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Judiciary Committee
February 10, 2010

[LB795 LB868 LB874 LB880 LB881 LB1102]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 10, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1102, LB880, LB881, LB868, LB874, and LB795. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None.

SENATOR LATHROP: Good afternoon, apparently the Vice Chair is going to run this meeting. There's a new sheriff in town. (Laughter) You all get 30 seconds today. (Laughter) Rogert is going to enforce it. No. My name is Steve Lathrop, I'm the Vice Chair of this committee and I'm the State Senator from District 12. If you've not been in Judiciary Committee before, we employ the light system. Well, we'd like you to keep your phones off so that that doesn't interrupt us. But we are going to use the light system. And how that works is each bill will be introduced by a sponsor. After the senator is done, we'll take proponents, opponents, and then those that are here in the neutral capacity. Each of you will be given three minutes. You'll get two minutes with the green light and then it will go to yellow. You know then that you ought to start wrapping it up, okay. And then when it turns red just kind of finish your thought. But please don't make us try to interrupt you because if you keep going, we will, only because we have so many people here today, so much ground to cover. And we try to, as a courtesy to the members of the committee and those whose bills are scheduled last, to make this move along in a reasonable fashion. We have six bills today. The first one is going to be LB1102. I should introduce a few people before. Kent Rogert is here, my colleague from Tekamah; Brenda Council and Scott Lautenbaugh; Christina Case is our committee clerk; and LaMont Rainey is our legal counsel. And with that, we'll begin with LB1102 and, Senator Giese, welcome to the Judiciary Committee.

SENATOR GIESE: Thank you, Senator Lathrop and members of the committee. My name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative District, which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. LB1102 is being introduced on behalf of the Nebraska horse racing industry and would allow Nebraska licensed racetracks the ability to install and operate Instant Racing Terminals. The ultimate purpose of the bill and of allowing Instant Racing is to help save a longstanding industry in the state of Nebraska by allowing Nebraska horsemen to help themselves. Instant Racing, currently authorized in three states, is an enhanced form of the simulcast racing that is already present at licensed racetracks in Nebraska. The real difference between the existing simulcast racing and Instant Racing is that patrons are betting on a race that has been already run. After inserting money into the Instant Racing Terminal, a central service elects one of more than 200,000 previously run races for the bettor to wager on. The bettor is given basic information about the horses at the time that the race was run, but is not given the name of the racetrack or any of the

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horses in that race. LB1102 rather than expanding gambling seeks to modernize and enhance the horse racing that is already taking place in Nebraska's tracks. Like simulcast racing, Instant Racing is a form of pari-mutuel wagering in that patrons are not betting against the horse, they are betting against other bettors. There are currently five licensed racetracks in the state of Nebraska, including Atokad Park in my district, in South Sioux City. Atokad Park is a longstanding racetrack in the history of South Sioux City. In my younger years, my parents would take me to that racetrack. And it seemed like Churchill Downs to me, (laugh) thousands of people, all week long and now we are limited to just a couple days of racing, live racing at the track in South Sioux. It's a longstanding tradition in not only South Sioux City but the state of Nebraska. And I believe the failure of the Legislature to take any action to help the horse racing industry will result in significant job losses in my district and in the four other Nebraska cities where horse racing has been a part of their community. There are a number of individuals behind me who will provide additional information. But I would be happy to answer any questions at this time. [LB1102]

SENATOR LATHROP: Any questions for Senator Giese? Can I just ask you, and maybe I should wait until somebody else comes along but is there a certain level of skill involved in this? Do you get information to make some judgment about the race in advance? [LB1102]

SENATOR GIESE: You do get information, and somebody else will handle this a lot better than I do. But there are things that you...a form that you can read and things like that for the expert bettor. [LB1102]

SENATOR LATHROP: Very good. Oh, okay. I don't see any other questions for you. And I assume you'll want to close. [LB1102]

SENATOR GIESE: Yes. [LB1102]

SENATOR LATHROP: I'm told that the Chair was thinking that we'd try to have about 20 minutes on each side of this discussion. So if you are...how many people are going to testify one way or the other on this bill? Okay, we should be all right. If you are...if someone has come up and represented your position and articulated your argument, if you...you can either leave a sheet that tells us you are in support or in opposition or you can briefly come up, you don't have to come up and repeat the same thing if somebody has already articulated your argument. [LB1102]

SENATOR COUNCIL: And, Senator Lathrop. [LB1102]

