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Judiciary Committee
March 04, 2009

[LB153 LB199 LB238 LB506 LB517]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 4, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB153, LB517, LB199, LB506, and LB238. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash, Brenda Council; Scott Lautenbaugh; Amanda McGill; Kent Rogert. Senators absent: None.

SENATOR ASHFORD: Hello, Senator Lautenbaugh. []

SENATOR LAUTENBAUGH: Hello, Senator Ashford. []

SENATOR ASHFORD: Welcome to the Ernie Chambers Judiciary Hearing Room and we are...welcome to all of you. We are here today to hear LB153, LB517, LB199, LB506, and LB238. We have a new stand-in legal counsel today, Michael Hooper, from Creighton Law School; and Christina Case is the committee clerk. Mark Christensen is here from Imperial on the committee, welcome, Mark; Senator Lathrop from Omaha; Senator McGill from Lincoln; and Senator Council from Omaha. We have, for those of you who haven't been here, and I see some of you I don't recognize right off the bat but some I do, we have a light system that we strictly enforce, not really, well, almost strictly, but we ask you to confine your comments to three minutes. And we will have a...we have a light system that goes to yellow and red, and when we go to yellow, that gives you about 30 seconds or so to sum up, and then the red light we'd ask you to stop your presentation. Oftentimes there are questions after the red light, which will enable you to amplify your points. But that way we can get through the five bills that we have today in an efficient manner. Senator Lautenbaugh, LB153. []

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford, members of the Judiciary Committee. My name is Scott Lautenbaugh. I'm the introducer of LB153. I'll be honest with you, I have comments prepared on this bill that I have apparently left down in my office, so my closing is going to be better than my opening on this particular bill. (Laughter) [LB153]

SENATOR ASHFORD: You brought your closing but not your opening? Or, no, are you going to...(laugh). [LB153]

SENATOR LAUTENBAUGH: No. I have a feeling my opening will be my closing, once I go get it. But that said, and...(laugh) [LB153]

SENATOR ASHFORD: That's full disclosure. In the era of transparency, it's good to know that you're... [LB153]

SENATOR LAUTENBAUGH: Yes, I'm all about transparency. So that said, what this

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basically does to promote tourism in Nebraska is provide caps on liability for what the bill defines as small tourism businesses. There are about six proponents. I will be here to close. I'd be happy to take your questions then or now; then would probably be better, all things considered, but... [LB153]

SENATOR ASHFORD: I think then might be better, so thanks, Senator Lautenbaugh. (Laughter) Richard Baier. [LB153]

RICHARD BAIER: (Exhibit 1) Out of forced transparency, Senator Lautenbaugh was going to introduce all the important technical details that I wasn't going to cover (laughter) so, as we work our way through this process... [LB153]

SENATOR ASHFORD: Moving right along, Richard, anybody else here want to talk about LB153? (Laugh) [LB153]

SENATOR LATHROP: We can move right to Exec on this, if you like. [LB153]

RICHARD BAIER: That would be great, as long as it's going through. Good afternoon, Chairman Ashford, members of the committee. My name is Richard Baier, the last name is spelled B-a-i-e-r. Since 2004, I've had the pleasure of serving as the director for the Nebraska Department of Economic Development, and in that role my office has responsibility for the state's Division of Travel and Tourism. I am here testifying today in support of LB153. Like to outline why this legislation is important to our state's economic development effort. I have some testimony that will probably put me over the three minutes, so you may see some things in my written testimony that I'll bypass during our comments today. As director of DED, improving our statewide tourism is one of my top priorities and has been for the last several years. I believe passage of this bill would fundamentally alter our tourism industry. Nebraska has a relatively large capacity for ag and ecotourism opportunities and, for clarification, agri- and ecotourism activities include nature viewing, such as crane migration in central Nebraska, participating in farming and ranching tours, hunting, fishing, hiking, canoeing, and essentially any activity that involves Nebraska's natural resources. Over the past four years, DED has actually committed two of our full-time positions in the Tourism Division to supporting growth within this industry. As I travel the state, I visit tourism destinations from the Qwest Center in Omaha to small pumpkin patch operations that open their doors for only a few weeks each year. While the national economy continues to be slow and every industry across Nebraska feels the effects of the recession, many of our farmers, ranchers, landowners, and creative entrepreneurs look for ways to supplement their income. One way to create more income for these fellow Nebraskans is to start a small business to allow people looking for experiential tourism destinations to travel to the area to participate in new kinds of activities. Since last summer, when gas prices hit the all-time highs and the economy went south, we've seen a spike in the amount of travelers who are taking vacations closer to home. People are driving instead of flying,

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and they are stopping en route to their destination to participate in activities in Nebraska. Experiential tourism has always been needed across Nebraska and I think a real opportunity for us, and I think you can make a strong case that we need to move forward now more than ever. I have attached for you a study that was done by the Fish and Wildlife Service pointing out the opportunities in this area. As I mentioned or as will be in your comments that I handed out, you'll see that several other states have passed laws in this same vein. Along with Kansas and South Dakota, states such as North Carolina, Texas, West Virginia, and Colorado have all taken steps to assist their agri- and ecotourism industries. We want to move like these states have to be able to further our industry. Many of the landowners in Nebraska have thousands of acres and it can be very cumbersome to inspect thousands of acres of land every week for areas of...areas that matter, especially in terms of this liability issue. With LB153, we want to allow landowners some protection in order...additional protection in order for insurance providers to feel comfortable enough to write a policy, should an accident occur on the land or the owners' property. Thank you for the opportunity and I want to thank Senator Lautenbaugh for introducing this legislation on behalf of the tourism industry in Nebraska. With that, I would be happy to take any questions. [LB153]

SENATOR ASHFORD: Any questions of Richard? Yes, Senator Lathrop. [LB153]

SENATOR LATHROP: Sure. This looks like we're amending something that's already existing law. Is this a rewrite of the Recreational Liability Act? [LB153]

RICHARD BAIER: It's a supplement to, Senator. I mean we're really getting much more focused... [LB153]

SENATOR LATHROP: I mean have we...but have we changed the name of it from the Recreational Liability Act, which was a modification of liability standards for people that don't pay a fee, to now we call it the Tourism Liability Act and we include the people that don't get paid and the people that do get paid in the protection of the act? [LB153]

RICHARD BAIER: This would be, yes, the intent of this is to provide for people who are getting a fee for their service. That is correct. [LB153]

SENATOR LATHROP: But the vehicle that we're using,... [LB153]

RICHARD BAIER: Uh-huh. [LB153]

SENATOR LATHROP: ...what we're supplementing here, because a lot of this... [LB153]

RICHARD BAIER: Sure. [LB153]

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SENATOR LATHROP: ...is existing language... [LB153]

RICHARD BAIER: Uh-huh, it is. [LB153]

SENATOR LATHROP: ...the existing language is actually the Recreational Liability Act, am I right? [LB153]

RICHARD BAIER: I believe that's correct. [LB153]

SENATOR LATHROP: And the Recreational Liability Act initially was...became law as a way to shield the liability of people who let folks on to their property for no fee. [LB153]

RICHARD BAIER: Okay. [LB153]

SENATOR LATHROP: Right. [LB153]

RICHARD BAIER: I believe that's correct in terms of history. [LB153]

SENATOR LATHROP: Okay. Well, that... [LB153]

RICHARD BAIER: I don't know all the history there, but yeah. [LB153]

SENATOR LATHROP: Yeah, that's what the Recreational Liability Act does. [LB153]

RICHARD BAIER: Sure. [LB153]

SENATOR LATHROP: And so what we're doing is rewriting this so that the people that are making money off of tourism now enjoy the same protections as the folks that just let me come on and hunt on their property for no fee. [LB153]

RICHARD BAIER: I think, Senator, I would probably argue--and you and I have talked about this issue--this really is about providing some limited protection for the folks that are doing that, yes. [LB153]

SENATOR LATHROP: Okay. What is it that these folks want to do in a careless way that they need immunity from? Because what we are giving them, what we're doing with a bill like this is saying it's okay to be careless with the people you allow on your property or you rent equipment to, but you just can't be grossly negligent. So if we're not going to require that they be careful, what is it that they want to do that is done recklessly... [LB153]

RICHARD BAIER: Right. [LB153]

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SENATOR LATHROP: ...or without care for somebody's safety that they can't do right now? [LB153]

RICHARD BAIER: Right. I believe, Senator, what this really is focused on is providing capacity and protection for the folks that, number one, one of the challenges we've had in this legislation is we've not been able to find people, number one, to find coverage, and if they can, it's an exorbitant amount, especially for small startup tourism businesses. [LB153]

SENATOR LATHROP: Okay. [LB153]

RICHARD BAIER: We're seeing a lot of our small startups not even being able to find coverage. [LB153]

SENATOR LATHROP: So this is not about somebody wanting to be careless but about your insurance premiums. [LB153]

RICHARD BAIER: It really is, finding protection for the business so that we can grow the entrepreneurs in our state and especially our agritourism and rural entrepreneurs. [LB153]

SENATOR LATHROP: Okay. And the assumption, can we agree the assumption is that if this passes, these people that rent canoes, and I enjoy doing that. I go down the Niobrara frequently. I enjoy doing that. [LB153]

RICHARD BAIER: We appreciate that. [LB153]

SENATOR LATHROP: I like it a lot and I'm in favor of expanding this sort of tourism. [LB153]

RICHARD BAIER: Uh-huh. [LB153]

SENATOR LATHROP: The assumption, though, with this bill is, is that as soon as we pass this all of a sudden insurance premiums will fall down and everything gets a lot cheaper and the guys that are renting the canoes can now make more money at it and expand their business and we can draw people from maybe Kansas and South Dakota. [LB153]

RICHARD BAIER: I believe that's the assumption. [LB153]

SENATOR LATHROP: Okay. [LB153]

RICHARD BAIER: Now I'm not guaranteeing there's going to be a drop, day one, but

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what I can tell you is the states that have passed similar legislation, their businesses have seen an increase in the number of businesses and seen a drop in their liability issues in terms of cost. [LB153]

SENATOR LATHROP: Well, let me ask you this, because insurance is based upon experience. [LB153]

RICHARD BAIER: Uh-huh. [LB153]

SENATOR LATHROP: So if we have a lot of car accidents then we... [LB153]

RICHARD BAIER: Right. [LB153]

SENATOR LATHROP: ...have to have auto insurance premiums high enough to cover the cost... [LB153]

RICHARD BAIER: Right. [LB153]

SENATOR LATHROP: ...of paying everybody off. [LB153]

RICHARD BAIER: Sure. [LB153]

SENATOR LATHROP: Can you tell me about anybody who has had a significant claim made against them who runs an outfitting business? [LB153]

RICHARD BAIER: Right. [LB153]

SENATOR LATHROP: Are there any of those people out there? [LB153]

RICHARD BAIER: We have not seen anyone with significant claims. There are a couple people, testifiers, following me that run these businesses that will share with you their minimal experiences. [LB153]

SENATOR LATHROP: Their experience with minimal claims... [LB153]

RICHARD BAIER: That's correct. [LB153]

SENATOR LATHROP: ...is what you're saying. [LB153]

RICHARD BAIER: That's correct. [LB153]

SENATOR LATHROP: So somebody cuts their hand or something on a piece of equipment, they might have a small claim, \$1,000 or less. [LB153]

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RICHARD BAIER: Uh-huh. Right, and I don't have the number. [LB153]

SENATOR LATHROP: So nobody...this is the problem. We have discussed this. [LB153]

RICHARD BAIER: Uh-huh. [LB153]

SENATOR LATHROP: This is the problem I have with legislation like this... [LB153]

RICHARD BAIER: Sure. [LB153]

SENATOR LATHROP: ...and that is they go to the insurance company and they say, we want to insure my canoe renting outfit, and they say here's the premium, and somebody says, oh my gosh, that's... [LB153]

RICHARD BAIER: Uh-huh. [LB153]

SENATOR LATHROP: ...that's a lot of money. And the insurance company says, well, it's because there's liability lawsuits, right, which is why you guys are here with this bill. But when we look at it, what we got is a couple of guys that have had some small claims. [LB153]

RICHARD BAIER: Small claims, correct. [LB153]

SENATOR LATHROP: Which really doesn't account for why this insurance is expensive. [LB153]

RICHARD BAIER: I think expensive and unavailable in some cases, and that's the other issue of that, but... [LB153]

SENATOR LATHROP: I guess I'll find out from the people who are running the outfitting services what they want to do carelessly... [LB153]

RICHARD BAIER: Sure. [LB153]

SENATOR LATHROP: ...that they can't do carefully,... [LB153]

RICHARD BAIER: Okay. [LB153]

SENATOR LATHROP: ...which is really the purpose of a bill like this, right? [LB153]

RICHARD BAIER: I don't think there's carelessness involved but at least providing

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additional protection. [LB153]

SENATOR LATHROP: Okay. [LB153]

SENATOR ASHFORD: Yes, Senator Christensen. [LB153]

SENATOR CHRISTENSEN: Thank you, Chairman. How's this affect...I threw this at you earlier. I've got a chunk of ground that people have offered me \$700 for before to have the right to come on and shoot birds or shoot deer, and I told you I wasn't going to rent it no more--I did that once--because the liability, taking in such a small amount of income, isn't worth the potential risk. And for a small business person like me that might be able to grab \$1,000 bucks off a quarter here or there, is... [LB153]

RICHARD BAIER: Yeah. [LB153]

SENATOR CHRISTENSEN: ...how does this affect that? [LB153]

RICHARD BAIER: I think it might offer you an opportunity to buy some liability coverage maybe you don't have now. And we've been trying to talk with the industry folks about that a little bit. More importantly, I think in addition to your example, it's really about the young startups of people that want to do this full-time, people that are bringing young families back. You're going to hear from Calamus Outfitters in a few minutes that were able to bring their son back and now they're working on bringing their daughter back, in terms of being small entrepreneurs. [LB153]

SENATOR CHRISTENSEN: But, see, that basically falls into my example,... [LB153]

RICHARD BAIER: Right. Yep. [LB153]

SENATOR CHRISTENSEN: ...because there's a guy started a small business. He went around and rented 20 quarters together in one chunk, give us all \$700 bucks apiece for it. Now he's got a big chunk that he can lease out to hunters from out of state. [LB153]

RICHARD BAIER: Absolutely. [LB153]

SENATOR CHRISTENSEN: But they need my draw because it's very key for it. I'm to the point saying I don't want to do it, and that's pushing this guy out. It could stop this whole operation because I've got a...every draw leads into my property. And so I'm saying, hey, \$700 income ain't worth my risk, and it's killing that small business if I back out. [LB153]

RICHARD BAIER: Right. [LB153]

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SENATOR CHRISTENSEN: And I don't think I could even buy the insurance for \$700 bucks to protect me. [LB153]

RICHARD BAIER: You might be right. [LB153]

SENATOR CHRISTENSEN: So I better not buy any. It stops this business. I'm not sure we're taking care of all the problems out there yet. [LB153]

RICHARD BAIER: Yeah. And clearly, we could go farther with the legislation. I think what we came to is something we thought was fair in terms of how do we kind of start down this process. If you look at the hunting numbers and some of the things I submitted in my testimony, the number of people that are doing hunting and things in states like South Dakota and Kansas that already have similar legislation, you're going to see that kind of...that activity expanding frequently and quickly. And, you know, having grown up in western Kansas, I can point to the areas where, you know, that's become a real secondary piece of their income, especially from my farm and ranch friends and kids I went to high school with. [LB153]

SENATOR CHRISTENSEN: So okay. Thanks. [LB153]

RICHARD BAIER: Okay. [LB153]

SENATOR ASHFORD: Richard, first of all, a totally unrelated topic, thank you for all the work you're doing on work force and getting people to work. [LB153]

RICHARD BAIER: You bet. [LB153]

SENATOR ASHFORD: I must say in all my years here, I've never seen such action on an issue of importance anywhere near what you're doing, so... [LB153]

RICHARD BAIER: Appreciate that. [LB153]

SENATOR ASHFORD: Thank you. Just a question: Have you thought of just providing a tax credit for liability insurance? [LB153]

RICHARD BAIER: I mean, we looked at lots of alternatives, Senator. It was one of the things that we did look at. There are some states that have done that to help offset that cost. [LB153]

SENATOR ASHFORD: I mean the thought being that there still...there would be insurance coverage and that cost would be reimbursed through a tax credit. [LB153]

RICHARD BAIER: Sure. [LB153]

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SENATOR ASHFORD: Then there would be no...you'd sort of balance out the need for...and the other idea I think we've discussed a little bit was the idea of certifying the individuals that would...somehow that would be eligible to receive the benefit. [LB153]

RICHARD BAIER: Uh-huh. [LB153]

SENATOR ASHFORD: Have you thought about doing that? [LB153]

RICHARD BAIER: We have looked at several of those options and, if you'd like, I mean we'd be happy to make available to the committee the legislation we've gotten from other states. We actually went out and found all the bills from the other states. Be happy to provide that. The problem with the tax credit, Senator, is just the financial challenge. If you're a small startup, you're having to pay the cost up front and then get reimbursed at a later date. In some cases you may not have any tax liability, so it depends on how you would structure that tax credit as far as refundability. [LB153]

