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Judiciary Committee  
February 11, 2009

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[LB252 LB347 LB409 LB472 LB494]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 11, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB409, LB347, LB252, LB494, and LB472. Senators present: Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: Brad Ashford, Chairperson. []

SENATOR LATHROP: Good afternoon. Welcome to the Judiciary Committee. My name is Steve Lathrop. I am the Vice Chair. And our Chairman is out of the state, so I'm going to Chair the committee hearing today. Few things you ought to know about before you come up here to testify, the process or sort of the ground rules. We, I believe, have five bills that we're going to take up. We'll announce what bill is going to be heard first. And then the senator introducing the bill will come up and speak. Then we will have proponents that will speak, then we will have opponents. And if you are here in a neutral capacity you'll also be given an opportunity to speak. We will ask you to limit yourself to three minutes, except for the introducers. We keep track of that with a light. Our committee clerk will make sure that that happens. You'll get a yellow light...you'll have a green light when you sit down. You'll get a yellow light when you've used two minutes. And when that light turns red we'll ask you to wrap it up. And if you don't, I'm going to have to interrupt you, and I don't want to have to do that because it always feels like I'm being rude. But we'll interrupt you only because we have five bills to be heard today and so that we get through all of them and not have to stay here until tomorrow. That's the process. I think that's the rules. Our first bill is going to be...I should introduce members of the committee too. Senator Coash has just arrived, from Lincoln; Senator Scott Lautenbaugh; Senator Brenda Council; Senator Amanda McGill; and Kent Rogert from Tecumseh...Tekamah. Anyway with that, we'll start with LB409 and Senator Cap Dierks. Good afternoon, Senator Dierks. [LB409]

SENATOR DIERKS: Good afternoon, Senator Lathrop and members of the Judiciary Committee. For the record, I'm Senator Cap Dierks. That's spelled C-a-p D-i-e-r-k-s. I represent District 40 in the Legislature. I'm here today to introduce LB409, a bill that was brought to me by the State Fire Marshal. Current state statutes define police animal as "a horse or a dog owned or controlled by the state of Nebraska for the purpose of assisting a Nebraska State Trooper in the performance of his or her official enforcement duties." This definition is too narrow and leaves many law enforcement animals with no protection while performing their duties. LB409 would expand the definition of police animal to include "a horse or a dog owned by any law enforcement agency of Nebraska," not just the State Patrol. The animals utilized by the county and city law enforcement agencies within our state are required to undergo rigorous training and are used by their handlers to help the officers perform viable law enforcement functions. These animals' loyalty...these animals loyally serve the citizenry of this state and

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deserve protection from being harmed or harassed while performing their duty. LB409 would also establish a new definition and provide protection for dogs used to help investigate fire scenes. Arson dogs, like those utilized by the State Fire Marshal's Office, provide fire scene investigators with invaluable information about the nature of many fires. These dogs enable investigators to find vital evidence that can be used in the prosecution of arson cases, thus helping to ensure the protection of the public. The State Fire Marshal is here and will be testifying regarding the role these arson dogs perform within his agency. Thank you for your time and attention to LB409. I will try to answer any questions you might have. [LB409]

SENATOR LATHROP: Thank you for the introduction, Senator Dierks. Are there any questions? I don't see any. Do you want to stay and close, Senator? [LB409]

SENATOR DIERKS: I'll stay for a while. I've got a bill coming up over in Revenue Committee I'll have to go to. [LB409]

SENATOR LATHROP: All right. Well, if you're not here, we'll figure you are waiving. [LB409]

SENATOR DIERKS: One that you're all very interested in, I know. (Laughter) [LB409]

SENATOR LATHROP: All right, I'll have to find out what that is. (Laughter) [LB409]

SENATOR DIERKS: Thank you. [LB409]

SENATOR LATHROP: The first proponent of LB409. [LB409]

JOHN FALGIONE: Good afternoon, Senator Lathrop and the rest of the members of the Judiciary Committee. For the record, I am State Fire Marshal John Falgione, J-o-h-n F-a-l-g-i-o-n-e, and I'm here to testify in support of LB409. I want to thank Senator Dierks for sponsoring this bill. Arson dogs perform a variety of functions within our agency and are an invaluable resource. There are currently two dogs in our agency--Ashley, a Black Labrador, and Ali, a Yellow Labrador. These dogs along with their handlers received their training and certification through the Maine State Police. These dogs are further trained on a daily basis by their handlers. These dogs are primarily utilized during fire scene investigation to determine if a hydrocarbon-based material is present at the fire scene. They have the ability to smell hydrocarbon-based material in parts per billion. The equipment...the laboratory standards of parts per million is what they have to gauge against. In 2007, Ali and Ashley were used in 75 different investigations, one of which resulted in the determination that the fire was a case of arson in the first-degree and attempted murder in the first-degree. Fire scene investigations are not the only time these dogs are used to help protect the public. These dogs are also used in public demonstration and education programs designed to

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promote fire safety awareness and prevention. Since the State Fire Marshal's arson dogs are not utilized for handler protection or suspect apprehension, these dogs are not trained in attack tactics and as a result are much more accessible for the general public. However, their general nature and disposition can result in them being an easier target for individuals wishing to stop them from performing their jobs. LB409 would acknowledge the important role these dogs perform and provide statutory protection for them while they are performing their duties. The bill will make it a Class IV misdemeanor to commit the listed acts against the animals, unless the actions taken by the person results in serious illness, injury, or death of the animal in which case the offense becomes a Class IV felony. There are examples from across the nation of malicious acts committed against arson dogs. For example, Charles Caldwell, a member of the Illinois State Fire Marshal's Office, had his arson dog, Chrissy, shot with a shotgun while she was in his backyard. Arson dogs perform a vital role in the investigation of fires and help in the education of citizenry regarding fire prevention. They perform these duties loyally and with no regard for fame or notoriety, as such they deserve to be provided protection from being harassed or harmed while they are performing their duties. Thank you for your time and the opportunity to testify in support of LB409. And I'll be happy to try to answer any questions you might have. [LB409]

SENATOR LATHROP: Thank you, Marshal. I think Senator Rogert has a question for you. [LB409]

SENATOR ROGERT: John. [LB409]

JOHN FALGIONE: Yes, sir. [LB409]

SENATOR ROGERT: Would this protect them when they're not performing their duties as well, or only on duty? [LB409]

JOHN FALGIONE: This would protect them, I believe, we're going to try...it will be a protection because they're just like an officer,... [LB409]

SENATOR ROGERT: Um-hum. [LB409]

JOHN FALGIONE: ...and we'll protect them, the way the bill states here, we'll try to protect them at all times. But especially where the harm usually comes from is when it's...when they're on the scene and on duty. [LB409]

SENATOR ROGERT: Can you give us an example of why somebody would want to harm an arson dog when he's doing his duties. I mean, I can think of a couple, but I'd like you to give us a couple. [LB409]

JOHN FALGIONE: Yes. In cases we have...these dogs are friendly dogs. And

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sometimes people that do set the fires may use an accelerant, will stay there. Well, these dogs can detect whether these people, when they go by them, if they have this...have an accelerant on them, in their clothing or on their shoes or whatever. We've had cases where people, once they see the dog is working and going to work, they don't want the dog into the fire scene and they'll make an attempt to try to stop them from getting into a fire scene. [LB409]

SENATOR ROBERT: Thanks. [LB409]

SENATOR LATHROP: The prohibition would be against harassing them for purposes of preventing them from doing their duties as a fire dog. [LB409]

JOHN FALGIONE: Absolutely, yes, sir. [LB409]

SENATOR LATHROP: So if they're in the backseat of a car and somebody...and the car is parked in the parking lot, and somebody is tapping on the glass, that's not a violation of this. But only if they are trying to do their work at a fire scene. [LB409]

JOHN FALGIONE: Correct. [LB409]

SENATOR LATHROP: Okay. I think I understand the bill. Thank you. Any other questions? All right. Seeing none, thanks for your appearance here today. [LB409]

JOHN FALGIONE: Thank you. [LB409]

SENATOR LATHROP: Anyone else here as a proponent? [LB409]

GARY KRUMLAND: Senator Lathrop, 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 in support of LB409. The current law right now does make harassing a police dog a crime, but the law only applies to State Patrol dogs. And we support LB409. It does expand it to all law enforcement agencies and law enforcement dogs. So it is basically taking the current policy that's in state law and expanding it to other situations, similar situations where the police officers use dogs. And at the bottom of page 5 it specifically says, to answer the question that a person commits harassment of a police animal, and just skipping this, "teases, harasses, etcetera, in order to distract, agitate or harm the police animal for purposes of preventing the animal from performing its legitimate official duties." So it is a very narrow position. And that is the current law and that's not being changed by LB409. The only change is that it expands "police dogs" to all law enforcement agencies and adds arson dogs to the dogs that are covered by this. [LB409]

SENATOR LATHROP: Very good. Thanks, Gary. Any questions? I don't see any. Thank

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you for your testimony. [LB409]

GARY KRUMLAND: Okay. [LB409]

ED BURMOOD: (Exhibit 1) Good afternoon, senators. My name is Ed Burmood, B-u-r-m-o-o-d. I'm a police officer with the city of Hastings. I am also the president of the Nebraska Police Canine Association and I'm here to testify for LB409 in that capacity, as well as for the Police Chiefs of Nebraska Association. You will be receiving a letter authorizing me to speak on behalf of the PCAN. First, I'd like to thank you for taking your time to hear this bill and consider what it would mean for police officers and their dogs across the state. As mentioned before, this is a change of the definition of a police animal to basically just eliminate the words of "State Patrol owned or controlled" to being "all law enforcement animals." This new definition will affect the following statutes 28-906, 28-1008, 28-1009, and 28-1013. And I've included copies of these for your convenience in my packet. Senator Lathrop, you had the question about tapping on the window. And I'd like to address that a little more specifically, if I could. In some cases that I am aware of there has been a time when dogs have been harassed in the back of the police vehicle to the point where the dog is agitated and he starts spinning in the vehicle. Senator Dierks being a veterinarian can probably attest to this that that can cause torsion, which is a flipping of the stomach and the gases build up in the stomach and surgery is needed immediately to save the dog's life, I think within 30 minutes. So that can come down to being a loss for the agency monetarily as well as the resource. Implementing this change to the statutes would allow those agencies to have an avenue for recouping their losses or preventing it altogether. I thank you for your time. If you have any questions, I'd be willing to answer them. [LB409]

SENATOR LATHROP: All right. Thank you. Senator Coash. [LB409]

SENATOR COASH: Thank you, Chairman Lathrop. Thank you for testifying, Ed. I'm just curious. Have you ever seen that experience where a police dog has needed to have surgery because of that torsion I heard you speaking of? [LB409]

ED BURMOOD: I've not seen it. I've just heard it from an officer that had that experience. [LB409]

SENATOR COASH: Here in Nebraska? [LB409]

ED BURMOOD: Yes, sir. And my dog also died under suspicious circumstances in his own kennel. And through the biopsy or the autopsy they found that he was probably poisoned. [LB409]

SENATOR COASH: Thank you. [LB409]

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SENATOR LATHROP: Senator Council. [LB409]

SENATOR COUNCIL: Yes, thank you, is it Officer Burmood? [LB409]

ED BURMOOD: Yes, sir...yes, ma'am. Sorry. [LB409]

SENATOR COUNCIL: All right. I want to ask you a question from your role as president of the Nebraska Police Canine Association. [LB409]

ED BURMOOD: Okay. [LB409]

SENATOR COUNCIL: Are the training standards the same for dogs that are under the authority of the Nebraska State Patrol and dogs that are under the authority of local law enforcement officials? [LB409]

ED BURMOOD: Yes, ma'am. In fact, our bylaws have that in them that they will be trained and certified through the same standards that the Nebraska State Patrol uses. [LB409]

SENATOR COUNCIL: Thank you, Senator Lathrop. [LB409]

SENATOR LATHROP: That does make me wonder if the bill shouldn't say a "certified dog." I mean, what if the...how do we know if it's a true police dog that falls under this. What if a guy is law enforcement, and I'll pick on Seward, Nebraska, and they have something happen. And a guy says, well, I'm going to go get my Lab and bring it down here and have her nose around and somebody harasses that dog. Is it any dog somebody uses in the course of trying to investigate a fire or a law enforcement issue, or should it be dogs that are certified as fire dogs or law enforcement dogs? [LB409]

ED BURMOOD: My personal opinion and the opinion of the NePCA is that they should be certified. And... [LB409]

SENATOR LATHROP: Have you had some discussion in your organization about that? Sounds like, you know,... [LB409]

ED BURMOOD: We have introduced this...a similar bill over the last couple of times. And we actually were trying to get that incorporated at the same time, but it seemed like it was creating too much of a hornets nest and who was going to decide what certification we were talking about. The same group that decides what police officers certifications are would also determine the canine certifications. [LB409]

SENATOR LATHROP: Well, you've got...do you have an organization you think we ought to recognize as the official certifying agency? [LB409]

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ED BURMOOD: Yes. [LB409]

SENATOR LATHROP: And who's that? [LB409]

ED BURMOOD: And that would be the law enforcement...it escapes me. [LB409]

SENATOR LATHROP: Are you certified by these guys? [LB409]

ED BURMOOD: (Laugh) As a dog handler, no; as a police officer, yes. [LB409]

SENATOR LATHROP: Okay. Maybe you can get it to us after the hearing. [LB409]

ED BURMOOD: Yes. [LB409]

SENATOR LATHROP: It just seems to me that we could have some guy out in a small community go get his Black Lab out of the kennel and take it to a crime scene. And the question would be whether he falls inside the statute or outside of it. [LB409]

ED BURMOOD: And we definitely don't want that, because we don't want bad case law out there either. [LB409]

SENATOR LATHROP: Okay. Maybe you could share with the committee or Senator Ashford's Office the name of the certifying organization, if you guys can agree on it. [LB409]

ED BURMOOD: Um-hum. yes. [LB409]

SENATOR LATHROP: Okay. Senator Council. [LB409]

SENATOR COUNCIL: And you touched on another point, too, Officer Burmood, under...in certain law enforcement agencies the handlers have to be certified, too, or undergo a specified training regimen in order to be assigned a canine. [LB409]

ED BURMOOD: Yes. [LB409]

SENATOR COUNCIL: Is there a central certification for handlers agency? [LB409]

ED BURMOOD: The certification comes with the dog team, that would be the officer and the dog. All my certifications and recertifications had my name and the name of my dog. [LB409]

SENATOR COUNCIL: And so the same certification that Senator Lathrop was referring

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to, that canine certification would encompass the officer assigned to... [LB409]

ED BURMOOD: All inclusive. [LB409]

SENATOR COUNCIL: ...that dog. [LB409]

ED BURMOOD: Yes, all inclusive. [LB409]

SENATOR COUNCIL: Okay, okay. [LB409]

SENATOR LATHROP: Very good. Thanks for coming down. [LB409]

ED BURMOOD: Thank you. [LB409]

SENATOR LATHROP: Next proponent, if any. [LB409]

REGINA SHIELDS: Members of the committee, my name is Regina Shields, R-e-g-i-n-a S-h-i-e-l-d-s. I just wanted to testify on one of the questions, Senator Lathrop, you were just asking. The bill specifically provides a definition that states the canine animal has to be owned by a law enforcement agency to be used as a police animal. So it would conclude that either the animal or the dog has to be owned by a law enforcement agency. So even an officer within the agency could not just go bring in their private animal and bring it back into a fire scene. [LB409]

SENATOR LATHROP: It does say "owner controlled." [LB409]

REGINA SHIELDS: By a law enforcement agency. My theory is that there would probably be no law enforcement agency that is going to allow an officer to go get an individual dog and say that they either own it to face all the liability for that, or that they're controlling it at that time just to... [LB409]

SENATOR LATHROP: So is your testimony then that we don't need to put the certifying agency in there? That the language that it be owned or controlled by a law enforcement agency is now enough? [LB409]

REGINA SHIELDS: That would be my testimony, yes. [LB409]

SENATOR LATHROP: Okay. Senator Lautenbaugh. [LB409]

SENATOR LAUTENBAUGH: These are probably comments cast as questions, so I apologize. But this bill is brought to add the arson dogs now, is that correct? [LB409]

REGINA SHIELDS: The bill was brought to...for our agents, first, to add the arson dogs.