SENATOR LATHROP: Yes. [LB1102]

SENATOR COUNCIL: If you could announce that I have a bill to introduce in another

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committee that may require me to leave during testimony on this bill. [LB1102]

SENATOR LATHROP: Yeah. I probably should have done that when I introduced everyone. From time to time, senators will get up and leave, it's not being rude or discourteous or making a judgment about the bill. We have, as part of our duties, the requirement that we go into other committees from time to time and introduce bills. So if you see people get up and leave at different times, it may be very well that they are introducing a bill in another committee. Mike. [LB1102]

MIKE KELLEY: Senator Lathrop and members of the Judiciary Committee, my name is Mike Kelley, that's K-e-l-l-e-y. I appear here today as a representative and a lobbyist for Omaha Exposition and Racing, also known as Horsemen's Park, which is up at 63rd and Q in Omaha. First of all, I want to thank Senator Giese for bringing this bill. This is something the industry needs desperately. We've been trying to get this in Nebraska for a few years now. The first effort was in 2005, we got it out of committee, it was making its way, it was prioritized. Senator Chambers, of course, doesn't like gambling and he, in his skillful manner, prevented us from ever having a vote on it. Something that still happens around here sometimes. A lot of bills failed that year. We also failed in 2007. The problem now is we're kind of at the end of the road. We have 100 days of live racing in Nebraska. And if we don't get another revenue stream, that's going to go away. We're going to come back to maybe ten days of live racing or something like that. There's currently 2,100 people licensed by the Racing Commission, somewhere in that neighborhood. I would say there's probably another 2,100 on top of that outside of...that are not licensed, that work in the industry. That's 4,200 jobs. If we had a manufacturing plant or something with 4,200 jobs that was going to suddenly leave the state, you'd be passing another LB775 or something to keep them here. This is something, we don't need to change the constitution, this is pari-mutuel. And I have a gentleman from San Diego who...we asked him to come here and testify. We told him it was 60 degrees here, like we tell the football recruits, so he showed up. (Laugh) And he's going to come next. He will answer any technical questions you have about this system and how it works. I just wanted you to know the political ramifications of where we're at. This is a game of skill to a certain degree but it's legal because it's pari-mutuel, that's why it's legal. In our modern society, people like faster action, they like video systems. This is...everybody is on the computer. And you got to remember, the computer is speaking to a computer. Not only does horse racing have to compete, people ask me all the time, what's wrong with horse racing, why are we failing? Because we're competing with casinos right across our river, also don't underestimate Internet gaming. Internet gaming is also...illegal Internet gaming is going on all the time and it's devastating us. This would give us a system to let horse racing help itself at the racetracks, we're only talking about having these systems at racetracks only. This can bring us back live racing. I think some of the revenue from this would also enable us to do a premiere track in Lincoln, Nebraska. All good things. The industry needs your help, now more than ever before. We've been sinking for awhile, we've been saying that, but we are really, I think.

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You know, Greg Hosch, from Horsemen's, will tell you better than me, but I think we're just about at the end of our rope for live racing. So I really...I just can't ask you strong enough to put this out on the floor and let's talk about whether we're going to save racing or not here in Nebraska. With that, I'm open for questions. [LB1102]

SENATOR LATHROP: Very good, thanks. Senator Coash. [LB1102]

SENATOR COASH: Thank you, Senator Lathrop. Mike, I've had some correspondence from constituents about this bill. And some of the folks that have talked to me have said this is...these terminals are slot machines. And I've never seen them, I've never been to a track where these are, but can you speak to what these look like and how... [LB1102]

MIKE KELLEY: Well, you have to understand, and they do look a little bit like a slot machine. They work completely differently because they're based on pari-mutuel wagering. But because slot machines are popular, people like them, you're naturally going to market what looks good. Again, you could make a Coke machine look like a slot machine if you want to but it would still be a Coke machine. There still is gambling here but it's horse racing gambling. So the argument that it's a slot machine is just not valid, because it is not, it's...it couldn't be under Nebraska law. And that's why we don't think this is expanded gambling because we're not going to Class III gaming here. This is not Class III gaming, therefore, it's not a slot machine. [LB1102]

SENATOR COASH: Is there a handle? [LB1102]

MIKE KELLEY: No, no. You pick...and again, there's an expert coming here to tell you a little bit more about the system. But, no, you do not. [LB1102]