SENATOR ASHFORD: Right. I think that... [LB153]

RICHARD BAIER: So that would be a challenge. We saw some other states, like Kansas, that actually has a posting process. You actually have to post a sign that says, you know, you're absorbing some risk as part of this process and, you know, you're going to be involved in a dangerous activity for... [LB153]

SENATOR ASHFORD: And we talked about the Colorado example... [LB153]

RICHARD BAIER: Uh-huh. [LB153]

SENATOR ASHFORD: ...where the liability...restrictions on liability apply to the renting of equipment but not the active...or there's a difference between the active guiding... [LB153]

RICHARD BAIER: Right. Uh-huh. [LB153]

SENATOR ASHFORD: ...for example, versus the renting of equipment. Is that...you know, I'd have to read this, but is that covered here? [LB153]

RICHARD BAIER: At this point, at this point, we'd like to see the folks involved in that service sector, I mean sort of that service, as well have some protection in this process. [LB153]

SENATOR ASHFORD: So the active guide would have the same or... [LB153]

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RICHARD BAIER: Yeah, would have the same kind of protection, yeah. [LB153]

SENATOR ASHFORD: ...same standard as would the person that's simply renting the equipment? [LB153]

RICHARD BAIER: Yeah. And again, Senator, I'm not an attorney but we could sit down and visit about the detail pieces of how all that fits together. [LB153]

SENATOR ASHFORD: Okay. And you've been very open about this and I'm not... [LB153]

RICHARD BAIER: Sure. [LB153]

SENATOR ASHFORD: ...it's not a gotcha question. I'm just trying to sort... [LB153]

RICHARD BAIER: No, I'd be happy to visit about it. We're here to do anything we can to improve the environment for this industry to flourish in the state of Nebraska. [LB153]

SENATOR ASHFORD: Right, and I think that's a laudable goal and something that's worth it. I just...I don't know, you know, how to structure it. So thanks, Richard. [LB153]

RICHARD BAIER: You bet. [LB153]

SENATOR LATHROP: I do want to say... [LB153]

SENATOR ASHFORD: Yeah. [LB153]

SENATOR LATHROP: ...I agree with what you're doing in terms of these outfitters... [LB153]

RICHARD BAIER: Uh-huh. [LB153]

SENATOR LATHROP: ...and the idea. I think this Legislature accommodated equine activities some years ago with a... [LB153]

RICHARD BAIER: A few years go, absolutely. [LB153]

SENATOR LATHROP: ...bill on equine activities. And I understand that these people can't operate without insurance, but I don't...no one is telling me about the risk, you know? [LB153]

RICHARD BAIER: Yeah. Right. Right. [LB153]

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SENATOR LATHROP: You drop a canoe in the water, somebody gets in it. It's hard to imagine a liability situation unless you're giving them a canoe with a hole in it. [LB153]

RICHARD BAIER: Right. [LB153]

SENATOR LATHROP: And then the question is whether or not they should be immune from liability for giving somebody a canoe with a hole in it. [LB153]

RICHARD BAIER: Sure. I understand clearly your question about negligence versus gross negligence. [LB153]

SENATOR LATHROP: Well, probably not. That's going to be hard on tourism, too, so... [LB153]

RICHARD BAIER: Absolutely. [LB153]

SENATOR LATHROP: ...or hard on the tourists anyway, so. [LB153]

RICHARD BAIER: It is. I agree. [LB153]

SENATOR LATHROP: But I do, I share Senator Ashford's appreciation for your work. [LB153]

RICHARD BAIER: Absolutely. Whatever we can do to grow this industry. And I'm tired of hearing folks come to us and say, you know, can you see what they're doing up in South Dakota on this hunting issue or see what they're doing in Kansas; why can't we do that? Well, we've got to take some steps to get there and this is one of those baby steps along the way. [LB153]

SENATOR ASHFORD: The intent is worthy and thanks. [LB153]

RICHARD BAIER: You bet. Thank you. [LB153]

SENATOR ASHFORD: Thanks, Richard. Any other proponents? [LB153]

MARGE LAUER: (Exhibit 2) Good afternoon. My name is Marge Lauer, that's spelled M-a-r-g-e L-a-u-e-r. Thank you for allowing me to speak today, Senator Ashford, and hello to all of the committee members. Today I've got four hats on in regard to this issue, and in my handout that I have for you, my notes are in the back if you wanted to reference them, but first of all I have a little cabin that we rent out in the center of Nebraska, and we also have a hunting blind on the river. So we're actively involved with agritourism. However, I am also the executive director of KAAPA, which is Nebraska's ag development group. We have 450 member farmers and ranchers and we encourage

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them to find revenue sources in all different ways and agritourism is one, so we work directly with the farmer and rancher. I'm also project director for Country-Adventures.com, which was started by KAAPA and it's a marketing venue for agritourism. Right now there's over 20 states represented on that marketplace but most of them are, of course, Nebraska. And lastly, I am a commissioner on the Rural Development Commission so I have a role in promoting rural Nebraska in many, many ways. Four key points that I want to give to you today and the first one is probably one of those...I was probably one of those people Richard was talking about--why can't we do what Kansas is doing, why can't we do what other states are doing. And so the key word is competition. Nebraska is behind the game when it comes to liability for agritourism. Many states are adopting legislation that relieves liability because it isn't the provider who is careless; it is the inherent nature of the adventure in that Mother Nature sometimes drops tree branches right in the middle of the horse trail and sometimes there's a gopher that digs a hole and someone twists their ankle, and those are the type of risk and liabilities that the landowner just absolutely can't control. It isn't like a commercial venture where you have four walls or a certain water park and you can maintain it. When you're talking about acres and acres of land, things can happen out there that never do you mean to be careless but Mother Nature has a way of getting to that. And Nebraska has 92 percent of their assets privately owned, so there's probably no better state in the Union to work on agritourism than Nebraska. And these other states that I mentioned, I handed out the legislation so you can see it. Kansas was one of the first, in 2004 adopted their legislation. And why are these states doing it? Well, because nationwide states are discovering the importance of agritourism as a source of tax revenue, an engine of economic development, and a method by which farmers can diversify operations. My second point is that insurance is a first step. A private landowner or a resource owner just absolutely cannot move forward without insurance, so it's kind of the funnel. That's where we've got to start, is with the insurance. Also, you have to recognize these aren't typical operations and many of them are very different. So there isn't a blanket and it's really hard for insurance companies to just look at one and say you're just like this other one down the road. And so they are assessed differently and even in that the price goes up. So it would help the agents and the agencies become better aware of the risks that are involved with agriculture or agritourism. I also want to encourage agents and insurance companies just to become more knowledgeable. Even bringing this subject to the surface is good. The number one thing we heard as we helped farmers try to find insurance was, my agent told me I couldn't get it. Their agent didn't know. And so we had relationships with national insurance companies and often did get them covered and, in fact, if you talk to the gal with Riding on Faith in Brainard, Nebraska, she will tell you the only reason she's in business today is because we helped her find an appropriate insurance policy. [LB153]

SENATOR ASHFORD: Marge, I'm going to ask you to sum up. [LB153]

MARGE LAUER: Thank you. Basically, that is it. I just think this is the first step and it's a

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unique industry. Thank you very much. [LB153]

SENATOR ASHFORD: Thanks, Marge. Any questions of Marge? Senator Lathrop. [LB153]

SENATOR LATHROP: I do have a question as long as you...you sound like the right person to ask, and that is so you helped somebody find a policy. If I am...let's say I have 25 canoes and I'm going to rent them to people going down the Niobrara River, what's that policy cost? Do you know? [LB153]

MARGE LAUER: I will hold that. They are the right persons...people when they come up because they do the business and they'll be able to quote it for you exactly. But I will respond with this. The agents and agencies look at this as a 365-day policy and you get an annual fee, of course, but they may only operate 20 or 30 days out of the year. So even...I know the risk is the same, but there's got to be some way that this part-time operation pays more of a part-time premium. [LB153]

SENATOR LATHROP: Okay. [LB153]

MARGE LAUER: I know. [LB153]

SENATOR LATHROP: No, I know. That's all right. Thank you for that explanation, appreciate it,... [LB153]

MARGE LAUER: Thank you for looking into this. [LB153]

SENATOR LATHROP: ...and your testimony. [LB153]

SENATOR ASHFORD: And I agree with you. It's just the insurance companies aren't... [LB153]

MARGE LAUER: I do know. I even have sold insurance so I've known that side too. So I appreciate your questions. [LB153]

SENATOR ASHFORD: policies aren't...don't seem to be meeting the needs of... [LB153]

MARGE LAUER: Yeah. [LB153]

SENATOR ASHFORD: Okay. [LB153]

MARGE LAUER: Thank you. [LB153]

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SENATOR ASHFORD: Thanks. [LB153]

DUANE GANGWISH: Good afternoon, Chairman Ashford, members of the committee. My name is Duane Gangwish, that's D-u-a-n-e G-a-n-g-w-i-s-h. I appear before you as the registered lobbyist for Nebraska Cattlemen. We represent several thousand landowners and our board of directors reviewed this and said this is an important piece of legislation for our landowners. Many of them provide recreational opportunities, whether it's hunting or riding or various other things, and because sometimes of the investment they have in land and facilities, it is sometimes they don't want to...they want to allow the opportunity to come on the land, as Senator Christensen said, but sometimes it's just not feasible to deal with the liability that they're exposed to. So with respect, we'd ask you to forward this legislation. [LB153]

SENATOR ASHFORD: Senator Lathrop. [LB153]

SENATOR LATHROP: I do have a question for you. [LB153]

DUANE GANGWISH: Yes. [LB153]

SENATOR LATHROP: You never get to this committee. [LB153]

DUANE GANGWISH: I try to avoid it. (Laughter) [LB153]

SENATOR LATHROP: Really? Well, it's good to have you here. [LB153]

SENATOR ASHFORD: Oh, this is the most...we have more fun here than in any other committee. [LB153]

SENATOR LATHROP: It's good to have you here. I generally just see you in the hallway. Right now the Recreational Liability Act protects a landowner who lets somebody come on. Let's say that I like to hunt, and I do, and I go out into the country and I knock on your door and I say, can I go on to hunt, and you say sure. If you don't charge me to come on to your property, and I'm a tourist at that point, I now have the protection of the Recreational Liability Act. If we pass this bill, you can now take money from somebody to lease the land and have the very same protections. So in a way, it seems like, and perhaps unintended, the consequence of a bill like this may be to see land that those of us have been hunting for years without paying a fee turns into land that you can't get on because it's all leased and the guy who's taking the lease payment to hunters from wherever now posts his property and says, no hunting. And so all the land in the state that's available to hunt and fish on is now taken away from the public's...you know, from a guy like me to go out and hunt because it's all leased. And so, in a sense, we're discouraging people from hunting in Nebraska unless you got an entire lease on a place like Senator Christensen's property. I mean, isn't that an

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unintended consequence of now letting people charge a fee to...and still be able to get the protections of the Recreational Liability Act? [LB153]

DUANE GANGWISH: Well, not being an attorney, I don't know that I can wisely answer your question. It's the prerogative of any landowner to allow you to come on gratis, you know, and hunt. [LB153]

SENATOR LATHROP: Absolutely, no question about it, and I'm grateful when they do. [LB153]

DUANE GANGWISH: Even whether they charge or not, I think many are probably unknowing of what their liabilities are. And just when you raise the concern of liability, they start to ask questions and then you delve into this. We do have members that allow hunting. One particular is a landowner in the Republican River and they have deer hunters that come in from...and when I--he serves on our board of directors--when I raised this question to him, he had no idea that...what he was exposing himself to by taking compensation for it. So maybe there's an educational component. But as Mr. Baier said, it really is a process by which we can expand that activity. I don't think you're going to see all the land in Nebraska move to a fee-based hunting activity. [LB153]

SENATOR LATHROP: Yeah, but I think that was the idea behind the Recreational Liability Act in the first place, was when somebody came in and said we can promote tourism if those of us that let these hunters onto the property aren't exposed to liability. We said, we the Legislature said, yeah, okay. There's a trade-off there. Because you're not taking any money for it, we're going to diminish or, rather, increase the level of negligence that has to take place before there's liability. And I just wonder, if we give those same protections to the guy who's leasing his property, whether we won't see less and less property available to hunt. [LB153]

DUANE GANGWISH: There may be another component that the committee might want to investigate, and that is Game and Parks is developing a program where they are providing financial incentives to landowners to allow hunting. And is that a fee for service and what would that then entail? I don't know that that's been fully explored, but there may be situations in that case where you're... [LB153]

SENATOR LATHROP: That's sort of in the middle and I can see the policy... [LB153]

DUANE GANGWISH: It is, very much so. Yeah. [LB153]

SENATOR LATHROP: ...considerations there. [LB153]

DUANE GANGWISH: Yeah. [LB153]

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SENATOR LATHROP: Okay. Thank you. [LB153]

SENATOR ASHFORD: And maybe that's an idea. Maybe Game and Parks ought to have some oversight of a program like this because they are the ones that have the most knowledge of... [LB153]

DUANE GANGWISH: It could be on those lands that that landowner participates in that incentive payment. Obviously there are other landowners that wouldn't, so I don't know that... [LB153]

SENATOR ASHFORD: No, but I'm talking about the general recreational tourism opportunities oftentimes are...occur on...well, that would be a different issue than I suppose. Anyway, okay, thanks. Thanks, Duane. [LB153]

DUANE GANGWISH: Thank you. [LB153]

SENATOR ASHFORD: I was just thinking. [LB153]

DUANE GANGWISH: Thank you very much. [LB153]

SENATOR ASHFORD: Next proponent? [LB153]

BRUCE SWITZER: (Exhibit 3) Thank you for this opportunity. I'm Bruce Switzer from Burwell, Nebraska, S-w-i-t-z-e-r. My family has been on the ranch for 105 years. We have the fifth generation growing up there now. My son went away to school and worked off the ranch for a few years. One weekend he decided he wanted to come home and live home. Well, the cattle market wasn't very good and so it was his idea to start this tourism business and it has allowed him to stay on the ranch. We have since had our daughter and her family move back in the last year. And because we are what we are on the ranch, we can't expand the ranch, but we feel we can expand the tourism part of it. And so I'm a proponent of LB153 for the simple fact that I know how tough it was to start and how tough it was to find the insurance. Our first insurance, liability insurance, we went to Colorado to get, and we have a company in Nebraska now that will cover us. But we spend about 9 percent of our gross on insurance, so we can't outgrow it. It's a big part of our expense. I believe that this would help young people to get started and that's why I'm testifying for it. Thank you. [LB153]

SENATOR ASHFORD: Bruce, good comments. There's one Nebraska company you know of that writes insurance for this type of operation, as far as you know? [LB153]

BRUCE SWITZER: We got our insurance through Farm Bureau and they tied the ranch and the tourist business together. [LB153]

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SENATOR ASHFORD: Okay. [LB153]

BRUCE SWITZER: And it was quite an ordeal, but... [LB153]

SENATOR ASHFORD: Yeah. Well, this sounds great. I don't know, I want to sign up. When do you open? [LB153]

BRUCE SWITZER: Well, we are. [LB153]

SENATOR ASHFORD: You're open now? [LB153]

BRUCE SWITZER: Yes. [LB153]

SENATOR ASHFORD: Good. [LB153]

BRUCE SWITZER: We'll start real quick here with bird watchers. [LB153]

SENATOR ASHFORD: Okay. [LB153]

BRUCE SWITZER: We're not...we're not asking to be careless in anything that we do. We try and do the right job and I think most people do. And if there are people who are careless, they're not going to be in this business very long. They're going to weed themselves out, I can tell you that. [LB153]

SENATOR ASHFORD: How many operations generally of your colleagues are in this that do what you do, which is an expansive lodging kind of thing? Do you have colleagues that you work together with that... [LB153]

BRUCE SWITZER: My son will be able to answer that question. He'll be right behind me. [LB153]

SENATOR ASHFORD: All right. Good. Okay. [LB153]

BRUCE SWITZER: It's kind of his business. [LB153]

SENATOR ASHFORD: Good. [LB153]

BRUCE SWITZER: Thank you. [LB153]

SENATOR ASHFORD: Thanks, Bruce. Yes, Senator Lathrop. [LB153]

SENATOR LATHROP: I'd just like to make a comment, if I can. When you look at the bill and I'm sure you've had an opportunity to read it and somebody has visited with you