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When we began drafting the bill we were contacted to talk about the bill itself. We were contacted by numerous agencies. The idea of expanding the definition has been brought before the committee in the past and this was a chance just to incorporate that in and bring one bill forward. [LB409]

SENATOR LAUTENBAUGH: And that...by expand the definition, you're talking about the arson dogs. [LB409]

REGINA SHIELDS: As well as to expand the definition of police animal. [LB409]

SENATOR LAUTENBAUGH: Thank you. [LB409]

SENATOR LATHROP: Seeing no other questions, thank you, Ms. Shields. Anyone else here in a...as a proponent? Anyone here in opposition to LB409? Anyone here in a neutral capacity? Seeing none, Senator Dierks waives the close. And so that will complete our hearing on LB409. Thanks. (See also Exhibit 15) With that, we will move to LB347 and look forward to Senator Cornett or her capable aide. [LB409 LB347]

BRENDA LARSON: Good afternoon, Vice Chair Lathrop and members of the Judiciary Committee. My name is Brenda Larson, L-a-r-s-o-n. And I'm Senator Cornett's legislative aide. And she represents the 45th District. Thank you for letting me introduce the bill in her stead. Under Nebraska law an owner of a dog is strictly liable for damage caused by the dog. LB347 would make exceptions to strict liability for police and military dogs under certain circumstances. The first circumstance is if the dog is defending itself from a harassing or provoking act. The other circumstances are if the dog is assisting an employee of the governmental agency in the apprehension or holding of a criminal suspect, in the investigation of a crime or possible crime, in the execution of a warrant, or in the defense of a police officer or another person other than the suspect. Thank you for your time and consideration of LB347. There are several people here to testify who actually use this in the field, should it pass. But I'll try and answer any questions if you have them. [LB347]

SENATOR LATHROP: Senator Council. [LB347]

SENATOR COUNCIL: Yes. And thank you for appearing on behalf of Senator Cornett. My question goes to this harassing and provoking issue. In LB347 it just speaks to "harassing or provoking act." And there is no definition of harassing or provoking act. But if you go back to Section 28, which was the section that was discussed with regard to LB409, there is a definition of harassment of a police animal. Is it the intent that the definition of "harassing or provoking" in LB347 be as set forth in Section 28-1009? [LB347]

BRENDA LARSON: I will be honest, I haven't looked at the definition that's in Senator

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Dierks' bill, but... [LB347]

SENATOR COUNCIL: Okay because it...and this is the existing language. [LB347]

BRENDA LARSON: So I would... [LB347]

SENATOR COUNCIL: Okay, so it... [LB347]

BRENDA LARSON: Yeah. I wouldn't see where that would be a concern or that would be something that could be either amended in or we could work with the committee on. [LB347]

SENATOR COUNCIL: Okay, because it gets back to the question that Senator Lathrop asked with regard to the previous bill because in the previous bill the language currently provides "for the purpose of preventing such animal from performing its legitimate official duties." And here... [LB347]

BRENDA LARSON: Right. [LB347]

SENATOR COUNCIL: ...if the definition of "harassing or provoking" goes...is intended to be broader than what's in 28-1009, it creates some concern for me. [LB347]

BRENDA LARSON: Okay. [LB347]

SENATOR COUNCIL: So we need to find...to determine what the scope of the definition of "harassing or provoking". And then my final question is, if an individual is seriously injured by a...what may potentially now be called a police animal and the evidence shows that it was not the result of a reasonable use of force while the dog was assisting in the execution of a warrant, this language of the bill does not prevent a citizen from pursuing recovery for any injury does it? [LB347]

BRENDA LARSON: That would be my understanding. Correct. [LB347]

SENATOR COUNCIL: Okay. So if there's evidence that the dog was, in my neighborhood we used to say sicked, that the dog was simply sicked on someone, that this language doesn't bar that injured person from recovering. [LB347]

BRENDA LARSON: I would say that there's probably someone after me that can testify a little bit better to that question. [LB347]

SENATOR COUNCIL: Okay, okay. I appreciate it, thank you. [LB347]

SENATOR LATHROP: Any other questions? Seeing none, thanks, Brenda. The first

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proponent to testify. [LB347]

THOMAS MUMGAARD: (Exhibit 2) Good afternoon. My name is Tom Mumgaard. I'm a deputy city attorney for the city of Omaha. It's spelled M-u-m-g-a-a-r-d. LB347 was proposed to clarify how two statutes that currently exist work together when a police dog or military dog bites someone. Nebraska has Section 28-1412 that authorizes police to use a reasonable degree of force when apprehending and detaining people. We also have Section 54-601 which isn't a law enforcement statute but says that dog owners are liable for damages from the dog's bite. And it doesn't test the reasonableness under the circumstances. It also doesn't say whether this statute does or does not apply to dogs used in law enforcement. In the past year we had a person, in Omaha, who was bit by a police dog while being arrested and they successfully sued using the dog bite statute. The city argued that the court should do as many other courts have done and read these two statutes together and only apply the reasonable force standard because the dog was the use of force by law enforcement. The district court said that since the dog bite statute did not exclude law enforcement dogs that the strict liability applied. Now we now turn to the Legislature to clarify how those two statutes fit together so we don't have a repeat of that reading of the statutes. This bill borrows from very similar statutes in California and Arizona which also have strict liability for dog bites. Importantly, it does not exempt owners from all liability. It just tests the liability for a dog bite under these specific circumstances under the reasonable use of force standard. Any other bite, a bite that's off duty, if the dog bites the neighbor while they're at home is tested under this strict liability statute. The police dog is handled the same as any other dog when it is not doing one of the acts that are listed in the statute. I have a handout that outlines the frequency and the apprehension of bites by Omaha police dogs, and it tells you a little bit about the efforts that the city of Omaha makes to make sure to minimize those bites. We have a witness here from the police department who can answer some of those questions a little more than I can. But I'd be glad to answer any of your questions with regard to liability. [LB347]

SENATOR LATHROP: Senator Lautenbaugh. [LB347]

SENATOR LAUTENBAUGH: So you're asking us to amend a statute that might impose strict liability on the city? [LB347]

THOMAS MUMGAARD: Yes. At least one district court judge has said that it does. We don't agree with that, but certainly we can understand that the statutes are not as clear as they should be. [LB347]

SENATOR LAUTENBAUGH: And your luck would be better than the last time we were here. (Laugh) [LB347]

THOMAS MUMGAARD: We don't want to see this grow into an industry like the other

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strict liability has. [LB347]

SENATOR LAUTENBAUGH: Understood. (Laughter) [LB347]

SENATOR LATHROP: Okay. Senator Council, you're recognized. [LB347]

SENATOR COUNCIL: I'm going to begin with a pooh and then...(laughter) go to my question. What is your definition of harassing and provoking? [LB347]

THOMAS MUMGAARD: It doesn't have any definition. We would have no objection to using the definition that's in the other statute. As it stands now, I guess, that would be defined by the court given the facts and the circumstances. [LB347]

SENATOR COUNCIL: Okay. I mean, standing by itself, if I walked past a police dog and went (makes a noise) and he bit me, then I would have no recovery if harassing or provoking was limited in its definition to anything. [LB347]

THOMAS MUMGAARD: No. You would have recovery under the reasonable force standard. And if what you did was not harassing and provoking and the dog had reacted unreasonably, given its training, status, etcetera, then you could recover. [LB347]

SENATOR COUNCIL: Okay. But that's what...as I read the reasonable force it's in connection with an activity being conducted by the handler. It's reasonable force while the dog or dogs were assisting an employee. So it wouldn't fall under that because I'm...you know, the dog is just sitting here and I walk by and raspberry it. My concern is that it doesn't...that if I'm bitten, the dog reacts to that and I'm bitten, that you're not exempt from liability because that's deemed a harassing or provoking act. [LB347]

THOMAS MUMGAARD: We would have no objection to defining "harassing or provoking." I'll tell you that the case law in other states treats the dog much like the use of a gun or the use of a baton. It's a tool used by the officer. And so the test is whether the use of that dog under those circumstances was a reasonable use of force by that officer, the same as if the officer pulled out his baton and hit somebody over the head because they went (makes noise). It would all be tested, is that a reasonable response to the person's actions. [LB347]

SENATOR COUNCIL: All right. Well, I appreciate it because like I said that's just...it concerns me because it says while the dog was defending itself from a harassing or provoking act. I have trouble with that. [LB347]

THOMAS MUMGAARD: And I'll answer your previous question. If a police officer, as you say, sicked a dog onto somebody in circumstances that would not be justified, that person could recover under the reasonable force standard. The same as if the officer

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had punched him under circumstances where it wasn't justified. [LB347]

SENATOR COUNCIL: Okay. Thank you, Mr. Mumgaard. [LB347]

SENATOR LATHROP: Senator Coash. [LB347]

SENATOR COASH: Thank you. What were the damages from that case that you mentioned? [LB347]

THOMAS MUMGAARD: Well, that case, I think we paid about \$6,000. It was a scarring issue. It really isn't the amount of money. I mean, given the typical circumstances almost always the person that is bit is the person that is being arrested, presumably the criminal. Almost always when you're bit you have some sort of pain or injury. The injuries, of course, are always treated immediately. As it stands now, if it's a strict liability situation, the person being arrested would automatically have a cause of action for the pain inflicted by that dog. So we might see a situation where every time a dog bites somebody during an arrest an automatic claim is made for the pain inflicted. And we write that arrested person a check. You might see situations, for example, you can play out the scenarios. If somebody was being arrested and they attacked the police officer and the police officer punched them defending himself, and the dog standing there next to the police officer bit the person on the leg, also defending the officer, the officer's punch would be tested by whether it was a reasonable degree of force. The dog's bite would be tested by a different standard, the strict liability. We're just saying, you know, it's the same thing. Put them together, test them by the same standard. [LB347]

SENATOR COASH: I understand. Thank you. [LB347]

THOMAS MUMGAARD: Thank you. I have nothing further. [LB347]

SENATOR LATHROP: It makes sense to me. I do have a question for you, though, Tom. And that is, could we accomplish the same thing, and you've obviously thought this through and so I'm going to ask you this. Can we accomplish the same thing by just making an exception to Section 1 for dogs that are used in the scope and course of law enforcement? And would that just turn it into a negligence standard? In other words, the Supreme Court has already said that the negligence cases for dog bites still lie, even if the strict liability claims don't, right? [LB347]

THOMAS MUMGAARD: Yes. [LB347]

SENATOR LATHROP: And so if we exempt law enforcement dogs is that the same? Is a negligence standard going to be the same thing as going to a...I...by the way, I agree with what you're here for. A guy that's been arrested and been bitten because he's

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acting up shouldn't be able to make a recovery. So is a negligence standard going to be the same thing as a reasonable force standard or are they going to be different do you think? [LB347]

THOMAS MUMGAARD: Boy, in my experience they're always the same thing. The reasonable use of...well, the reasonable use of force standard, typically, comes up in the constitutional context. There are longstanding tests that have been put out. You look at the severity of the actions, you know, the damages, those types of things. They track along with the same types of things that judges and juries look at under the instructions for negligence. [LB347]

SENATOR LATHROP: I'm just wondering if we accomplish it more simply by excepting out of the strict liability statute, dogs that are used for law enforcement purposes and acting in the scope and course of that function, and then we just...then they just fall into a negligence standard. [LB347]

THOMAS MUMGAARD: Well, I'll tell you, you might end up in the same place but I'm not sure you always would. That's why we chose that since we had a perfectly good longstanding statute that talked about reasonable use of force and law enforcement that we should just continue to use that test and not mix up negligence and other things. [LB347]

SENATOR LATHROP: Okay. Okay. And you're okay with the language? [LB347]

THOMAS MUMGAARD: Yes. [LB347]

SENATOR LATHROP: All right. Senator Lautenbaugh. [LB347]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. This may be a stupid question, I'll say that up front, but while I've got you here I'll ask it. The language says, "while the dog was defending itself from a harassing or provoking act." Do dogs defend themselves from harassing or provoking acts or do they react to harassing and provoking acts? And is that a difference that makes a difference? And I might be addressing that to my committee members as well. [LB347]

THOMAS MUMGAARD: You know, and that's a question the lawyer can't answer. I would suggest you ask that to Sergeant Worley. [LB347]

SENATOR LAUTENBAUGH: Fair enough. [LB347]

THOMAS MUMGAARD: Thank you. [LB347]

SENATOR LAUTENBAUGH: Thank you. [LB347]

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SENATOR LATHROP: Thanks, Tom. [LB347]

STEPHEN WORLEY: Good afternoon. My name is Sergeant Stephen Worley, W-o-r-l-e-y and I'm a police sergeant, supervisor of the Canine Unit for the Omaha Police Department. My goal here today is to, hopefully, shed some light on the extent of things we do to prevent bites while also letting you know that the importance of the police service dog is a valuable tool to help us. Our dogs in the police department are dual-purpose dogs that are used to apprehend suspects as well as to search for illegal narcotics. Some of the...I believe you all have the handouts that was given out. We took a sample of numbers from 2007 and 2008 of apprehensions made; there was 192 made during those two years, 182 occurred with apprehension of the suspect without a bite, and 10 of those over the last two years occurred with a bite. I wanted to inform you of some of the things we do and steps we take to apprehend somebody without getting someone bit. It's not our goal to bite people. It's our goal to apprehend suspects. The first thing we need to do is ensure that we have good deployment criteria involved. We use Graham v. Connor, the criteria that our handlers will use before they'll deploy a dog is they're going to consider the severity of the crime, they're going to consider whether the suspect poses an immediate threat to the safety of officers or others, and also whether the suspect is actively resisting arrest or attempting to evade arrest by flight. That's one of the first things that we need to consider. The other thing is the training of the police dog itself. The dogs go through a training program that is...will result in a state certification if the dog and handler pass that certification. It's generally 10 to 12 weeks long, the certification process is. It's an international police dog standard that we go by. But it is a state certification. I'm also a state evaluator for the state of Nebraska. And at the end of a training cycle I will evaluate the dogs and put them, and handler, put them through a series of tests. If they pass that, I will sign off and send a form into the Nebraska Law Commission, who then issue a certification for that to be a police dog team. I see I'm running short on time, so I'll go ahead and open it up to any questions that anyone has. [LB347]

SENATOR LATHROP: Very good. Thank you. Senator Lautenbaugh. [LB347]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And understand, I don't know if we're supposed to say this before we Exec, but I do support this bill. I like this bill. [LB347]

STEPHEN WORLEY: Thank you. [LB347]

SENATOR LAUTENBAUGH: But my question is the same. How do you prove a dog is defending himself from harassment or a provoking act? Would it be better if we said reacting to a harassing or provoking act? [LB347]

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STEPHEN WORLEY: Well, I see your issue with that. And is it a real threat or is it just a perceived threat by the dog. And the only answer I can give to that, obviously we can't get into the mind of the dog. But just from a training aspect, if you turn over to the...I believe it's going to be the second page of the handout that Mr. Mumgaard gave you, well, okay. It does talk about detaining a passive person. And give me a moment just to find that, the portion that deals with that. [LB347]

SENATOR COASH: Bottom of page 2. [LB347]

STEPHEN WORLEY: Okay, thank you. All right. It does talk about detaining a passive person. And, hopefully, this will answer some of it. We can issue the dog a command to apprehend a suspect with a bark or with a bite. The great majority of times we're going to use a bark and hold command, where we'll give the command to the dog to go in and if this is, let's say, a burglary of a business, we do everything we can to find out if there are any innocent parties in there, janitorial, custodians, or anyone. And then we'll give announcements. We'll usually give three announcements, we give them in English, we also give them in Spanish. If the dog is sent in on a bark and hold command, the dog is trained to go in, locate a person in there, whatever person is in there, and bark and guard that person. If the person tries to attack the dog or makes an aggressive movement then the dog will engage the suspect and bite them. If the person flees or attempts to get away, the dog will again engage. When we do this training, throughout the...from day one with the dogs we build in what's called acceptable movements when we train the dog. I, as a trainer and a canine handler, will play suspect for other dog handlers and their dogs. I'll move and I'll work in acceptable movements--a cough, reaching down, putting your hands up. We work in from day one anything that a possibly innocent person might do, even a little bit of fearful movement from the dogs, because it's understandable that someone would be afraid of a dog that's three to six feet away barking at them, like these dogs are trained to do. Now the dogs have had that training in them. If the training is consistent the dog should not engage a person unless they feel that it is over and above what they've been taught. Does that answer your question? [LB347]