SENATOR COASH: Okay, thank you. [LB1102]

SENATOR LATHROP: Any other questions? I don't see any. Thanks, Mike. [LB1102]

MIKE KELLEY: Thank you, senators. [LB1102]

SENATOR LATHROP: Next proponent. [LB1102]

DAVID PAYTON: Good afternoon. My name is Dave Payton, P-a-y-t-o-n. I work for AmTote but I also work with Racetech, which is the patent holder for Instant Racing, and I do a lot of work with Overland Park, which is the home of...where Instant Racing was born. Just to kind of give you just a brief overview. Instant Racing was developed about a decade ago. And it was after the state of Arkansas, Overland Park, went through the process of trying to get slot machines, they realized they couldn't, so they opted for looking at an alternative pari-mutuel game because pari-mutuel wagering was legal in Arkansas. They came to AmTote. They had the idea of trying to make

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pari-mutuel wagering electronic. They saw slot machines, they saw the impact that had on the industry. So their goal was to take the racing industry, try to bring value to the existing database of races that they have and invent a new product. So that was kind of the genesis of Instant Racing. I wanted to speak briefly about the pari-mutuel aspect of it, just so you have a good basis for that. Pari-mutuel pools in Instant Racing are based on the same rules as pari-mutuel pools at the racetrack today. They operate with takeout from the growth pool and there's no interest in the...in who the winners are to the operator itself, and the payoffs are based on the amount wagered. There's nothing fixed about the payouts that are generated from these terminals. The payout process is identical to the payout process that we have within the tote system today for every win pool and pool like that at the racetrack. The added pari-mutuel tests for this is that the player selects the runners based on handicapping data that's provided. The player can view the race on the terminal, so we actually provide the video in the same package, on the same cabinet. The wagers are placed in an auditable transaction-based tote system, just like all the wagers at the racetrack are today. The winner is determined by the official order finish, which is obviously the same as every race that people bet on today. The pools all operate under an approved regulatory body. They've been run in jurisdictions which were authorized for pari-mutuel wagering. And the takeout is distributed based on any other pari-mutuel pool, where there's a pari-mutuel tax, then there's funds that go back to purses, funds that go to the operator and breakage. The price calculation method is the exact same as we have within pools at the racetrack today. As we calculate a price for a win pool, we do the same with Instant Racing Pools. And we have breakage that's associated with those as well. There is an aspect of Instant Racing where there is a minimum payout that's always going to be made to any winner, and that's based on money that's bet in the pool as opposed to a minus pool that's generated today. The basic premise for Instant Racing, the way that it works is it essentially takes the process of wagering, making a bet, and compresses it into a short time frame. The reason for this is to have a quick electronic play game. So every wager that's made is wagered with the runner...with the player making selections of the runners and then the race is run. If the player wins, then they actually get the pool. If they don't win, then the money carries over. And every pool operates in that fashion. I don't know if the light means a lot. I've got a lot of technical stuff to... [LB1102]

SENATOR ASHFORD: Why don't we do this, why don't we sum up. Then if there are any questions, we can go that route. [LB1102]

DAVID PAYTON: Sure. Let me just...I'll do a couple quick things just on the equipment side of it. It operates on the same tote system that we operate live racing at racetracks today. The terminals that are operating are essentially repackaged, self-service terminals for...that we use at racetracks. Again, they've been made to look like a slot machine but they're not a slot machine. They work with push buttons or a touch screen. And then the other component of this, the new component for the system is a video server where we actually store the races that we do pull from our database so that a

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player can have a different race to play every time. Just a couple quick statistics, Oakland Park has been the home of Instant Racing for the last ten years. In that ten years, they've generated \$1.23 billion in handle of the terminals. They only operate with 350 terminals at the racetrack. And the increase to purses in Arkansas because of that has been...the daily purse average is 50 percent higher than it was before Instant Racing was introduced and that's meant about \$20 million being added to purses in the last decade. [LB1102]

SENATOR ASHFORD: Okay. Any questions of this witness? Yes, Senator Christensen. [LB1102]

SENATOR CHRISTENSEN: Thank you, Chairman. Again, go through here, that split, is that increased money, how that's going to be spent, how it will be utilized? What happens with the winnings, the bets, the bet side? I know where the winnings go but the bet side, how does that work? [LB1102]