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about how it might affect insurance premiums, the idea behind changing the liability laws is someone...you can't make a claim if someone is careless. So if a guy hits you in a car accident, you get to make a claim against him if he breaks your arm in a car accident because he's been careless. What you're asking for in this bill as a means, you believe, to lower insurance premiums is permission to be careless, just not grossly negligent. And you're smiling and I understand why, because that's not what you want to do, but that's what people can get away with if we change the law. And the law right now is if you're going to pay somebody for a service or pay somebody to enter their land, they have to be careful for your safety in a standard, ordinary sort of way. And when we change laws like this, we let people get away with being careless. So can a guy rent a canoe with a hole in it now? Is that gross negligence? Maybe it is and maybe it isn't. Maybe it probably isn't. Maybe it's just simple negligence to rent a canoe with a hole in it. But when you take away people's incentive to be careful, some people are going to not be careful. And when we make policy, that's what we have to consider, whether it's okay for outfitters to be careless with tourists and with people that rent canoes or expect that somebody isn't going to do something that might get them hurt. So we appreciate what you do and, believe me, I think Senator Ashford is on to a good idea of providing a tax credit or something for the insurance, but when we change these rules, unless there's a whole bunch of claims out there that no one has told me about yet and outfitters are getting sued a lot, the explanation for your insurance premiums being way high isn't the risk. And reducing the risk to exposure that's only gross negligence instead of simple negligence probably isn't going to lower the premiums either. But, I know, you call the insurance guy and he says, can't get it, and this seems to be the answer, and I just wonder if it isn't a problem in the insurance industry and not with liability. Because it's hard for me to imagine how you can be careless in renting out a canoe, as long as there's no hole in it. [LB153]

BRUCE SWITZER: It's hard to be careless in this business and have a business. [LB153]

SENATOR LATHROP: I would think so. I would think so. But thank you for your remarks. [LB153]

BRUCE SWITZER: Thank you. [LB153]

ADAM SWITZER: I'm Adam Switzer. Bruce is my dad, last name S-w-i-t-z-e-r. He pretty much touched on how I got the business started and now we're trying to incorporate my sister and her husband and grow the business, which is going to take some expansion in leasing some land, and I just feel this bill would help us move forward with that. I believe that anybody who owns land has worked hard to pay for it and pay taxes on it should not have any reason why they shouldn't take money for a trespass fee, a lease fee, or any other way they can get it, and I think this bill is going to help that and it's going to help people like me expand business to bring younger people my age into the

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industry. If we can at least hold our insurance costs stable so we know we can make a budget, then maybe we can spend some more. I mean it's nuts and bolts for me. How much money do I have? How much money am I going to spend on advertising, insurance, buying groceries? I mean I get right down to the penny, and if I can spend...I mean you're talking, kick around \$1,000 like it's nothing. If I can spend an extra \$1,000 advertising, that's huge, and that's what it comes down to for me. And if this gives me an extra \$500 a year, that's really important in our part of Nebraska. [LB153]

SENATOR ASHFORD: Senator Lathrop. [LB153]

SENATOR LATHROP: Do you believe that that's what it would do? It would reduce your premium by \$500? [LB153]

ADAM SWITZER: I would hope. I would hope that it would at least maintain it and not have it go up. [LB153]

SENATOR LATHROP: Have you had an agent tell you what this bill would do, or an underwriter tell you what this bill would do to your liability premium? [LB153]

ADAM SWITZER: I did talk to...it wasn't my agent. I did talk to an agent at a conference and he looked at it, and there was also a lawyer there, a liability lawyer there, and he says this is good legislation for the tourism department, says this would really help. He didn't tell me... [LB153]

SENATOR LATHROP: My question was whether anybody told you what it would do to premiums. [LB153]

ADAM SWITZER: He said that it should help it at least maintain. [LB153]

SENATOR LATHROP: Okay. [LB153]

SENATOR ASHFORD: And that's my concern, is I doubt this will have...you're not going to see your premium go down. [LB153]

ADAM SWITZER: No, I understand, it ain't going to go down. [LB153]

SENATOR ASHFORD: Yeah, and that's what is of concern. On the other hand, if we were to give you a tax credit for your premium...if you're paying 9 percent of your gross sales in insurance. I don't know what your gross sales are and I'm not going to ask you but I'm going to guess that that's a pretty good chunk of money, and if you had a tax credit, that would be a significant amount of money you could plow back into your business. My point is I agree with you. What you're doing is great for Nebraska, there's no question about it, and that we should invest in what you're doing because you are

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helping us, there's no question. You've met that threshold test with me and I'm sure with everybody else here. How do we best give you the incentives you need? We give a lot of big companies a lot of tax credits to operate their businesses in Nebraska. You are already operating your business in Nebraska. You've done it as an entrepreneur without any help from the government. Maybe it's time to give you a little help. [LB153]

ADAM SWITZER: That would be great. [LB153]

SENATOR ASHFORD: Okay. [LB153]

ADAM SWITZER: One other point I'd like to touch on is we've been in business since 2001 and I've had a lot of people call me in the last three years wanting to get started in the same thing, close to the same area. And I believe the potential for everybody to be successful is there without being competitive, but their number one reason for not doing it is liability insurance is too high and they don't have... [LB153]

SENATOR ASHFORD: Getting into it. [LB153]

ADAM SWITZER: Yeah, getting into it. [LB153]

SENATOR ASHFORD: Because what...right, because what you're doing, a lot of these people own their own land already, correct? [LB153]

ADAM SWITZER: Yeah. [LB153]

SENATOR ASHFORD: And so they're not outlaying...they're not putting a lot of money out to buy land and that sort...but it's their operating costs right off the bat. There's no cash sitting around to do that. [LB153]

ADAM SWITZER: Right. [LB153]

SENATOR ASHFORD: So...but once you get your insurance and you start operating, because you own the land, there's a good potential for profit, profitability, right? I mean you wouldn't do this unless... [LB153]

ADAM SWITZER: Well,... [LB153]

SENATOR ASHFORD: Well, let me... [LB153]

ADAM SWITZER: ...it's been seven years. We haven't seen a real profit yet, but at least we're paying the bills. [LB153]

SENATOR ASHFORD: But if you could...if you could...if you could get a tax credit for

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your insurance premium, it might be meaningful to you. [LB153]

ADAM SWITZER: I suppose it probably would be. [LB153]

SENATOR ASHFORD: Yeah. Okay. Thanks. And I appreciate your testimony. Next proponent. Now if you tell me you've got one of these places that we don't know about, Mr. Cavanaugh...(laughter) [LB153]

JAMES CAVANAUGH: Actually, I've been to this place and it's very nice. I'd highly recommend it. Senator Ashford, members of the Judiciary Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska, appearing in favor of LB153. And we commend Senator Lautenbaugh for bringing this before you. Essentially, I mean, what you're hearing is the people in this business, which is for my money one of the future growth industries of Nebraska, are finding the availability and the affordability of liability insurance a problem, and that's true. We represent better than 700 agents across the state and we've been down this road for a number of years. As a matter of fact, the Banking, Commerce and Insurance Committee held an interim study hearing in Chadron, Nebraska, about five or six years ago with northwest Nebraska tourism entities on this very question, and it hasn't gotten particularly better since then. So if you can keep your eyes on the availability and the affordability of insurance, that's where everybody wants to go with this thing. And certainly the Independent Insurance Agents, the people who sell insurance, want to have it available and affordable for the people that we're selling it to. Whether it's negligence or gross negligence, whether the limits are \$500 or \$1 million, businesses are up to \$5 million or not, you know, there's probably room for discussion in there. But this body, the Legislature, in recent years and members of this committee have passed legislation that went towards controlling the cost of insurance in various areas, workers' comp insurance and other areas. Whether or not they knew to a moral certainty that the legislation that they passed was going to do that, well, only time tells on things like that, but I think this is a good faith stab at trying to make this line of insurance for this growth industry in Nebraska available and affordable. We'd be happy to enter into specific discussions, giving you specific examples from our base of insureds relative to, you know, what premiums cost for a guy doing the outfitting of canoes on the Niobrara or folks that do wagon train experiences in the Panhandle. There are lots of folks who do hunting experiences and camping experiences. There's also an expansion of definition in here which I'd add needs to be looked at because it does add some things to the Recreational Liability Act list that you had before. There are things in here that probably could be added, whether or not you do anything else with the bill. But the bill is a definite step in the right direction. We need to encourage this industry. If you've been to western Nebraska in the last ten years you know that the towns are in trouble, the people are in trouble. You look at a map of Nebraska of where family farms and ranches have disappeared, and we stick out. We rank number one in the nation in that category, and that's a shame. Tourism can help. Be happy to answer

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any questions you might have. [LB153]

SENATOR ASHFORD: Thanks, Jim. Any questions? Thanks, Jim. [LB153]

JAMES CAVANAUGH: Thank you. [LB153]

SENATOR ASHFORD: Any other proponents? How many opponents do we have to this? [LB153]

DEB SKINNER: Hello. [LB153]

SENATOR ASHFORD: Hi. [LB153]

DEB SKINNER: Deb Skinner, S-k-i-n-n-e-r. Good afternoon, Senator Ashford and members of the Judiciary Committee. I'm Deb Skinner and I'm the president of the Nebraska Travel Association. Our association is a membership-based organization representing 170 tourism businesses, attractions, and organizations across Nebraska. We include lodging facilities, outfitters, convention and visitors bureaus, and other tourism attractions across this great state of ours. We are here to support LB153 and would urge you to move this bill on to the floor for full debate. While supporting the limits on liability, you are alleviating some of the fear from property owners in allowing tourism related activities to take place on their private property. This legislation not only supports the tourism industry but the agricultural community as well. And so by supporting this piece of legislation, you are supporting two of the three leading industries in the state--tourism and agriculture. The agritourism community represents ranches, country lodging, bird-watching, hunting, just to name a few, and also my favorite, Double D Ranch in Ashland. The support of tourism related activities on private land could mean the difference for some landowners in the level of income that would allow them to remain on their family farm or ranch, or having to sell and move off their home. Tourism in Nebraska is one of the top industries. This legislation allows Nebraska to become more competitive with neighboring states when it comes to agritourism. The more visitors that Nebraska can bring into the state, the more tax dollars go into the General Fund. When people from other states are trying to plan a trip, they want to come, they could go just about anywhere. They might want to go to a ranch. They might want to go hunting or bird-watching. We want them to know that Nebraska is the best option for them. So the Nebraska Travel Association thanks you for your support of LB153. [LB153]

SENATOR ASHFORD: You're a good promoter of Nebraska. Any questions? [LB153]

SENATOR LATHROP: I'm tempted to ask what they do at the Double D Ranch, but I think I'll pass. [LB153]

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SENATOR ASHFORD: Well, I was going to say I'm glad it isn't flooded. [LB153]

DEB SKINNER: I threw that in right at the last. It's the cowboys that just makes the Double D Ranch. [LB153]

SENATOR ASHFORD: Yeah, I'm glad we didn't flood that thing,... [LB153]

DEB SKINNER: That's right. [LB153]

SENATOR ASHFORD: ...make it into a lake. All right. Thanks. [LB153]

DEB SKINNER: Thank you. [LB153]

SENATOR LATHROP: Thank you. [LB153]

CRAIG HEAD: (Exhibits 4, 5, and 6) Good afternoon, Senator Ashford, members of the committee. My name is Craig Head, C-r-a-i-g H-e-a-d, and I'm the assistant director of government relations for the Nebraska Farm Bureau Federation, here today on behalf of the organization to support the bill. What I'm passing out to you...let me back up. We've had a longstanding policy that supports trying to grow this industry, as been mentioned earlier by a number of other folks. What I'm passing out to you is a letter from one of our members who was unable to come down today. He started calving season; really wanted to be here but couldn't. But he is like so many of the other folks that have been here before describing. Basically he has an upland game bird resort that they started as a secondary business to supplement their farming operation. And I won't go through the letter, I'll let you look at it, but basically he details some of the challenges that they've had in trying to grow the business and concerns about it. In the letter he also references a neighbor down the road who had an ATV off-road operation who faced a similar challenge of basically finding insurance to cover that new small business venture, so... [LB153]

SENATOR ASHFORD: Can they find insurance or...I mean, if we were to give them a tax credit, could they find insurance then? [LB153]

CRAIG HEAD: In this particular case he said they didn't have any luck finding insurance for the ATV situation. [LB153]

SENATOR ASHFORD: And that's a little different deal. [LB153]

CRAIG HEAD: It's a little different deal and I think that's part of the challenge, is all these ventures are a little bit different in their nature. This particular producer that the letter is from does have...was able to secure liability insurance in his particular case. [LB153]

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SENATOR ASHFORD: Yeah, Senator. [LB153]

SENATOR LATHROP: How about the Farm Bureau? Do they, Farm Bureau Insurance, do they offer insurance to insure people with these kind of ventures? [LB153]

CRAIG HEAD: They do offer insurance. They do in some cases. I'm not sure of all the details there, but the gentleman who was up earlier alluded that he did have a policy. [LB153]

SENATOR LATHROP: This is kind of...I thought about this while people were testifying and when they say there's no insurance, that isn't about the risk. That's just that people don't find it profitable to write insurance. And my guess is if we figured out how many operations that we would insure, if that were available and we counted all these, maybe there's 400. And it may not be a profitable area to write for insurance companies. If Farm Bureau, I mean they grew out of insuring farms, if they don't find it a profitable enough line to write, I don't know that increasing or diminishing the risk makes that any different. It's just that there aren't enough people that would buy the policy to make it worth their time to engage in that line of insurance. [LB153]

CRAIG HEAD: And that could be the case in some situations and, again, that's why the reference to the...just the nature of the businesses. I'm not sure on that regard. [LB153]

SENATOR LATHROP: Right. Okay. Thank you. [LB153]

CRAIG HEAD: You bet. Thank you. [LB153]

SENATOR ASHFORD: Thanks, Craig. [LB153]

CRAIG HEAD: Yeah, if I could just real quick, also I do have for the record a letter from the State Chamber of Commerce and also the Lincoln Chamber of Commerce to submit in support. [LB153]

SENATOR ASHFORD: Yeah, I just...I just think, to me, to me, these are businesses that are very similar to any new business starting in Nebraska that was going to enhance opportunity for Nebraska. The liability issue is such...is just like, you know, somebody that wants to come here and get a LB775 credit or a Nebraska Advantage Act credit. They...these businesses, in order to get into this business, need some help to get going. And the...I'm just concerned that the liability...doing anything with the caps on liability isn't going to do it. What's really going to do it is giving them the credit that they need, whether it's a tax credit or how we could structure it, to get them incentivized into doing this. That's what my concern is. [LB153]

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CRAIG HEAD: Right, and I understand and I would just tell the committee... [LB153]

SENATOR ASHFORD: Wouldn't you...I mean, that seems logical, unless I'm missing a step in the logic here. [LB153]

CRAIG HEAD: But I think for a lot of the startup business, that would probably be the case, but... [LB153]

SENATOR ASHFORD: Okay. Because they may have to pay more insurance at the beginning and... [LB153]

CRAIG HEAD: To establish that business to get to the point where they can afford it. [LB153]

SENATOR ASHFORD: To establish that business, and if they don't have the money the liability caps aren't going to make any difference. [LB153]

CRAIG HEAD: Right. [LB153]

SENATOR ASHFORD: Okay. [LB153]

CRAIG HEAD: And I think Mrs. Lauer made a good point earlier. I mean... [LB153]

SENATOR ASHFORD: Right. [LB153]

CRAIG HEAD: ...the nature of the business, sometimes you're talking about being open for 30 days out of the year in some cases, sometimes it's six months. There's just so many variables in this industry (inaudible). [LB153]

SENATOR ASHFORD: Well, you have to invest in tourism to get tourism to work. [LB153]

CRAIG HEAD: Right. [LB153]

SENATOR ASHFORD: You know, you're not going to get people pulling off I-80 just because they're driving through I-80. I mean you got to... [LB153]

CRAIG HEAD: Right. If you're in the snowmobiling business, you need certain conditions, you know, that type of thing, exactly. [LB153]

SENATOR ASHFORD: Right, I agree with you. Good point. Thanks. [LB153]

CRAIG HEAD: So great. Great. Thank you. [LB153]

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SENATOR ASHFORD: Any other proponents? [LB153]

ALICE LICHT: Good afternoon, Senator Ashford and members of the committee. My name is Alice Licht and I appear today before you representing the Nebraska Hotel and Motel Association. And I think all the testimony that has been given we would agree with and we just want to be on record to support this to promote tourism in the state. Thank you. [LB153]

SENATOR LATHROP: Thank you. I'm the Vice Chair so I get to say thank you and see if there's any questions. I don't see any. Thanks for your testimony. [LB153]

ALICE LICHT: You're welcome. Thank you. [LB153]

SENATOR LATHROP: Any other proponents that have yet to testify? Anyone here in opposition? [LB153]