SENATOR LAUTENBAUGH: Kind of. I just didn't want to get in a circumstance where there was some provocative act that the dog had to be so threatened that it was defending itself. I'd prefer it maybe to just be reacting so that there is a reason for the dog's behavior. [LB347]

STEPHEN WORLEY: Right. And if a person was to take a step towards the dog quickly or attempt to flee quickly, the dog would most likely engage the suspect. [LB347]

SENATOR LAUTENBAUGH: Okay. [LB347]

SENATOR LATHROP: Senator Rogert. [LB347]



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SENATOR ROBERT: Sergeant, I've got a couple of different questions for you. If you're using a dog in an apprehension and he engages, how does he not have a bite? [LB347]

STEPHEN WORLEY: How does he not have it? If he can get by engaging that is a bite. By detaining a person, when...if that's, getting into a bit of semantics with words, but basically when they detain a person it's not biting them. A detention is when the dog is barking and/or growling and guarding that suspect. [LB347]

SENATOR ROBERT: Okay. [LB347]

STEPHEN WORLEY: And the dog would do so until relieved by the handler, either called back or given a, basically, a command to stand down or lay down, quit barking, and then the person could be taken into custody by the officer without...and hopefully our goal is always to take someone into custody without a bite or apprehension having been made. [LB347]

SENATOR ROBERT: And this is going to turn into a three-part question. Does the dog generally, when they do engage, do they have a certain area that they go for, like a pant leg or do they go for the leg, or for the arm, or a shoe or... [LB347]

STEPHEN WORLEY: They're going to go for basically areas that we have trained. We use a bite suit, we use a muzzle, different training methods. Quite frequently it's going to be an arm bite. There's also times where the dog will bite somebody by the leg. A lot of times it is effective for the arm because the hands are what carries weapons that can hurt the officer or the dog with. So if one arm is immobilized it does tend to make it safer for the officers and dog. [LB347]

SENATOR ROBERT: Okay. Well, now maybe you can help me answer this. The way I read this language as it's written, and I'm once again, fully supportive, but I don't know if this will protect you from a bite during an apprehension if you didn't...if the suspect didn't harass the dog. If he just took off running, dog jumps on him and bites him, I think you're still liable at that point with this language. [LB347]

SENATOR LATHROP: Except that we still put use of force. [LB347]

STEPHEN WORLEY: And I think what maybe the answer to that is "reasonable" is the wording. And also if you consider the amount of steps we take prior to deploying the dog, very rarely is the suspect not given a warning to surrender or a police dog would be used. [LB347]

SENATOR ROBERT: Okay. [LB347]

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STEPHEN WORLEY: So, in fact, I cannot, in my 12 years of doing this I don't recall one incident where the suspect did not have a warning. If we enter a large building, and we did one not that long ago in a grocery store, if we get to a section of the building where there is an upstairs, an area that the suspect may not have heard us we'll give announcements again and again to ensure that anyone that's in there is given the opportunity to give up. We don't know many times if the dog...the dog's...the reason we send that dog in is they're going to make it safer for the officers. Someone is waiting to ambush us or is armed, the dog's job is to protect us and to either, hopefully, warn us that the suspect is there by either smelling them, seeing, or hearing them, or if the suspect is aggressive and charging towards us to basically engage that suspect for us. [LB347]

SENATOR ROBERT: Okay, great. I just wanted to make sure we accomplish what our goal is here. So thanks. [LB347]

STEPHEN WORLEY: Sure. Okay. [LB347]

SENATOR LATHROP: I want to go back to the concern expressed by Senator Lautenbaugh because I think he's right. And as long as Tom is here, Mumgaard, it seems to me like the language ought to be...and I think the dog bite statute and the interpretations already recognize harassing and provoking a dog as a defense to even strict liability. But it seems to me that the language ought to read, instead of "defending itself from," it should say "responding to." So if somebody is harassing them without...actually you could bang on the door or the cage or the car or anything like that. If you provoke the dog, even if it's not defending itself but responding to it. [LB347]

STEPHEN WORLEY: Right. [LB347]

SENATOR LATHROP: That doesn't change this. That seems to be an improvement. Okay. I think we answered the question we had. All right. Any other questions? Seeing none, thank you for your testimony. [LB347]

STEPHEN WORLEY: Okay, thank you. [LB347]

GARY KRUMLAND: Senator Lathrop, members of the committee, my name is Gary Krumland, that's spelled K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities in support of LB347. We do think that this is a question that's been raised that's best settled by a policy set by the Legislature. For that reason we support LB409 and would be happy to offer any help we can to the committee or Senator Cornett to get any questions like this resolved, if that would help the committee. With that, I will answer any questions. [LB347]

SENATOR LATHROP: All right. Yeah, any questions for Gary? I don't see any. Thanks

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for your testimony. Any other proponents? Anyone here in opposition? [LB347]

DANIEL FRIEDMAN: (Exhibit 3) Hello, Senator, members of the committee. My name is Daniel Friedman, D-a-n-i-e-l F-r-i-e-d-m-a-n. I'm testifying today in opposition to LB347 on behalf of the Nebraska Association of Trial Attorneys. The bill was designed to amend Section 54-601, the dog bite statute, to broadly immunize governmental agencies and their employees for injuries caused by military or police dogs. LB347 is substantially flawed for a number of reasons. First, as you pointed out, Senator Council, the bill lacks important definitions. It doesn't define what acts could be considered to be harassing or provoking nor does it define the term "reasonable force." It invites courts to later on make those determinations. Second, the bill is incredibly overbroad. It would unreasonably immunize police departments and other agencies from liability in myriad situations. For example, if a police officer unleashed a dog to chase a petty criminal suspect, such as a shoplifter or vandal, and the dog wounded the person, the officer and his department would arguably be immune from suit under the bill. The bill is not limited to violent criminals and provides no protection of suspects that are eventually exonerated of any suspected criminal conduct. Finally, insofar as the bill seems to be patterned on statutes in Arizona and California, as Mr. Mumgaard mentioned, the bill lacks two crucial exceptions that are employed in those states. In both California and Arizona the immunity provision does not extend to third persons that were not parties to the act that prompted the use of the police dog. This exception is absolutely imperative. If a person is just at the wrong place at the wrong time and is injured by a police or military dog, there is no reason that they should be left with no legal recourse at all. That's what LB347 does in its current form. The second exception that is employed both in Arizona and California permits immunity only in situations where the governmental agency in question has adopted a written policy on the necessary and appropriate use of a dog. This exception would at least require a governmental agency to put some thought into how their dogs are used before becoming entitled to any type of immunity. The officer from Omaha spoke about the broad guidelines that are employed in Omaha when a dog is to be used. But we don't know that those types of guidelines are employed in every jurisdiction and every municipality across the state. In sum, LB347 is very overbroad and would immunize governmental agencies from injuries caused to anybody by a dog, regardless of the crime for which they're being apprehended. It also lacks important exceptions contained in the statutes adopted in California and Arizona. And I believe I handed out those statutes with the relevant exceptions highlighted. I'd be happy to answer any questions. [LB347]

SENATOR LATHROP: Thanks, Dan. Any questions for Mr. Friedman? You said that you thought the...first of all, as I read the statute, all it does is exempt them from strict liability so they'd still be subject to a negligence claim. And this wouldn't provide a defense to that. Would you agree with that? [LB347]

DANIEL FRIEDMAN: I think that's true. But I think there are important policy reasons

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why a person that's injured by a dog in certain circumstances shouldn't have to prove negligence. The benefit of a police dog should be tempered by the fact that there is a potential for a finding of strict liability if the dog is used in an inappropriate manner. [LB347]

SENATOR LATHROP: But just as a matter of taking a full view of liability for a dog bite, there's strict liability, which this addresses, and then there's negligence claims. And we're not talking about giving law enforcement full scale immunity, just taking them out of the strict liability if certain circumstances exist. [LB347]

DANIEL FRIEDMAN: That is correct. [LB347]

SENATOR LATHROP: The other thing I wanted to ask you about before you got away, you said that the exceptions in other states are subject to two requirements. One requirement is the need for written policy... [LB347]

DANIEL FRIEDMAN: Um-hum, yes. [LB347]

SENATOR LATHROP: ...in order for the immunity from strict liability. What's the other one, Dan? I missed it. [LB347]

DANIEL FRIEDMAN: The other one, I think, was it passed out? [LB347]

SENATOR COUNCIL: Yes, it's highlighted. [LB347]

DANIEL FRIEDMAN: The other exception, Senator, is where a third party is injured. So the way I read this bill right now if there's a bank robber and he's fleeing and the dog is unleashed to apprehend the bank robber, knocks down a little old lady on the street and she is injured. Then there is immunity from strict liability. [LB347]

SENATOR LATHROP: Or at least there is not strict liability. And I'm just wondering if the negligence still, leaving open the negligence claim takes care of that third party. For example, to use Senator Council's word, if somebody is running from law enforcement, they've just robbed the Kwik Shop, and he says, stop and they don't. And he says to the dog, "sickem'," and he points at the bank robber who's running away and the dog runs and bites the paperboy. Isn't that...does the negligence claim still cover that circumstance? [LB347]

DANIEL FRIEDMAN: There's a longstanding policy that we don't want to have the victim of a dog bite or a dog attack or a dog accident to have to prove negligence. And there is...those reasons still all apply, almost with even greater force, when you're talking about an innocent third party that was just literally in the wrong place at the wrong time. Why should we create immunity from the use of strict liability in those circumstances?

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And I see no principle reason why the drafters of the bill wouldn't include the same exceptions, the same language that the Legislatures of Arizona and California used. At the very least those exceptions would take care of some of the problems that we have with the bill and limit it just at least a little bit. [LB347]

SENATOR LATHROP: Okay. [LB347]

DANIEL FRIEDMAN: But there are other important considerations to take into account that I would urge the committee to consider. [LB347]

SENATOR LATHROP: All right, Dan, thanks. Senator Lautenbaugh. [LB347]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. So you don't see a distinction between like me owning a dog, and I do because I choose to, and the police owning a dog because it's a tool of their trade as a reason for why we should exempt them from strict liability. [LB347]

DANIEL FRIEDMAN: Well, there are naturally different reasons for owning a dog. But I think that the way that the statute...that the bill is currently crafted broadly immunizes police officers and police agencies for use of the dog. I mean, we don't need to get into a philosophical discussion about the benefits of a homeowner owning a dog versus a police officer using a dog to understand all the different circumstances that this bill would cover that have nothing to do with the original intention of the bill. [LB347]

SENATOR LAUTENBAUGH: Well, you've again used the word "immunity," by the way. Is there an immunity provision in here that I'm not seeing? [LB347]

DANIEL FRIEDMAN: Well, again it doesn't address negligence. When I was talking about immunity I was speaking about the use of strict liability. And forgive me if I was being a little overbroad. But I think that we shouldn't have to rely on the courts to determine if use of force was reasonable if a dog is sicked, for example, on a fleeing shoplifter or a fleeing petty criminal. Why should then a court have to step in and determine that that was reasonable? At the very least it seems to me that the bill could adopt some of the very same guidelines that the officer from Omaha was talking about--when a dog can be used. Why not codify that in this bill at the very least so we can determine on the front end when dogs should be used and when there can...when strict liability ought not apply. [LB347]

SENATOR LAUTENBAUGH: But you don't understand the distinction between the dog being a tool of the police law enforcement trade and some random homeowner deciding to have a dog because they want to. [LB347]

DANIEL FRIEDMAN: Well, I don't think that just because a dog is a valid tool of the

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police department it should necessarily follow that there should be immunity from strict liability in all circumstances in which a dog is called upon to act. And I think that the way this bill is drafted it's exceedingly broad. [LB347]

SENATOR LAUTENBAUGH: Now do you understand if a police officer accidentally shoots someone we don't impose strict liability. Is that correct? [LB347]

DANIEL FRIEDMAN: I think that's right, yes. [LB347]

SENATOR LAUTENBAUGH: If a police officer swings his baton at someone and accidentally hits the wrong person we don't impose strict liability. Is that correct? [LB347]

DANIEL FRIEDMAN: I think that's correct. [LB347]

SENATOR LAUTENBAUGH: So the court can determine negligence or lack of negligence in those cases. [LB347]

DANIEL FRIEDMAN: Again, the use of a dog, though, is a different circumstance because dogs...you can't really weigh a dog's intention for starters. And the benefit of the dog, I think, is outweighed by the risk that a dog poses insofar as a dog only responds to commands and can respond, like you said Senator, to just instinctual or just instinct and not necessarily respond to its training. [LB347]

SENATOR LAUTENBAUGH: I understand the judge isn't determining whether the dog acts reasonable, right? Is it that the officer was acting reasonable? [LB347]

DANIEL FRIEDMAN: Forgive me, I don't understand your question. [LB347]

SENATOR LAUTENBAUGH: Well, you're saying that we can't determine why the dog acted the way it did. We really don't have to determine why the dog did what it did, do we? Isn't the question whether or not the officer was reasonable in his use of the dog? [LB347]

DANIEL FRIEDMAN: Well, I think the question that you raised earlier speaks to that concern. I mean, if the bill is adopted as it's currently written and then a dog just responds to something and it's not even a true "harassing or provoking" act but the dog perceives it as such, then strict liability can't be used. I just don't know why we would adopt a statute that is meant to exempt certain uses of police dogs and have it be so broad to potentially cover some of the examples I mentioned and then rely on judges to make that determination on a case-by-case basis when we can certainly come up with some more narrowly tailored criteria at the outset. And that's certainly what Arizona and California have done. And I don't know why those exceptions weren't utilized by the

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drafters of LB347. [LB347]

SENATOR LAUTENBAUGH: Okay, thank you. [LB347]

DANIEL FRIEDMAN: You're welcome. [LB347]

SENATOR LATHROP: Senator Council. [LB347]

SENATOR COUNCIL: Thank you, Mr. Friedman. One of the concerns you've expressed, perhaps it could be addressed by taking the action that has been discussed with regard to the previous bill and that was the discussion about certified police animal or arson dog. And Sergeant Worley did provide, at least for purposes of comparison, the Omaha Police Department training and handling procedures. And it sets forth that these are standards that have been adopted by the International Patrol Dog Training and Deployment Standards that are used as a part of their certification of the dog and the trainer. So if we were to add "certified" before "police animal or arson dog" it would at least take a step towards providing the kind of safeguards that you're referring to in terms of the use of the dog. I mean, at least if the dog and the handler have been certified the greater likelihood is that the dog would respond in the manner as Sergeant Worley described. If just to detain a suspect it would sit, bark and keep that individual there and would not strike unless the suspect were to run. But there is...it would appear that that certification would address one of the concerns you've expressed. [LB347]

DANIEL FRIEDMAN: I think that's true. It would alleviate at least some of the concerns that I expressed. [LB347]

SENATOR COUNCIL: Okay, thank you. [LB347]

SENATOR LATHROP: I think that's it, Dan. [LB347]

DANIEL FRIEDMAN: Thank you. [LB347]

SENATOR LATHROP: Thanks. Anybody else here in opposition to LB347? Anyone here in a neutral capacity? I guess, Brenda waives close. So that will close our hearing on LB347. And we will move next to LB252, which brings us back to Brenda Larson, standing in, pitch hitting for Senator Cornett. [LB347 LB252]

BRENDA LARSON: Good afternoon again, Vice Chair Lathrop, members of the Judiciary Committee. Again for the record, my name is Brenda Larson, L-a-r-s-o-n and representing the 45th District for Senator Cornett. LB252 makes it illegal to knowingly and intentionally possess equipment used in violation of Section 28-1005, which is animal fighting. This bill also defines specifically which paraphernalia it is illegal to possess in relation to animal fighting and also provides a list of factors the court could

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use to determine if the paraphernalia is related to animal fighting, such as expert testimony, incriminating statements, the proximity of the animal...equipment to the animals, and other such factors. The bill also would...will provide a penalty and the ability to seize the property and/or the animal. We thank you for your time on LB252. There are several people who will be using this, should it pass, who will be able to answer your questions on how this will be implemented. [LB252]