DAVID PAYTON: Well, the takeout is essentially broken down into existing...it would follow your existing pari-mutuel rule of distribution methods and you'd negotiate the percentages that would go back to the purses, and then you'd identify what would be the...the state tax is already a part of that takeout. So you'd have money going to purses, money going to taxes, then there's a fee for licensing the product, and then the rest is for the operator's profit. [LB1102]

SENATOR CHRISTENSEN: Like what type of percentage would these be? [LB1102]

DAVID PAYTON: I could give you the Arkansas numbers. In Arkansas the rate that they pay back to Racetech is 15 percent of the takeout goes for the license to operate the game, 15 percent goes to purses, 10 percent of the win goes to state tax, there's a 3 percent fee that goes back to the host track that provides the races to us, so actually there's a way for revenue to be generated by the host track as well. And the rest is breakage and operating profit. [LB1102]

SENATOR CHRISTENSEN: Where is the rest of that...15 percent track, 15 percent purse, 10 percent state, (inaudible), 3 percent host track, we're at 43. [LB1102]

DAVID PAYTON: And the rest is for operating expenses and profit. [LB1102]

SENATOR ASHFORD: Any other questions of David? Seeing none, thanks. [LB1102]

DAVID PAYTON: (Exhibits 1 and 2) Okay. I did bring some...I tried to say a lot in a short time. I've got copies of this, if I can provide that to you. [LB1102]

GREG HOSCH: Good afternoon, senators. My name is Greg Hosch, G-r-e-g H-o-s-c-h.

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I live at 6406 South 150th Street in Omaha. I'm the general manager of Horsemen's Park and also oversee Lincoln Race Course here in Lincoln and Atokad Downs in South Sioux City. I'd like to thank the committee for taking the time to conduct this hearing and to hear our testimony. I would especially like to go on record thanking Senator Giese for introducing this bill for which I'm testifying in favor of. LB1102 would allow the five tracks in the state to conduct pari-mutuel wagering on historic racing. We believe this bill is vital to the survival of the racing industry in the state of Nebraska. You know, when the State Fair was moved to Grand Island, I'm not sure anybody thought or realized what the consequences would be to the Nebraska racing industry. Unfortunately, the horse racing industry, an 80-year-old industry in this state, kind of got left at the gate. Luckily, the Nebraska HBPA was able to secure a three-year deal with the University of Nebraska to conduct live racing on the former State Fair Park property. But what happens after those three years? Our industry cannot afford to lose the Lincoln racing market, it's the second largest market in the state and without it the industry as we know it cannot survive. Our only chance for the industry to survive is to build a new racetrack by 2013 here in Lincoln to replace the existing track and in conjunction with the Nebraska Horse Park of which you'll probably hear a lot more about this summer. We think pari-mutuel wagering on the historic races could generate the additional revenue that would allow us to build this track. Without the new track here in Lincoln, what happens to the Nebraska horse racing industry when we lose the Nebraska racing circuit? And if we lose this Nebraska racing circuit, I can tell you we'll essentially lose the whole racing industry in this state. And if we lose the industry, we're going to lose thousands of jobs, we're going to lose the breeding farms, we're going to lose the \$35 million to \$40 million of annual economic benefit to the state. By then, I'm certain, we'll lose the track in Columbus. And I can tell you firsthand, if there's not something on the horizon by the end of this year, I'm sure we'll be forced to close Atokad Downs, which is in Senator Giese's district in South Sioux City. So we need this racing circuit to keep this industry alive. Without Lincoln there is no circuit, and without a circuit there's no industry. You might still see a few days at Fonner Park, maybe at Horsemen's Park, but the industry as we know it is going to go away. What you'll see is a few trainers bringing in some horses to race in the spring at Fonner, then they'll head to other states to race their horses, buy their goods and certainly right now in this state people stay in the state year-round to do that. With a new mile track in Lincoln, it keeps the circuit alive and it changes the face of horse racing in this state forever. I believe this is the shot in the arm that would jump-start our industry. But we need to generate the revenue to build this track. And we believe by allowing pari-mutuel wagering on historic races that that would generate the revenue we need to complete the project. So I'd ask that you pass LB1102 and allow us to preserve the live racing industry in this state. Thank you. [LB1102]

SENATOR ASHFORD: Any questions of Greg? Senator Council. [LB1102]

SENATOR COUNCIL: Yes. Thank you, Mr. Chairman. And thank you, Mr. Hosch. I guess, the question I've been asked most often in the last couple of days with regard to