ROGER FOSTER: (Exhibit 7) Good afternoon, members of the committee. I'm Roger Foster, R-o-g-e-r F-o-s-t-e-r, and I won't take up a bunch of time with my concerns with it because Senator Lathrop has covered the majority of them. What I will tell you about is a couple years ago this committee spent countless hours on liability for municipalities. And as far as the insurance aspect of it, I sit on my local city council and I asked our insurance carrier directly, if this bill doesn't pass, which is pretty much word for word with a few words inserted into this legislation the exact same thing, the Recreational Liability Act, will our insurance go up, and he said no. So I mean I don't...I guess I don't buy the fact that the insurance is going to go up. And the other point I'd like to make is there was a group that was organized through the Legislature which was called the Alexa Check Program and it was in honor of my late daughter, and what the program did was to do a statewide campaign to promote safety in public places and inspections of, in particular, buildings and structures. And the way that this bill is written, when tourism is considered, I guess you would call, the level of what the group is doing, it gives them all the protection under the old Recreational Liability Act, which doesn't say they're going to act reckless but it does give them the opportunity to act reckless and careless. And I know the direct effects to certain laws applying to the wrong people, such as the Recreational Liability Act applying to the municipalities. Just a quick story on what happened to my daughter, she was in a public rest room when a concrete wall...it was an after-school picnic and a concrete wall fell over on top of her. At that time, municipalities were considered covered under the Recreational Liability Act and had zero liability for that accident, even though other walls of similar nature had been repaired. And there was other walls that were repaired. There was other walls, other than the one that fell on her, that were in the exact same condition as the one that fell on her. And after we did this statewide campaign, there was numerous other things that were found because of the Alexa Check Project. So those things are out there and if

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businesses or even private entities are not encouraged to do inspections, which I think is promoted by insurance companies. Because the insurance companies will force you to do inspections, make sure you do things, they will come out and do them for you and make sure things are safe for your property. I don't anticipate anybody acting reckless but if that opportunity is there and the incentive of doing inspections is not there, I mean, naturally, it's going to get put on the bottom of the list. And that's the reason I oppose this bill. From sitting here listening, if we were talking about a tax credit for tourism, I would have been on the proponent side. Other than that, thank you. [LB153]

SENATOR LATHROP: Thank you. And we appreciate your return to the Judiciary Committee and your testimony today. I know you were here two years ago, I think, with maybe a bill that Senator Karpisek had, if I'm not mistaken, but... [LB153]

ROGER FOSTER: It was the...it was the bill on the liability. [LB153]

SENATOR LATHROP: Right. Right. Okay. Thank you for your testimony. Any questions? I don't see any. [LB153]

ROGER FOSTER: Okay. [LB153]

SENATOR LATHROP: Any other opponents today? [LB153]

JOHN FOWLES: Vice Chairman, my name is John Fowles. I'm an attorney in Lincoln, Nebraska, and I'm here on behalf of the Nebraska Association of Trial Attorneys to oppose this bill. Without diminishing the business endeavors that have been discussed here today, this is a bad bill, committee, and there are three reasons. First of all, it's bad policy; second of all, it does not accomplish its purpose; and it creates an unfair preference to certain property owners. I believe that this bill basically encourages property owners to be careless. It discourages them from maintaining their property and it discourages them from providing training to employees and customers. It just gives all the wrong incentives to the owners of property. Secondly, I don't think it really accomplishes its stated purpose. You do not encourage tourism by giving owners a disincentive to care for their customers. You encourage tourism by providing activities that are enjoyable and safe for those who participate in those activities. This bill discourages that. Lastly, I'd like to say that I think this bill basically protects a class of persons from the standards that apply to everyone else. As a lawyer, I've noticed over the years many times when perspective clients are informed that a certain class of persons has a particular protection from liability that's not provided to other people, they're usually very upset by that, the classic example being the Medical Hospital Liability Act. I think this is just another example of a preference, a basically unfair preference, for certain landowners. And for these reasons that I've discussed with you today I think you should oppose this bill and kill it in committee. [LB153]

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SENATOR LATHROP: All right. Thanks, John. Any questions? I don't see any. [LB153]

JOHN LINDSAY: Thank you, Senator Lathrop, members of the committee. For the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing as registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. I want to make...I've got four points to make. This is a bill that is significant. This Legislature, this committee spent several months working on recreational liability, trying to achieve a balance, trying to arrive at good policy a couple years ago. And as Senator Lathrop touched on, this completely, completely undercuts the Recreational Liability Act and totally rewrites it. It is significant legislation. There are some effects of the bill that I don't think those who are operating the businesses that you've heard from, I don't think that's been...is their intent in doing it. I concur, I think, with a couple of the proponents who said, our goal isn't trying to be careless, that's not what we're trying to do, it's just about liability. The problem is that there's a perception out there that because someone gets hurt there is liability. Absolutely not the case. I suspect Senator Lathrop, Senator Ashford have been in situations where they've lost cases, thinking there was liability and there wasn't. It's just addressing that kind of perception. Second thing, liability is based on fault. Something wrong has to be done, somebody has to be careless in order for there to be liability, so that is what this bill addresses, is it allows carelessness, not what they're intending but that is what it allows. Number two, startup businesses, sometimes it is in the state's best interest to pursue those, but think about how we go about doing it. Let me give you an analogy. Startup trucking right now would be very difficult because diesel prices are way up there. And we could probably make it more affordable by just saying, you know what, truck drivers are only liable if they're grossly negligent and if they have up to \$500 of revenue we'll even protect them further. That would be...we wouldn't even dream of allowing those big rigs out on the roads without insurance, but that's what we're doing here. We are allowing people to run naked or at least eliminating the liability on insurance...or for which they would insure. A final aspect is, what does this bill do? One of the additional protections it does, it caps damages. Even if you're drunk and taking somebody out on a tour of historic homes, you can be driving drunk and your damages are capped at \$500,000, because they're grossly negligent but they're a small business. What's a small business? Let's say you pay \$100 bucks a person for that tour. Fifty thousand customers a year is a small business. I think that is not the policy that this state ought to be looking. Senator Ashford, I think, has hit upon the better approach; that is, if this business is something we want to do, let's look at tax credits to subsidize it directly. I'd be happy to answer any questions. [LB153]

SENATOR LATHROP: Thank you, Mr. Lindsay. Any questions? I see none. Anyone else here in opposition to LB153? Anyone here in a neutral capacity? Senator Lautenbaugh, we've all been looking forward to your prepared remarks. [LB153]

SENATOR LAUTENBAUGH: My opening? [LB153]

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SENATOR LATHROP: Your opening. [LB153]

SENATOR LAUTENBAUGH: Well, thank you, Mr. Chairman, and I probably overpromised on the opening that is now the closing, because there really isn't much to it that hasn't been covered ably by the committee in the questioning of the witnesses that we've had here. We are, of course, willing to address some of the concerns. I know the limitation to gross liability was certainly an issue that generated a lot of discussion. Just to make life easier, I should announce to the trial lawyers, I'm going to Government Committee after this, since they seem to follow me this year. But (laughter)...so...the fourth bill. Anyway, I am willing to work with the committee on this. I think the bill does have merit. I don't know if the tax credit approach is workable in this budget environment, so this is an attempt to do what we can with what we have to hopefully provide some relief to these smaller businesses outstate. [LB153]

SENATOR LATHROP: Just thinking that through, I would think that they would get a bigger benefit if they had a tax credit than if you pass this with...and apparently it wouldn't affect their premiums, is what they've been told, that their premiums wouldn't necessarily go down, so maybe the tax incentive. I'd help you with that one. [LB153]

SENATOR LAUTENBAUGH: (Laugh) As our new team concept goes onward? [LB153]

SENATOR LATHROP: Our new team, yes, the law firm of Lautenbaugh and Lathrop. [LB153]

SENATOR LAUTENBAUGH: Okay. Great. I'd be happy to take any questions you might have, but I am sincere when I say I would like to work on this. [LB153]

SENATOR LATHROP: (See also Exhibits 15 and 16.) Okay. Thanks, Senator. I think that does it for LB153. The next bill is LB517 and that brings us to Senator Hansen. Does Senator Hansen know that...? [LB153]

CHRISTINA CASE: He's on his way. []

SENATOR LATHROP: Is he? Okay. Thank you. []

CHRISTINA CASE: We gave him a call. []

SENATOR LATHROP: Senator Hansen, you're up. Welcome to Judiciary Committee. []

SENATOR HANSEN: Thank you. []

SENATOR LATHROP: You've been here before with great ideas, I might add. Good afternoon. []

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SENATOR HANSEN: Thank you, Vice Chairman? []

SENATOR LATHROP: Vice Chairman. []

SENATOR HANSEN: Vice Chairman and other members of the Judiciary Committee, my name is Tom Hansen, T-o-m H-a-n-s-e-n, and I represent District 42. I introduced LB517 after an incident that I learned about that happened in North Platte. An adoptive mother endured a 3-year-long battle to keep her prospective adopted son out of the hands of the man who fathered the boy by sexually assaulting a 13-year-old girl. The length of time to make the final determination, which was favorable for the adoptive mother, but it took far too long. The convicted and imprisoned perpetrator should have never been entitled to pursue custody. I believe there's a loophole in the current law that normally is designed to protect children; however, this law does not mention anything about terminating parental rights of a sex offender who conceives a child through an assault. The current law allows termination of an individual who murders another child of a parent or subjected a child to a number of aggravated circumstances, but as long as the parent has never inflicted any harm upon the child in question, the parental rights can easily be challenged. LB517 changes the current law by adding an exception to provide that reunification should not occur if a parent has been convicted of a felony sexual assault of the other parent of the juvenile or a comparable crime in another state. The bill further provides that the court may terminate parental rights if one parent has been convicted of felony sexual assault of the other parent or a comparable crime in another state. The adoptive mother is here, Missy Black, and she will testify and will give you a detailed account of her ordeal that happened in North Platte. Is there any questions of me on LB...? [LB517]

SENATOR LATHROP: We might. Any questions? I do have a couple for you... [LB517]

SENATOR HANSEN: Okay. [LB517]

SENATOR LATHROP: ...just about kind of what you're driving at with this bill and maybe run a scenario by you, which is if the...and I'm going to stereotype, if the father commits a sexual assault and this is an attempt to reunify the family, you would not reunify the father with the child if the father had committed a sexual assault upon the mother. Is that the thrust of the bill? [LB517]

SENATOR HANSEN: The mother of the child. [LB517]

SENATOR LATHROP: Yeah, is that what I...did I say something different? [LB517]

SENATOR HANSEN: And it's the child that's in question. [LB517]

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SENATOR LATHROP: Right. [LB517]

SENATOR HANSEN: Yes. [LB517]

SENATOR LATHROP: The child is in question. Father sexually assaults. That can happen in the course of a marriage... [LB517]

SENATOR HANSEN: Yes. [LB517]

SENATOR LATHROP: ...or outside of a marriage. [LB517]

SENATOR HANSEN: Yes. [LB517]

SENATOR LATHROP: And you said terminate the parental rights, and this doesn't terminate the parental rights; it just doesn't provide for reunification. Am I right? [LB517]

SENATOR HANSEN: I think...okay. [LB517]

SENATOR LATHROP: And the difference is the difference between letting him see the kid and terminating his parental rights, in which case he has no obligation for child support, right? [LB517]

SENATOR HANSEN: I would say right. [LB517]

SENATOR LATHROP: Okay. Well, maybe I'll ask these questions or, at least now that I've asked them, people that come behind you can talk about it. [LB517]

SENATOR HANSEN: Okay. I appreciate that. [LB517]

SENATOR LATHROP: Because I appreciate that the father, if he's, you know, somebody that commits sexual assaults maybe shouldn't be with his son or daughter, but at the same time, do we mean to terminate their parental rights and absolve them of any duty to support the child? Well, somebody will probably address that behind you. [LB517]

SENATOR HANSEN: Somebody will attempt to answer that, I'm sure. [LB517]

SENATOR LATHROP: Okay. Thanks. [LB517]

SENATOR HANSEN: Missy is in a wheelchair today, broke her leg yesterday. She's very determined and made the four-hour drive down here and... [LB517]

SENATOR LATHROP: Well, we appreciate that too. [LB517]

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MELISSA BLACK: I did not fall out of a canoe. (Laughter) My name is Missy Black, it's M-i-s-s-y B-l-a-c-k. Members of the committee, I appreciate you having me here today to kind of tell a little bit of my story and to address the idea of maybe why somebody should not have any parental rights at all. In our particular situation, my husband and I became foster parents, I like to say quite by accident. I was a Teammates mentor to a gal who, at 16, was placed in foster care and we told ourselves that we were foster parents simply because it was Jasmine and it was probably something that we would never do again. And every week somebody from the state called our home to see if we'd be interested in a placement that they had. And I just happened to be home one Wednesday afternoon when they called and they said, we have a 3-year-old little boy whose mom is 16 and she needs to go into drug treatment for about 60 days; would you guys be interested in just having this little boy in your home for 60 days? I have a soft spot for young mothers and so, of course, I said yes, assuming that if somebody were to believe in her that maybe we could help both of them; that the situation was going to be short term because we didn't anticipate that we would ever adopt our son. And several of my friends and actually my mom and a lot of our family recommended that we not become foster parents at all in a short-term situation because we would fall in love with the child and then not want to give them back. And they're exactly right. That's exactly what happened and the first day that he came into our home we found ourselves caring deeply for this little boy and caring for his mother as well. As time progressed, his mother was arrested again for a drug conviction and we found that she was going to be incarcerated longer than we thought she was going to be, and she and her son attempted to reunify after she was let out of Geneva. They attempted a reunification and at that time it just wasn't right. I believe that there were several reasons it wasn't right. She was too young, there were too many factors at risk. And so she chose to give up her parental rights to Hunter and she called me the day that she did and she said, Missy, I just want you, before I sign, before I sign this paper, I just want to make sure that this is what you intend to do, I want to make sure that you guys intend to adopt Hunter, which in fact we did. And it was at that point that HHS went to try to have the father relinquish his parental rights and he would not, and he fought that for about the next three years through county court, through state court, and through the United States Supreme Court, because he did not feel that he should have to give up his parental rights to that child. We as foster parents, we signed a contract with the state that said that we would keep this child safe from harm, and that was the contract that we felt like we had signed with the state. We would be his guardian and we would keep him safe from harm. And what the state, instead, attempted to do was to have Hunter go and visit his dad in prison in one of the state transport vans so that they could attempt to form a relationship. They also wanted to be able to start to introduce him as Hunter's dad through a series of letters that this gentleman wrote, and the letters said things, my name is Henry and I knew your mom once and I like puppies, and things like that. And so over the series of letters they were going to introduce him as Hunter's father and I just, I guess in answer to your question that you asked Senator Hansen, I

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believe that his parental rights should be terminated immediately. And, you know, I recognize that the state has to, at some point, has to be reimbursed for some of those costs, but this gentleman was in no way capable or able to do that. [LB517]

SENATOR LATHROP: This bill addresses been convicted of a felony sexual assault of the other parent. Was that the case with this guy? [LB517]

MELISSA BLACK: He was a 35-year-old man who raped a 13-year-old little girl because he was her mother's boyfriend. [LB517]

SENATOR LATHROP: And this child,... [LB517]

MELISSA BLACK: And this child is the result of that. [LB517]

SENATOR LATHROP: ...Hunter, was the consequence of that. [LB517]

MELISSA BLACK: He promised the mother a pony. He promised her that he would buy her a pony if she did what he wanted her to do. [LB517]

SENATOR LATHROP: Okay. [LB517]

MELISSA BLACK: And one day when we were in county court this gentleman, if we can call him that, looked at Tasha (phonetic) and he said to Tasha (phonetic), Tasha, if you really want me to relinquish my parental rights, to terminate my parental rights, all you have to do is come and visit me in jail, that's all you have to do, all you have to do is write me letters, all you have to do is call me. [LB517]

SENATOR LATHROP: Okay. Yeah. [LB517]

MELISSA BLACK: And so in his efforts, it was a revictimization. [LB517]

SENATOR LATHROP: Okay. I think I have the picture. [LB517]

MELISSA BLACK: Okay. [LB517]

SENATOR LATHROP: And where did you come from? [LB517]

MELISSA BLACK: I'm from North Platte. [LB517]

SENATOR LATHROP: North Platte. [LB517]

MELISSA BLACK: Uh-huh. [LB517]

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SENATOR LATHROP: Well, thank you for coming all the way from North Platte. [LB517]

MELISSA BLACK: You're welcome. [LB517]

SENATOR LATHROP: And the record won't reflect it but we see you're in a wheelchair... [LB517]

MELISSA BLACK: Yes. [LB517]

SENATOR LATHROP: ...and your arm is in a splint... [LB517]

MELISSA BLACK: Yes. [LB517]

SENATOR LATHROP: ...and your foot is in a split, so with considerable effort you've made it here and we appreciate your testimony. Are there any questions for Missy? I don't see any. I think we understand the situation. [LB517]

MELISSA BLACK: Okay. Thank you. [LB517]

SENATOR MCGILL: Thank you. [LB517]

SENATOR LATHROP: Any proponents or other proponents? [LB517]