SENATOR LATHROP: Okay, thank you, Ms. Larson. Any questions? Okay, seeing none, we'll take the first proponent of LB252. [LB252]

MATT LIERMAN: (Exhibit 4) Senator Lathrop, members of the committee, my name is Matt Lierman, that's spelled L-i-e-r-m-a-n and I'm a felony prosecutor with the Sarpy County Attorney's Office. I also prosecute all animal-related cases for our office. LB252 addresses the problem of animal fighting in general and the possession of the tools used to ready these animals for fighting in particular. LB252 was crafted to require knowledge or intent of the person possessing the equipment listed within the bill. The language is similar to Nebraska's Drug Paraphernalia statutes in that it enumerates the type of equipment commonly used for such purposes but also lists determining factors a trier of fact should consider. This is important for two reasons. First, some equipment listed within the bill may serve a legitimate purpose--for instance a treadmill can be used for agility training and rehabilitation; and a break stick may be used to separate two unruly dogs within a home. As a result, the bill requires the possessor to have knowledge of the item's illegal purpose, not simply that the item could be used unlawfully in the wrong hands. Second, the bill adds an additional intent element--that the item be used for pitting an animal against another. It's not enough that the item may be illegal in nature; instead the possessor must have knowledge or intent of its illegal nature and purposefully utilize it with the intent of pitting an animal against another. This bill was carefully drafted to ensure that items used for training, rehabilitation, or general sporting purposes would not criminally implicate their possessor. A survey of numerous state animal fighting paraphernalia statutes reveals language which is far broader and ambiguous...and more ambiguous than the bill before you, examples being California, Colorado, Indiana, Louisiana, Mississippi, Oregon, Ohio, and more. And again, I'd be happy to provide you with these statutes for comparison's sake. As the law currently exists, animal fighting operations are partially immune from prosecution. Individuals may freely possess all the contraband necessary to train, encourage, and support animal fighting without criminal recourse. The language in LB252 ensures that legitimate activities on the part of responsible animal owners will not subject them to prosecution while reflecting a need to close a legal loophole that currently exists in Nebraska law. And with that, I would be happy to take your questions. [LB252]

SENATOR LATHROP: Senator Council. [LB252]

SENATOR COUNCIL: Yes, good afternoon, Mr. Lierman. [LB252]



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MATT LIERMAN: Good afternoon, ma'am. [LB252]

SENATOR COUNCIL: I just wanted to make a point clear. This legislation provides for first determining or defining what dog fighting paraphernalia is. I just want to be clear that under Section 3 does this act...I could possess everything that's listed under Section 2 and someone could determine, based upon the standards set forth in Section 3, that those objects are animal fighting paraphernalia. But doesn't the state still have to establish that I possess that with the intent to commit dog fighting? [LB252]

MATT LIERMAN: Absolutely. If you go to the reading of the statute, under Section 2, "no person shall knowingly or intentionally own or possess." And then you have the additional intent element that says it's "with the intent to commit a violation of Section 28-1005," that is the pitting of two animals or an animal against another. So owning it in and of itself is not a violation. You have to have that additional intent that you're going to intend to pit another animal or animals against one another. [LB252]

SENATOR COUNCIL: Okay. Now then...and taking that to the next step, Section 3 in identifying or describing factors to be considered in determining whether an object that might otherwise not be objectionable is animal fighting paraphernalia, e.g., the treadmill. [LB252]

MATT LIERMAN: Okay. [LB252]

SENATOR COUNCIL: Okay. But if I possess a treadmill and I have a prior conviction of dog fighting does the mere fact that I have the treadmill subject me to criminal prosecution without the intent being met? [LB252]

MATT LIERMAN: Well, it would require facts beyond just having a treadmill in and of itself. The fact that you have a previous conviction for dog fighting or something along those lines may militate in favor of a jury saying that, you know, under these circumstances we believe that you're possessing it for the purpose of pitting an animal against another. It doesn't mean in and of itself that you're going to be guilty simply because you have that past conviction but it's something that a trier of fact should consider because it's relevant as to whether or not you're using it for legitimate purposes or illegitimate purposes, in this particular case, whether you're using it to rehabilitate your animal or you're using it to train and strengthen a dog for the purpose of a dog fight. [LB252]

SENATOR COUNCIL: And...but from a prosecutorial perspective, in your role as a deputy Sarpy County attorney, if you have someone identified as having one or more of these objects with a previous conviction for dog fighting, wouldn't it be fair to say that you'd more than likely file charges believing that that is at least some evidence of the

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intent to commit that act again? [LB252]

MATT LIERMAN: And if this came before me as the charging attorney, obviously, I'd look at the facts and the circumstances, I'd look at the investigation that took place. I'd obviously take a look at the criminal history to determine whether or not the individual has engaged in this type of conduct and weigh all those determining factors. It goes beyond just whether or not an individual has a past conviction. It goes...I mean, there are a number of considerations that I would take into account and, obviously, a trier of fact would take into account. So I can't say based upon those limited facts alone that I would say yes or no. But I think the purpose of that particular section is to give a trier of fact, you know, a number of things that they can take into account because they're all relevant. And they really mirror what is in our...Nebraska's drug paraphernalia statutes. [LB252]

SENATOR COUNCIL: Okay. That's all. [LB252]

SENATOR LATHROP: I have a couple questions for you. [LB252]

MATT LIERMAN: Yes, sir. [LB252]

SENATOR LATHROP: You said you're a Sarpy County prosecutor. [LB252]

MATT LIERMAN: I am, indeed. [LB252]

SENATOR LATHROP: How long have you been there? [LB252]

MATT LIERMAN: Three years. [LB252]

SENATOR LATHROP: Did you prosecute anywhere else before that? [LB252]

MATT LIERMAN: I did not. [LB252]

SENATOR LATHROP: Have you had occasion where you think the sheriff or the law enforcement in Sarpy County have shown up at the scene and believed that they were at someplace where dog fighting was happening but they couldn't prove that dog fighting was happening? [LB252]

MATT LIERMAN: No. And there will be... [LB252]

SENATOR LATHROP: That kind of brings me to the purpose of the bill then. And what I want to try to distinguish is some bills that we pile on, okay, like adding five more years on somebody because they had a handgun while they committed a felony. That's kind of a piling on bill. And then we have some bills that we...where we have a hard time

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catching somebody doing the criminal act, in this case dog fighting, and so we charge them with being in possession of the paraphernalia. Can you characterize this bill as one or the other? [LB252]

MATT LIERMAN: Well, I...we have a situation where somebody could have all the trappings of being involved in an animal fighting operation. And simply because they're...law enforcement, for whatever reason, because dog fighting is a very underground operation, simply can't get involved in the dog fighting operation. They can't put somebody in there. They can't actively arrive on scene while this is taking place. So even though we know somebody is engaged in that, there are going to be people that are testifying to that...those particular operations--Mr. Langan, as well as Capital Humane Society. [LB252]

SENATOR LATHROP: Sure. [LB252]

MATT LIERMAN: You know, it creates a situation where a person can be engaged in aiding and abetting and taking part and all of those things, and yet there is no criminal recourse whatsoever. So it does close a legal loophole. I don't think it's piling on. [LB252]

SENATOR LATHROP: Have you had in your years of experience at the Sarpy County prosecutors office occasions where you've shown up on the scene and the dogs are all gone but there sits the paraphernalia? [LB252]

MATT LIERMAN: No, but I know that's existed in other jurisdictions. And I know... [LB252]

SENATOR LATHROP: Other jurisdictions in Nebraska or are we talking about something in Virginia? [LB252]

MATT LIERMAN: Yes, in Nebraska, in Nebraska as well as many other states where it's not as underground as it is in Nebraska. [LB252]

SENATOR LATHROP: Here's a concern. Well, did you have anything to do with the drafting of this bill? [LB252]

MATT LIERMAN: I did. [LB252]

SENATOR LATHROP: Okay. Then tell me is it modeled after another state's bill or did you do this from scratch on your own? [LB252]

MATT LIERMAN: No, it's...in a way it's modeled after several other states that we thought were well-written and well-drafted, in other words, that they were very particular.

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I also looked at several other bills because the ones that I refer to in my testimony were very, very broad and very, very ambiguous. And we didn't want that in this particular occasion. And so it's drafted after pulling out all the best pieces of those bills as well as looking at our drug paraphernalia statutes. If you look through Section 3 of this bill, you'll see that's modeled almost exactly after Nebraska's drug paraphernalia statute. [LB252]

SENATOR LATHROP: Well, here's the...I guess, here's the issue, and that is, can you prove any of this, the intent to use some of this stuff like a treadmill. I mean, probably half the people in this room have one in their basement or they walk on one in the morning before they come to the office. So there's a lot of things that are in here--a boxing glove, there's things in here that don't have anything to do with dog fighting. So by the time you prove someone's intent or an animal on animal fight, if you...by the time you prove somebody's intent, can't you just prove that they were dog fighting or animal fighting, if it's roosters or whatever else you're concerned with. [LB252]

MATT LIERMAN: Well, some of these things are ambiguous because they're used for two different purposes. The treadmill always comes to mind, the break stick, things of that nature. But a lot of times, and I know in the past where they've had cases where they have arrived on scene and there are no animals. You can't prove that dog fighting was actually taking place at that location because there wasn't...there weren't any dogs because as soon as people got word they left. But this equipment is left on scene and we know what it's used for. And based upon expert testimony we'd be able to prove that. And so you're left with a situation where if you don't have the dogs on scene, you don't have the people on scene, there's nothing that officers can do. And so... [LB252]

SENATOR LATHROP: Here's another concern that I have and I'm just going to visit with you about it, and that's number...on page 4, line 19, "National and local advertising concerning the use of the object." So if I have a treadmill and I have a...and you bring in, even though I may never have looked at it, you bring in something out of the...off the Internet that's an advertisement for a treadmill used to train dogs. Then I may never have seen it and suddenly you're offering it in my trial and you're making it admissible here, too, by the way, right? [LB252]

MATT LIERMAN: Well, a couple of different things. I'm thinking of a situation where you have specific journals that go to dog fighting, they go to fowl fighting and things like that. And they design these particular instruments, these hot walkers, these treadmills specifically for dogs and they're specifically for fighting. So if an individual goes to that particular journal, they order that treadmill specifically to strengthen their dog for the purpose of putting it in a fight, then I think that that material would be relevant as to whether or not that person was utilizing it for animal fighting or whether they're utilizing it for some sporting purpose or rehabilitation. I think that's entirely relevant. [LB252]

SENATOR LATHROP: I don't know how you can make the difference...well, would you

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agree with me that somebody can put a dog on a treadmill and not intend to fight with it? [LB252]

MATT LIERMAN: Absolutely, they're used for rehabilitation. [LB252]

SENATOR LATHROP: It's cold out, it's ten below and they don't want to take it outside for a walk. [LB252]

MATT LIERMAN: And people do do that. And that's what we're talking about here is that these sorts of objects can have legitimate purposes. But it's not as though people are going to be arrested simply because they have a treadmill in their basement. They're using it for their dog when it's ten below. There has to be something more. [LB252]

SENATOR LATHROP: Well, that's our... [LB252]

MATT LIERMAN: There has to be that illicit intent element. [LB252]

SENATOR LATHROP: And that's why I'm asking you the questions because I want to make sure that the people we're making felons are people that are doing something wrong. [LB252]

MATT LIERMAN: Absolutely, absolutely. [LB252]

SENATOR LATHROP: Can you tell me what states you modeled this after so that we can look at their statutes? [LB252]

MATT LIERMAN: I will get you a copy of all of those, if you would like. [LB252]

SENATOR LATHROP: Maybe if you could give it to LaMont that would be helpful. Then we can look and see what other states are doing and... [LB252]

MATT LIERMAN: Yes, yes, sir, I'll provide you with all of those. [LB252]

SENATOR LATHROP: Okay. Any other questions? All right. Thanks for coming down. [LB252]

MATT LIERMAN: Thank you very much. [LB252]

SENATOR LATHROP: Anyone else here to testify in favor of the bill? [LB252]

MARK LANGAN: (Exhibit 5) Thank you, Senator Lathrop. I appreciate this opportunity. My name is Mark Langan, it's M-a-r-k, last name L-a-n-g-a-n. I command the law enforcement branch of the Nebraska Humane Society known as the Field Operations

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Department. We conduct criminal investigations into such crimes as animal cruelty, dangerous dogs, and dog fighting. We routinely obtain court-authorized search warrants and work with law enforcement agencies on animal-related crimes. Prior to my career with the Nebraska Humane Society, I was a 26-year member of the Omaha Police Department. For the majority of my police career, I was a supervisor in the Metro Area Drug Task Force, specializing in the investigation of drug operations. I am here today to support LB252 and to let you know that dog fighting is a problem we deal with at the Nebraska Humane Society. Several years ago, my agency initiated a dog fighting investigation in Omaha. We had received information from a confidential informant that the target person was involved in selling drugs, possessing weapons, and dog fighting. We conducted this investigation with the Omaha Police Department Narcotics Unit, resulting in the target person pleading guilty for selling drugs. He is currently incarcerated. Based on evidence found during this investigation, along with statements from the suspect himself, the following information was learned about his dog fighting operation: This is a large-scale dog fighting operation that stretched into a three-state region and was active for over five years. The suspect in the investigation both sold and bought pit bulls for fighting purposes over the Internet, from such places as New York, South America, and the southern states. The fights were held every few months in the state of Iowa, specifically in rural areas. Normally, 20 to 30 people would attend, thousands of dollars were bet, and weapons and drugs were always present. The suspect routinely traded fight dogs for guns and drugs, mainly to gang members in the Omaha area. The dogs were trained both in Omaha and Iowa, using such equipment as treadmills to condition the dogs, spring poles suspended from trees and other structures to condition and strengthen the dog's jaw and neck muscles, and fight pits used to hold dog fights. Unprescribed veterinary medicine was also possessed to treat the dogs' injuries. Please note that all of these items are identified in LB252 as "animal fighting equipment." Attached to your copies are pictures showing dog fighting equipment. The first, which I am also holding up, was seized from the suspect in this investigation, this photo here was, and shows how a fight dog is suspended from a spring pole in order to strengthen jaw and neck muscles. The second photo also seized in this investigation is of a pit bull suspended from a spring pole in a back yard. The third photo, taken from the Internet, shows how a dog is conditioned on a treadmill. It is a Class IV felony to fight animals, train animals to fight, and to watch an animal fight. LB252 will also make it a Class IV felony to knowingly or intentionally possess equipment to advance the crime of dog fighting. Again, the Nebraska Humane Society supports LB252. And I would be happy to answer any questions. Thank you. [LB252]

SENATOR LATHROP: Thanks, Mark. Any questions? Senator Council. [LB252]

SENATOR COUNCIL: Thank you, Mr. Langan. We briefly discussed this bill prior to the hearing. [LB252]

MARK LANGAN: Yes, we did. [LB252]

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SENATOR COUNCIL: And I probably need to preface my remarks that I'm violently opposed to animal fighting and I'm violently opposed to training animals to fight. In fact, my personal pet has been the victim of an animal that was trained to fight. But my problem and my concern with the bill is making sure that we're not exposing individuals to felonies for the mere possession of materials that could be used for training animals to fight or in the actual fighting itself. But I just wanted to be sure and make it absolutely clear that the...that there's a second level here and that's with the intent to commit a violation of 28-1005, which is animal fighting. So there has to be something more than just possessing these items to be charged with a felony, you have to have corresponding evidence of intent to actually engage in that conduct. Am I correct? Is that how you read the legislation? [LB252]

