would be my intent. I would love to take that farther if I could, but at this time I think one step at a time. [LB123]

SENATOR LATHROP: Okay. Thanks. [LB123]

SENATOR KARPISEK: Thank you, Senator Lathrop. [LB123]

SENATOR ASHFORD: Any other questions of...and this is a possession statute, I guess? [LB123]

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SENATOR KARPISEK: Yes. And more hopefully... [LB123]

SENATOR ASHFORD: Not a sale and possession? [LB123]

SENATOR KARPISEK: Well, there is a part, again, on the sale end that would...the distribution part would fall here. [LB123]

SENATOR ASHFORD: It all comes out... [LB123]

SENATOR KARPISEK: Class III felony. [LB123]

SENATOR ASHFORD: That would be a Class III. Possession would be a... [LB123]

SENATOR KARPISEK: Class IV. [LB123]

SENATOR ASHFORD: ...under this proposal would be a IV. [LB123]

SENATOR KARPISEK: Yes. [LB123]

SENATOR ASHFORD: Okay. All right. Yes, Senator. [LB123]

SENATOR LATHROP: You know, I guess I came up with another question. [LB123]

SENATOR ASHFORD: Okay. Come...you might as well ask it now then. (Laugh)
[LB123]

SENATOR LATHROP: Yeah and this is...the plant that we're talking about, the substance that we're talking about comes from a plant, this Salvia plant? [LB123]

SENATOR KARPISEK: It does but it's not the commonly one...the common one that we have in our gardens. It mainly comes from Mexico. It can be grown here, but it's not to be confused with the ornamental plant. [LB123]

SENATOR LATHROP: And that was my question. Is this a plant that can be used in landscaping or... [LB123]

SENATOR KARPISEK: Well, I suppose it could, but that's not...(laughter) [LB123]

SENATOR LATHROP: No. I don't want to make it a crime to grow your landscaping just because somebody might come by and try to eat it. (Laughter) [LB123]

SENATOR KARPISEK: No. They are two separate things and there is not a... [LB123]

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SENATOR LATHROP: Okay. There's no landscaping purpose for this plant. [LB123]

SENATOR KARPISEK: No, and there's no medicinal right now. I would bring up, too, that if--I had a question from a reporter--if there were health benefits, would you, you know, would this cut out any testing? Marijuana, a lot of those other drugs are tested and made into a pill form. I don't have any issue with that if they can do some good out of it and it's prescribed, not just self-medicate. [LB123]

SENATOR ASHFORD: If it were prescribed. [LB123]

SENATOR KARPISEK: If it were prescribed, right. Not in its current form. Well, that's for a different day, again. [LB123]

SENATOR ASHFORD: Okay. And the difference between what Senator Lathrop was talking about and what you're talking about is that it's a different... [LB123]

SENATOR KARPISEK: It is a different plant. It's in the same species, but it's a different plant. [LB123]

SENATOR ASHFORD: Easily distinguishable. [LB123]

SENATOR KARPISEK: Easily. [LB123]

SENATOR ASHFORD: Okay. Well, we'll hear more about...thanks, Senator Karpisek. Do you want to stick around? [LB123]

SENATOR KARPISEK: I will stick around. Thank you, Chairman Ashford. [LB123]

SENATOR ASHFORD: Okay. Thank you. How many proponents do we have here? One, two, three, and opponents? Okay. I remember you from last year. Two opponents. All right. [LB123]

COREY O'BRIEN: Good afternoon. My name is Corey O'Brien, I'm with the Attorney General's Office, Mr. Chairman, fellow members of the committee. I'm an assistant attorney general with the Nebraska Attorney General's Office in the drug and violent crime division. Today, it is my privilege to testify in support of LB123 on behalf of my office and the Nebraska County Attorneys Association. A year ago, I drafted a similar bill and brought it before this committee on behalf of the Attorney General's Office. I am delighted that Senator Karpisek has brought this bill back again this year for your consideration. According to the 2007 Monitoring the Future studies authored by the Office of National Drug Control Policy, 19 percent of eighth graders, 35 percent of tenth graders, and 46 percent of twelfth graders reported using an illegal drug. From my

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travels across the state of Nebraska prosecuting drug offenses, I can tell you that these numbers are somewhat soft because they do not include the rapid escalation we have seen in kids using legal products like over-the-counter cough suppressant containing dextromethorphan, compressed air computer keyboard cleaners, and substances like Salvia divinorum. LB123 deals with the drug Salvia. Many Nebraskans may not be familiar with the word, but unfortunately many high schoolers and college students are. I don't mean to bring this to the attention of the Syracuse students that were not aware of it, and I would hope that they would not go out and experiment as a result of the developments they've learned of today. Salvia is an emerging drug threat in the drug culture. Its official name is Salvia divinorum. The active ingredient is Salvinorin A. Salvia is an herb native to certain areas in Mexico and is a fast-acting hallucinogen that is very similar in its effects to LSD, psilocybin, and a peyote which are all already classified as Schedule I controlled substances. Ingested by smoking or chewing, Salvia gets people high but it also gives many a very bad trip with the potential to harm themselves and others. Need I remind the committee in the past two years of two murders that have taken place within the state of Nebraska, one recently out in Chadron, and one here in Lincoln that involved hallucinogens similar to what we're talking about here with Salvia divinorum. The one in Chadron involved LSD, the one here in Lincoln involved hallucinogens caused by dextromethorphan obtained through over-the-counter cough medicine. [LB123]

SENATOR ASHFORD: What were the ages involved in that case? Do you recall, Corey? [LB123]

COREY O'BRIEN: One was a...well, they were both through the ages of college students. As Senator Lathrop brought up, this is widely available over the Internet and in head shops throughout the state of Nebraska. It would add Salvia divinorum to the schedules and make it a Class III for distribution offenses and Class IV felony for possession offenses. According to the Offices of Diversion Control in the Drug Enforcement Administration, neither Salvia divinorum nor its active constituent, Salvinorin A, has an approved medical use in the U.S. It is quite different than the Salvia that adorns many of our gardens. Finally, as Senator Karpisek mentioned, it has been passed as illegal in nine other states, including Illinois, Louisiana, Maine, Missouri, North Dakota, Oklahoma, Oregon, and Tennessee. Nebraska needs to join that list. [LB123]

SENATOR ASHFORD: Thanks, Corey. Any questions of Corey? Seeing none. [LB123]

COREY O'BRIEN: Thank you. [LB123]

SENATOR ASHFORD: Thank you. Senator Rogert, welcome. So Senator Rogert is here. Yes, sir. [LB123]