JOHN FREUDENBERG: Good afternoon, Mr. Vice Chairman and committee members. My name is John Freudenberg. I am the criminal bureau chief for the Attorney General's Office and I am here to testify in support of LB517. The bill amends two existing statutes in our present Juvenile Code. The first is Section 42-328.01 (sic) and the second is Section 43-292. Currently, Section 43-283.01 establishes the state's responsibility to make reasonable efforts to reunify and preserve families in situations where foster care is being considered. The state is to attempt to eliminate the need for removal of children prior to considering foster care as an option. The goal appears to be to maintain the family unit as much as possible and minimize the use of foster care. Now subparagraph (4) of this section sets forth a situation where reasonable efforts to reunify are not required. Those can be found in the bill starting on page 2, line 23. LB517 adds a provision which exempts the state from the reasonable efforts requirement when a court determines that one parent has been convicted of a felony sexual assault of the other parent. The second change LB517 makes is to Section 43-292. Now that section sets forth the grounds on which a termination of parental rights can be brought. The existing statute was drafted as an exhaustive list of possible grounds when it was passed in 1981. It has been amended three times, from my read of the statute, since that time for what I assume was to add additional criteria. Whenever a listing method is used like this, there are bound to be legitimate grounds which are not considered but would

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reveal themselves over time. Such matters could then be added or modified, like they have in '92, '96, and '98 to this bill. We now have another situation which was not originally listed but obviously should be added to the list as a reason for termination where one parent has been convicted of a felony sexual assault of the other parent. The obvious situations, like have been mentioned here, would be where someone other than...someone is raped by a person other than their spouse or significant other and such act produces a child. It also would be relevant to where a parent is involved in a domestic violence situation, is raped by their significant other or spouse, and then is subsequently convicted. In either situation, the proposed changes appear to be reasonable additions to our Juvenile Code. And I'd be happy to answer any questions that you may have regarding this. [LB517]

SENATOR LATHROP: Thank you. Any questions? I don't see any. Thanks for your testimony. [LB517]

JOHN FREUDENBERG: Thank you. [LB517]

ALICIA HENDERSON: (Exhibit 8) Good afternoon. I am Alicia Henderson and I am the chief deputy of the juvenile division in the Lancaster County Attorney's Office and, as such, the kind of cases that I handle and the other attorneys that work in my division handle are all cases involving juvenile court. Probably half of our caseload and the time that we spent are working on cases where children are abused and neglected. I would be remiss if I did not say thank you to Missy Black and to her husband and to all the other people who are willing to foster children for inordinate amounts of time while they...while we are trying to get through the system and end up with a permanent situation for those children. The handout that I have provided for you, actually I had a conversation with Senator Hansen asking him if I couldn't bring before the Judiciary Committee some other ideas about how to amend these two statutes. The statutes work together, as Mr. Freudenberg said. There's one statute that requires reasonable efforts except in certain circumstances and if you look through that list of circumstance, you see it's really when something horrible happens to a child. We shouldn't have to wait. The other is the grounds for termination of parental rights. There are a list of, I believe, nine or ten grounds for termination of parental rights, but termination can only be entered in situations where it is in the best interest of the child for termination to occur. So there's always that safety valve for a court. I am asking this committee to look at two problems that are in addition to the problems that are set forth in LB517, specifically two different gaps. And with that, I have in my written testimony those two gaps. We have a situation, if a father sexually assaults his child, and I've called her Amanda because that's A, and there are two other siblings, Becky and Carla, who would be siblings B and C, and the current law clearly provides that nobody has to use reasonable efforts to reunify the father with Amanda because of what happened to Amanda. But the law does currently require the department to use reasonable efforts to reunite those two female siblings with that same father who has sexually abused one of the siblings. I am simply

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proposing that there be four words added to two current provisions in the law, one in the reasonable efforts area and one in the termination of parental rights area, to address this particular issue. The second gap that I see, and we see this all the time, and anyone who does what Missy Black has done sees it as well: a family gets involved, a mother many times gets involved with drugs or alcohol and severely neglects children so badly that ends up serving time in prison because of that kind of a child neglect situation. There's also a case going on in juvenile court that is mandated to attempt reunification. Now everyone can understand that the first time around, but...and lots of times on the eve of a termination trial the mother will relinquish her parental rights, as did the mother in this particular case. But there is a situation of course then the mother gets out and ends up having yet another child. This last proposed solution would allow the department not to have to use reasonable efforts to reunify the mother with that subsequently born child when it's not in that child's best interests. With that, I'd ask, any questions? [LB517]

SENATOR LATHROP: All right. Very good. Thank you. Any questions for Ms. Henderson? I see none. Thank you for the suggestions too. We always like to hear about ways we might improve legislation, so that's good. [LB517]

CAROL STITT: (Exhibit 9) I am Carol Stitt with the Foster Care Review Board, and we would like to support LB517 as well as the amendments introduced by the county attorney's office. We have spent a lot of work in the last year trying to get focus on aggravated circumstances. We've had a lot of success, but these are areas that need improvement. So we'd just like to say thank you for your consideration and there's some information here. [LB517]

SENATOR LATHROP: Very good. [LB517]

CAROL STITT: Okay. [LB517]

SENATOR LATHROP: Thanks. [LB517]

CAROL STITT: Yes. [LB517]

SENATOR LATHROP: Any questions for Carol? I don't see any. [LB517]

CAROL STITT: Okay. [LB517]

SENATOR LATHROP: Any other proponents? Don, are you moving towards the seat? Okay. Just wandering around through the chairs. (Laughter) Any...you're a proponent, in favor. [LB517]

MARY JANE DEMMERS: Yes. Yes. [LB517]

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SENATOR MCGILL: Go ahead. [LB517]

SENATOR LATHROP: Come on up. [LB517]

MARY JANE DEMMERS: All right. [LB517]

SENATOR LATHROP: Thank you. Did you fill out one of those sheets. [LB517]

SENATOR MCGILL: Yes. She has to give it to the page. [LB517]

MARY JANE DEMMERS: I did. [LB517]

SENATOR LATHROP: Okay. Very good. [LB517]

MARY JANE DEMMERS: I did. [LB517]

SENATOR LATHROP: I don't know if Senator Ashford reminded people you have to fill out a sheet if you're going to testify. [LB517]

MARY JANE DEMMERS: (Exhibit 10) I did but, you know, guide me through this, please. I guess I'm here to thank you and...for the things that you've done regarding... [LB517]

SENATOR MCGILL: Thank you. [LB517]

MARY JANE DEMMERS: ...family preservation and reunification, all of you. I have a little different approach. [LB517]

SENATOR LATHROP: Well, let's have you start with your name... [LB517]

MARY JANE DEMMERS: My name is... [LB517]

SENATOR LATHROP: ...and spell your last name for us. [LB517]

MARY JANE DEMMERS: Thank you. My name is Mary Jane Demmers, D-e-m-m-e-r-s. I'm from Grand Island, Nebraska, and I support LB517 with some stringent and tangible and documentable accountabilities on how it's carried out, and I haven't seen that yet. The reunification and family preservation as it stands right now I would say is not successful. I'm here...and so I'm going to just interject that, but I'm here today as the parent of a child who was involuntarily made a ward of the state of Nebraska in June of 2007 at the age of 15. I have our son's written permission and encouragement to share our experience with you in regard to family preservation and reunification. Our son was

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removed from our home and made a state ward for the original charge of using pot in Hall County. Since then he has been moved around to four different contracted state facilities for rehab since 2007 when he just turned 15, and he's soon to be 17, and he has been incarcerated all of this time. Prior to that, we had him in two private rehab facilities and planned to continue to do more. Our communication, in light of family preservation, with him for future family reunification in the most recent facility that he is in is we waited 52 days before he could make one ten-minute monitored phone call to us for family preservation, one ten-minute phone call every 30 days thereafter, and one four-hour visit on campus or on site a week. He was denied access to parents or independent legal counsel prior to signing to commit himself to the current facility. I question the legality of that. And I did ask...contacted HHS and basically their response was we can keep him until he's one hour before he's 19 years old. We requested where to find our legal rights at HHS in person in Lincoln, Hall County offices, state Attorney General's Offices, and finally found our legal rights about a month ago. Agency...on the next page, Agency 25 statutory authority reads, and you can look at the enclosure, basically, it looks like they're in conjunction. Without reading it, the agency sets its agenda, appears to be in concurrence with other departments within their own department, as well as regulates the contracted health provider agencies to meet the regulations set up by the same agency, and then evaluates itself on their own outcomes and presents the results to the Legislature for funding. Now I could be wrong, but after two years of experience, that's what it sounds like to me. [LB517]

SENATOR ASHFORD: Mary Jane, I'm going to ask you to sum up, too. [LB517]

MARY JANE DEMMERS: Okay. Am I off target? [LB517]

SENATOR ASHFORD: No. Well, you're out of time but you're not off target. [LB517]

MARY JANE DEMMERS: Okay. [LB517]

SENATOR ASHFORD: You're on target but out of time, but please sum up. I'm not...you have time to sum up. I just...I... [LB517]

MARY JANE DEMMERS: Right. Okay, thank you. I strongly urge you to include a tight measure of outside accountability regarding the true efforts, plans, and documentation of actions from consumers, as well as independent sources, to make sure it is full and accurate accountability should this reunification plan pass the Legislature. And that would be independent accountability outside of the HHS system, which is an entity unto itself. In that regard, I would truly support this. [LB517]

SENATOR ASHFORD: Okay. I'm going to ask you to stop then because there may be some questions. Any questions of Mary Jane? I guess not. Thank you. [LB517]

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MARY JANE DEMMERS: Uh-huh. [LB517]

SENATOR LATHROP: Thank you for coming here today. [LB517]

MARY JANE DEMMERS: Yeah. [LB517]

SENATOR ASHFORD: Other proponents? Opponents? Neutral? Senator Hansen. [LB517]

SENATOR HANSEN: Thank you for listening to the testimony on LB517 today. Aggravated circumstances, I can say that term. I couldn't say it before, but aggravated circumstances is a huge area for the Foster Care Review Board and also those people who are working with children, trying to get them permanently placed. They go through the process over and over and over because they can't use aggravated circumstances for the rest of the family and the rest of the siblings. This I think has something to do with LB517, but the part that we want, that we'd like to see enacted, of course, is the part with the sexual assault of another parent of a child. [LB517]

SENATOR LATHROP: You know, you have, since you got here, had a special interest in foster care issues, and I, for one, appreciate it, because it's good to know that somebody has picked it up and is keeping an eye on it and comes and tells us when we need to tweak it and improve it. So I really do...I commend you for your interest and your effort for foster kids. [LB517]

SENATOR HANSEN: Today, I met Missy Black. Missy Black contacted me in 2006 while I was running for the Legislature, so it was good to meet her. Someday I'll meet her standing up. [LB517]

SENATOR ASHFORD: Thank you. [LB517]

SENATOR HANSEN: Thank you. [LB517]

SENATOR ASHFORD: With that, that's should be...that's enough. Thank you, Senator. Thank you for your comments. LB199, Senator Stuthman. [LB517]

SENATOR STUTHMAN: Thank you, Senator Ashford. Chairman Ashford and members of the Judiciary Committee, my name is Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District, and I am here to introduce LB199. LB199 was brought to me by the Department of Health and Human Services, and set out to accomplish the following. Independent contractor new hire enforcement allows for the reporting of independent contractors under the New Hire Act. This reporting method will help identify individuals who have taken new employment and have child support obligations. Once these individuals are identified, an income withholding notice can be

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generated to their employer, and child support can be collected from each paycheck. Continuous submittal of state revenue information will change the method of reporting past due support amounts. This bill allows the continuous submittal process rather than the yearly submittal process, which was just once a year. Interest on spousal support and medical support payments will accrue after a 30-day grace period rather than beginning the day after it is due. The 30-day grace period brings spousal and medical support interest accrual into confirmation with how interest is accrued in child support cases. Assignment of child, spousal, or medical support payments will provide that only the support which becomes due during the time period in which the individual receives public assistance is assignable to the state. Currently, an individual applying for or accepting public assistance assigns all court-ordered child, spousal, and other support arrears, and additional support that becomes due while receiving public assistance to the state. This change is needed to comply with the federal mandate. Medical support in Title IV-D cases must address how parents will provide for children's healthcare needs through health insurance coverage and/or through cash medical support. Cash medical support is defined by the federal regulations as an amount ordered to be paid toward the cost of health insurance provided by the public entity or by another parent through employment or by another medical cost not covered by insurance. Cash medical support or the cost of private health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed 5 percent of his or her income. This change in defining medical support is needed to comply with the federal mandate. Individuals from the department are here to answer any technical questions that you may have. And it is my understanding that the department and the bar association are working together to try to hammer out some of the differences that they have on this bill. With that, those are my opening comments and I would attempt to answer any questions, but like I had stated, there are individuals from the department that would be more qualified to answer those questions. [LB199]

SENATOR ASHFORD: Arnie, this seems like a good effort at reducing some costs. [LB199]

SENATOR STUTHMAN: Yes. [LB199]

SENATOR ASHFORD: And there's a pretty significant savings here. Is most of that related to the--and maybe Todd will talk about that--but is most of it related to the medical? [LB199]

SENATOR STUTHMAN: Most of this is collecting child support from individuals that are required to pay child support. And by doing this it is my understanding that these individuals that are on public assistance, that will replenish the public assistance support money that is... [LB199]

SENATOR ASHFORD: And also provide medical coverage in certain cases. [LB199]

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SENATOR STUTHMAN: Yes. Yes. [LB199]

SENATOR ASHFORD: Okay. Good. Any questions of Arnie? Yes. [LB199]

SENATOR LATHROP: Just one. Did I hear you say that currently, if a parent is ordered to pay child support, what do they have to do, check in once a year and tell them what their latest job was, for...? [LB199]

SENATOR STUTHMAN: Yes. It's...currently, this bill allows the... [LB199]

SENATOR LATHROP: And now they have to do that more frequently? [LB199]

SENATOR STUTHMAN: Yes. Rather than a single yearly submittal of it. [LB199]

SENATOR LATHROP: That's got to be huge for child support enforcement. [LB199]

SENATOR STUTHMAN: Yes. Yes. Because... [LB199]

SENATOR LATHROP: These people...I...these...mostly it's moms, but not necessarily, that have a deadbeat dad that just keeps switching jobs and they can't catch him or keep up with him. [LB199]

SENATOR STUTHMAN: Yes, and this would be, you know, if it's reported that they got new "hirement" and on a monthly basis, and instead of waiting a year to submit anything that has been collected from the paycheck. [LB199]

SENATOR LATHROP: Good. Good. Thanks. [LB199]

SENATOR ROBERT: Good bill. [LB199]

SENATOR ASHFORD: Seems very commonsensical. Thanks, Arnie. [LB199]

SENATOR STUTHMAN: Okay. Thank you. I will waive closing. [LB199]

SENATOR ASHFORD: Okay. We'll let you. Todd. [LB199]

TODD LANDRY: (Exhibit 11) Good afternoon, Senator Ashford, members of the Judiciary Committee. I am Todd Landry, T-o-d-d L-a-n-d-r-y. I am the director of the Division of Children and Family Services for the Department of Health and Human Services. I would like to start by thanking Senator Stuthman for introducing LB199 on behalf of the department. I am here today to testify in support of LB199 which, as you have already heard, would amend our enforcement techniques, allow for more efficient

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program administration, address some equity concerns, and implement federally mandated regulations in child support program. Currently, Nebraska ranks fifth in the nation in the collection of current child support, and thirteenth in the nation in the collection of past arrears. The proposed bill will enhance our ability to effectively collect child support on behalf of the children and families we serve. And I'd like to add a note of appreciation and acknowledgement to the thousands of parents who fulfill their child support obligations on an ongoing, routine, and timely basis. But for those who don't, we do need to have efficient and effective tools to collect child support on behalf of the children that they are responsible for. There are four main components of this bill. Senator Stuthman has addressed each of those and I would like to hit on a few points on those, as well. The New Hire enforcement should require, we believe, the reporting of independent contractors under the current Nebraska New Hire Act. This reporting method will help identify individuals who have taken new employment and have a child support obligation. Once these individuals are identified, an income withholding notice can be generated to their employer and child support can be collected from each paycheck. Independent contractor numbers have continued to increase in Nebraska, and this proposal provides another means to collect child support for Nebraska's children. There are an estimated 6,781 independent contractors employed in Nebraska who have child support orders. By requiring these individuals to be reported to the New Hire system, an estimated \$6.6 million in child support could be collected. The continuous submittal of state revenue information portion of the bill will change the method of reporting past due amounts. This change allows for a continuous submittal process rather than a single yearly submittal process being used. More details are provided in my written testimony. The section on interest on spousal report or medical support payments currently begins accruing the interest the day after it is due. The amendment will provide for a 30-day grace period before interest starts accruing, and brings this form of interest accrual into conformity with how interest is accrued in the other aspects of child support. And last, a new federal mandate requires the legislation to change our current assignment law, and that section is also detailed for you in my written testimony. This last section is where we have had particular conversations with the bar association regarding some concerns that they have on the proposed legislation, and we're working with them on their concerns. I see my time is up but I would like to finally note that the savings from the passage of this bill is intended to partially cover the costs of LB346, which I believe all of you are aware of that was introduced on behalf of the Governor. I encourage you to support LB199. I thank you for your interest in this area and be happy to answer any questions. [LB199]