MARK LANGAN: That's definitely how I read the bill. I assisted Matt Lierman in some of the terminology of the bill. We wanted to make sure that you senators were clear on the Judiciary Committee that we're only going after the people that are knowingly and intentionally possessing this dog fighting equipment with the intent to dog fight. You know, one term that...and I prosecuted hundreds, or not prosecuted, was involved in the prosecution of hundreds of drug cases over the years, was the term "totality of circumstances." That's what I always told our prosecutors--you have to consider the totality of circumstances. An analogy that I might use is, you know, it's a felony here in Nebraska to possess burglar tools, not necessarily to be in the commission of committing that burglary but to possess burglary tools. If I as a police officer, at two o'clock in the morning, stop a car and the guy has got a pry bar and a set of pliers and a hammer on the seat, you know, I ask him why he has those tools, and he says, well, I'm a construction worker and he verifies that, I'm not going to arrest him. If I find a guy at two o'clock in the morning hiding in the bushes next to a house with those same instruments I'm going to arrest him for possession of burglary tools because of the totality of circumstances--the time, the location, where he was, what he had, and stuff like that. I kind of think the same philosophy might be utilized in a situation like this, hopefully, by law enforcement and then by the prosecutor who has to look over the totality of the circumstances in order to file the charges. But I think we build in a lot of the totality of circumstances philosophy in this bill. [LB252]

SENATOR COUNCIL: Okay. And you were involved in drug enforcement when you were on the Omaha police force. And Mr. Lierman testified that the statute mirrors some of the drug paraphernalia provisions that currently exist. Now are...correct me if I'm wrong. Are there not some drug paraphernalia items that the mere possession of those items is grounds for a charge...misdemeanor charge and depending upon the paraphernalia that you possess escalating up to a felony charge? [LB252]

MARK LANGAN: Well, again I always base it, and I'm not sure of the verbiage of the law, but I always based it again on the totality of circumstances. If we went into a house

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and we found a triple beam scale and just that triple beam scale, to me that was not a violation of the drug paraphernalia statute. But if we found a triple beam scale along with, say, packaging materials, saying there were no drugs in the house whatsoever, packaging materials, drug records denoting sales of drugs to people, things like that, to me the totality of circumstances would lead me to believe...to arrest that person for possession of drug paraphernalia. I hope that answers your question. [LB252]

SENATOR COUNCIL: Let me ask you in this context, I'm going to give you a hypothetical. I'm walking down the street, you're a patrol officer. You stop me, ask me a few questions, ask me to empty my pockets, and I empty my pockets and I've got a roach clip and a packet of rolling papers. Does that give you grounds to issue me a citation? [LB252]

MARK LANGAN: I would say no. And I've had hundreds of situations like that and we haven't issued citations. But if you had a...the remnants of a marijuana cigarette or something like that, even just residue, even if it's residue, that would add to the totality of circumstances. Then you'd get a ticket. [LB252]

SENATOR COUNCIL: Okay. If I have a seed in my pocket along with that. [LB252]

MARK LANGAN: And we have found them too. We're pretty good at finding seeds. (Laughter) [LB252]

SENATOR COUNCIL: And just for the purposes of the audience, you have never found a seed on me. (Laughter) [LB252]

MARK LANGAN: We do our... [LB252]

SENATOR ROBERT: Search her. [LB252]

SENATOR COUNCIL: Thank you. [LB252]

MARK LANGAN: You're welcome. [LB252]

SENATOR LATHROP: I do have a couple of questions. And the first one has to do with whether or not you can have this stuff. Can people use this stuff just to make their dog a fierce dog but not intend to fight them? [LB252]

MARK LANGAN: Most definitely. And people can also possess like treadmills to condition dogs for pulling contests or dog competition shows and things like that. [LB252]

SENATOR LATHROP: You showed us the things that are used to make a dog's jaw



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strong. And apparently one of these dogs is hanging from something in somebody's backyard. Can I have one of those? There's nothing wrong with having it if my intent is to make my dog tough so that when I walk down the street people are afraid. [LB252]

MARK LANGAN: Definitely not. And that's the problem that we have is that's the excuse that the dog fighters that we are investigating are using when we find this equipment is that they are possessing it to condition their dogs for such things as competition contests, not fights, pulling contests and things like that. We think the bill will allow us to consider the totality of circumstances and file charges in certain situations where we can't now. [LB252]

SENATOR LATHROP: Okay. It is a Class IV felony to fight animals? [LB252]

MARK LANGAN: Yes. [LB252]

SENATOR LATHROP: To possess the paraphernalia used for that purpose is also a Class IV felony? That's what the bill would make it, a Class IV felony. [LB252]

MARK LANGAN: That's what the bill would make it, yes. Right now it's... [LB252]

SENATOR LATHROP: It doesn't seem like if the offense of putting two dogs in a ring and having them fight is a Class IV felony that possessing the stuff shouldn't be something less? I mean it just seems like it's a little overkill. [LB252]

MARK LANGAN: Well, I think since past Legislature...past legislative sessions have found it okay to make it a felony to fight dogs, and a felony to train a dog to fight, and a felony to watch a dog fight, to me, keep things consistent and make it a felony to possess dog fighting equipment. [LB252]

SENATOR LATHROP: Okay. [LB252]

MARK LANGAN: To me that makes sense. [LB252]

SENATOR LATHROP: Are you ever going to have somebody you convict of a dog fight...of fighting two dogs, so it would be the owner that puts a dog in a ring. Are you ever going to have occasion where you convict him of a dog fight where you won't be able to get him on paraphernalia? [LB252]

MARK LANGAN: Well, I could see a... [LB252]

SENATOR LATHROP: I mean at that point a collar is... [LB252]

MARK LANGAN: I could see a hypothetical situation of, say, either my animal control

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officers or the Omaha police coming upon a dog fight, like in a city park where people are standing around the dog, the two dogs, and the dogs are fighting and that's a bona fide dog fight where there won't be any paraphernalia there. But they would still be arrested potentially for the Class IV felony of dog fighting. And there is spontaneous dog fighting like that taking place in Omaha. We had a situation like that about a year ago involving two juveniles that were prosecuted. [LB252]

SENATOR LATHROP: They just take it down to a park and have their two dogs go at it. [LB252]

MARK LANGAN: This was like in the middle of the street. [LB252]

SENATOR LATHROP: But most generally won't you, and this goes back to my piling on question. Is this one of those piling on statutes, or is this one of those things where you walk in and everything for a dog fight is there, but no dogs. [LB252]

MARK LANGAN: My opinion is this is definitely not a piling on statute. It's a statute that is needed. We had a situation two years ago of a person who attempted suicide. And we were called to the scene by the Omaha police because there were a couple of pit bulls that were injured. And we found the basement covered with blood on the walls, a little fight pit in the basement with blood, the treadmill, the spring poles and things like that. And the prosecutor in the case did not feel as though there was enough evidence for dog fighting but actually brought it to my attention that we should have a bill like this where we can prosecute somebody for having all the dog fighting equipment. [LB252]

SENATOR LATHROP: Okay. Thanks, Mark. Any other questions? I don't see any. Thanks for coming down. [LB252]

MARK LANGAN: Thank you very much. [LB252]

SENATOR LATHROP: Any other proponents? [LB252]

ROBERT DOWNEY: (Exhibit 6) Senator Lathrop, members of the Judiciary Committee, number one my apology to you, Senator Lathrop. I misspelled your name on my cover sheet here. Wasn't intentional. I wanted to talk to you about two dogs that came through Capital Humane Society, here in Lincoln, in May of 2008. In the testimony that is being handed out, four pages back you will see attachment one, a set of necropsy photos on this particular pit bull puppy. This dog was brought into the shelter by a citizen who had found it on the street. The dog was covered with puncture wounds, with lacerations, was bleeding profusely. We had no veterinarians in the building at the time so the dog was immediately transported to the nearest veterinary clinic where it was examined and euthanized. The dog probably would have bled out within a matter of another 10 to 15 minutes. One of the injuries was complete severance of the left cranial artery of the dog.

The veterinarian who examined the dog guesstimated the age to be 12 weeks of age, and this was based upon dental development. But the dog that we saw physically appeared to be a dog that was in the range of seven to eight months of age, and this was based on the muscularity of the animal. As a result, it was a red flag to me. I had the dog necropsied at the university's Veterinary Diagnostic Center. We also had urine samples taken from the dog and submitted to Truesdail Laboratories in California. The toxicology reports came back positive for the steroid boldenone. Boldenone is a veterinary steroid used primarily in horses and cattle to build lean muscle mass. It's widely abused in mixed martial arts, boxing, sports of that nature, bodybuilding. It's readily accessible over the Internet. In one of the attachments I have placed in there shows you a Web site where you can easily access and obtain boldenone. Boldenone is used in the dog fighting world as a steroid to build lean muscle mass in the fighting dogs. Another dog, the last attachment there, page 5, is a pit bull that came to the shelter on May 6 of 2008, had many puncture wounds all over its body, lacerations, so on and so forth. Not all of these wounds took place at the same time. There were scars, healed over puncture wounds, fresh lacerations on this dog. So whatever this dog was involved in it had been involved in on numerous occasions. An individual contacted us by cell phone, gave us their name and expressed an interest in coming and obtaining this dog from us. We immediately turned that name and cell phone number over to LPD. We were notified that that person was wanted on several outstanding felony warrants and if that person showed up at the shelter we were to immediately summon law enforcement. How could LB252 help with these two dogs? If they entered into the shelter, if these two dogs were ever tied back to an actual owner, prosecutors could go, law enforcement could go to a court and seek a search warrant to go to the premises of whoever owned these dogs, search the premises for paraphernalia. And if they find paraphernalia with blood on it, remnants of blood, so on and so forth, if they find steroids that the dogs have been injected in, obviously, something out of the ordinary is taking place in a situation like that. [LB252]

SENATOR LATHROP: Very good. Thank you for your testimony. Are there any questions? Seeing none... [LB252]

ROBERT DOWNEY: Thank you. [LB252]

DON WESELY: Mr. Chairman, members of the Judiciary Committee, I'm Don Wesely, D-o-n W-e-s-e-l-y, representing the Humane Society of the United States which has 10.5 million members nationwide, 48,000 members here in Nebraska. We support LB252. The key point of this is that animal fighting is a felony in the state of Nebraska, but the possession of animal fighting paraphernalia is legal. And we see that as a disconnect that needs to be corrected with this legislation. I was the senator who introduced and passed the felony provisions for dog fighting back about 20 years ago. Dog fighting was a problem then, animal fighting I should say because it also includes fowl fighting. But here, 20 years later it continues to be a problem, so much of a problem

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that we recently announced a partnership with the Attorney General, Jon Bruning, to offer a \$5,000 reward for any information that led to the arrest and conviction of somebody involved with dog fighting. Also, we partner with the Capital Humane Society, the Nebraska Humane Society. The Nebraska Humane Society has offered a \$10,000 reward for information leading to arrest and conviction of dog fighting. This is a serious problem. Getting information has been a problem, convicting people of dog fighting and fowl fighting has been a problem. This will help address that problem by making it possible to, as you said Senator Lathrop, you can't find the animals but you find the paraphernalia, you have a chance to move forward and deal with it and prosecute people based on that. We feel very strongly that this is good legislation. We support the legislation. We ask your support as well. And that will end my testimony. [LB252]

SENATOR LATHROP: Thanks, Don. Any questions? Don't see any. [LB252]

DON WESELY: Thanks. [LB252]

SENATOR LATHROP: Thank you. Any other proponents? Anyone here in opposition to this bill? Anyone here in a neutral capacity on LB252? [LB252]

KATIE ZULKOSKI: (Exhibit 7) Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I am testifying today on behalf of the Nebraska Veterinary Medical Association. The language being passed around is an amendment that we are proposing. And we have shared this language with Senator Cornett as well. This would just be language that would exempt any equipment that a licensed veterinarian had, such as a treadmill, but that concern has been raised earlier, any equipment that a licensed veterinarian had for a specific reason that that would be exempt from this animal fighting legislation. [LB252]

SENATOR LATHROP: Any questions? I don't see any. [LB252]

KATIE ZULKOSKI: Thanks. [LB252]

SENATOR LATHROP: We did talk about this and I appreciate your testimony in a neutral capacity today. Anyone else here in a neutral capacity? Seeing none, that will close our hearing on LB252. (See also Exhibit 13) We'll move into LB494. Brings us to Senator McCoy. Good afternoon, Senator McCoy. [LB252 LB494]

SENATOR McCOY: Good afternoon. [LB494]

SENATOR LATHROP: First time in Judiciary Committee. [LB494]

SENATOR McCOY: Yes, it is. [LB494]

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SENATOR LATHROP: All right. Well, welcome. [LB494]

SENATOR McCOY: (Exhibit 8) Thank you. Again, good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th Legislative District. I'm here this afternoon to introduce LB494. This bill was brought to me by the city of Omaha because of the burgeoning canine crisis in the Omaha metropolitan area. LB494 seeks to amend the revised statutes of Nebraska to change provisions relating to dangerous dogs. LB494 will increase the criminal penalties for owners of dangerous dogs, a term which is rigorously defined within the bill. This bill addresses the situation when a dog commits an act of mutilation or significant bodily harm. The change being sought is charging owners of a dangerous dog with a Class IV felony. The need for this bill became undeniable as recently as last night when a 12-year-old boy was bitten in a neighborhood only two blocks north of Senator Council's district. The issue of dangerous dogs is affecting Nebraskans across the state. Recently, this issue became very personal for my family as well as for families across my district. As members of the committee may be aware, over the weekend a 48-year-old woman was attacked, inside her home, by what this bill defines as a dangerous dog, meaning that this dog had committed a violent act once before this second occurrence. This violent attack happened within a half mile from my home where my wife, Shauna, and I are raising three young children. Unfortunately, this was not an isolated occurrence. Over the weekend a Siberian Husky bit a two-month-old, causing fractured ribs, in Bellevue. A 9-year-old boy also was bitten in the face by a rat terrier in Omaha and needed stitches on his face. LB494 would be a strong tool to help committees impose criminal penalties that will significantly improve public safety. By consulting the Nebraska Revised Statutes for crimes and punishments, it is clear LB494 would significantly increase criminal punishment for owners of dangerous dogs whose dog commits a violent act. Current state law provides for either a Class III misdemeanor or a Class IV misdemeanor. To enhance the criminal penalty to a Class IV felony, as this bill proposes, would be a significant change. LB494 is not breed specific. The intent of LB494 is to strengthen the criminal liability for owners whose dog commits or attempts to commit a subsequent violent act. The definition of a dangerous dog reflects that intent. Criminal penalties will not be applied to the owner of a dog which has no previous record of committing or attempting to commit a violent act. I'd like to provide the committee, which I did a few moments ago, for the record a copy of a resolution voted for by every member of the Omaha City Council in support of the goals of LB494. And I'd be happy to answer any questions, if I can. [LB494]

SENATOR LATHROP: Thanks, Senator McCoy. Senator Rogert. [LB494]

SENATOR ROBERT: Senator McCoy, you may have no idea, but didn't we address this? Has this been addressed in the past, to your knowledge? [LB494]

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SENATOR McCOY: I don't know that this specifically in this manner has been addressed. There may have been bills in the past that touched on this area. But I'm not aware specifically of a bill that addressed this in this particular manner. [LB494]

SENATOR ROBERT: Yeah, we had a dangerous dog bill last year, but I don't remember what it was. Thanks. [LB494]

SENATOR LATHROP: Any other questions? I don't see any. Do you want to stay around and close? [LB494]

SENATOR McCOY: I will stay as long as I can. Thank you. [LB494]

SENATOR LATHROP: Okay. All right, good. Marty Conboy, come on up. [LB494]

MARTIN CONBOY: Good afternoon, Senator Lathrop, senators. My name is Marty Conboy, C-o-n-b-o-y. I'm the city prosecutor in Omaha, here testifying in favor of the advancement of LB494 and here on behalf of the city of Omaha. This bill is designed to dovetail into a plan that the city of Omaha has already incorporated through a number of ordinances. It takes into account the fact that we have a situation where we really have a pyramid of behavior. And quite often I've come to this committee, I think once already this year, to ask that matters be considered to be elevated to the level of a felony because of serious societal consequences. This is one case that I can say that there are instances where judges have said that the matter is so severe that the misdemeanor penalties currently available for serious dog attacks are not sufficient. We don't have to use our imaginations anymore to imagine children who are maimed, people who are killed by dogs that are not properly kept. Our ordinances now provide for more responsibility for dog owners to keep those dangerous animals; to identify them, to require insurance, certain sequestration, and things like that. But regardless of those measures, there are cases where these dangerous dogs aren't kept properly and they do in fact inflict these rather serious or sometimes fatal attacks. This statute would permit a new level penalty to put at the top of this pyramid. It wouldn't apply to a lot of people, but I think we'd all agree that hopefully these kinds of results won't be common. And so when they do occur we will have that tool that these judges will tell you that we don't have now. It is hopeful that added to the responsibilities already required of people who possess dangerous dogs, who have been found to have a dog that is dangerous, that this will be a deterrent for them to either take extraordinary measures to keep that dog away from other people or, if necessary, to get the dog out of the state in some way, maybe out of existence, but whatever it takes to be sure that these sorts of things don't happen. So the deterrent value is also important as well. I'd be happy to answer any questions that you might have. [LB494]