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LB1102 is, what is a historic horse race? [LB1102]

GREG HOSCH: That's races that have been run prior to...and I'm not sure, Dave could probably answer how far they go back, but they could be races from the sixties, seventies that are kept in a database. And when you bring up the race you're betting on one of the historic races or the prior run races. [LB1102]

SENATOR COUNCIL: Okay. So, I mean, when you say that they've been run, you know, like particular cup events or...I mean, I'm just trying to get my head around, you know, if you've run the race once before, does that make it historic? [LB1102]

GREG HOSCH: Well, that's where...the Instant Racing are based on historic races or races that have been previously run. I mean, there might be some races in there from Ak-Sar-Ben, Sportsmen, you know, the old tracks that have already expired, but the racing data is there already and they're kept in the servers that Mr. Payton had testified about earlier. [LB1102]

SENATOR COUNCIL: Okay. Say, for example, former Ak-Sar-Ben track, every May there was a \$100,000 handicap race, is that what you mean by historic race? [LB1102]

GREG HOSCH: Could be a historic race, yes. Previous run...previously run races that, obviously, the people wouldn't know the outcome. [LB1102]

SENATOR COUNCIL: Okay. So now I get it. (Laugh) [LB1102]

SENATOR ASHFORD: You're helping me, Senator Council, so keep going. [LB1102]

SENATOR LAUTENBAUGH: Historic meaning happened in the past, not of historic significance. [LB1102]

SENATOR COUNCIL: Yeah, right. Now I've got it. So if there was a race run at Hot Springs four hours ago, you...that would be a historic race. [LB1102]

GREG HOSCH: That would be a historic race in my eyes, yes, correct. [LB1102]

SENATOR COUNCIL: Okay, okay, I've got you. Thank you, Mr. Chairman. [LB1102]

SENATOR ASHFORD: And it's...we don't know the outcome obviously. And you can bypass the race. How do you do that now again? I missed the first few minutes, but... [LB1102]

GREG HOSCH: Well, you could...Mr. Payton would be able to answer that better because I've only seen them on a small basis. But... [LB1102]

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SENATOR ASHFORD: That's okay, I can ask...all right, okay. Fair enough. [LB1102]

GREG HOSCH: ...you can bypass the information. It's my understanding you can bring up the information for the race and look at that data or you can bypass that and just go right to the race. The ones that I saw, you could see the horses running through the stretch, they hit the finish line, the order of finish comes up and... [LB1102]

SENATOR ASHFORD: But it's a game of chance and that...because you don't know anything about the horses. [LB1102]

GREG HOSCH: You have the option of looking at...they have some data that you can look at that would give you an insight as to the... [LB1102]

SENATOR ASHFORD: Okay. But you can disregard that. [LB1102]

GREG HOSCH: You can bypass that if you wanted to. [LB1102]

SENATOR ASHFORD: Okay, thanks. Thank you. Thanks, Greg. Yes, Senator Rogert. [LB1102]

SENATOR ROBERT: How many races are in the pot? [LB1102]

GREG HOSCH: I believe there's...is there a couple hundred thousand, is that what you said? There's 200,000. [LB1102]

SENATOR ROBERT: Yeah, that's my understanding, there's a couple hundred thousand. So would you contend that there's literally no chance anybody would have any idea how this race came out because you don't know where it was ridden? [LB1102]

GREG HOSCH: Correct. [LB1102]

SENATOR ROBERT: And the only information you get...the part of the game of skill is what you get, you get some set amount of information and you get to pick your horse based upon that information. Kind of like you would get at the actual...it's kind of like the blue sheet that you get when you're at the track. [LB1102]

GREG HOSCH: Correct. Yes, correct. Similar to that. They provide some data as to the horses that are in that particular race. And you make your wager based on your judgment of that data. [LB1102]

SENATOR ROBERT: Okay. [LB1102]

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GREG HOSCH: Thank you. [LB1102]

SENATOR ASHFORD: Thanks, Greg. [LB1102]

GREG HOSCH: Thank you. [LB1102]

SENATOR ASHFORD: How many other proponents do we have? One more? Come on up. And how many opponents do we have? Okay. [LB1102]