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LANCE HEDQUIST: (Exhibit 2) I do have some handouts here. Chairman Ashford, members of the Judiciary Committee, my name is Lance, L-a-n-c-e, Hedquist, H-e-d-q-u-i-s-t. I'm the city administrator of the city of South Sioux City, Nebraska. I do appreciate the Judiciary Committee hearing this bill. This is a bill that the city of South Sioux City strongly supports. We have two places in town that sell this drug, and we're very concerned about it, and a lot of people in our town want us to take action to get that...to see that that indeed stops. There actually are 11 states now with California recently banning effective January 1 for the youth. Eleven states that have bans in terms of Salvia. You'll also note in the information that I have provided that numerous other countries have taken action to ban Salvia, so it's not just a United States issue. You'll see that there's many countries that have taken action in terms of banning and have very serious penalties in terms of having that drug available in their community. The Watchful Eye group is a group of volunteer citizens that work to keep our kids out of gangs and not to use drugs. In their information that's provided here, you can see the concern that they have expressed on this particular matter. We likewise have met with United States Drug Enforcement Agency seeking their assistance in this area, and as of yet, the United States has not taken action to place this as a banned substance. And so their hands are tied, but they've clearly expressed their concern on this particular matter. In addition, I did hand out one other item that came out of the Los Angeles Times that I think is reflective when you look at the...not just the article, but under the comments where it says: Hello. I tried Salvia for the first time yesterday. I had heard lots about this legal high. I have done LSD and magic mushrooms in the past, so I figured it couldn't be any more hallucinogenic seeing that it's totally legal. Boy, was I wrong. When I bought the one gram packet--which, by the way, sells for about \$10--of Salvia, the guy behind the counter told me very little about it for the first time, and make sure I had someone around who could watch over me, called a sitter. I didn't listen to a word this guy said. I went home I put the quarter of the gram in my homemade pipe to be inhaling. I'll skip a little bit there. Said that I didn't realize what I had done to myself, was immediate regret. The floor was firing bullets at me. The room began to spin violently. I panicked and fell to the ground. I totally forgot that I smoked Salvia and this was about 40 seconds after doing so. He talks about his couch trying to eat him. There are lots of very interesting stuff that comes out of that. So we would support LB123. We appreciate the committee taking it up. We appreciate the senator for introducing it and the support of the state Attorney General's Office. And I'd be happy to answer any questions if you want, Mr. Chairman. [LB123]

SENATOR ASHFORD: Any questions of the city manager here? Thanks, Mr. Hedquist. [LB123]

LANCE HEDQUIST: Thank you. [LB123]

SENATOR ASHFORD: Thanks for coming down. [LB123]

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GARY KRUMLAND: Senator Ashford, members of the committee, my name is Gary Krumland. It's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in support of LB123. Been hearing from local law enforcement and city officials across the state who are becoming more and more concerned about how to deal with Salvia and they're becoming concerned about it. And so we think LB123 will give them a tool to deal with it, and for that reason we're here in support. [LB123]

SENATOR ASHFORD: Okay, Gary. Any questions of Gary? Going on record in support. Okay. Any other proponents? Opponents? How are you? [LB123]

STEVEN GLASER: I'm pretty good, actually. Senator Ashford and members of the Judiciary Committee, my name is Steven Glaser, S-t-e-v-e-n G-l-a-s-e-r. Now, I would like to bring up some of the issues as to why this bill should not pass. First of all, you're trying to make it a Schedule I drug, which according to federal law, Schedule I means that there must be no potential medical use, there must be a high potential for abuse, and there must also be no safe way to use it under medical supervision. However, this drug actually does not fall under any of these categories. One of the reasons for that is the toxicity research that was done on it shows that when in animal studies rats were given a dosage that is more than 150 times the maximum recorded dose a human being has ever ingested, there was actually zero toxicity whatsoever. The dose was given over the period of two weeks, once a day, and after the dosage was given, the animals were killed and they had necropsies performed on them. The heart, the brain, the lungs, the bladder, the kidneys, everything was absolutely unchanged. The only thing that was changed was that while the rats were on the drug, they had a slight elevation of pulse. Now, as far as I go, I mean, as far as my perspective goes, I think that that is a fairly innocuous, fairly nontoxic. Another thing is that I actually called the professor who was in charge of the research, Dr. Briner, at UNK, and I asked him a few questions about the drug, and he said that he has never been able to kill an animal. And when that's your job, that's kind of impressive that he actually failed. Another thing is that there is actually a fairly high amount of potential medical use for this drug in animal studies. In rats, and in nonhuman primates, there is much evidence that shows that it can actually cure cocaine addiction. The addiction to Salvia divinorum itself is only .6 percent, which if you compare it to alcohol at 12.5 percent of the U.S. population for some sort of alcohol dependence or even caffeine, 3 percent of the population who have severe dependence, that's really not much of anything. Another thing is it's a law that you can't really enforce because of the characteristics of the drug and the botanical nature of the plant. And I know that one of the comments that was mentioned so far today is that it's not used in landscaping, but there are actually quite a few botanical gardens across the country that have Salvia divinorum as a beautiful flower because it's quite pretty. You should see pictures of it on-line sometime. Check it out. It's great. And oh...I have to stop. [LB123]

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SENATOR ASHFORD: You can finish your thought, Steven, if you want. [LB123]

STEVEN GLASER: Oh, I have lots of thoughts. I can keep going for... [LB123]

SENATOR ASHFORD: Well, finish the one you were on. (Laughter) [LB123]

STEVEN GLASER: Okay. Well, something that I wanted to say is that I have participated in a clinical research trial for an opiate pain killer called Tapentadol, which is now FDA approved. I did this back in September and October, and I have also used Salvia divinorum because I...especially after last year when the bill actually passed the committee, I decided, you know what, all the scientific research shows that it is an innocuous drug. I'm going to go ahead as a scientist, you know, try it on myself, see what happens. Salvia divinorum is by far a much stronger and more useful painkiller than the one that I was studying in that drug study and it had fewer side effects. [LB123]

SENATOR ASHFORD: Okay. Let's see, I have to recall last year, you're at UNL, right? [LB123]

STEVEN GLASER: I actually just graduated in December, so I now have... [LB123]

SENATOR ASHFORD: Last time you were here you were at UNL. [LB123]

STEVEN GLASER: Yes, yes, last time, but... [LB123]

SENATOR ASHFORD: And you were in biology? [LB123]

STEVEN GLASER: Geology. [LB123]

SENATOR ASHFORD: Geology. That's right. [LB123]

STEVEN GLASER: I've worked in four different laboratories, two of them are biochemistry laboratories, so I do have fair understanding of what I'm talking about. [LB123]

SENATOR ASHFORD: Well, I remember your testimony. Okay. Any questions of Steven? Thanks, Steven. [LB123]

STEVEN GLASER: Please? It's interesting. (Laugh) [LB123]

SENATOR ASHFORD: That's very interesting. You have very interesting comments. Thanks. [LB123]

STEVEN GLASER: Thank you very much. [LB123]

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SENATOR ASHFORD: Any other opponents? We're going to hand out...why don't you hand out to the students the...we're going to hand out a copy of the Los Angeles Times material so you can read along, see what we're talking about here to the students if they want it. Okay. Let's get started. [LB123]