SENATOR LATHROP: Any questions? Senator Christensen. [LB494]

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SENATOR CHRISTENSEN: Thank you. Do you guys have the rights to have a city ordinance prohibiting these to be in town? [LB494]

MARTIN CONBOY: We do. In fact this very statute and part of its preamble does provide that the cities have the opportunity to pass ordinances. And we do have an extensive chapter intact on the books that deal with dangerous animals, and it was recently updated. [LB494]

SENATOR CHRISTENSEN: Have you looked at updating that or not enough instances or why wouldn't you take a more firm approach? [LB494]

MARTIN CONBOY: Well, actually this statute is the next step. Our statutes go, in Omaha, have a cap on the penalties that we can impose of six months for an occurrence. And the recent attack last summer, where a girl's scalp was ripped off, in fact, I talked to her grandfather. Had she not been secured in that wagon with a seat belt, which is kind of unusual, she would have probably been pulled out of there and the consequences much worse. And that woman who owned that dog received the maximum penalty that we have available in the law in the city of Omaha. But it became clear, and these recent attacks make it more clear that six months in jail, which is our maximum penalty under our ordinances, probably would not be considered sufficient for a child who is killed by someone who already had a dog that was determined to have been dangerous in the past. So we've gone as far as we can with our ordinances. And that's why the council asked to have the Legislature look at this. [LB494]

SENATOR CHRISTENSEN: Yeah, but couldn't you take the ordinance a little further and ban them from town? [LB494]

MARTIN CONBOY: We absolutely could. And that was a consideration that was, I guess, bantered about. The hope is that, at least on the behalf of the city council, that people could be responsible enough and that these dogs could be identified regardless of breed. Some jurisdictions have had breed specific legislation with, they claim, success. And the hope is that we can find a solution that would apply to all dogs in all circumstances without taking that step. But that may be...down the road I'm sure it will be discussed in fact. [LB494]

SENATOR CHRISTENSEN: Thank you. [LB494]

SENATOR LATHROP: Senator Council. [LB494]

SENATOR COUNCIL: Yes, thank you, Mr. Conboy, for providing testimony today. Kind of piggyback on Senator Christensen's question, maybe try to clarify a little bit. Even under the Omaha ordinances in order to be considered a dangerous dog it has to have gone through the level of potentially dangerous dog, and has done something to place

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them in the category of dangerous dog. [LB494]

MARTIN CONBOY: Correct. [LB494]

SENATOR COUNCIL: So in terms of banning dangerous dogs from the city, what would be...it would become kind of an enforcement nightmare, I would think, that you'd have to then...any dog that has had an event that was reported to Omaha Humane Society or to the Omaha Police, then that dog would automatically fall into the dangerous dog category. [LB494]

MARTIN CONBOY: Correct. In fact, the statute says that the records of the local agency determine whether or not it is considered dangerous. [LB494]

SENATOR COUNCIL: Okay. I see. [LB494]

SENATOR LATHROP: Senator Christensen. [LB494]

SENATOR CHRISTENSEN: Thank you. But couldn't you not ban certain breeds totally and you do, correct, ban certain breeds? [LB494]

MARTIN CONBOY: In Omaha we don't. And part of the problem with that is, I guess, just identifying whether a particular animal falls within the breed. It would have to be proven that a dog, for instance, is a pit bull. And that term "pit bull" has a wide definition. I'm told that genetically there really was never a natural pit bull, that they're actually a crossbreed of...created over time. And while we probably see one, you know, you say you know one when you see one; you still have to prove it. You'd almost have to bring in a veterinarian to say that they've done the analysis of the skull and the structure and so forth to determine whether it would qualify as a pit bull. So that is one of the shortcomings of those ordinances that other cities have employed. [LB494]

SENATOR CHRISTENSEN: Okay, thank you. [LB494]

SENATOR LATHROP: I do have some questions for you, Marty. And certainly I've done a lot of dog fight cases over the years. And they can kind of fall into two varieties. And one is when a pit bull tears somebody up and they can really, truly disfigure somebody. But you also have the little yippy dogs where, you know, Missy goes over to her friend's house and they have a poodle or a schnauzer or something that's just a small dog, it bites them. And if it breaks the skin it will require medical treatment, at least a tetanus shot, typically. And that yip dog that's the family pet and may even have been provoked by wrestling or running in the house or something, but it bites the neighbor kid, and if it inflicts an injury that requires medical treatment it's now, under your bill, or as defined in the statute a dangerous dog. Right, dangerous dog can be any dog that inflicts any injury on a human being that requires medical treatment. And it...so I understand what



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you're after, which is the pit bull that tears somebody's arm off and somebody ought to be convicted of a felony. But if that family pet that is one of those little yippy varieties that are small... [LB494]

SENATOR ROBERT: You have one, don't you? (Laughter) [LB494]

SENATOR LATHROP: I do own one. And I'm not defending my dog here. But, no. Now I want to walk you through the statute though. That dog bites somebody that may or may not have provoked it. But you have to have medical attention because you need a tetanus shot after you've been bit by the dog. Now we go over to the heart of the statute, which is Section 6. And it says, "any dangerous dog" which the yippy dog now qualifies as "inflicts on a human being mutilation." And we don't...I don't see where mutilation is defined. And so does that mean we now have to have a tearing of the muscle tissue, disfigurement? Is a mutilation the equivalent of requiring any medical treatment? So the second time the yippy dog breaks somebody's skin are we now looking at a felony? Which I don't think is what we intend to do with the bill. [LB494]

MARTIN CONBOY: I would agree with you. That term is not defined. It is listed in conjunction with loss of life or the loss of body parts. And the...I guess, in terms of what would be normally considered injury that you described in the first part of the determination, mutilation would imply something permanent, disfiguring, and severe, I think if given common definition. [LB494]

SENATOR LATHROP: Wouldn't the bill be better, and I'm just visiting with you about drafting ideas. But wouldn't it be better if it were any owner whose dog has previously mutilated another animal or human being that's involved in a second mutilation, and that we define mutilation to be, you know, death or serious injury. [LB494]

MARTIN CONBOY: Well, here's the reason behind that. You know, we talked about those serious incidents that just occurred, including the one last summer where a child's head was almost ripped off. That dog had never had a determination of being dangerous. So actually this wouldn't even apply. [LB494]

SENATOR LATHROP: Wouldn't even help. [LB494]

MARTIN CONBOY: Right it really is...this law incorporates the old common law standard of one free bite. Basically, even if your dog kills somebody, if it's the first time that dog has had any indication officially that it's dangerous, you would not be covered by this statute. It really does require...and I suppose the minimal circumstance where a small dog might fall under that fourth test there, if it's been determined because of sending somebody for treatment of an injury, it would then be considered dangerous. It would then alert the owner that they've got to be careful because now they've got responsibilities under the statute. [LB494]

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SENATOR LATHROP: I have a hard time making it a felony. And going back to a mutilation, if a small breed dog, that's the yippy variety and not a vicious dog, bites a little girl on the cheek and cuts her cheek, and now she's got a scar and needs stitches and things like that, is that a mutilation? [LB494]

MARTIN CONBOY: I can't imagine, either by common definition or the evidence that you've described, that anybody would determine that to be a mutilation. [LB494]

SENATOR LATHROP: Well, it's almost like we're going to make it a felony, and as soon as we make it a felony that will subject somebody to up to a year in the penitentiary. Right? [LB494]

MARTIN CONBOY: Five years. [LB494]

SENATOR LATHROP: Five years in the penitentiary. So now we're talking about five years in the penitentiary and it can be a family and a family pet. And it falls within this. What you're saying is while mutilation really, nah, five years is too much for that, but if it was a pit bull and it tore somebody's face then maybe it is because we don't mind sending them there. It just seems to me that as drafted we're taking...we're trying to get to the guy who has the pit bull that tears somebody's arm off or their scalp or something like that. And it's so broad that it can actually get that little yippy dog that twice bites somebody. [LB494]

MARTIN CONBOY: I would agree with you that the intent was, when you talk about loss of limb or death, throwing mutilation in there, I think, was assumed to include those very serious and permanent disfigurements. And, I guess, as I describe that perhaps it would be better to actually define mutilation to specifically include the "severe permanent disfigurement" rather than just, you know, the...and... [LB494]

SENATOR LATHROP: Severe and permanent, so a scar on the face for a little girl that bends over to pet the dog and gets bit on the face and has a tear and, you know, the scar tissue can have the formations that leave large red lumps on the face. [LB494]

MARTIN CONBOY: And again, I don't know if you'd consider that a severe permanent disfigurement. In terms of scars I think most adults have some... [LB494]

SENATOR LATHROP: I'm happy to...I like the subject, I know what you're shooting at, and I'm happy to make it a crime to have these dogs that are mutilating people. But I do think maybe with Mark's help and Senator McCoy we can come up with a definition of mutilation where we're not making Class IV felons out of housewives, right? [LB494]

MARTIN CONBOY: I understand. [LB494]

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SENATOR LATHROP: Okay. Any other questions for Mr. Conboy? Okay, thanks.  
[LB494]

MARK LANGAN: (Exhibit 9) Thank you, Senator Lathrop. My name is Mark Langan, M-a-r-k L-a-n-g-a-n, vice president of field operations of the Nebraska Humane Society. I'm passing my testimony around. I'm not going to read it because Marty Conboy did a great job of synopsisizing what I was going to say. I did want to respond to one point that Senator Lathrop made in regard to dogs that might be tormented, causing the dog to bite somebody. That is dealt with on page 3, line number 9. Says that "A dog shall not be defined as a dangerous dog if somebody is committing a willful trespass, is tormenting the dog, abusing the dog, or assaulting the dog," and things like that. I wanted to say that the Nebraska Humane Society does support this bill. As you're all aware we deal with a large number of dog bites that are highly publicized. A huge number of those dog bites are the cause of irresponsible dog owners not taking control of their dogs. This bill would not only target irresponsible dog owners, but those whose dogs have already been declared dangerous, who have already bit somebody, who allow the dogs to bite somebody again. To us that's above and beyond being an irresponsible dog owner, it's why we think that this bill is a good idea. I'm more than willing to work with the city of Omaha in regards to what you said on drafting a definition of mutilation. I think that's important. That's a good point. But I don't want to take away from the fact that this bill does target not just the irresponsible dog owner, but a level above that, one whose dog has already bitten once and who's allowed that dog to bite a second time. [LB494]

SENATOR LATHROP: Great. And I appreciate the purpose of it, I agree with the purpose of it. And maybe the problem is in the definition of a dangerous dog, because the definition is broad enough to include a small puncture wound. [LB494]

MARK LANGAN: And I'm more than willing to work with the city of Omaha on that.  
[LB494]

SENATOR LATHROP: Okay, okay. Senator Council. [LB494]

SENATOR COUNCIL: Mr. Langan, is there any limitation that would be or could be imposed for how many bites a dog gets after being provoked? I mean, because you just said, you know, you bite...your dog bites someone the first time, responsibility is on the owner to prevent the dog from biting someone the second time. What about the...and clearly, and I know you've heard and I think in fact with regard to the incident that occurred not far from my district, the owner who was responsible said the dog was provoked, that the kids had been teasing the dog. So under the statute if the...who determines whether the dog was provoked? [LB494]

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MARK LANGAN: Well, in Omaha and Sarpy County we're the investigative agency. We certainly take that into account. However, if we have a dog that conducts severe injury on somebody, whether or not that dog was provoked, we still have to...public safety is still number one in our book, it's still our number one goal. We still have to keep that dog from having that happen again. We may not charge the person because the dog was provoked, but we still may confiscate the dog and hold it for court and let the judge decide if that dog should go back to that person or not. [LB494]

SENATOR COUNCIL: Okay, because I...in response to a previous question, there was the impression left that if it's the first time that my dog acts violently, and the first time my dog acts violently he inflicts injuries that lead to a death, in those cases isn't it more often the case that that dog is euthanized? [LB494]

MARK LANGAN: If we have a dog that conducts a severe injury on somebody, whether that dog was provoked or not, there is a good possibility that that dog could end up being euthanized. Keep in mind however, if somebody is trespassing or burglarizing a house that might not be the situation. But if it's an innocent party and no matter why the dog bit, our goal is public safety to keep that dog from biting again. We certainly take that into account. And public safety is our number one goal at the Humane Society. [LB494]

SENATOR COUNCIL: Okay. So I just want to make it clear, I've got the little yippy lap dog that Senator Lathrop gave me. And it's my dog's third time biting someone. But each time, the previous occurrences, my dog was provoked. Okay? And it's the third bite. I'm not subject to a Class IV felony as this statute is written, am I? [LB494]

MARK LANGAN: Can I go back to that totality of circumstance thing that I talked about in the previous bill. We have to analyze each situation and we analyze each individual bite situation and then come to a consensus, is this dog a danger to the community or not? If we feel as though the dog is a danger to the community, we take steps to keep it away from the community. [LB494]

SENATOR COUNCIL: Okay. But to keep the dog away from the community, I'm concerned about the Class IV felony charge. I mean, as the statute reads I don't become...I don't even become a potentially dangerous dog until I take some action that's unprovoked and injure someone. [LB494]

MARK LANGAN: Correct, correct. [LB494]

SENATOR COUNCIL: And what I'm saying is if there is an animal that has been provoked into taking some action that results in injury, that may not submit the owner to a felony. But it may subject the dog to some kind of action by the Humane Society to keep that dog from harming anyone else. [LB494]

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MARK LANGAN: I understand what you're saying. [LB494]

SENATOR COUNCIL: That's...I just want to make a distinction between... [LB494]

MARK LANGAN: The answer is yes to your question. [LB494]

SENATOR COUNCIL: Okay. I just want to make this distinction and make clear that we're not going to be subjecting individuals to felony charges in cases, you know, where but for being provoked, the dog is just a yippy lap dog. But when provoked or teased or beaten by someone other than their owner, I want to make that clear, that there are other remedies available short of charging the owner with a Class IV felony. [LB494]

MARK LANGAN: I would agree with you on that. [LB494]

SENATOR COUNCIL: Okay, okay. [LB494]

MARK LANGAN: And I would also say in my experience at the Humane Society this charge would not be utilized all that much. For these situations to fall into place and somebody be charged with a felony, this would not be an every day occurrence. Any other questions? [LB494]

SENATOR LATHROP: I don't see any. Thanks for coming down, appreciate it, Mark. [LB494]

MARK LANGAN: Thank you very much. [LB494]

SENATOR LATHROP: Anyone else here to testify in favor of LB494? [LB494]

WENDY BLEVINS: Good afternoon. My name is Wendy Blevins, B-l-e-v-i-n-s, and I currently reside in Omaha, Nebraska and want to speak to you in regards to this bill. On June 25 of last year my life changed forever. My friend, Carley, and I were putting our young children in a wagon and taking a walk, her son, Cade, and my daughter Charlotte. As we walked we saw two women coming down the street walking a large dog. The dog backed its head out of the collar and began walking towards us like any curious dog would. When the dog was approximately four feet away it lunged and attacked Cade. The dog bit the left side of Cade's chest, thrashed back and forth and pulled the wagon onto its side. Carley desperately grabbed for her son but he was belted into the wagon and she was unable to get him loose. Carley's hand was bitten at this time. And as the dog moved his attention from Carley back to Cade, I moved in between Cade and the dog and blocked the dog from further attacking Cade. Unfortunately, Charlotte was now unprotected and the dog turned from me and attacked my baby. I lunged to block this attack but I was not fast enough. The dog attacked