LYNNE SCHULLER: Good afternoon, Chairman. My name is Lynne Schuller, S-c-h-u-l-l-e-r. I'm the executive director of the Nebraska Horsemen's Benevolent and Protective Association. And we would like to go on record as being a supporter of this bill. And I think maybe I might be one of the only people that have played this machine. But what happens is when the game starts it has color, pie charts of the history of the horse, the history of the trainer, how many times it's won, placed, shown, what kind of win ratio the trainer has, that kind of thing. All of that information is available as if you were watching the race and you could look at the daily racing form. You can get all of the same information on this machine that you could get if you were watching a live race at any racetrack. So...and they probably wouldn't run historic meaning historical value, because, for example, the Kentucky Derby has way more horses than you would normally see run in a regular race. So that would kind of give away that...yeah. [LB1102]

SENATOR ASHFORD: Okay, thank you. Any questions? Seeing none, thanks. [LB1102]

LYNNE SCHULLER: Thanks. [LB1102]

SENATOR ASHFORD: Next proponent. Thanks, guys. Have a good day, have a good day. Thanks for coming. Okay. [LB1102]

JESSE COMPTON: Hello. My name is Jesse Compton and I'm here as a proponent of LB1102. I'd like to thank this committee for their time and their consideration. I grew up at the racetrack and I'm part of a third generation racing business. Horse racing is the whole reason my family moved to Nebraska in the late seventies. So, I guess, my vision of the good life here in Nebraska has always had something to do with horse racing. My father, he bought a small farm near Shelby. I watched it grow until I was old enough to help. Used the money I made at the track to put myself through college, now I'm starting my own business and it's time to buy my own farm and start my own family. But racing may no longer be there for me as I continue to develop. My opponents will have you think this is a gambling bill. But perhaps we need to think of this as a racing bill. Why should we save racing? I'll try to explain this in as timely a manner as possible. You think about horse racing from a different perspective and how it impacts the community

and the state. I like to think about how much money one horse can create and then multiply that times how many there are. Each horse is cared for at the track by a trainer, this is kind of the nuts and bolts about how it works. The trainer is paid a fee by the owner. The owner races their horses to try to win purse money. It's a nice little system. Now depending on the size of the stable that you run, a small army of workers is required just to take care of one horse. That horse needs a farrier, a dentist, a vet, a groomer, an exercise rider, a jockey, and a pony person just to run in one race. That's just the direct jobs. Now there's another group that are employed that include secondary or indirect people, these are people involved in the licensing, testing, racing staff, the medical, agents, insurance, security, ticket taking, parking, catering, etcetera. And then the last piece of the racing puzzle when you think about the whole big picture of economics is the breeding. Think about the farms, so on and so forth. So this is an astounding amount of money and jobs created just through horse racing. Think about the supply and labor of materials...the supply of labor and materials and where it comes from, it's all agricultural and it's all local. That's a business that's very unique for this state. One horse can create up to almost 30 jobs. And from a dollars-and-cents standpoint, in our stable, is probably the easiest way to put it, we carry about 40 head and spend \$15 a day per horse on supplies and about \$10 a day on labor. And so you average that out, it's, you know, \$5,000 a month. You take that times 1,000 horses, in the 75-day meet when we're in a town and the economic impact of our show coming to town might be \$2 million or \$3 million for that 75-day meet. And that doesn't even account like all the people that we hire while we're there. Now our opponents will also say racing is not viable, there's no interest, it's all about the gambling, why do we save this? Well, most of the horses in this state are owned by citizens that love racing. These are not people that do it for the money--farmers, lawyers, accountants, admin, so on and so forth. It's been difficult to make a profit as the racing number and the purses have decreased, but I am proud of how Nebraska has survived despite what has happened in other areas. Our problem is that we're caught in a bit of a downward spiral and most of the people before me kind of listed the problems that we had. But for the most part, where we want to go from here is that we need to get the new track built in Lincoln so we can modernize what we're doing and have a viable product to sell. Most of the racetracks we're at are old, outdated facilities. People are looking for new entertainment value. This legislation could go a long way in revitalizing that, the purse structure, similar to what it did in Arkansas. Better purses and a mile track... [LB1102]

SENATOR ASHFORD: Jesse, I'm going to ask you to... [LB1102]

JESSE COMPTON: Yeah. In conclusion, I hope I have done a little to educate you on the specific function racing has within society and how it's important to our rural infrastructure. Racing is a nearly perfect business with most of its inputs coming from agriculture and it's outputs going back into agriculture. We have tremendous built-in advantages in this state and the economic impact of racing is rivaled by few other businesses. Keep in mind... [LB1102]