SCOTT FERGUSON: (Exhibit 3) Members of the committee, my name is Scott Ferguson, F-e-r-g-u-s-o-n, and I'm here today as someone who's actually smoked and chewed Salvia about a dozen times in the past five years. I have grown it as a houseplant. As a result, I have developed a relationship with it that I think is valuable and healthy. Salvia is a unique visionary substance. It's a species of plant that has been grown and used by people in North America for hundreds or thousands of years. I think it's important to realize that smoking Salvia is not like huffing paint, drinking alcohol, doing meth or smoking cigarettes. And speaking of cigarettes, I think it's interesting that according to the CDC, in the past 12 days since this bill was introduced, over 70 Nebraskans have died from tobacco-related illnesses. Salvia is not something anyone smokes everyday. Most people try it once or twice and never touch it again. Others pursue it to see where it takes them and what it shows them over time. It isn't toxic, whether you look at the study they did at UNK or if you ask anyone who's tried it. It's interesting that looking back two years across the country, it's hard to find any cases of accidents or illnesses it has caused. None were presented. No instances of anything that has happened in Nebraska have been presented today. The few isolated stories where a half-hearted, usually disingenuous connection is made between Salvia and negative incidences, but for sure there has never been a publicized case in Nebraska. The law this bill proposes is not an appropriate first step towards regulating Salvia. Before we start arresting or ticketing people who have any contact with Salvia, before we ban nondescript houseplants, we've got to step back and take a clear look. We can't recklessly criminalize something just because it's easier than doing some hard work to fully understand the issue. We need some balance. People under 18 or 19 probably should not smoke anything, especially drugs like nicotine and meth. Adults should be able to interact with Salvia responsibly, continue to do so. We already have laws that mandate responsible behavior. And ultimately, I think this bill is premature and unnecessary. And I want to thank you for your time today, and I hope you take all the time you need to study Salvia thoroughly and thoughtfully. There are a lot more resources out there than just YouTube videos. And along with this testimony, I'd like to provide links to a database that has thousands of experience reports from individuals like me, and a list of articles and books that are readily available. Thank you for your time. [LB123]

SENATOR ASHFORD: Any questions? It's not hallucinogenic in your opinion? [LB123]

SCOTT FERGUSON: It is hallucinogenic. The common...I mean, technically it's a dissociative experience, but yes, it's a hallucinogenic as far as that's commonly

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understood. [LB123]

SENATOR ASHFORD: And what the Attorney General has suggested is that it may have been a factor or was a factor, could have been a factor in two homicides. Is that possible? [LB123]

SCOTT FERGUSON: Those are...he said those were LSD and some pharmaceutical, neither one of those were natural substances. And Salvia is very unique. It only lasts a few minutes, and there's never been a reported case that's been definitively linked to Salvia in the last ten years. [LB123]

SENATOR ASHFORD: Okay. Any questions? Yes, Senator Coash. [LB123]

SENATOR COASH: I was just curious. In your opinion, how readily available is this drug in like our Lincoln community here? [LB123]

SCOTT FERGUSON: If you're not looking for it, it's not looking you in the face. But if you want to find it, you can find it, on-line usually. [LB123]

SENATOR COASH: Thank you. [LB123]

SENATOR ASHFORD: Thank you. [LB123]

SCOTT FERGUSON: All right. Thank you. [LB123]

SENATOR ASHFORD: Any further opposition, opponent testimony? Oh my gracious! Oh no, you're leaving. (Laughter) Thanks for coming. Do we have any neutral testimony on this bill? Thanks for coming. Senator Karpisek? [LB123]

SENATOR KARPISEK: I'll waive, Chairman Ashford. [LB123]

SENATOR ASHFORD: All right. Very good. Let's move on then to the next bill is Senator Pirsch, LB76. You're up, Pete. [LB123 LB76]

SENATOR PIRSCH: Okay. Members of the Judiciary Committee, I'm state Senator Pete Pirsch representing Legislative District 4. I am the sponsor to LB76 to provide for aggregation of amounts for certain forgery crimes. Currently, Nebraska criminal law provides for a felony penalty for one who makes or possesses a forged check with a face value of \$300 or above with intent to deceive. Nebraska criminal law provides for a misdemeanor penalty for one who issues or possesses a forged check with a face value below \$300 with intent to deceive. Offenders can defeat the spirit of the criminal statutes by writing multiple forged checks where each individual forged check is written for an amount just below \$300, the felony threshold level. Offenders can therefore issue and

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possess literally thousands and thousands of dollars of forged checks and still only face misdemeanor charges. I should point out that prosecutors in Nebraska cannot extradite offenders from other states, even across the river, on misdemeanor charges. So LB76 would cure the loophole by allowing prosecutors the ability to aggregate the amounts on all forged checks issued or possessed by the same individual during the same scheme or course of conduct. In allowing prosecutors to aggregate multiple forged checks issued or possessed during the same scheme or course of conduct, the forged check statutes would become uniform with a different crime, the crime of bad check statute. The bad check statute currently allows for multiple check aggregation currently. Thank you very much. [LB76]

SENATOR ASHFORD: Any questions of Senator Pirsch? Yes. [LB76]

SENATOR LATHROP: I think I do. Senator, the bill allows you to aggregate checks. So somebody is in a scheme or a course of conduct and they write several \$100 checks to get over the \$300 threshold, then it's a felony. [LB76]

SENATOR PIRSCH: Correct. [LB76]

SENATOR LATHROP: What is the standard for what "one scheme or course of conduct" is? [LB76]

SENATOR PIRSCH: Well, that's a matter to be determined by the court. It's not defined but would be dependent upon the facts of each and every case that comes before the judge and a matter of argument. But it... [LB76]

SENATOR LATHROP: Well, do you have any idea because here's my concern, if I write a check in 2009 for let's call it \$250 and it bounces or I don't make it good, and then two years later I write another one for \$75. I'm now over the \$300 threshold. But that's not a check-writing spree. It's not a... [LB76]

SENATOR PIRSCH: Again, what was the differential in time you indicated? [LB76]

SENATOR LATHROP: Well, you could use any one of them, but let's start with a year. Do you think that a year's difference between two checks is a "scheme or a course of conduct?" [LB76]

SENATOR PIRSCH: No, I don't. And, you know, this isn't new language, this is language in place currently with statute that's working just fine with respect to the bad check. And so...there's two different differentials. There's what we're hoping to add here is forged checks to the already existing language that utilizes this language pattern or course of conduct, and there hasn't been any... [LB76]

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SENATOR LATHROP: This deals with forged checks and we already use the same language with respect to bouncing checks. [LB76]

SENATOR PIRSCH: Same language, but and I must point out, arguably the culpability that comes with forged checks is much, much greater than with bad checks. If I'm writing a check on my own account and it turns out I don't have \$60 in there which the check, I only had \$40 and I do that a number of times, at least I'm writing on my own account. Now, we're talking about people...I'm writing on your account. Right? So I don't know how we can justify the state of the law as it is with very obvious greater culpability dealing with forged checks as opposed to bad checks. And yet we utilize this same language with the bad checks, that separate statute that already exists in law. And again with respect to your question about the language, does that present possibly a problem, you know, that's been in place for a long, long time? I've been a prosecutor in Douglas County, the busiest courthouse in the state of Nebraska. Not once has that issue ever risen as a problematic or an issue within a case. Typically these are schemes where individuals, you know, identify a target and hit it rapidly within the course of a day or two. And my experience has been as that has been charged, we're talking about a day, possibly two or three. So that typically has been the fact scenario. I've never...I think you would perhaps be laughed out of the courtroom if you came in with two instances, one year apart from the other and had success. [LB76]