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Charlotte's head, its jaws wrapped around her head and only by the grace of God did its teeth only rip away the back side of her head and spared her face and neck. The dog ripped Charlotte's scalp away as I watched in horror. The dog let go of Charlotte briefly, only to get a better grip on the remaining part of her scalp as he pulled it off her little head. I threw my body over hers and I began...as it bit down again, this time on her shoulder. I fought the dog off and searched for the release in the seat belt but was unable to find it. During this time I kept myself between the dog and my daughter and the dog bit into my neck twice, missing my main artery by fractions of an inch. The dog had also bitten my hands and my face. Charlotte's injury was devastating. And as I looked at my daughter I thought, how are they going to fix this? This wound is so large. Charlotte's left ear was partially detached, split in half and punctured. She lost one-third of her scalp. She underwent three surgeries in eight days, and during the three weeks after we were released from the hospital we had over 22 doctor's appointments. Charlotte had a wound vac, or a vacuum that sucks out infections attached to her head that comes out and attaches to a box that required round-the-clock care. Charlotte was in a lot of pain during this time and she experienced many sleepless nights crying and clinging to me. She would wake up screaming and terrified. Over the next several years Charlotte will need four to six more surgeries and her scalp will be stretched by placing a balloon under the skin and inflating it with saline every few weeks. After six months the skin will be stretched to three times its size and this will make her head appear very large until the balloon is removed and the skin is stretched over her head to cover the scar. Charlotte's injuries currently attract a lot of attention from others in the forms of stares of sympathy and disgust. When her head is made grotesquely larger by this balloon we will not even be able to hide it with hats. And I am scared for the emotional effect that this will have on my daughter. As her mother I just want to take this all away. I still do not have full function of my left arm. The muscles, ligaments, and tendons, and nerves were all damaged by this attack. I have had two ultrasounds, four MRIs, two ANG's, cortisone shots in my neck and shoulder and I attend physical therapy and my chiropractor three times a week. Despite all of this, my doctors inform me that there is nothing much that can fix my injury. My temporary fixes for a chronic issue are pain management, strengthening the affected area, and waiting. We will wait to see if my body will heal itself and restore the function of my ligaments, tendons, and muscles. Mentally and emotionally I am plagued with the fact that I could have lost my daughter. The attack plays over and over in my mind and I see the images of my daughter's scalp being ripped off. No matter where I am, I am always looking for an escape route, a safe place to go. This has affected every aspect of my life. Charlotte and I have 13 doctors, 6 of whom we see on a regular basis. Our current medical bills are well over \$150,000, after insurance, and our out-of-pocket medical expenses are currently somewhere between \$7,000 and \$9,000. The 32nd attack by this dog has translated into a lifetime of medical, emotional, and financial burden for my family, and we are faced with the lasting challenges every day as a result of this attack that nearly killed my daughter and caused a lifetime of medical issues for both of us. After telling you all my story, I do hope that you understand a little bit more as to why I am in support of this bill. My goal

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today is to express to you all the need for such a bill. It is the responsibility of everyone in the community to keep it a safe and respectable place to live. Owning a dog is a privilege and it needs to be taken seriously. The state of Nebraska, by applying stronger penalties to owners of dangerous and potentially dangerous dogs, none of this being breed specific, is showing that it in fact acknowledges the seriousness of these attacks. As of right now there is no law that forces the owners of these dogs to pay restitution to the victims or even attempts to bring them justice. LB494 will let the owners of this dog...these dogs know that Nebraska means business and Nebraska means to protect its citizens. By passing LB494 and making the penalty for owning a dangerous or potentially dangerous dog that attacks someone a felony instead of a misdemeanor is a far more appropriate consequence than the one that is currently in place. This bill is designed to help reduce the number of violent attacks not just be a punishment. By applying a felony conviction and a greater fine, we are all hoping that the owners will take notice and be more responsible by enrolling their dogs in the appropriate training programs or by other methods take the proper measures needed to prevent their dog from committing another violent act. I would like to thank you all again for allowing me to talk in favor of this bill. I decided to make the drive to Lincoln today because I feel it is a very important issue not only for my family but for the protection of the Nebraska citizens. [LB494]

SENATOR LATHROP: Thank you for your testimony. We appreciate you coming down. Let's see if there's any questions before you get away. Seeing none, thank you very much for your testimony. [LB494]

WENDY BLEVINS: Thank you. [LB494]

SENATOR LATHROP: Any other proponents of LB494? Anyone here in opposition? You know, I probably didn't say this. I'm pretty sure I did. You're going to have to sign in. But we'll let you testify, but everybody else needs to sign the sheet in advance. [LB494]

HARRY MUHLBACH: I have to sign first. Okay, okay. I could take...this is...my name is Harry Muhlbach, spelled M-u-h-l-b-a-c-h, from Lincoln, Nebraska. I'm not...I am opposed to the part of the bill the way it's written with regard to the domestic dogs, the family dogs. I...my family has taken care of children a lot. And we had a daughter that was nine years old that was bitten in the eye at a birthday party. And the kids were teasing the dog with a pizza. They were letting it...they didn't want the crust. They were sticking the crust out and so my question is would this dog be labeled as an offensive dog in the future. What happened several years later was a grandson came over, same dog, and it was crossed with a blue heeler. And he was running around the yard and the dog nipped my grandson in the foot, just playing. Now that dog had two offenses. And both times it broke the skin. And I am opposed to that, the way the bill is written, because I don't want...my grandparents they have a dog. I don't want them labeled, if their dog comes over and somebody grabs it. And I'm not talking about just little dogs. You can

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agitate a big dog that's a tame dog, by pulling its hair or something. But there's one thing that I notice was left out of this bill. And I have a neighbor that has a dog that would eat steel if it ever got loose. And it's never had an offense. And he calls it his watchdog. And it's not...it's the way it was treated and it's on a chain. And those are the kind of dogs that weren't even mentioned in here that are watchdogs by the owner that would really hurt somebody the first time. [LB494]

SENATOR LATHROP: Very good. Mr. Muhlbach, let's see if anybody has questions for you. None. Okay, thanks for coming down. Anyone else here in opposition to LB494? How about here in a neutral capacity? Seeing none, Senator McCoy, you're up to close. [LB494]

SENATOR McCOY: Thank you again, Chairman Lathrop. A couple of things that I wanted to point out, if I could, in closing. Senator Rogert, you were correct. LB1055 from last year, which was signed into law, did define a little bit of what necessitates a first attack or what constitutes kind of the first strike, so to speak. And it was signed into law with a number of amendments on that. That was from Senator McDonald, last year. A few other clarifications, if I could, going back to Nebraska statute and a definition of mutilation. And I'd be happy to work on clarifying that part of the bill if need be. But as it's defined now in state Statute 28-1008, mutilation is defined as meaning...mutilation means intentionally causing permanent injury, disfigurement, degradation of function, incapacitation, or imperfection. So that would be the definition as it stands now. A couple of other points that I might go back to. And, Senator Council, you brought up that enforcing a dangerous dog ban could be very problematic. If we were to go for a ban instead of that, and another point that I might bring up is that this is not breed specific. As I indicated in my opening, this isn't just about pit bulls. There was a Siberian Husky, over the weekend, in an attack. And it certainly would also go back to what Mr. Conboy said earlier, and that is that this is up to somewhat discretion, where things are looked at in the totality of evidence and that it may be that a lap dog, we may need to clarify some provisions of that to make sure that we're talking about a serious attack. And as Mr. Langan said, from the Humane Society, that what we're looking at here are these charges will not be brought every day, that this is certainly a rare occurrence we're talking about the most heinous of these attacks. With that, I'll conclude my remarks unless there would be any questions. [LB494]

SENATOR LATHROP: I don't see any. We'll work on the language so that we'll make sure we're trying to get the dogs and the dog owners that we're after and not capturing minor incidents that require minor medical treatment. [LB494]

SENATOR McCOY: Absolutely. [LB494]

SENATOR LATHROP: Very good. Thanks, Senator McCoy. [LB494]



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SENATOR McCOY: Thank you. [LB494]

SENATOR LATHROP: Good to have you here. [LB494]

SENATOR McCOY: Thank you. (See also Exhibit 14) [LB494]

SENATOR LATHROP: On to LB472. And that brings us to Senator Fulton. Senator Fulton, you are free to open on your bill dealing with scrap iron. [LB494 LB472]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I bring to you LB472. The theft of copper and other regulated metals continues to cost utilities, automobile dealerships, farmers, developers, and homeowners significant losses as theft of copper provides a rapid means for methamphetamine users to supply their addictions. Despite our recent attempts to curb copper theft and the prevalence of meth at the point of the transaction, the crime remains prevalent in our state. LB472 provides an additional hurdle at the transaction point to reduce copper theft and thus meth usage. LB472 amends Section 69-404 to require secondary metals recyclers who purchase catalytic converters, copper or other regulated metal to mail a check for payment to the vendor after a three-day hold period has expired. This provision was actually contained in LB766 from last session, yet was amended out on Final Reading. I am reintroducing this provision in the form of LB472, not as a judgment of the merits of LB766 last year, as that bill was a significant achievement, but rather I'm reintroducing this provision to revisit the original accord which existed on Final Reading of LB766 last session. By requiring the additional safeguard of a three-day hold on only the mailing of a check, we are more likely to ensure that the vendor is one who is legitimate. Concluding, it is important to note that despite our prior efforts and despite the decline in the price of copper from its price point last year, the theft of regulated metals continues to burden property owners, our public power system, and our law enforcement. LB472 presents a reasonable means of addressing this ongoing problem. If there are any questions I'd try to answer them. [LB472]

SENATOR LATHROP: Thank you, Senator Fulton. Any questions for Senator Fulton on LB472? Senator Rogert. [LB472]

SENATOR ROBERT: Thanks for coming, Senator Fulton. I worked with you last year on what bill it was. I don't remember what bill we passed last year. But we did quite a bit of research, several of us, and I think we did accomplish a lot of stuff. My experience over the past year, and I guess the reason I was so interested in it last year when you brought it was because I think there was a serious problem. We were...I was getting a lot of calls and I was seeing a lot of things that I didn't like out in the country when it comes to theft of these types of things. I think a lot of it had to deal with the price of, you know, the high value, you mentioned in here, you know, the high value of the metal and

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the catalytic converters. Since then the value has, for lack of a better term, tanked. It really has gone to a bottom level, worse than it ever probably has been. It's my opinion that maybe that was the problem. And now I'm not hearing or seeing as much of it. Are you still seeing or hearing more or getting more issues of it? [LB472]

SENATOR FULTON: Yeah. I'll...I am, Senator. And there will be some testifiers to follow which may be better able to address this, at least with more specificity than I can. We've become acquainted through our service here in the Legislature. And you probably recognize that I'm one that doesn't like or invite government interference in private business generally. But I do recognize that there are times when, as a means of societal response to a problem, sometimes that might be warranted. This morning I talked about pharmacists on the microphone because the pseudoephedrine bill that we passed in, you know, a couple years back did change the lives and behaviors and professions of pharmacists. They came to the table and we found a collaborative way to deal with, you know, with the same problem here. If I had not had...if no one would have brought this to me, I would not have brought the bill forward. The problem, however, remains. And I have been requested to bring the bill forward. So to answer your question, I'm certain that the incidence of metal theft has decreased because the value of copper and other precious metals, regulated metals, has decreased. But the problem still remains. And so that's why I brought this forward. I don't have any joy in bringing a bill like this forward. But it is something I believe that's necessary and therefore I brought it. [LB472]

SENATOR ROBERT: Well, I appreciate you mentioning some guys requested you do this. I've had a number of calls in the last few days asking us not to do this. So I was hoping that...and I figured there would be, but hopefully we can find something somewhere along the line. Thanks. [LB472]

SENATOR LATHROP: Any other questions for Senator Fulton? Seeing none, are you going to stick around to close? [LB472]

SENATOR FULTON: I think so, yes. [LB472]

SENATOR LATHROP: All right. The first proponent testifying in support of LB472. Go ahead. And please, if I didn't say this, start with your name and spell your last name for us please. [LB472]

RICK NELSON: (Exhibit 10) Good afternoon. Yes. My name is Rick Nelson, R-i-c-k N-e-l-s-o-n. Senator Lathrop and members of the Judiciary Committee, my name is, as I stated, Rick Nelson. I'm the general manager of Custer Public Power District in Broken Bow, Nebraska. You will see in the testimony that's being handed out that Kristen Gottschalk is actually listed as the testifier. She's in another hearing, so I volunteered to come in. I am testifying for the Nebraska Rural Electric Association and Custer Public Power. The Nebraska Rural Electric Association is 35 rural public power districts, links

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up about 400,000 meters over 80,000 miles of distribution line. And I'm here to testify in support of LB472. First of all, I would like to thank Senator Fulton for introducing LB472 on behalf of our membership. Legislation passed last year was introduced, as he described, to begin to address the increasing concerns with theft of high value metals and catalytic convertors. This legislation requires the scrap metal dealer to obtain a photocopy of valid identification of a seller, fingerprints, and record a valid address. These measures are in place to assist in catching a thief after the fact. An additional provision was part of the bill, as Senator Fulton described, and was pulled out at Final Reading. Why do we care about mailing a check? It is believed that the increase in theft corresponds with the increase in using illegal drugs, primarily methamphetamine. For electric utilities theft of copper becomes a major safety issue when thieves remove copper wires from utility poles or substations. Copper wire is often removed from material storage areas. Farmers are seeing an increase in the removal of copper from center pivot drives. Even as the prices rise and fall, there seems to be the activity continuing. While we appreciate the efforts of the Legislature to address high value metal theft by putting in statute provisions to catch a thief, we believe a better solution is to prevent the theft in the first place. Actions of utility...electric utilities prevent theft along with a delay of payment for stolen copper should prove to be effective deterrence. Again, I'd like to thank you for your consideration. And I'd answer any questions you might have. [LB472]

SENATOR LATHROP: Thank you. Any questions? Don't see any. Thank you for your testimony. [LB472]

RICK NELSON: Sure. [LB472]

SENATOR LATHROP: We appreciate hearing from the rural electric. [LB472]

RICK NELSON: Sure. [LB472]

SHELLEY SAHLING-ZART: (Exhibit 11) Good afternoon, Senator Lathrop, members of the committee. My name is Shelley, S-h-e-l-l-e-y, Sahling-Zart, S as Sam, a-h-l-i-n-g hyphen Z-a-r-t. I'm vice president and assistant counsel for Lincoln Electric System here in Lincoln and I'm testifying for Lincoln Electric System as well as the Nebraska Power Association. The Power Association represents all of Nebraska's publicly owned electric utilities, including municipalities, public power districts, and rural power districts, and co-ops. We also thank Senator Fulton for introducing this legislation. And it is kind of a carryover from some issues we discussed last year, Senator Rogert. It is an increasing problem and one that we believe continues to be...needs to be addressed. Even though the price of copper has come down, we are seeing in Lincoln continued copper thefts. We had some fairly major ones about a month and a half ago. And our concern is not really as much monetary concern as it is a public safety concern. Part of the handouts you're getting, as they come around, I've included two photographs from a couple of our

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power poles here in town where people have been ripping and stripping the ground wires off as high as they can get to them and clip them off, which leaves those wires exposed and ungrounded, which is a concern for our utility workers. In addition, we have people, as they attempt to steal copper either by breaking into our substations or, in our case, they broke into our service center on North 27th Street. When they get into the substations they're taking their lives into their own hands. OPPD and NPPD have had instances of charred clothing with no bodies. They've had people take chain saws into live electrical lines. And we're amazed we haven't found bodies. They have found bodies at utilities in other parts of the country. We've been fortunate in Nebraska. We believe a lot of the reason for these copper thefts is the fast cash proposition, the idea that you can quickly turn this around for cash. What this bill is intended to do is provide a deterrent by taking away the fast cash proposition. It requires a hold on the payment, and the payment is mailed to an address provided by the person bringing the copper in. We think that's the best way to deter it. The other two things that I've provided to you, one is an assessment of copper wire thefts from electric utilities that was prepared in April of 2007 by DOE, the Department of Energy's Office of Electricity Delivery and Energy Reliability; and then one just this last fall, in September, copper thefts threaten U.S. critical infrastructure, that was prepared by the FBI's criminal intelligence section. We believe this is an important issue that needs to be addressed. The price of copper is likely to come back up and we ought not wait until we have the severe problem again before we address it. With that, I would take any questions. [LB472]