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SENATOR ASHFORD: Jesse, time out. (Laugh) No, I'm not...just, we have to be...give everybody else a chance. You can submit that testimony if you like. [LB1102]

JESSE COMPTON: Okay. I was just going to say I have two more sentences. [LB1102]

SENATOR ASHFORD: Go ahead and sum up. Do you have one other point you want to make? [LB1102]

JESSE COMPTON: Yeah. I just...the last thing I wanted to add is when it comes to racing and people talking about gambling addiction and so on, addiction is a personal problem and it's not a public issue like people want to...racing is not all about gambling. For a sport that affects a large amount of people and way more than just the potential gamblers this would create. [LB1102]

SENATOR ASHFORD: Okay, all right. We get it. I appreciate your testimony. And do we have any questions? Yes, Senator Christensen. [LB1102]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Jesse. Your understanding of this bill if the event is going to be 75 days long in a town that they're going to be able to use these machines 75 days or these machines now available year round at these facilities and you'll just move to the next facility? [LB1102]

JESSE COMPTON: We strictly race instate right now. There's a circuit, we race in five different locations. And on average sometimes we'll stay in a town but race in another town because they don't stable us at the facility. And so normally we divide our year up and we spend about three to four months in Grand Island, three to four months in Lincoln, and three to four months in Columbus depending on where we race. Now, I'm not sure whether...when we're not racing there, whether the machines will be up and running. I'm just talking from a horseman's standpoint. From the horseman's standpoint, you know, all the money we put into the towns while we're there. That's why I put 75 to 100 days, that's usually about average of what we spend in a town. [LB1102]

SENATOR CHRISTENSEN: Okay, thank you. [LB1102]

SENATOR ASHFORD: Thank you, thanks. Any opponents? Opponents, opposing the bill, do we have anyone here to oppose the bill? Okay. Step right up. Hi, Pat. [LB1102]

PAT LOONTJER: (Exhibits 3-6) Good afternoon, senators. I'm Pat Loontjer, it's spelled L-o-o-n-t-j-e-r. I live at 2221 South 141 Court in Omaha. I'm the executive director of Gambling With the Good Life. Gambling With the Good Life has been in existence for 15 years. We're the largest coalition in the state. Every church in the state of Nebraska is part of our coalition. And our goal is to oppose any form of expanded gambling. And

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we've been very successful because three times measures have made it to the ballot and three times they've been defeated by the voters. The last time was the keno bill, which was keno enhancement, very similar to what we're talking about today as far as horse racing enhancement. And that was defeated 61 percent by the voters. What we see as this bill, LB1102, is, it is a bailout, it is a bailout for an industry that is failing all across the country. And it would not work because we've seen what happens over in Iowa. And I have information for you from Iowa that they brought the gambling in and the slot machines in to save the dog tracks and to save the horse tracks. And as of January the 29th, they came out with a recommendation to close the dog tracks because they're not profitable. Once they got their license, they no longer wanted the animals because it's not a popular form of gambling today. So it's not going to work to save that industry. And as far as we're concerned, they are illegal, they are slot machines. I have information here that it has been proven that in many other states by...vetoed by governors, I've copies of that, and also by Supreme Courts in Wyoming and other states. And the reading from the governor in Wyoming reads: Anyone who has actually observed these machines cannot deny that the machines are entirely designed to operate exactly like a slot machine. In fact, the patent for this device refers to the system as an electronic gaming device. The machines are designed specifically to provide the instant, quick action that gambling...for gratification. Depending on the machine you play, the machines provide you with rolling tumblers, etcetera. These machines are Class III gambling, they will be challenged, I'm sure, by our Attorney General if this is passed. They are slot machines. The other thing we wanted to just leave with you is that gambling is not a panacea to help any of our budget woes. Iowa, who has 21 full-blown casinos now and 4 more coming, and they're even suggesting sports betting in Iowa, their budget deficit is much, much higher than anything that Nebraska is looking at. It just destroys your economy and hurts families. So we would like to encourage you to vote no and not allow this bill out of committee. [LB1102]

SENATOR ASHFORD: Thank you, Pat. Any questions of Pat? Yes, Senator Coash. [LB1102]

SENATOR COASH: Thank you, Chairman. Pat, something you said piqued my interest. You said this bill would be challenged by the AG. Did he tell you that? [LB1102]

PAT LOONTJER: No, but I...he has challenged other machines, the bank shots that came in. They're Class III, they come in under a disguise that we're not...we're just advanced. But we believe that he would challenge it. [LB1102]