SENATOR LATHROP: Where do you think it gets gray at? I appreciate that what you prosecuted all had to do with somebody on a spree or a...you know, he runs out and he writes several bad checks or forges several checks and that all happens in a day or two, but... [LB76]

SENATOR PIRSCH: Right. Well, it gets gray like there's probably a million different things that are gray in any case, whether...how do you display intent to do a crime and whatnot. And so it just becomes...you know, you're not presumed guilty by any means just because you're charged with something, so. [LB76]

SENATOR LATHROP: What if the difference is a month? I write two checks, one on the first of the month and one on the last of the month, is that a spree or a one course of conduct? This may be existing law, but I have a little problem with the idea that we're going to aggregate something and use as the tie the term or the phrase "one scheme or one course of conduct." [LB76]

SENATOR PIRSCH: Well, you can't just introduce two, Senator. You would have to introduce some sort of evidence as the prosecutor. The burden is always on the prosecutor, and each element has to be proven, not just by a preponderance of the evidence, you believe it more than not. In criminal cases always, the burden on the prosecutor is always to prove the...each element, beyond a reasonable doubt--the highest level of proof that's required in the law. And so if you cannot show this, it's a

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very high burden on the prosecutor... [LB76]

SENATOR LATHROP: Maybe what I'm doing is now drawing on your experience as a prosecutor. Where is the one scheme at? Is that if you write two checks within a year, a month, a week, three days? [LB76]

SENATOR PIRSCH: Well, you know, I think it's dependent upon perhaps other facts. You can't just look at that one fact in isolation, the day of the year. You might want to look, is this a drug ring that is, you know, utilizing? What other evidence do you have? Are the same two individuals showing up and one is the getaway driver of the car? There's a number of factors that may or may not come into play in each one. And so I don't...if you're looking for specific guidance on, this fact will dictate in every case. I don't know I can do that. I can just tell you that from my experience you start to get into that type of times that you're talking about, you're going to immediately get, you know, a lot of bite back. These cases are going go to trial and you're going to find judges who are not prosecutors making the determination, looking for evidence from the prosecutor beyond a reasonable doubt that there is some common course or scheme. So it ultimately is in the hands of a judge, just as all of our criminal laws are. [LB76]

SENATOR LATHROP: Okay. I think... [LB76]

SENATOR ASHFORD: Senator Rogert. [LB76]

SENATOR ROBERT: Senator Pirsch, maybe this will help you out on your discussion with Senator Lathrop. This happened to me a couple of years ago, my vehicle was stolen and the next two or three days, the folks who stole my vehicle wrote checks all over Omaha, most of them in that \$100 to \$200 range, some of them up, but none of them were \$300. They wrote \$3,000 or \$4,000 worth of checks in a matter of 40 hours. They were all...they did catch one guy and they charged him with a misdemeanor. Now, this would be able to charge that kid with a felony, right? [LB76]

SENATOR PIRSCH: It is possible they don't have to, but it gives prosecutors the ability to, if they diagnose...when it comes to felony courts, they're...you know, prosecutors are not generally my experience has been looking to take nonserious crimes and if they can turn them into serious crimes to clog the courts, clog the jails. But there are, you know, organized element of criminality that are very smart and will react to what we do here in the building. Note in 2003, the Legislature passed a law that changed the definition of Class IV felony from a loss of \$75 to \$300. So we upped the amount, the line between misdemeanor and felony from \$75 to \$300. Losses sustained by retailers quadrupled as a result. So they know...you know, there are elements out there they are very intelligent, that know the line and play the line. And keep in mind, if you live right across the river from our largest city, Omaha, in Council Bluffs, we cannot extradite on misdemeanors. And so really you come across, you're hit in a relatively quick period of time, you identify

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which retailer or which individuals are weak and hit. And then in a lot of cases, very little that we can do about it. [LB76]

SENATOR ROBERT: Okay. Thank you. [LB76]

SENATOR PIRSCH: Yep. [LB76]

SENATOR ASHFORD: Thanks, Senator Robert. Any other questions? Thanks, Pete. Do you have a wish to close? [LB76]

SENATOR PIRSCH: I'm going to waive closing. [LB76]

SENATOR ASHFORD: Okay. And you have the next bill, too, so, I think. Come on up. [LB76]

KATHY SIEFKEN: Senator Lathrop and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, here today... [LB76]

SENATOR ASHFORD: Am I the wall? No. I'm just kidding. (Laugh) [LB76]

KATHY SIEFKEN: Did I say Lathrop again? Did I do that again? I did that last year, too. The conversation goes back and forth between...I'm sorry. Senator Ashford, I know who you are. (Laughter) [LB76]

SENATOR ASHFORD: No, no. I'm kidding you. [LB76]

KATHY SIEFKEN: And members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, here representing the Nebraska Grocery Industry Association. And we would like to thank Senator Pirsch for introducing this bill again, and I would like to give you just a little bit of history. In 2003, the definition of a felony was changed from \$75 to \$300, and within days, as Senator Pirsch mentioned, the losses just quadrupled. And what we see are individuals and they are groups of individuals and sometimes one at a time, and what they'll do is they'll go dumpster diving, they'll grab checks, they will forge signatures, and they will hit the entire community of Omaha. And this is mostly an Omaha issue. We're seeing some of it recently in Lincoln. And what they do is they go across the town and they write checks for just under \$200, and then they'll wait, and the next day go back out and do the same thing again. Then they'll change one of the numbers in the MICR line on the bottom of the check and hit it again. And these people are professional crooks. They know exactly how the system works. They know what to do with it, and the losses that we are seeing for each individual group gets into thousands of dollars. And what we're asking for today is your assistance in stopping professional crooks from coming into our communities and taking advantage of the retailers who then are...they have to pass those losses along. It increases the costs of

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goods to everyone. So with that, I'd answer any questions and then I also have someone following me that is a...works with loss prevention in one of the stores in Omaha. [LB76]

SENATOR ASHFORD: Any questions of Kathy? And I do agree with you that it is a major issue, having been in retail for a long time. And there are ways to protect against it, but they're not always foolproof, obviously. [LB76]

KATHY SIEFKEN: This would be between... [LB76]

SENATOR ASHFORD: Do you have any data...I missed it and Senator Pirsch made the same point that when the law was changed in 2003 to the aggregation...well, from \$75 to \$300. Do you have any data on that? [LB76]

KATHY SIEFKEN: We have actual case histories. [LB76]

SENATOR ASHFORD: Do you have any...I'm not disagreeing with you. I've seen this. I mean, I believe you that this happens. But it might be helpful to have... [LB76]