SENATOR LATHROP: Very good. Thank you. Are there any questions? I don't see any. Thanks for your testimony. [LB472]

SHELLEY SAHLING-ZART: Thank you. You bet. [LB472]

SENATOR LATHROP: Anyone else here in favor of this measure? Anyone here to testify in opposition? [LB472]

DON WESELY: Mr. Chairman, members of the Judiciary Committee, I'm Don Wesely representing Alter Trading Company and the Scrap Recyclers of Nebraska. This issue was before us last year. And I know Senator Council is new and Senator Coash. But let me give you a quick summary of what we went through. Legislation was introduced as LB766, had a massive amount in the original bill. This committee reviewed it. And specifically, among other things, took out this requirement of the three-day hold on the check. It went to the floor. That was put in on a floor amendment and then later was taken out again on Final Reading, as was indicated. So this is a contentious part of the legislation from last year. And it's contentious...we have a number of scrap recyclers who will follow me because it's so disruptive to those who have committed no crime. There is a criminal activity. There is a problem. It is less now than before because of the passage of legislation and because the price has gone down. But still there is an issue and we're ready to work with anybody to address it. But let's go after the problem. Let's

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go after the criminal. There is another piece of legislation that's been introduced. We will support that legislation to increase the penalties for these type of thefts. Let's go after the criminal, let's not go after the innocent who are the scrap dealers and those 99-plus percent of their customers who come in and bring in material to recycle, and have committed no crime. But under the legislation passed last year, here are some of the things that we now require. And again, we ended up supporting that effort to try to address this problem. But now when they come in we get the date and time of transaction, we get the weight, grade, and description of the regulated materials. And regulated materials are not only catalytic convertors and copper but all nonferrous metal, except gold and silver, and also metal beer kegs. So they bring in these regulated materials. They get the weight and grade description, the name, signature, and address of the person selling, a photocopy of their motorcycle license, a fingerprint if they have copper or catalytic convertors. So we've got their fingerprint now. We get a photograph or video of all these regulated materials, not just the copper or catalytic convertors. We have to hold all of that material for a year. We can't pay any cash payment over \$25. Everything is going to have to be by check for any copper or catalytic convertors. We put a lot of restrictions on last year. It just came into effect in September. It's having an impact, I think, to help deal with this problem. And to add now back this item punishes individuals who are trying to cooperate and work with folks and are doing a good job, I think, recycling material in this state. So we strongly oppose this proposal. If the public power industry and others wish to work with us, we're glad to do it, to try and address the problem. But this is not the solution to that problem. Thank you. [LB472]

SENATOR LATHROP: Thanks, Don. Any questions? Seeing none,... [LB472]

DON WESELY: Thank you very much. [LB472]

SENATOR LATHROP: ...appreciate it. Next testifier. [LB472]

TODD HOPPE: Hi. I'm Todd Hoppe. I represent All Metals Market at Fremont, Nebraska. I have to follow-up on Don Wesely. I have our register. When somebody sells me the regulated metals everything in the information I have to take. The only thing that's not included on there is a picture of the regulated metals. It's on a different system in our company and it was cumbersome to bring that today. I would agree with the power company. There is a problem they need to address; they're going after it the wrong way is the way our company and our industry see. We put out \$45,000 for the system that you will see. We were extensive. We wanted to make sure we fully complied. And it was easier for us not only with the system, we had administrative expenses. We've incurred them, we're willing to do that. We're trying to be proactive in this issue. Now to come back to the table after this was taken out of the LB766 before, now we're going to incur postage costs, more administrative costs, and it's not going to have anymore effect than LB766 did before. And like Mr. Wesely said, we haven't had

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enough time to see the full impact of this bill. I believe it was a good bill. A lot of senators worked very hard on it. I believe their avenue of attack is going with their...more punishment for the crimes they're committing if they're stealing municipality wire. I testified before on LB766. I am a full-time manager of All Metals Market, like I said, but I also have been in law enforcement since '84. I'm a deputy with the Saunders County Sheriff's Office, in a part-time capacity. I'm not here on behalf of them, but I have the luxury of seeing the other side. Having a three-day wait for payment is not going to help with any kind of conviction or slowing down of the theft of copper or catalytic convertors. It's not the way to address this problem. And that's all I have to say. [LB472]

SENATOR LATHROP: Thank you for your testimony. [LB472]

TODD HOPPE: Thank you. [LB472]

SENATOR LATHROP: Anyone have any questions? Seeing none, thank you. Next opponent. [LB472]

JENNIFER JONES: Good afternoon. My name is Jennifer Jones and I am currently an undergraduate student at the University of Nebraska-Lincoln, an environmental studies major, and I am strongly opposed to LB472 for two reasons. My first reason is that I feel that this bill takes away from the whole principle of recycling. Right now we're in no position with our environmental status to discourage anyone from recycling. This is exactly what that bill would do. My second reason I oppose this bill is because I have a family-owned business, Scrap Central, in Omaha, Nebraska. And with this bill I would have to...a lot of our customers are older, older people, older gentlemen, ladies. They come in, just cleaning up their basement, extra copper piping in their basement. And I would honestly have to look at a 72-year-old lady bringing in a bucket of copper and tell her she has to wait three days for her check. I have a huge problem with that. So those are the two reasons I oppose this bill. [LB472]

SENATOR LATHROP: Thank you, Ms. Jones. Any questions? Don't see any. [LB472]

JENNIFER JONES: Thank you. [LB472]

SENATOR LATHROP: Thanks for your testimony. [LB472]

PETE LANGER: Good afternoon. My name is Pete Langer. I'm here representing Alter Metal Recycling. [LB472]

SENATOR LATHROP: Can you spell your last name for us. [LB472]

PETE LANGER: L-a-n-g-e-r. [LB472]

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SENATOR LATHROP: All right. [LB472]

PETE LANGER: The way Alter operates, I actually agree with basically everything that's been said against the bill so far, and some of that I'll reiterate here. But Alter operates scrap metal recycling facilities in Lincoln, Norfolk, Omaha, and Grand Island, and we're strongly opposed to the proposed LB472. We believe there's no legitimate reason to amend the state scrap theft bill that just went into effect in mid-2008. The following are some of the reasons why the Legislature should reject the proposed amendments at this time. The original bill that was passed in 2008 has just been in effect for a few months and has not been given time to fully determine how it works in practice. The scrap metal recyclers, law enforcement officials, and other interested parties are just getting used to the rules and regulations that were imposed by the new law. These provisions have simply not been given sufficient time to allow all the provisions to work and to evaluate how they will assist in the fight against crime. To go forward with an amendment that imposes even further burdens upon our business at this time is premature and unfair. Contrary to what has been claimed, we have seen no increase in metal theft in our facilities since the law went into effect last year. On the contrary, our facilities have seen a dramatic drop-off in nonferrous metals business and theft reports since last fall. Our Lincoln operation has only received one theft report from the Lincoln Police Department in the past three months. Our Omaha facility manager has been informed by local police that metal thefts are down as much as 80 percent since last year. Our Norfolk scrap yard has not had any metal thefts reported to them since the 2008 law went into effect, and our Grand Island facility has only had one reported incident, in December of 2008, and not had another since. Additionally, the scrap metal industry is currently suffering through one of our worst business periods in history. Our industry has not been immune to the worldwide crash in markets. Alter and all of our colleagues have struggled to maintain profitability in recent months. And the last thing that we as an industry need at this time is more unnecessary overregulation that will burden our operations even further and cost even more money. There is no question that the proposed requirement of this bill that calls for holding of check payments for three-days before payment can even be mailed to our customers will cost our industry an incalculable loss of business. Nothing will stop a huge number of our customers who are not willing to wait up to five to six days to receive payment for their legitimate sales from going to neighboring states which do not have such a ridiculous requirement. We will be virtually guaranteed to lose many, many customers to Iowa and other bordering states. In addition, this requirement will only serve to punish us and the 99 percent plus of our customers who are not doing anything wrong, and will totally disrupt legitimate business. It will also force thieves outside of the jurisdiction of Nebraska law enforcement where this law does not apply and we can no longer assist in identifying and prosecuting metal thieves. [LB472]

SENATOR LATHROP: Thank you for your testimony. We'll see if there are any

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questions. [LB472]

PETE LANGER: Thank you. [LB472]

SENATOR LATHROP: Senator Rogert. [LB472]

SENATOR ROBERT: Mr. Langer, which operation are you out of? [LB472]

PETE LANGER: Norfolk, Nebraska. [LB472]

SENATOR ROBERT: You're from Norfolk? [LB472]

PETE LANGER: Um-hum. [LB472]

SENATOR ROBERT: When we run in...did this last year I went and toured the Omaha operation one morning... [LB472]

PETE LANGER: Um-hum. [LB472]

SENATOR ROBERT: ...with the help of your group. And I would have to assume that maybe there wasn't a lot of work you guys had to do to implement last year's bill, because you guys were almost there already. [LB472]

PETE LANGER: We were. [LB472]

SENATOR ROBERT: And I commend you guys for doing that. You guys do a good job. What I did notice is that especially Omaha, we'll say, Carter Lake's about 100 yards away. (Laugh) And I'm afraid that this right here would send them right down the road. And I don't know that we'd catch anything. What about the rest of your colleagues in Norfolk? There are a couple other guys up there. Is this...was the implementation of last year's steps a big burden for them? Were they close because you drove them to get there? [LB472]

PETE LANGER: Most were fairly close. We are the only scrap metal recycler...I guess, there are several others. But not...this law did not effect them. Mostly they're in aluminum cans, which was not governed by last year's law. [LB472]

SENATOR ROBERT: Right. [LB472]

PETE LANGER: But, no, it was not a large leap for us to be able to get to that. And most around us have been able to, you know, meet the requirements of last year's law. This next step is going to be very labor intensive, very difficult for smaller operations to be able to meet that requirement. My greatest concern is that we really have not been



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involved with any metals theft where we have not been able to secure...or law enforcement has not been able to secure an arrest. We have...at this time, even before this was in effect, we'd been able to provide any and all information--names of potential suspects, pictures of not only the material but also of the person delivering the material, including receiving payment. [LB472]

SENATOR ROBERT: Does the Norfolk City Police and the Madison County Sheriff make stops regularly to pick up that information from you guys? [LB472]

PETE LANGER: Any time, and not only those sheriffs department...those officers but all around us, they know that that information is readily available to them and can be provided at a moment's notice. [LB472]

SENATOR ROBERT: Can you address an issue about a term, I know it's more familiar in Omaha than it may be up there, but of gypsies when it concerns catalytic convertors? Can you tell us a little bit about those. [LB472]

PETE LANGER: Um-hum. About their operations or their business or... [LB472]

SENATOR ROBERT: Yeah, both. [LB472]

PETE LANGER: (Laugh) They are...it is obviously a concern. Their style of operation, there are some legitimate traveling dealers. And gypsies is kind of a blanket word that would cover anybody who would do that kind of business. There are also some who are unscrupulous. But we see that same thing in stationary dealers as well. This law requires the same of them. We have...again, already we have their pictures, we have a picture of the material on the scale, we have a copy of a drivers license, we have a fingerprint. We have all of this information. It is all retained and it is all readily available to law enforcement. You know, we think that we're doing way above and beyond. Were 110 percent even before this law went into effect. And I don't see where this will change anything other than drive the thieves, along with legitimate business, out of the state of Nebraska and into an area where we can no longer provide that service, we can no longer help secure arrests and prosecution on these people. [LB472]

SENATOR ROBERT: And you're coping okay with what we did last year? That's working all right with you. [LB472]

PETE LANGER: We have been able to adjust to that. And we are all following that, we are all meeting that requirement. [LB472]

SENATOR ROBERT: Thanks, Mr. Langer. [LB472]

PETE LANGER: Thank you. [LB472]

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SENATOR LATHROP: Very good. Thank you for your testimony. Anyone else in opposition? [LB472]

ERIC STOUP: (Exhibit 12) Good afternoon, members of the Judiciary Committee and Senator Lathrop. I'm Eric Stoup. I represent Sadoff Iron and Metal out of Lincoln, Nebraska division, I'm the manager. Basically, you have a copy of our position on the bill. We feel that LB472 doesn't accomplish what it needs to, to deter the problem, basically. The three-day hold is cumbersome, it's...in addition to what we've already had, it's too much to basically overcome what we're looking for. Basically, the bill in the past put a lot of extra strain on our business, basically, because what would I say, we do work with the law enforcement. But it's an every day occurrence, basically. It comes around all the time. They ask for information. It's put us out a lot already. So, I guess, we feel basically like everyone else. We don't really think that this is the way to go about it. We would support a bill that would have stronger requirements on the theft, basically, penalties. [LB472]

SENATOR LATHROP: Okay. Thank you for your testimony. Any questions? Seeing none, appreciate you coming down. Anyone else in opposition? [LB472]

HARRY MUHLBACH: My name is Harry Muhlbach, spelled M-u-h-l-b-a-c-h, from Lincoln, Nebraska. First, I want to thank Chairman Lathrop and the rest of the senators for sticking around this time of day. I've been at hearings where most of the chairs have been empty. And I've always felt that that was not appropriate for the senators to not be...stick around to the end. And I want to thank you for being here. [LB472]

SENATOR LATHROP: I should tell you that Senator Ashford is out of the state, so... [LB472]

HARRY MUHLBACH: I know. (Laughter) So he's got a valid excuse. [LB472]

SENATOR LATHROP: I wanted to defend that guy even though he's not here. [LB472]

HARRY MUHLBACH: That's fine because this is above average of sticking around. [LB472]

SENATOR LATHROP: Thank you. [LB472]

HARRY MUHLBACH: Okay. First of all, this bill needs to be just plain killed, not even taken out of committee. It doesn't address the problem. It's just...it's going to hurt the people that are doing the business. Now our family, we go back to what this lady said, we're a recycler. People hire us to go clean up a farmstead. And we go clean up a farmstead and sometimes we run into a customer that wants a farmstead cleaned up on

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shares. And they want, you know...so if we can go and haul in our material to a recycler and sell it, we know the amount there, we can settle up with that person. The person doesn't have to question us why he's waiting three days to get the copy of the porous metals. It hurts good business. The price, it's going to have to have an effect upon the price of the metal that we receive because the good management on the people that are buying the product from us are going to have to discount a little bit to allow for their additional labor to process and hold this. So it's actually going to hurt our returns a little bit. It has a false security on stopping theft. That's not...this isn't going to do anything to it. And also people that are recycling, it will have a tendency to hurt them too. [LB472]

SENATOR LATHROP: Okay. Any questions? I don't see any. Thanks for your testimony. Anyone else here in opposition? Any...seeing no one, anybody here in a neutral capacity? And, Senator Fulton, you're up to close on LB472. [LB472]

SENATOR FULTON: Thank you, Mr. Chairman, members of the committee. The majority of purchasers of ephedrine are not criminals, yet we as a state passed legislation recently, and in fact as recently as this morning revisited that legislation to regulate the purchase of ephedrine. So if one is to argue by way of an absolute principle that we cannot change the behavior in a given industry in order to get at a few who are criminals, and I submit to you that we have done that and we do that quite frequently. The question becomes then, as it often does, an element of prudence, judgment. And I'll frame this situation to you as briefly as I can here. If a person who wants to sell stolen scrap metal to raise money to pay for a drug habit or what have you wants to do so, then it is in that person's best interest to get money and get money fast--so sale and speed. This bill proposes to delay, by three days, this transaction and obtain the mailing address to which the money would be sent. So if the person really wants the money, then they're going to provide a real mailing address which is going to help in apprehending these criminals and with enforcement, hopefully, have a diluting effect on the commission of the crime. So I present this to you by way of idea. It's been something that's been contemplated before, I recognize that. But, hopefully, it's worthy of your consideration. So thank you. [LB472]

SENATOR LATHROP: Thank you very much, Senator Fulton. That concludes our hearings for today. We're out of bills. [LB472]

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Judiciary Committee  
February 11, 2009

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Disposition of Bills:

LB409 - Held in committee.  
LB347 - Placed on General File with amendments.  
LB252 - Held in committee.  
LB494 - Placed on General File with amendments.  
LB472 - Indefinitely postponed.

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Chairperson

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Committee Clerk