SENATOR ASHFORD: Senator Lathrop. [LB199]

SENATOR LATHROP: I do have a question and this relates to me not practicing in this area, at least not in a long, long time. But are we now...one spouse is ordered...let's say the decree says Dad is to cover Junior on the health plan, and Mom and Dad shall pay 50 percent of the deductible and the copay amounts or noncovered amounts. Are those

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now run through child support enforcement? [LB199]

TODD LANDRY: Those now are--and I will confirm this information for you--but it's my understanding that right now those are generally not covered through current child support obligations. The federal mandate says we have to cover them now, or at least that is our interpretation. [LB199]

SENATOR LATHROP: Is that right? The federal government does? I just don't... [LB199]

TODD LANDRY: That is a federal mandate that we have, and that's our interpretation of the... [LB199]

SENATOR LATHROP: How do you guys know if somebody has not paid something they're supposed to pay? [LB199]

TODD LANDRY: Well, at this point, you know, we obviously know those court orders and so we comply with the court orders. That is an important point. We, of course, do not... [LB199]

SENATOR LATHROP: But you don't know if some kid has gotten sick or not, is the problem. [LB199]

TODD LANDRY: We don't know. The question is whether or not they have, in fact, met the obligations of the court order. And this brings us into alignment with the federal mandate that says we will have to confirm that based on that 5 percent threshold rule that was discussed in my written testimony. [LB199]

SENATOR LATHROP: But that's about buying insurance. I'm talking about the noncovered expense that Mom and Dad are supposed to split evenly. I don't know how you can enforce that. [LB199]

TODD LANDRY: On those pieces, generally those are very difficult to enforce and usually requires another court order requiring... [LB199]

SENATOR LATHROP: A hearing. [LB199]

TODD LANDRY: ...us to add to the arrearage amount or the current collection amount. [LB199]

SENATOR LATHROP: Okay. Thanks for that. [LB199]

SENATOR ASHFORD: Senator Rogert. [LB199]

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SENATOR ROBERT: Todd, you kind of ran out of time so could you, for us, just elaborate where these savings are going to come from? That would be... [LB199]

TODD LANDRY: Um-hum. Yeah, the savings come from...most of the dollars that are embedded in here, of course, are pass-through dollars. You know, we pass through the lion's share. In fact, we collected last year about \$274 million in child support over the course of the year; passed that through 99 percent of the time within the two-day requirement of the federal government. So we're doing a good job on that. But for those families who are receiving public assistance, and there are limits on how much we can collect of this but particularly for the past due amount, we can then collect on some of this past due amount and apply that to what was owed under public assistance or what the state has already provided in the form of public assistance. And that goes for both state and federal, and that's why you see the breakout there. [LB199]

SENATOR ROBERT: So that would get the recipients off our pocketbook and onto the guys who really deserve to be paying it. [LB199]

TODD LANDRY: That's right. It's intended to recognize that if the state is providing that assistance, and child support comes in, that it reimburses the state for what the state has already provided. [LB199]

SENATOR ROBERT: In the fiscal it mentions, and you mentioned in your testimony that some \$6 million-odd could be collected in addition to where we're at now because of this process. [LB199]

TODD LANDRY: And that's just on the first technique of New Hire reporting, sir. [LB199]

SENATOR ROBERT: What are the odds of getting there? [LB199]

TODD LANDRY: I think the odds are very good. Many other states have, in fact, implemented New Hire for independent contractors, and they've had very good success in doing that. In...on average, we collect somewhere between 70 to 80 percent of current child support every month, and so we do believe there's a very good chance. Income withholding is by far the most effective way of collecting child support. [LB199]

SENATOR ROBERT: Sure. [LB199]

TODD LANDRY: Right now, we can't do that for independent contractors, and this is what this section is intended to address. [LB199]

SENATOR ROBERT: So you say about 80 percent a month of what we should be, that puts us at about fifth in the nation? [LB199]

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TODD LANDRY: That's right. [LB199]

SENATOR ROBERT: What's the average? [LB199]

TODD LANDRY: The average, I think, is 62 to...I'll get you the exact number. It's either 62 or 67 percent. [LB199]

SENATOR ROBERT: Where do you think we'll go with this? [LB199]

TODD LANDRY: Well, I think we're going to go up any higher, but keep in mind we'll also pick up some in arrearages as a result of this, as well. [LB199]

SENATOR ROBERT: Sure. [LB199]

TODD LANDRY: But, you know, I think with this technique that certainly we might be able to crack into the top two or three. [LB199]

SENATOR ROBERT: Super. Thanks. [LB199]

SENATOR ASHFORD: Yes, Senator Council. [LB199]

SENATOR COUNCIL: Thank you, Mr. Landry, because a lot of people don't understand the circumstances under which a family that is the subject of a child support or spousal support order winds up being eligible for public assistance. And in most cases it's because of the delinquency that is established through the child support payment office. So a parent who's ordered to pay child support hasn't paid child support; there's a huge arrearage. The child needs assistance. Then that custodial parent then has the opportunity to come and seek state assistance, and more often than not it's in the form of Medicaid or childcare support. Is that correct? [LB199]

TODD LANDRY: Yes, ma'am. I do think it falls across the entire spectrum but Medicaid certainly, childcare subsidy. We certainly see some within the food stamp program as well. [LB199]

SENATOR COUNCIL: Okay. And so during the time that the custodial parent is receiving those benefits, the noncustodial but obligated parent isn't paying. Then when you start collecting, there's....the process is, is that from the collection it first goes to repay the state? [LB199]

TODD LANDRY: I'll confirm this, but there is a formula that is used. The current child support continues to go to the recipient, the custodial parent, and the past due amount that we're able to collect generally goes first to be applied to the state arrearage, if I can

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use that term. [LB199]

SENATOR COUNCIL: Okay, so...and then I guess that's what I have the question about--and I've had some cases--but how is the calculation of what the past due amount is? If your income withholding says you get to withhold \$200 a month, and the noncustodial obligated parent is \$12,000 in arrears and they earn enough that you can...can you withhold up to 50 percent or up to all of their income? [LB199]

TODD LANDRY: I will confirm with you the exact amount, but it is set...it is almost always set in the court decrees of how much exactly we can collect for both current and arrearages, but there are some limits as it relates to federal and state regulation that says we can only collect up to a certain amount of their adjusted gross income or their gross income, and we will... [LB199]

SENATOR COUNCIL: Okay, because I was wondering if the garnishment rules would come in... [LB199]

TODD LANDRY: Right. Right. [LB199]

SENATOR COUNCIL: ...if you're the head of household or you can only collect...you can only withhold 25 percent under certain circumstances or 50 percent under other circumstances. [LB199]

TODD LANDRY: That's right. That's right. And I believe the number is 25 percent but I will confirm that for you, Senator. [LB199]

SENATOR COUNCIL: Thank you. [LB199]

TODD LANDRY: The one other piece I would like to point out, though, is one of the best and most effective ways of collecting past due arrearages for us as a state, for all states, is the tax intercept program,... [LB199]

SENATOR COUNCIL: Income tax, yeah. [LB199]

TODD LANDRY: ...because that actually comes through, as you can imagine, in one lump sum. One of the things that you would notice is we collected a far significant increase...a significant increase in the amount of federal intercept last year. That was largely due to the stimulus package that was passed that provided either \$600 or \$1,200. We collected a significant amount of past due amounts because of that tax intercept program. The continuous submittal process that we have included in this law allows us to do that even more effectively, and that is the best way that we have found to collect those past due arrearage amounts. [LB199]

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SENATOR COUNCIL: And the continuous submittal requirement is imposed on the obligated parent? [LB199]

TODD LANDRY: The continuous submittal requirement is actually a technical requirement for us to be able to submit on a continuous basis how much the arrearage is as opposed to just one time a year. [LB199]

SENATOR COUNCIL: Okay. [LB199]

TODD LANDRY: So as those dollars may become available, for example, during the year... [LB199]

SENATOR COUNCIL: So you could submit to the Department of Revenue on a monthly basis. [LB199]

TODD LANDRY: Exactly. That's what this will allow us to do,... [LB199]

SENATOR COUNCIL: Okay. [LB199]

TODD LANDRY: ...which is exactly what we do with the federal IRS, but right now we don't do that for the state. [LB199]

SENATOR COUNCIL: Good. Okay. [LB199]

TODD LANDRY: Yes, ma'am. [LB199]

SENATOR ASHFORD: And that's a reporting requirement to the federal. [LB199]

TODD LANDRY: That's both: to the federal as well as to the State Department of Revenue. [LB199]

SENATOR ASHFORD: Let me ask you one quick question on the arrearages. Do the arrearages count against the state in any way? So, for example, if you have an inordinate...if your percentage goes down, does that impact your federal funds? [LB199]

TODD LANDRY: It does not right now. The primary way that we could be subject to federal penalty is around paternity establishment, and so far we have not been...or we're not subject to that penalty this year. You have to achieve a 90 percent paternity establishment rate or achieve a 2 percent increase in your paternity establishment rate, and right now we're on track to do that. [LB199]

SENATOR ASHFORD: So if there is an inordinate number of--not that there are here--but does that... [LB199]

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TODD LANDRY: It currently does not factor into that although we are required to report that to the federal government. [LB199]

SENATOR ASHFORD: All the arrearages? [LB199]

TODD LANDRY: Right. Yes, sir. [LB199]

SENATOR ASHFORD: Okay. Thank you, Todd. [LB199]

SENATOR LATHROP: Just to point out that as much as HHS has been kicked around, being fifth in child support collection is pretty good, so we should give you a little pat on the back in Judiciary Committee today. [LB199]

TODD LANDRY: Thank you, Senator. I appreciate that very much. [LB199]

SENATOR LATHROP: It doesn't happen very often around here, so thank you. [LB199]

SENATOR ASHFORD: Would you...and I think this sounds like a pretty important piece of legislation that ought to...and LB346 is up tomorrow or may be up tomorrow morning on General File. Is this something that on Select File we could...you would prefer see amending onto LB346? [LB199]

TODD LANDRY: Well, what...I'm not... [LB199]

SENATOR ASHFORD: Is it a priority, do you know... [LB199]

TODD LANDRY: I'd have to probably defer to someone else that's more knowledgeable about that aspect, but... [LB199]

SENATOR ASHFORD: Well, not necessarily the process, but you need this to fund... [LB199]

TODD LANDRY: This is one of the ways that we have proposed to fund LB346, given the difficult economic times that we're facing as a state. Yes, sir. [LB199]

SENATOR ASHFORD: So it would be prudent to try to find a way to, if the committee desires to get it out there, somehow so it can accompany LB346. [LB199]

TODD LANDRY: You know, we would love to see this come out so that barrier is also removed. Yes, sir. (See also Exhibit 19) [LB199]

SENATOR ASHFORD: Right. Okay. Thank you very much, Todd. Any other

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proponents? Opponents? Neutral? Oh, my. [LB199]

CHRIS JOHNSON: You moved so quickly there I didn't get a chance to stand up when you said opponents. [LB199]

SENATOR ASHFORD: Oh. [LB199]

CHRIS JOHNSON: Good afternoon, Senator Ashford and members of the committee. My name is Chris Johnson, J-o-h-n-s-o-n. I am an attorney in Hastings, Nebraska; drove down here for the hearing today so I could share my thoughts with you on this bill. I practice mostly family law and have since 1993, and I travel throughout the state doing so. There is a lot of good things in LB199, but there are some things in it that are bad and need to be changed or deleted. And if they cannot be changed or deleted, then I would urge you to hold this bill in committee. The goal of the bill as drafted is to bring Nebraska law into compliance with certain federal regulations. The current status of Nebraska law on these matters does allow for a court to order one parent or the other, with no distinction as to custodial or noncustodial, to procure health insurance. It also allows the court to mandate--and this happens in almost every case I'm involved with--to say what happens to medical costs that are incurred that are not covered by health insurance. Normally, those are shared on a direct ratio to what the individual parent contributes to the family plot, if you will--the marital plot--even though they're no longer together. I believe under the current federal regulations, and I have read them, the Nebraska law that we have right now already is compliant so we're not in danger of losing any of our federal funds if we don't have this provision of LB199 that talks about assigning insurance responsibilities and what happens to payments that are not covered by insurance. There are problems with what LB199 would do. LB199 would create a class. It would create a class of people who are single parents and it would require from single parents what would never be required of married parents. If the provisions of LB199 are great in terms of requiring parents to cover their children for health insurance and to pay costs not covered by insurance, then you should require it of all parents, not simply divorced or separated parents; otherwise you create a divorce tax, if you would. If it's a good idea, make it apply to everyone. The main problem that I have with LB199 deals with the...what's called a medical payment award or medical cash award. This allows a court to decree up to 5 percent of a person's gross income, which could be 15 percent of their net income. It allows the court to set aside 5 percent of a person's gross income and pay it over on a monthly basis to the custodial parent to reimburse them for costs they may or may not incur for unpaid medical costs. There is no requirement that the costs be incurred. There is no requirement that they spend the money. What happens then if the child gets sick and these costs are not paid? The doctor is still going to sue the parent who's already paid money in. I think that's something that needs to be dealt with, with the bill. Finally, in the child support guidelines that are already existent, an economist has developed those guidelines and figured out what it costs to support a family, and it is from that that the child support

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guidelines come into being. If--and I don't know if anyone has asked this question--if, as part of that economist's formula, healthcare costs are already included, then this would amount to a double dip because it's already part of the child support guideline. Currently, the law is that the custodial parent will pay the first \$480 of any payment not covered by insurance before the noncustodial parent chips in any money. Well, that must be because it has been already computed into the guidelines, a certain percentage of money for unpaid medical costs. This would do it again. And I represent a lot of people, a lot of people who simply cannot afford this. It's not a matter of do they want to or they don't want to; they simply cannot afford this. So I realize I'm out of time. You are not out...but you, this committee, is not out of time. The federal regulations allow you two legislative sessions to become compliant with the federal regs. This is the first one. We can rework LB199 so that all the interests are accomplished and addressed, and I look forward to helping anyone who would like to do that. [LB199]

SENATOR ASHFORD: Go ahead. Senator Lathrop. [LB199]

SENATOR LATHROP: Just a comment. I'm glad you're here. I'm glad we have lawyers that are looking over the legislation, Mr. Johnson, and I would encourage you to work with the bar association, because it sounds like there's still some... [LB199]

CHRIS JOHNSON: And I am doing that. [LB199]

SENATOR LATHROP: Okay, good. Continue to do it. We had a problem with Senator Flood's bill getting past the bar association, that did a lot of...well, I'm sure you're familiar with it. [LB199]

CHRIS JOHNSON: I'm involved in that, as well. [LB199]

SENATOR LATHROP: And we had to do a little bit of rewrite. So having practitioners involved in the process is very helpful. I'd encourage you to stay with it. [LB199]

SENATOR ASHFORD: Yes. Senator Rogert. [LB199]

SENATOR ROGERT: Yeah, you commented right then that we have two sessions. Now, I'm just reading what this note here says: We must be in compliance by October 1, 2009, (inaudible) that we are in the second session when you get... [LB199]

CHRIS JOHNSON: In 2008 there was a new NPMR, the national public notice of rule-making changes, and it indicates as of August 2008, with the new changes that they have, you have two legislative sessions after that to bring it into compliance. [LB199]

SENATOR ROGERT: Okay. [LB199]

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CHRIS JOHNSON: I think we already are. I think our law already is. But that's something that no one should hold a gun to your heads and say you need to do this or we're going to lose money. That is not the case. [LB199]

SENATOR ROBERT: Okay. [LB199]

SENATOR ASHFORD: Yeah, I concur with Senator Lathrop, Chris. And if we can get something worked up so that Todd can have some of the benefit of these monies, that would be helpful too, and we probably have two or three weeks to do it, but I don't know if that time frame works for you, but the bill is here so you guys can work on it. Yes, Senator Council. [LB199]

SENATOR COUNCIL: And thank you, Mr. Johnson, for bringing the perspective of a practitioner, as well. When I was looking at it...I mean, your...and I'm intrigued by your arguable constitutional issue with regard to... [LB199]

CHRIS JOHNSON: The divorce tax issue. [LB199]

SENATOR COUNCIL: ...the divorce tax issue. Because as I read the proposed legislation, it becomes a divorce tax issue if neither party has insurance available through their employer or an organization, because it provides then that the court shall order a cash medical support. [LB199]

CHRIS JOHNSON: Well, I would take it even one step further, and you're correct, but it also indicates on page 4 of the bill that any person against whom a child support order is ordered against, or a custodial parent, can be ordered to procure health insurance if it's available to their employer. You can't do that with married people. They have the option over their own family finances to decide whether or not the health insurance for their particular family is in their family's best interest or not. A court can't do that. A court can't say to a married family, you must get insurance, but we can now with a divorced family. And I think that's an interesting thing that I have pondered on since this bill was put into place. [LB199]

SENATOR COUNCIL: Well, and as you well know, courts do it now. Judges do it now. [LB199]

CHRIS JOHNSON: They do. [LB199]