KATHY SIEFKEN: So do you want to know what we went... [LB76]

SENATOR ASHFORD: Well, the law changed in 2003. There was an increase... [LB76]

KATHY SIEFKEN: And what the losses of the dollar amount was? [LB76]

SENATOR ASHFORD: It wouldn't hurt to have, if this bill goes to the floor, to have that kind of data that says in Nebraska when we made a law change, you know, there was significant loss to retailers in that...you know, upon the passage of the bill. I think that would be an important piece of information. [LB76]

KATHY SIEFKEN: And we...I'm sure Jason has some of that just for his stores and we can get that information to you. [LB76]

SENATOR ASHFORD: Okay. You mentioned that it was...they increase...and I'm not doubting you. [LB76]

KATHY SIEFKEN: It quadrupled, yes. [LB76]

SENATOR ASHFORD: So you must...that's based on something. [LB76]

KATHY SIEFKEN: Yes, yes. Um-hum. [LB76]

SENATOR ASHFORD: Okay. (Laugh) I guess it would be helpful just to have that. All

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right. [LB76]

KATHY SIEFKEN: Okay. [LB76]

SENATOR ASHFORD: Okay. Yes, Senator Christensen. [LB76]

SENATOR CHRISTENSEN: Thank you, Chairman. Kathy, why was it changed from \$75 to \$300 then? [LB76]

KATHY SIEFKEN: The arguments that we heard were simply that with inflation going up, the felony level had never been changed and it was time to sort of get with the program and increase that because it was so low. And frankly, the way it all happened was one of those issues where we had about four hearings that day and we were hopping from hearing room to hearing room, so we didn't get in here in time and Judiciary was just finishing up when I walked in the door. I talked to Senator Quandahl who introduced the bill, and he said, don't worry about it, it's not going anywhere anyway. So I didn't worry about it. And at the end of the session, Senator Brashear had a tendency to take all of those unopposed bills and wrap them up into a little ball and throw it in, and it passed. [LB76]

SENATOR ASHFORD: Wow! We appreciate your candor, Kathy. (Laughter) Go ahead. [LB76]

SENATOR CHRISTENSEN: I guess if we're dealing with forged checks, it's not that somebody is accidentally going over, I don't understand why we would want that higher amount on there. [LB76]

KATHY SIEFKEN: It is not an accident. These are people that are intentionally defrauding retailers. [LB76]

SENATOR CHRISTENSEN: Correct, because if it's a forged check, it's not your own. [LB76]

KATHY SIEFKEN: Right. [LB76]

SENATOR CHRISTENSEN: So I guess I don't understand why it shouldn't start at 5 bucks. You know, if it's an illegal check, forged check means illegal. Why would we even want to ever raise it? I guess I'm confused there why they would have even attempted to raise it. [LB76]

KATHY SIEFKEN: I would agree with you, but you have to get the bill passed and I don't think \$5 is going to pass. [LB76]

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SENATOR CHRISTENSEN: Well, I understand, but... [LB76]

KATHY SIEFKEN: So you get what you can. [LB76]

SENATOR CHRISTENSEN: Thank you. [LB76]

SENATOR ASHFORD: Okay. (Laugh) Senator Lathrop. [LB76]

SENATOR LATHROP: Maybe I can follow up on my concern over the "one scheme or course of conduct." When the industry sees these, are they all within a week? If somebody gets a checkbook, are they going to write those checks... [LB76]

KATHY SIEFKEN: I'd say within 30 days, but they change who they look like, and then they start again. [LB76]

SENATOR LATHROP: I'll tell you that as a lawyer I'm concerned that that's unconstitutionally vague. Okay. And they may have been doing this over on the other side with bad checks, but that language, if you're going to use that as the standard for accumulating bad checks to turn misdemeanors into a felony, then it has to be clear enough to the person who's about to do it so that they know what that means. And to say "one scheme or course of conduct," and I didn't frankly...when Senator Pirsch was trying to answer my questions, I didn't get a sense of...I understand what the typical is, it's all going to happen within two days, like Senator Rogert's experience. So why don't we just say within a week's time or... [LB76]

KATHY SIEFKEN: If you said within 30 days, you'd catch everybody that we're after. [LB76]

SENATOR LATHROP: Okay. [LB76]

KATHY SIEFKEN: But I don't know if that is... [LB76]

SENATOR LATHROP: Well, we might say one scheme... [LB76]

SENATOR ASHFORD: Apparently some people disagree with you, but maybe we'll hear from them. [LB76]

SENATOR LATHROP: One scheme or course of conduct, but not more than 30 days. [LB76]

KATHY SIEFKEN: The "not more than 30 days" would catch the issues that we see in grocery stores is what I'm telling you. [LB76]

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SENATOR ASHFORD: I mean, one of the...and Senator Christensen's point it's a logical question, and that is if it's bad to write a forged check no matter what the amount is is a legitimate point. I think, you know, the countervailing argument is, well, if we made all those things felonies, we pay \$30,000 a year or \$28,000 a year to put someone in the corrections facility. And then that gets to be a burden on the taxpayers, so we try to create a balance that still gets at the problem. Following up with Senator Lathrop's question I think is a good point. And that is, we are theoretically making this a felony, we are making this a felony in this bill to aggregate forged checks. My experience as a retailer for many, many, many, many, many, many, many, way too many years to think about, is that it is...the scheme is relatively close in time. It is a concentrated sort of thing. The problem is when you get hit with one of these, you're mad as heck and you want this person arrested and you want it to stop, not only for yourself but for your other stores that are getting hit as well. Clearly happens, no question it happens, it's a bad deal. You know, and you want to be able to get prosecutors to prosecute. It seems to me one of the best ways to do that is to follow in with Senator Lathrop's point is to be very definitive. You may miss a few if you use the looser language or the broader language. And I agree with Senator Pirsch that that is language that is in the statutes, but if you're talking about really enlarging felony prosecutions here, that you may want to be more specific and maybe there are other states that have tested more specific language. It is a problem, but maybe following Senator Lathrop, maybe there is another way to do it. But appreciate your point. Any other questions? Thanks, Kathy. [LB76]

KATHY SIEFKEN: Thank you. [LB76]

SENATOR ASHFORD: Yes, next supporter. Do we have opponents here? No opponents. [LB76]

SENATOR ROBERT: The bad check writers. (Laughter) [LB76]

SENATOR ASHFORD: Listen, we have the...just wait, Senator Robert. Go ahead. [LB76]

JASON OWENS: Chairman Ashford, members of the Judiciary Committee, I'm Jason E. Owens, last name is O-w-e-n-s. I represent Hy-Vee grocery stores in Omaha, Council Bluffs, and Papillion. What I'm going to talk to you today about is an individual case, and this might clear up some of the questions. We had one individual that was within a group of a criminal network, went around and...by criminal network I mean burglaries, car break-ins, things of that area. She was the person that cashed the checks at the stores. Her job was specifically to do that. She was caught by law enforcement in Cass County. When she was pulled over, she was throwing numerous checkbooks, checks out the window. They blew all over, but the checks that they did find in her vehicle were tracked back to these events that I had stated before. She was linked back to grocery

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stores within the Omaha metro. It was Douglas County, Lancaster County, Cass County, Otoe County, Sarpy County. She was charged in Cass County. She had numerous people's checking accounts. She had five counterfeit IDs, and she had one stolen ID that looked a lot like her. This stolen amount for Hy-Vee alone totalled \$3,991.82. Now, this tracked over a period of time of about five months. We weren't able to put a suspect together because we didn't know exactly who we were looking for on the video, but we had video. And once we got all that information put together, we was able to go back and locate those checks that had been written at the store and track that back to she was involved. She had other accomplices. Like I said, it was a criminal network. She did not have a job, but she was able to rent a house for I think it was a period of time of a year. That's kind of where the bill is trying to catch those people that we have that are on a continual basis that are going in, breaking into vehicles, disrupting people's lives. Says time. Any questions? [LB76]

SENATOR ASHFORD: And I think that's what we're struggling with is to get at the problem that you...clearly a valid point, clearly a problem. How do we get at it and still remain...have language which will be utilized by prosecutors and law enforcement? That's, I think, the issue, so. [LB76]

JASON OWENS: I can...as far as the data and stuff, there was one guy that was put away and he's in the penitentiary right now from what I understand that he had counterfeited \$32,000 worth of checks. And he got a hold of a person that was like this, and basically they went around and started passing these at different stores. And they had the technology to counterfeit IDs, they had the technology to counterfeit the checks. They were actually printing the checks in the van on the way to the grocery stores, on the way to retail stores. And then a lot of times they turned these...the product that they purchase at the grocery stores, they'll turn that back in with a receipt, they'll take that cash and it'll be a seven- to ten-day period by the time you would get your checks back to even know that that was a bad check. And a lot of retailers, you know, they're so busy they're not going back to look at what it was paid for with. [LB76]

SENATOR ASHFORD: And there might be a federal...isn't there a federal jurisdictional issue here too? [LB76]

JASON OWENS: I worked with Secret Service, U.S. Marshals, F.B.I., U.S. Postal Inspectors. [LB76]

SENATOR ASHFORD: Okay. Good. Okay. Thanks for your comments. [LB76]

JASON OWENS: Yes. [LB76]

MICHELE BANG: I'm Lieutenant Michele Bang with the Omaha Police Department. I'm currently assigned to the major crimes unit. Part of our job responsibilities is to

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investigate fraud-related crimes, including forgery. We average between 250 and 300 cases per month related to fraud-related crimes. The vast majority of those are related to fraudulent checks. I do have some examples of checks so that you could see the high quality of these checks. Today, checks that are stolen out of mailboxes and burglaries are not even the most common checks being forged. Now they with the readily available materials at Office Depot, Magnetic Ink, you can produce your own checks. And at the bottom of the check, you have everything you need in order to do that. All the account numbers, routing numbers, all that is available. So a retailer who accepts these checks, if they run it through the system, it will come up as a good check. So it's not always as easy to spot as what we might think. And essentially the conveniences for the legitimate customers have become...is what they're exposing. We had one gentleman who was arrested and he had made a mistake. And his scheme was is he was a crack addict, and that's where that scheme comes in. It's very similar to trying to develop a conspiracy case, in your interviews and the evidence is what builds the scheme. I am less concerned about this person acting as an individual than I am concerned about the people acting in a conspiracy or network. And this gentleman essentially would go in and he would write checks under the \$300 amount. What he did, though, was he accidentally made a mistake and ended up over that \$300 amount and got booked. And when he was booked for the felony he asked and he goes, well, isn't forgery under \$300? He knew exactly what he was doing. And over the course of several months, he was writing checks on several different accounts. We recently investigated a large forgery ring in the Omaha, Nebraska, area with over \$110,000 in known losses. This is...the suspect is currently awaiting trial. His name is Kevin Dean (phonetic). He basically would recruit, there was layers within this organization. So they would have recruiters, and then they would have check cashers. And the check cashers are usually folks that are down on their luck, that are willing to take a felony hit even over the \$300 amount in order to get that money, and they would pay them for that money. Once again, all the information you need is right on the bottom of the check. So you are able to take an organization such as Burger King. I'd pay you \$20, let me scan your check. Scan the check, now I have everything I need in order to make a check. Burger King is a large enough organization if I write a \$600 check and go into Hy-Vee, it's going to look like a payroll check, it's going to look legitimate. And if I have a good ID, they're going to cash the check. Well, it's several days later and Burger King may not realize it because they're a large enough organization that they're not going to see that loss right away, so it takes time for that to happen. And so these are very real losses. It's not going to prevent us from having forgery charges, but it's just another tool in the tool belt. [LB76]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB76]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Thank you for coming and testifying today, and I may be asked...you may be the wrong person to ask this question to, but I don't know the answer to it. I've just been turning this over in my own mind. I'm not sure I share Senator Lathrop's concerns, but I understand what he's saying. And I

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can see a course of conduct occurring every something you do every 45 days and it would still be a course of conduct in my mind. So I'm not comfortable with the 30 days. Is there some definitional way to...I know nothing about retail. Let me state that up front. But are there definitions in there that set forth what you're talking about? And do you know? [LB76]

MICHELE BANG: Well, I'm not a legal expert. Of course, I usually defer that to the prosecutors that I work with. But usually what they do is they have a specific number of witnesses, and it's not specific. There's things that make them feel comfortable that they're going to be able to prove the case beyond a reasonable doubt. So, no, I don't believe there's any strict statutory definitions that we have in order to show it. What it is showing that there's a pattern of behavior that shows intent and that this is a criminal network and that they're working in conjunction with each other to further their...but, again, I am not a legal expert so I would defer to the legal experts. [LB76]

SENATOR LAUTENBAUGH: I'm probably using your testimony to think out loud, and I apologize for that. [LB76]

MICHELE BANG: That's okay. [LB76]

SENATOR ASHFORD: Yeah, Senator Lathrop. [LB76]

SENATOR LATHROP: You bring up an interesting point, and that is the language. I've been thinking of it as that one-person scheme, but your concern is that you could have a burglar go into homes or...yeah, go into homes, take out checkbooks, go find himself a crack addict, and as soon as the two of them agree that he's going to go forge a check for \$15 at the Kwik Shop, it becomes a felony for both of them because it was a scheme that got them to the \$15 forged check. [LB76]

MICHELE BANG: Correct. And I don't know that. I think what this does is it allows us to deal with the individuals that...and once again, I mean. I understand diversion, I understand that many of these suspects, they have...I mean, there are basically...and I say this in a...but they're being used by somebody who's much smarter than them. They're usually drug addicts, they're not very smart and they're poor and they need their money for either their fix or some of them are literally...they're just poor and it's worth the risk. I need the \$300 right now to go out and do it. But like the gentleman I was talking about, naturally this was a gentleman, and also I use that term loosely, it was a man who victimized Hy-Vee. What he would do is he'd go in and he would write checks, and in the interview--and that's where it becomes important and it helps for our prosecutors to be able to establish that this is a scheme--he acknowledged: I would go into the store and I'd buy Newport cigarettes, Newport cigarettes or something that could be traded for crack. So that's what I did. Now, that shows the scheme. And I always wrote under \$300 because I know that's the misdemeanor amount. Well, we