SENATOR COUNCIL: Judges include in support orders and divorce decrees all the time that if...whichever party can obtain the insurance through their employer is ordered to do so. [LB199]

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CHRIS JOHNSON: I see it every day. To me it's an interesting question. But the medical payment is particularly troubling because it's 5 percent of the gross that can be ordered in addition to the health insurance...or not in addition to. [LB199]

SENATOR COUNCIL: No. [LB199]

CHRIS JOHNSON: If health insurance is not available... [LB199]

SENATOR COUNCIL: Right. [LB199]

CHRIS JOHNSON: ...then the court can order 5 percent of your gross pay to be paid over to the custodial parent. What's interesting though, and I think most troubling, is there's no requirement that that money has to be spent. There is no requirement that expense has to be incurred before you make the payment. It's just extra money. And there's no ceiling for the noncustodial parent, but if he does this--and I say he figuratively--but if he does this, that means that no one else can sue him if the child later gets sick and there are fees and expenses that the custodial parent doesn't pay. I mean, if he has done this, does he get immunity? And that's not in the bill. And we also have the federal poverty guidelines that right now are about \$900-some a month. There's no mention in the bill that you can't take a person down below that number in addition to the child...when you take away the child support and you take away the medical support payment, there's nothing in the bill that says you can't go below this certain number, which changes every year. There's problems here; I think we can make it better. [LB199]

SENATOR COUNCIL: Thank you. [LB199]

SENATOR ASHFORD: Thanks, Chris. Do you have any other questions, Senator Lathrop? [LB199]

SENATOR LATHROP: No, other than your idea about the divorce tax. If a husband and wife have three kids and they elect not to cover them with a health plan that's available to one or the other of them, then they're both going to be in the soup. The problem with a divorce situation where Mom and Dad aren't married is the court has to decide who's going to have the coverage because somebody who has the coverage available to them shouldn't put the other one in the poor house, which could conceivably happen because there are necessities of life, and both are liable for them. [LB199]

CHRIS JOHNSON: I'm only saying that it is interesting to me that we can require it of some people but not of everyone. [LB199]

SENATOR LATHROP: I agree. I think it is interesting. Work with the bar. If you don't get anywhere, get on the House of Delegates. Run the show. [LB199]

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SENATOR ASHFORD: Thanks, Chris. [LB199]

CHRIS JOHNSON: Thank you very much. [LB199]

SENATOR LATHROP: Yes, thank you. [LB199]

SENATOR ASHFORD: Any other opponents? How many other testifiers do we have on this bill? Okay. [LB199]

ROBERT WATSON: Mr. Speaker, members of the committee, my name is Robert Watson, W-a-t-s-o-n. I haven't done this in a few years and I'm pretty nervous so I think I'm going to read my own thoughts which I wrote in your cafeteria a little while ago. But I represent Nebraskans for Family, which is essentially a small grass-roots organization here in Nebraska. And the primary purpose of the organization is to offer information and resources, whether that be through legal referral, and access to information for noncustodial parents primarily, although anyone who has a need for it. You know, like Chris, I think LB199 has a lot of strengths. Okay. I have no problem with the mandatory reporting of income. People that work should pay their obligation. It's pretty simple. However, there's an enormous hole in this bill and that is the cash medical and healthcare requirement. And I think Chris kind of alluded to some of it but I'm going to point it out a little bit more clearly. May be a little bit ridiculous, but if you read this bill, the first few pages through page 5, you'll see that it's actually true. But first I want to tell you a little bit about the NMPR which Chris...or NPRM that Chris mentioned, which is the notice of proposed rule making. In 2000, a congressionally supported study entitled "21 Million Children's Health: Our Shared Responsibility," issued 76 recommendations, in part to increase pressure to help families manage healthcare expense to save Medicaid and CHIPs money, and to help ensure that children had access to medical care. It also required that states first modify support guidelines to ensure that state guidelines address how parents will provide health insurance for the children. In addition, the guidelines need to consider not only health insurance coverage but how parents--notice it doesn't say how "parent"--will meet the child's healthcare needs, basically, when no insurance is available, when the cost of insurance is beyond a reasonable means of the parent or where the costs are extraordinary. The bottom line is that the intent here was to provide health insurance and it was never intended to shift the entire responsibility of providing health insurance away from the custodial parent and entirely place it on the noncustodial parent, which is exactly what LB199 does. The feds even went so far as to say that household income should be considered because both parents should be...they need to find out who can more...who is more able to provide the health insurance; not just to levy a debt on a person who presumably can't pay it. And I can give you all the technicalities in the world. I think I went over 400 pages that dealt with the study, the original study, down through LB199. But just to give you one clarification--I know I'm short on time. A scenario: Two married parents. Parent A,

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say, makes \$250,000 a year but doesn't have insurance available through the employer, and Parent B is a stay-at-home mom or dad. These two people file for a divorce. Parent A still doesn't have insurance through work; makes \$250,000 a year. Parent B is fully responsible by either paying the cost of the insurance or paying this flat fee that can be administratively mandated by the Department of Health and Human Services. Now, the only situation that I can tell in LB199 where the noncustodial parent would have to pay...or where a parent would have to pay for the full medical costs or the health insurance is if they don't have custody of the child. It essentially takes away any responsibility whatsoever from a custodial parent. Assuming that health insurance is not available through employment or an organization, they have no responsibility at all to contribute to health insurance. And I've got more here that clearly I won't get through. I've got the red light here, but I just want to make sure that you folks understand that this is really going to be...I don't have this problem. I provide health insurance. You know, it's not an issue for some of us. Times are getting bad and this is going to have an incredibly chilling effect on the working poor, on the lower middle class, and on the poor. These people don't have the money. You can take 5 percent of nothing and the state is not going to get anything, and not only that, creating a fictitious asset on the books of DHHS, okay, isn't going to get the state any money. They don't get money unless they collect money. If there's no money to collect, all you do is ruin the credit, potentially put a noncustodial parent in jail. Junior still doesn't have any health insurance. And the state...you know...I mean, I don't think this was at all malicious. I just think it wasn't well-thought-out. [LB199]

SENATOR ASHFORD: Well, let's do this, Robert. [LB199]

ROBERT WATSON: Yeah. [LB199]

SENATOR ASHFORD: I assume you're going to get...you may get some questions, so let's go to some questions. Are there any questions? I assumed incorrectly. (Laughter) [LB199]

SENATOR COUNCIL: I just had one. [LB199]

SENATOR ASHFORD: Yeah, I thought Senator Council might have one. [LB199]

SENATOR COUNCIL: And maybe I should have asked Mr. Johnson this, as well, because he was the one that made reference during his testimony to a question as to whether or not the current child support guidelines take into account what the courts currently order in terms of the allocation of the cost of healthcare,... [LB199]

ROBERT WATSON: The shared. Right. Yeah. [LB199]

SENATOR COUNCIL: ...the shared; the custodial parent having responsibility for the

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first \$480 and then it being divided based upon the marital income. If the noncustodial spouse provided 70 percent of the income to the marriage, then they're responsible for 70 percent above...or \$480 ordinarily. But isn't it also true that the child support guidelines, the calculation, takes into account and provides the obligated parent an offset for the cost of insurance for the family? [LB199]

ROBERT WATSON: Yes. Yeah, because that's essentially the contribution of the custodial parent, is the reduction--you're going to have another attorney come up here next who can maybe answer the detail--but yeah, that's the point, is two parents have a child, two parents are responsible. And although one parent does transfer money to the other, the offset in that person's income is essentially that other person's, or in this case, the custodial parent's contribution toward that pool, let's say, or toward that contribution. It's intended to be...you know, we all take care of our children, you know. And I don't know where this language came from. It certainly didn't come from NPRM or the federal regulation. It did not come from the original study. And it didn't come from...I've got the notes from the ERICSA convention in Memphis this past year where they talked about how this would be implemented. Nebraska is the only state I have seen so far where this kind of language is used. [LB199]

SENATOR COUNCIL: Thank you. [LB199]

SENATOR ASHFORD: Thanks, Robert. Good job for doing it in the cafeteria...writing it up in the cafeteria. [LB199]

ROBERT WATSON: Sorry. (Laugh) It's been too long. I'm getting... [LB199]

AMIE MARTINEZ: Good afternoon. [LB199]

SENATOR ASHFORD: Good afternoon. [LB199]

AMIE MARTINEZ: Thank you, Senator Ashford and members of the committee. My name is Amie Martinez. I'm an attorney practicing primarily in family law here in Lincoln. I also appear before you representing the Nebraska State Bar Association. I am the chair of the House of Delegates, and coincidentally also the chair of the family law section. The Nebraska State Bar Association does oppose LB199 as drafted, and I can tell you that I would concur with Mr. Landry that we are working on trying to find some compromises in the language to make sure that we can hopefully help with regard to the compliance issue. It's not our intention to be oppositional but merely that the bill, as drafted now, is not one that we can support. We have no objection to the accounting, the support issues, or any of those portions of the bill. In particular, our objections are to the language contained and proposed on pages 5 and the top of 6, so I would confine my comments to those issues. This mandate did come down in July 2008, and it's my understanding that we are to come into compliance either this session or next session. I

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can't speak to some of those issues. But I will tell you that I think it's important to note that Nebraska's compliance is only with regard to cases where people are being offered public assistance. And I don't have, unfortunately, the statistics to tell you how many times that is the case, but I don't think that it rises to the level of half of the cases where we have divorce orders or paternity orders. And so I think that this bill, as drafted, does not limit its focus, and therefore that's part of the problem. The issues--and I'll just rattle through them because, Senator Council, I do have some responses to some of your comments--in particular, the term "reasonable effort by a custodial parent" on page 5, line 9, is something that the family law committee or family law section has some questions about, "decisionmaker." Definitions of those two terms are very difficult. The 60-mile or 60-minute radius is problematic for a number of reasons. I did talk with a number of members about that issue. This issue about reasonable cost. The problem is, is that...one is that that cost, as defined right now, is 5 percent. The mandate came down with some of the comments to say that that percentage could be changed. It should go along with whatever the state decides, which I think needs to be addressed. But it foresees or forces a parent to have health insurance, where they might not otherwise have it, just so they can add their children. And the only cost as part of that 5 percent, if it is considered, is the add-on for the children. So many times you can insure yourself for, I don't know, \$200, and add on your children for \$50. That 5 percent would only apply to the \$50. Even though it's out-of-pocket costing you \$250, only that \$50 would be considered, and that is problematic. The cost of health insurance is already...I see I am out of time. May I be allowed to continue just briefly? [LB199]

SENATOR ASHFORD: Well, why don't you finish up. [LB199]

AMIE MARTINEZ: Thank you. The cost of health insurance is already dealt with in the child support calculations. There is no limit or direction for this cash payment. Right now, the way we practice is that if you have out-of-pocket expenses, parents are allocated for that responsibility once it is incurred. This is basically a supplement as to child support, and that is problematic. So those are the concerns. In response, Senator, if I may to your comments about the garnishment limits or how much could be withheld for the arrearage, I do think the garnishment amounts would be certainly one guideline. If you have someone held in contempt, the court can, as part of the purge plan, order whatever it deems appropriate. Certainly would take into account the garnishment proceedings. One of the questions you had was about the allocation of health insurance. There is a recent change in the last two years to the allocation of the health insurance obligation, and it is not always a noncustodial parent who is paying for the health insurance. So in the child support calculation, if you've ever seen them, it used to be the deduction for health insurance was calculated up above, meaning before the deductions. It is now a dollar-for-dollar credit if you provide health insurance to the parent who is providing that health insurance coverage. So it is already taken into account. [LB199]

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SENATOR ASHFORD: Let me stop you here because we may have some questions. [LB199]

AMIE MARTINEZ: Okay. [LB199]

SENATOR ASHFORD: Do you have any questions of... [LB199]

SENATOR COUNCIL: No. In fact, she's responding to the exact points I wanted to have expanded upon because that was my...was it two years ago... [LB199]

AMIE MARTINEZ: I believe so. [LB199]

SENATOR COUNCIL: ...that the guidelines were updated, and that's when the move of the out-of-pocket insurance costs moved below the line, for lack...if you've never seen the child support calculation you may not know what we're talking about, but it moved below the line. [LB199]

AMIE MARTINEZ: Right. [LB199]

SENATOR COUNCIL: And it was a...it's just like literally a dollar for dollar. [LB199]

AMIE MARTINEZ: It's a dollar-for-dollar credit. It used to be that when they calculated the amount of support and your responsible percentage, your deduction for health insurance was taken up above, and so you were not... [LB199]

SENATOR COUNCIL: It reduced... [LB199]

AMY MARTINEZ: Right. [LB199]

SENATOR COUNCIL: It reduced your monthly income. [LB199]

AMIE MARTINEZ: Right. It reduced your monthly income so even if it cost you \$500 a month to provide insurance, it may make a difference of only \$30, \$40, \$50 in your child support obligation. Now if it costs you \$500 a month for insurance, it is that \$500 credit. And those are all my...those are all the comments that I had to your questions, Senator Council. [LB199]

SENATOR COUNCIL: Thank you. [LB199]

SENATOR ASHFORD: Thank you. I guess I would encourage...this seems like a very important, to me anyway, this is an important initiative that Todd and Senator Stuthman have brought us, so let's see if we can get it resolved. [LB199]

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AMIE MARTINEZ: And I appreciate that very much and we are working together, and I know Mr. Johnson appeared today because he was not sure if anyone was coming in our official capacity as a state bar association. I do...I just want to make sure than when folks toss around this idea that this bill has to be passed to take us into compliance with the federal mandate... [LB199]

SENATOR ASHFORD: I'm less concerned about that... [LB199]

AMIE MARTINEZ: I don't think that's true. [LB199]

SENATOR ASHFORD: ...and more concerned about meeting the financial needs of the state in addressing LB346 issues. [LB199]

AMIE MARTINEZ: Right. [LB199]

SENATOR ASHFORD: So if there...to me, that's extremely important, so if we can work it out with the bar so that we can accomplish Todd and Senator Stuthman's plan here, that would be great. [LB199]

AMIE MARTINEZ: Very good. Thank you for your time. [LB199]

SENATOR ASHFORD: (See also Exhibits 17 and 18) Thanks. Thank you for your time. Any neutral testifiers? Okay. That concludes the hearing. Thank you. Pete, LB238. Senator Pirsch...LB506, sorry, wrong again. [LB199]

SENATOR PIRSCH: (Exhibit 12) Members of the Judiciary Committee, my name is Pete Pirsch, P-e-t-e P-i-r-s-c-h. I represent the Legislative 4th District. I am also the sponsor of LB506 which is before the committee today. LB506 changes the provisions under Nebraska's duty to stop in the event of accident resulting in personal injury or death. That's 60-697 and 60-698 that are affected by this. Under LB506, if a person flees an accident which results in an injury to any person, the penalty remains a Class IIIA felony, which is up to five years. However, under LB506, if a person flees an accident which results in the death of any person or serious bodily injury, the penalty is now a Class III felony: up to 20 years. The order not to drive and license revocation provisions for both provisions would remain within the range of 1 to 15 years, as the current law stands. And I am going to have passed around an amendment, AM449, which clarifies the definition of serious bodily injury and refers to a specific statute where that definition is found. It also names the bill Matt's Law after a young man whose life was taken as a result of a situation that is addressed in this bill. His father has been instrumental in pushing for a tightening of legislation to make sure that no other family has to go through what he and his family has had to... [LB506]

SENATOR ASHFORD: I think that's a bit of an understatement, even in...(laugh).