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never...and he was charged two years prior to that for I believe eight counts of misdemeanor forgery. And then two years later he's doing the same behavior again. And so I think that's where you show the scheme. On a conspiracy case you can simply charge in addition to the forgery, you can charge the conspiracy for the people higher up in the ring. [LB76]

SENATOR LATHROP: So the scheme as it relates to a couple of people, that you could get with a conspiracy theory. [LB76]

MICHELE BANG: You could still do a conspiracy case without this law. This law just allows us...also what it does because a lot of time these people are part of a network, they are part of a group, is it give you the hammer to hold over people's heads to cooperate to help to prove the conspiracy. The people at the top are isolated. It's no different than a drug network except now we're just dealing with checks. But the person at the top is isolated, he's got the lair in between him of the recruiters. These people are the ones that are going out and finding the check cashers. The cashers don't know the guy at the top, and so we need the hammer to help us to get to the guy at the top. This is the guy making all the money. And just as it give us another tool in order to try to basically deter this theft. [LB76]

SENATOR LATHROP: Is this the same language that's found in the bad checks? [LB76]

MICHELE BANG: Well, unfortunately OPD doesn't investigate bad checks, that's at the county attorney's level. So I believe it is, but I couldn't say for certain. [LB76]

SENATOR LATHROP: Okay. [LB76]

SENATOR ASHFORD: Yeah. This is very helpful, and I think your testimony is very good. I think that it is...most of these things are related to other things and it is using people in poverty, which is in all this gang stuff we've looked at is so much the case where you've got...whether it's guns or whether it's illegal weapons or whether it's checks or whatever it is, it's a means of obtaining cash to do what you do. And they use people who are clearly...and oftentimes women. Isn't that the case? I mean it is with some things, poor women. [LB76]

MICHELE BANG: It's both. [LB76]

SENATOR ASHFORD: But women are victimized in this. [LB76]

MICHELE BANG: Correct, and also they may be easy to... [LB76]

SENATOR ASHFORD: I mean in a sense, they're victims because they're in such bad shape that they'll go in and do this, I guess. [LB76]

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MICHELE BANG: Oftentimes it is women. It's not just women that perpetrate this, but they're also...you know, they have the fear of physical intimidation that controls them as well. So if you use a female or you use an addict, so. [LB76]

SENATOR ASHFORD: Right. Thanks. [LB76]

MICHELE BANG: Any other questions? Thank you very much for your time. [LB76]

BOB HALLSTROM: Chairman Ashford, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB76. I think you've heard plenty about the highlighting of the problem. Obviously in the banking industry the issues of desktop publishing, check laundering, identity theft, all leads to the problem which results not only in retailers facing losses, oftentimes under the loss allocation rules, banks can face losses and individual consumers as well. And we certainly support the legislation. Be happy to address any questions the committee may have. [LB76]

SENATOR ASHFORD: Thanks, Bob. Any questions of Bob? Thank you. [LB76]

BOB HALLSTROM: Thank you. [LB76]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Senator Pirsch? Senator Pirsch waives, so that concludes the hearing and we'll go to LB148, I think, yes, LB148. [LB76 LB148]

SENATOR PIRSCH: Members of the Judiciary Committee, I'm state Senator Pete Pirsch once again, Legislative District 4. I'm also the sponsor of LB148. LB148 would amend Nebraska criminal statute 28-306 regarding penalties for motor vehicle homicide, which is a Class IIIA felony currently. LB148 also would amend Nebraska statute 28-394, kind of a sister statute, regarding penalty for murder vehicle homicide, which is a Class IV felony currently. LB148 allows discretionary license revocation under the first statute of at least 1 year and not more than 15 years, and under 28-394...and 28-394 allows for a discretionary license revocation of at least 60 days, not more than 15 years. It is my understanding that Mr. Cunningham is going to come with an amendment to the bill as language as introduced, and I welcome that as a friendly amendment to the matter and am a proponent of his amendment as well. Essentially 28-306, which deals with murder vehicle homicide, the element that has to be displayed is either reckless or willful reckless driving, the two highest levels of dangerous driving in Nebraska law. And what is...and we talked about the, you know, a little bit of the concern that we don't want to unnecessarily just simply add penalties for more jail time. There's a concern out there for that, and this does not do that. This simply states that there is...adds a license revocation to the list of penalties or to the existing penalties that

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happen when you do cause someone to die because you've intentionally engaged in reckless or willful reckless driving, so. And again, the 23-94 (sic) deals with causing the death of an, in the sister statute, the death of an unborn child. So those two statutes would be affected just simply by adding revocation penalty to the existing penalties. [LB148]

SENATOR ASHFORD: Okay. Any questions of Pete? Thanks, Pete. Proponents? [LB148]

JIM MAGUIRE: Good afternoon, Senator Ashford, senators of the Judiciary Committee. My name is Jim Maguire. I'm president of the Douglas County Deputies Union. This bill was...it started May of 2007 when I had a good friend of mine get killed in a car accident, and during that, the driver was convicted of reckless driving. And the problem that exists in the law is that it only allows the revocation of the license for points. And all this bill is allowing the judge to do is to give them the option of suspending their license for 1 to 15 years. If you are involved in an accident where you hurt somebody and you drive away, you don't render aid, you don't tell them who you are, you can lose your license for 1 to 15 years. Yet if you are driving in such a manner that you don't care who is out there, you don't have to lose your license, you only do it for points. And that's where this bill kind of started for me. I'm not going to sugarcoat it, it's a very personal bill for me. It was hard for me to see the defense attorney in there explain to the judge that it would be an inconvenience of this person to not to be able to drive. And for my friend to be buried in the ground and him not to have any say-so, and that's where this kind of all starts. This bill has the complete support of all the deputies in Douglas County, I know for the State Fraternal Order of Police. And this was gone over at length with Don Kleine who is the Douglas County Attorney. And about the only thing that I want to add is that driving in Nebraska is not your right, it is a privilege. If you're going to drive recklessly...you could be driving in a manner where you could be drag racing and you kill a family of four, you weren't just happening...you weren't drinking, you can have your license within that one year. And that's where the premise of this bill hopefully will be supported and changed. Thank you. If you have any questions, I'd be happy to answer them. [LB148]

SENATOR ASHFORD: Thanks, Deputy. Any questions? What were the circumstances of the case, if I might, just generally... [LB148]

JIM MAGUIRE: The deputy's name was Shad Nicks. He was riding a motorcycle and the other driver was coming out of Gretna, and she was driving on the wrong side of the road. From personal experience, I've worked a bunch of accidents. I had one where some kids were driving to Fort Calhoun, they were driving 90 miles an hour on 72nd Street. And they tried to jump a hill and they killed...the age of the passengers were 14, 15, and 17. And that driver...the only legal way for that person to not drive was when he lost his license because of points. The judge did not have any say-so in...you know, a

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part of your probation, we're going to take your license for this. If you don't do your probation in a certain way, I'll take your license away. For a young person, that's a very strong motivation to make sure they're doing everything that they're supposed to. But I could give you example after example in Douglas County about, you know, speeding and people not caring about anybody else on the road. [LB148]

SENATOR ASHFORD: Well, thanks for the work you do and appreciate it. [LB148]

JIM MAGUIRE: Thank you. [LB148]

SENATOR ASHFORD: Any other proponents? [LB148]

GREG GONZALEZ: Good afternoon, Senators. My name is Greg Gonzalez. The last name is spelled G-o-n-z-a-l-e-z. I'm a lieutenant with the traffic unit at the Omaha Police Department. And I'm in charge...one of the responsibilities I have, I'm in charge of 14 accident investigators and we investigate crashes throughout the city of Omaha. I'm just going to give you a few statistics on accidents that we encounter throughout the city. In 2008, we arrested over 3,800 drunk drivers; we investigated 28 fatality accidents; over 4,000 hit-and-run accidents, many I'm sure involved drunk drivers; and approximately 800 serious injury collisions. The reason I'm here today is I was sent here on behalf of Chief Buske of the police department to endorse this bill. Personally, I think it adds a little bit of teeth in the statute so folks are held accountable while they are driving reckless or under the influence of alcohol. And that's essentially why I'm here today, so I can answer any questions you have for me. I just want to give you the insight of the Omaha Police Department. [LB148]

SENATOR ASHFORD: It was 4,000... [LB148]

GREG GONZALEZ: We investigated over 4,000 hit-and-run accidents throughout the year, and if we could prove everyone that was drunk... [LB148]

SENATOR ASHFORD: Hit-and-run, 4,000 hit-and-run? [LB148]

GREG GONZALEZ: Over 4,000. [LB148]

SENATOR ASHFORD: All varying kinds? [LB148]

GREG GONZALEZ: All vary, some involve drunk drivers that admit to us later during interviews. There's a majority of them I'm sure that were scared, didn't have a license, maybe had warrants, things of that nature. [LB148]

SENATOR ASHFORD: You guys do a great job. [LB148]

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GREG GONZALEZ: We try. [LB148]

SENATOR ASHFORD: Thanks, Greg. [LB148]

GREG GONZALEZ: Thank you. [LB148]

SENATOR ASHFORD: Any other proponents? Opponents? Did I go through all that? I guess I did. Neutral? Jim is going to testify on this, give us some background I think. [LB148]

JIM CUNNINGHAM: (Exhibit 4) Senator Ashford and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I'm testifying in my capacity as executive director of the Nebraska Catholic Conference, which represents the public policy concerns and interests of the three Catholic dioceses in Nebraska. I'm testifying in a neutral position because I don't have a position to express with regard to the substantive matter of the bill, the license revocation issue. I'm not representing a position on that issue. However, I would like to ask the committee respectfully that if you see fit to advance this bill that you use it as a means and an opportunity to accomplish some further harmonizing between the two sections of Chapter 28 that comprise the bill. Senator Pirsch was correct, and I want to thank him for, first of all, for including Section 28-394 in his proposal because that just makes sense to do it that way, and also to thank him for his acceptance of this amendment. And I do have an amendment that I'd like to share with the committee. The purpose is really plain and simple, and that is that the motor vehicle homicide of the unborn child law was part of the Homicide of the Unborn Child Act that was passed by this Legislature on a very overwhelming vote in the year 2002. But LB824 originated in the first session in 2001, and the original bill dealt with adding the unborn child as a victim of homicide within the construct of the regular law in homicide. It just would have added unborn child with person in the context of victim. There was a lack of comfort about taking that approach on the part of members of the Judiciary Committee. This was Senator Foley's bill. Senator Foley and Senator Brashear, who was Chair of the committee at that time, worked together during that session and then over the interim to come up with the concept of a parallel law, a homicide law, and then a parallel homicide of the unborn child law. And the idea was is that the two laws would be the same, except the victim under the Homicide of the Unborn Child Law would be the unborn child. Unfortunately, and this is the way they occurred to my best recollection, after this agreement was made, whoever was charged with the responsibility for finding the model for the unborn child homicide law looked at the reissue bound volume of the statutes and didn't check the 2001 supplement. There had been an intervening bill in 2001 that dealt with this particular subject of motor vehicle homicide inadvertently, and I can I think assure you unintentionally, that was overlooked. And so there are three provisions I would like to ask you to add to 28-394. One is found on lines 5 through 8 on page 3. That has to deal with prior conviction of drunk driving I believe in another state. The second one is lines 13 through 16 on page

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3 that has to do with when the revocation is administered in conjunction with sentencing. And the third one would have to do with, on line 4 of page 3 to just add the words "or 60, 197.06" (sic). Again, that was a later change in the motor vehicle homicide law that wasn't picked up for purposes of the motor vehicle homicide of the unborn child law. And so I would ask you that if this bill is to move forward that you use it as an opportunity to do that harmonizing because that was the intent in the original LB824. [LB148]

SENATOR ASHFORD: What was the third point? [LB148]

JIM CUNNINGHAM: The third point is on line 4 on page 3. There was a subsequent bill, LB208, in 2003 that added the words "or 60, 197.06" (sic), and I'm not totally... [LB148]

SENATOR ASHFORD: It says 60-6. [LB148]

JIM CUNNINGHAM: If you compare that with the Homicide of the Unborn Child Act, you'll find that it says Section 60-6,196 and it doesn't have the "or" in the other. So it's a harmonizing amendment and I would ask you to consider it. Thank you. [LB148]

SENATOR ASHFORD: And you drafted...and it's here. [LB148]

JIM CUNNINGHAM: I have an amendment drafted and I have a clean copy of that amendment as well. I wanted to articulate the purpose on the page to be simple about it. Thank you. [LB148]

SENATOR ASHFORD: Okay. Any questions of...I think I get it, I mean, I do get it generally. (Laugh) And if not... [LB148]

JIM CUNNINGHAM: There was a statute supplement and somebody forgot to look at it. [LB148]

SENATOR ASHFORD: Right, right. Okay. That's okay. Okay. Any other questions of Jim? Thank you, sir. [LB148]

JIM CUNNINGHAM: Thank you. [LB148]

SENATOR ASHFORD: Any other neutral testifiers? Senator Pirsch, do you wish to close? [LB148]

SENATOR PIRSCH: No. [LB148]

SENATOR ASHFORD: (See also Exhibit 5) Okay. That concludes the hearing on LB148 and concludes all of the hearings. Thank you all for coming and thank you,

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Deputy, for sharing your comments. [LB148]

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Disposition of Bills:

LB76 - Placed on General File with amendments.
LB123 - Placed on General File.
LB148 - Held in Committee.
LB151 - Placed on General File with amendments.

Chairperson

Committee Clerk