[LB506]

SENATOR PIRSCH: The purpose: Why have this law? Just two reasons I'll mention quickly. First of all, I think it's an appropriate expression of society's moral outrage with respect to this type of an action. Here somebody is killed or seriously injured, left in the roadway to die, and a driver who could have helped left the scene of that victim, first. Second, and it's an attempt at parity. And I'll...we in the...and as a former criminal prosecutor, I can tell you we should...in our criminal laws, the penalties we want to encourage penalties as an inducement for people to do the right thing and not incentivize them for doing the wrong thing. And as an analogy I can use a law that existed back in the '90s when we had a driving under the influence law that did carry with it a possible penalty for jail. And at the same time that that law existed, they had a penalty...I'm sorry, a law that prohibited people from leaving the scene of an accident. And typically, the people...or very often the people who left, had an inclination to leave the scene of an accident, were leaving because they were under the influence of alcohol, and they understood that there was jail time as a possibility with respect to the DUI, an "enhancible" type of offense; whereas, with the leaving the scene of a property...with the leaving the scene charge, that carried with it a mere fine. If it was...if you reported it, if you got away from the scene, didn't get breath-tested, therefore escaped the DUI, after an hour you could go back and...well, actually if it was even under 12 hours, the worst they could do to you is a hundred buck fine. If you stayed out for longer than 12 hours, then the worst they could do to you is still a fine of up to 500 bucks, but no jail time was even a possibility. So under that scheme or paradigm, as the two laws existed, made perfect sense and happened all the time, that people would be observed by witnesses, getting in from the bar, had been there five hours. All the witnesses at the bar said he had been, you know, when they looked over, saw him drinking heavily, took off. You know, was staggering as he went out the door, got in the car. Then all the police knows, that there was an accident. They respond to the scene. They identified the driver in the car. When they locate, you know, 13 hours later, the car, it's full of empties, you know. But the guy after 13 hours is sobering up, couldn't be prosecuted for a DUI. Hence, the worst that you can do to you is a fine and not jail. And so it would incentivize people and they did do the wrong thing: left the scene of those accidents. And so as an analogy, that's pretty much the situation I'm hoping to correct with this bill. We have cracked down on our DUI laws, especially repeat offenders, and those are really the scary individuals that we're concerned about. And so as they progress and get enhanced to third offense, fourth offense, fifth offense, you actually climb to the level where you get to 20 years incarceration. And however, the penalties for leaving the scene of this personal injury...I'm sorry, leaving the scene of an injury, a serious bodily injury or death, has not increased, and so I think it sends the wrong incentive. So what this is trying to do is just achieve a parity similar to the one I mentioned, and so that a judge has the ability, should somebody leave the scene of a death, and the witnesses at the bar placed him, you know, drinking there for five hours staggering out in the parking lot, getting into his car, you know, colliding with the

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individual, leaving the scene, the person seriously injured or dying. That when they find the car, empties galore in the car, that at least that the judge has an ability at sentencing time to say, you know, we couldn't get at you for a DUI sixth offense, so you beat the DUI, but in this particular situation it is because of all the extrinsic other types of facts that were attendant with the...that were documented by witnesses, that I suspect that you were you on your DUI 6, it at least gives the judge the opportunity to look at that and if he, the judge, is so inclined, give a sentence that would be at least commensurate with what the DUI would have been. So that's the underlying second rationale for the law. I believe that we have one testifier here today. If there's any questions, I'd be happy to entertain those. [LB506]

SENATOR ASHFORD: Thanks, Pete. Any questions of Pete? Seeing none, Bob? And you have done a great deal. [LB506]

ROBERT SCHMILL: (Exhibit 13) Well, thank you. Chairman Ashford and members of the committee, my name is Bob Schmill, and that's S-c-h-m-i-l-l. I first appeared in front of this committee in February 2006 to ask for your help to change the law to make it a felony, to leave the scene of a personal injury accident, from a misdemeanor. Your action not only brought the state into line with 45 other states, but also persuaded Iowa and Kansas to change their laws as well. But a few corrections still need to be made. LB506 will increase the charge for leaving the scene of a serious bodily injury or death accident to a Class III, from a Class IIIA felony. What was the reason this law was changed that year and why do these corrections need to be made? On April 24, 2004, at 12:30, as Matt Schmill from Omaha was killed by a 19-year-old drunk driver. She had three prior MIPs, was on probation for a DUI at the time she killed my son. He was walking home with friends after he had turned 23 at midnight. The driver drove off, leaving him in the street to die. Even though she admitted she had been drinking in the park prior, they couldn't prove that she was drunk at the time of the crash. Today, the driver that causes a crash resulting in a serious personal injury or death of another person, if they stay at the scene and are under the influence of alcohol, they can get up to 15 years in jail. But if that same driver leaves the scene, they would only do a maximum of 5 years and the state can't prove that the person was drunk. The driver is still rewarded with a lesser sentence like before the 2006 bill was passed. There needs to be a difference between minor injury and serious bodily injury or death that a driver causes. With the passage of LB506, you will not only define the different levels of injury but separate the seriousness of the levels by increasing penalties. That night at the hospital I knew that I needed to make sure that my son's dreams came true, and so we continue to tell his story. To keep Matt's memory alive we founded the Matt's Dream Foundation to educate adults to the dangers of alcohol and the impact that a drunk driver has on families and friends of a victim. We speak to six to eight groups per month in a two-state area, and our focus is on 21 and older. This bill was also introduced last year and didn't make it out of committee. If it had become law last year, the driver of the car that hit the 18-month-old last December would be looking at 15 years once going

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through court, instead of 5 with the current law. How do you explain this to the parents? What you will never know is, unless you've lost a child, is the emptiness that one feels for someone that has been loved and was loved by family and friends; the longing to hold someone that you will never see on this earth again; the dreams that will not be fulfilled; the voice that will never be heard and the smile that will never brighten a room. The average number of hit-and-run deaths in Nebraska is 3.8. We just had another one yesterday in Omaha. For every person killed, 50 to 60 family members and friends are punished because of that death. Let's quit punishing the victims of the crimes and start punishing those that commit them. I thank you for the difference in the lives that you help--let me try that again. Thank you for making a difference in the lives of our present and future Nebraskans. Thank you for your time and I'd be open up for any questions. [LB506]

SENATOR ASHFORD: Any questions of Bob? Thank you, Bob. We will work on it. [LB506]

ROBERT SCHMILL: I also put...there's a Web site...the little tiny print is a Web site, DeadlyRoads.com, which is only for people who are victims of hit and runs, and then of course the faces, but I think I handed that out to everybody before then. Thank you. (See also Exhibit 14) [LB506]

SENATOR ASHFORD: (See also Exhibit 20) Thank you, Bob. Any further testifiers in support? Opposition? Neutral? Thanks, Pete. The next bill is LB238 and that is...whoops, Senator Lathrop, our very own member. [LB506]

SENATOR LATHROP: Good afternoon, Mr. Chairman and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, and I'm the state senator from District 12 and I'm here today to introduce LB238. The purpose of LB238 is to provide additional protections for facilities and infrastructure owned by public power districts that are involved in the generation, transmission, and distribution of electricity. LB238 establishes the Public Power Infrastructure Protection Act. Under the act, a person is guilty of a Class IV felony if they willfully or maliciously damage, injure or destroy, or attempt to damage, injure or destroy objects used for generating electricity by a public power supplier. This would also apply to any facility or electric wire owned and utilized by the public power supplier, and could include any attempt to interrupt the generation, transmission, or distribution of electricity by a public power supplier. Under the act, a person is guilty of a Class II felony for willfully and maliciously destroying or causing or attempting to cause damage or loss to a nuclear electrical generating facility or its components. It would also apply to specific actions by individuals that relate to spent or unspent nuclear fuel, including any attempts to make the fuel unusable or unsafe. The bill would also make changes to the crime of first degree criminal trespass by extending this crime to those who enter or remain in or on a public power infrastructure facility and know that they do not have the right to be there. LB238 is necessary for several

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reasons, including the need to take action against the recent increase in copper thefts. As the price paid for scrap copper has increased, there have been many instances around the country where someone has decided to break into a power facility to steal the wire or material. This cannot only impact the flow of electricity to the public, but it can be deadly for those who attempt to commit this crime or who work at those facilities. The passage of LB238 will help deter these attempts to steal copper and other materials from power facilities, as well as provide additional protections for the facilities. LB238 addresses an important public safety issue that also has a financial impact on public power suppliers and their ratepayers, and I ask that the Judiciary Committee vote to advance this to General File for additional debate. Let me just say this after reading my prepared remarks: This isn't just about stealing copper wire. This literally goes to national security. We have nuclear power facilities, two of them in this state, and to make it a Class II felony for people to fuss around with these facilities, trespass, try to damage the facilities or to get at the fuel, a Class II felony, really it could be worse. I mean, we could make it a Class I felony just because of the hazards related to the nuclear facilities. So I think there is...it's a measured response to the problem and a good policy, as you'll hear from my friends at the Omaha Public Power District shortly. [LB238]

SENATOR ASHFORD: All right. Thanks, Senator Lathrop. Any questions for Steve? Seeing none, Omaha Public Power District is next. [LB238]

TOM RICHARDS: That's me. I don't get to come to the Judiciary Committee very often, so I'm excited. [LB238]

SENATOR ASHFORD: Well, I'm not sure we are, but we might be. (Laughter) [LB238]

SENATOR MCGILL: What does that mean? [LB238]

TOM RICHARDS: Late in the day. Chairman Ashford, members of the committee, Judiciary Committee, I'm Tom Richards. I'm the manager of governmental community relations for the Omaha Public Power District. It's T-o-m R-i-c-h-a-r-d-s. OPPD is here today in support of LB238. We want to thank Senator Lathrop for introducing the bill. OPPD has security measures in place which normally would be sufficient to preclude illegal trespass and theft. Generally, facilities, substations, service centers are protected by chain-link fence, locked gates, interior lighting, and in some instances motion detectors that have closed-circuit TVs. In addition, personnel access into and around these substations are closely observed, and random checks of selected facilities are conducted by private security officers and law enforcement authorities, yet our facilities are still being broken into and property damaged or stolen on a regular basis. In 2006, OPPD sustained financial losses of \$68,000 from the theft of wire and tools. The total includes the cost of fence repairs and the labor involved in repairing damaged infrastructure. In calendar year 2007, OPPD sustained financial losses of \$23,000 in

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wire thefts and \$6,000 in tools. The actual cost to OPPD and its customers was in excess of \$211,000, when adding the cost of fence repairs and labor involved in repairing damaged infrastructure. In calendar year 2008, OPPD sustained financial losses of \$27,000 in wire thefts. Actual loss to OPPD and its customers was over \$134,000 last year, when adding the cost of fence repairs, labor, and repairing damaged infrastructure. In 2008, copper thieves increased their efforts to steal copper from OPPD, blatantly disregarding public and health issues related to those thefts. OPPD responded by increasing the surveillance at our metro substations and partnering with Crime Stopper boards around the counties and offering rewards for their arrests. We established reward funds. We had letters to neighborhood substation watch groups. We increased patrols and surveillance at substations. We added security lighting and installed new security cameras, and we've added contact information to our Web pages. OPPD is providing law enforcement with copies of reports to help them in their efforts to deter the break-ins and thefts. With all of these efforts, copper theft and break-ins at our facilities continue to be a problem. In conclusion, according to one FBI report on copper thefts, copper theft poses a threat to the U.S. infrastructure. Thieves are stealing copper in substation cell towers, telephone lines, railroad construction lines, and vacant homes because it's a lucrative business. Copper thefts have increased since 2006, and are disrupting the flow of electricity as well as critical services. This disruption poses a risk to public safety and national security. OPPD, as well as other service utilities, believe that copper thefts create a situation that is dangerous and life-threatening to the public, its employees, and to the people that are doing the break-ins. I should also add that I'm also representing the Nebraska Power Association, which is a consortium of all the utilities around the state of Nebraska. I have much anecdotal information. If you have questions, I have a chance to walk you through. [LB238]

SENATOR ASHFORD: Any questions of...Senator Council. [LB238]

SENATOR COUNCIL: Thanks. Thanks for the testimony, Tom. And believe me, I have no problem whatsoever with the issues of theft and sabotage, and I appreciate Senator Lathrop's statement about national security. But I do have a problem on page 5, because based on the language an employee at a nuclear electrical generating facility who screws up and makes a mistake that alters or renders unusable or unsafe the spent nuclear fuel, they're subject to a Class II felony. That's problematic for me, because, I mean, I understand that it doesn't apply if the person is...it occurs in the performance of an act in compliance with rules or directives or within the scope of their specific employment. But, you know, what about the janitor who walks through and hits the wrong switch with the mop handle, causes this to occur. They're subject to a Class II felony. [LB238]

TOM RICHARDS: Well, that's not what our goal is. Our goal is--and we can fix it... [LB238]

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SENATOR COUNCIL: Maybe we could tweak that. [LB238]

TOM RICHARDS: We can tweak it to however we need. Our goal is, is that you don't want somebody at a station who is sabotaging or had a bad day or somehow kind of willfully does something. So whatever we need to do to fix that, I will... [LB238]

SENATOR COUNCIL: Yeah, and maybe that's just it. Maybe all we have to do is say "takes, steals, and carries away or willfully or maliciously removes, alters, or otherwise renders unusable." But right now, that standard doesn't apply, so, you know, the stumbling, bumbling janitor could be subject to a Class II felony. So maybe the only...maybe we just insert "willfully or maliciously" before "removes and alters," because it's different. I mean, if you're taking, stealing and carrying away, that's a willful act. But if you alter or otherwise render something unusable, I think that should be willful or malicious as well. [LB238]

TOM RICHARDS: We can fix that any way that we need to. [LB238]

SENATOR COUNCIL: Okay. [LB238]

TOM RICHARDS: The point being, there are no...let me rephrase. I'm not an attorney. I had a conversation with one of the county attorneys, a former county attorney, where we have no statutes dealing with nuclear facilities on a state level, and this would be an opportunity to start to put some of that in place. I will tell you, too, that the problem with copper thefts and people breaking...it's a methamphetamine issue. [LB238]

SENATOR COUNCIL: Absolutely. [LB238]

TOM RICHARDS: We have a problem with people using methamphetamine, breaking into our facilities, cutting into copper wire, cutting into substations. This isn't one where it's a squirrel, a little furry animal creature getting into our transformers. These are people that are using chain saws, wire cutters, locked fence cutters, and they're coming into our facilities and sabotaging them. And we look at this...I know that there have been bills in the past where people have tried to move it towards the salvage dealers. Our thought is, let's move it off the salvage dealers. Let's move it to penalties on the people that are doing the break-ins and take it from there. [LB238]

SENATOR ASHFORD: Any questions of...more? The one...go ahead. And I had the same problem with Section 2 and maybe the malicious language in subsection (1) takes care of that. I don't know. Read it together, but... [LB238]

SENATOR COUNCIL: I think you need to move the (a) over. [LB238]

SENATOR ASHFORD: Right. And but... [LB238]

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TOM RICHARDS: You've got to understand the attorneys at OPPD aren't normally criminal prosecutors so (laughter) any help we can get we're... [LB238]

SENATOR COUNCIL: If you make the willfully and maliciously apply to both (a) and (b), it addresses it. Right now, it only applies to (a), so. [LB238]

SENATOR LAUTENBAUGH: I don't know if you can accidentally do the things they're worried about, but I don't...I think it's a harmless amendment that probably (inaudible). [LB238]

SENATOR ASHFORD: But the question...yeah, the question I had is more on the felony IV side where we're...is it...there doesn't need to be a breaking or entering there. That's a situation where a pole could be damaged or...or not damaged, but...well, damaged or parts of it could be taken... [LB238]

TOM RICHARDS: Cut down. [LB238]

SENATOR ASHFORD: Cut down or something like that, so... [LB238]

TOM RICHARDS: There's three things that we're after. We're after the people that are trespassing on our facilities... [LB238]

SENATOR ASHFORD: I get that but what about the... [LB238]

TOM RICHARDS: And then the next one are the vandalizing, the ones that are vandalizing, cutting the fences, cutting the guy wires. And then the third group are the ones in the nuclear facility, whereas, at least I've been told, there are no Nebraska statutes criminally dealing with trespassing and breaking into a nuclear facility. [LB238]

SENATOR ASHFORD: Okay. [LB238]

TOM RICHARDS: It has been a big problem, not just in Omaha. It's a dangerous problem and it's happened across the state. We look at this as a better approach. [LB238]

SENATOR ASHFORD: I mean, I buy the rationale without any question. [LB238]

TOM RICHARDS: Okay. [LB238]

SENATOR ASHFORD: I just...I don't know about Section 6 exactly, but...okay. [LB238]

TOM RICHARDS: We'll work with you in any way... [LB238]

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SENATOR ASHFORD: Well, I just raise the issue since that's my job. Thank you.
[LB238]

TOM RICHARDS: Thank you. [LB238]

SENATOR ASHFORD: I think that's it. Don. [LB238]

DON WESELY: Thank you. Mr. Chairman, members of the Judiciary Committee, I'm Don Wesely and I'm here representing Alter Trading Company and the scrap recyclers, and I want to start off by thanking you for killing LB472. We appreciate that. And as Mr. Richards said, we think... [LB238]

SENATOR ASHFORD: Which was that? [LB238]

DON WESELY: That was the one that made us... [LB238]

SENATOR LAUTENBAUGH: The scrap bill. [LB238]

SENATOR ASHFORD: Oh. [LB238]

DON WESELY: Oh, you weren't here. (Laugh) It didn't let us pay people for three days.
[LB238]

SENATOR ASHFORD: Oh, that one. [LB238]

DON WESELY: Yeah. But this one goes right at the heart of the problem: the thieves. If you come in and you steal somebody's property and...you know, up the penalty on this copper theft. And I know Senator Council has gone through this on her own property, and if you wanted to expand this, taking people's pipes out of their homes, that would seem like...you know, it's just ridiculous what some of these guys will do on this methamphetamine. But we support this. We think this is the right way to go. Let's get at the problem and the people causing the problem, and so we hope this bill will pass. Thanks. [LB238]

SENATOR ASHFORD: Thanks, Don. Any other proponents? Opponents? Neutral?
Senator Lathrop waives. Done. Thank you. [LB238]

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Disposition of Bills:

LB153 - Held in committee.
LB199 - Placed on General File with amendments.
LB238 - Placed on General File with amendments.
LB506 - Held in committee.
LB517 - Placed on General File with amendments.

Chairperson

Committee Clerk