SENATOR COASH: Okay. So I didn't want you to represent the AG in... [LB1102]

PAT LOONTJER: No, no, no communication. No, no, no communication. [LB1102]

SENATOR COASH: Okay. [LB1102]

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SENATOR ASHFORD: Thanks, Pat. Next opponent. [LB1102]

AL RISKOWSKI: (Exhibits 7 and 8) Al Riskowski, it's R-i-s-k-o-w-s-k-i, with Nebraska Family Council. Thank you, Senator Ashford. It's been a long time since I've been here before you. [LB1102]

SENATOR ASHFORD: I was going to say we haven't seen you for awhile, Al. [LB1102]

AL RISKOWSKI: Good to be here. We oppose this for three reasons. (1) I was at the hearing on LR277CA. You heard the very same words being spoken there that LR277CA is the one bill we need that would provide the money to build the racetrack that we need here in Lincoln. This is the one bill that we need that would provide the money to bailout the horse racing industry. Well, the General Affairs Committee has already sent LR277CA, a proposed constitutional amendment, to the full Legislature to allow wagering on horse races from satellite sites across the state. This bill already provides the opportunity for Nebraskans to determine if the horse racing industry is worth saving. And that's a quote from Senator Karpisek, thus LB1102 is not necessary legislation if the intent is to bailout the horse racing industry. We already have a bill moving through the Legislature or to the Legislature. (2) is LB1102, we also feel, it is not legal under current law. And I sent to you two pieces, one from the chairman of the Maryland Racing Commission, back on March 17, 2009, just last year. They requested an opinion from him whether historic, previously held horse races, known as Instant Racing, was pari-mutuel? And he said, no, it's not. Also, I have before you the court case that came before the Wyoming Supreme Court. And this was their conclusion, I have part of the case that you have there before you. But he said the Wyoming Downs argued that Instant Racing Terminals are a mere accoutrement of pari-mutuel wagering and that the governing status must be construed so as to embrace new inventions. But they say, we agree with the district court's conclusion that we are not dealing with new technology here, we are dealing with a slot machine that attempts to mimic traditional pari-mutuel wagering. Although it may be a good try, we are not so easily beguiled. That was via the Wyoming Supreme Court. And finally, we at Nebraska Family Council are working with other nonprofits, churches, to try and strengthen families here in the state of Nebraska along with Tom Osborne, coming up with ideas how to strengthen and help families. We see this type of gambling, it's been proven to be harmful to families, as a type of a slot machine. And it's counterproductive to what we're attempting to do here in our state. So thank you very much. [LB1102]

SENATOR ASHFORD: Thank you, Al. Any questions of Al? Seeing none, thanks, Al. Next opponent. [LB1102]

JOHN NEUBERGER: (Exhibit 9) Good afternoon, ladies and gentlemen, Chairman Ashford. My name is John Neuberger, that's spelled N-e-u-b-e-r-g-e-r. My wife, Arlys,

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and I reside in the 27 Legislative District and we're represented by Senator Coash. I volunteer much of my time to help families avoid bankruptcy and to live within their incomes. We use a money map system developed to help them assess where they are at and help them get back on the road to financial freedom. And I'm not here this morning to oppose gambling...legalize gambling, per se, but I oppose expanded gambling in Nebraska. And I ask you to help me in a couple areas. I've worked with over 300 families struggling with financial woes. And I'd like to offer this premise for your deliberations. The gambling dollars should come out of a family or single person's discretionary income. Well, what's discretionary income? Well, I went to investopedia.com and it says that the amount of an individual's income that's left for spending on gambling, investing, savings, and so on after taxes and personal necessities, such as food, shelter, and clothing have been paid, that's what they call discretionary income. It involves the money spent on luxury items--vacations and nonessential goods and services. Some people even use credit cards, borrowing to purchase these discretionary goods like gambling. But increasing personal debt with revolving credit is not the same as having discretionary income. And since gambling has an addictive quality to it, public policy needs to help our people make it clear and discourage their using nondiscretionary income and credit borrowing for any type of legalized gambling or illegal gambling as far as that goes. By so doing, you would help financial coaches like myself or professional financial counselors that have been helping families to avoid financial bondage that results in bankruptcy. My position is basically that because gambling is addictive and we already have many legalized gambling games to spend one's discretionary money on, I'm opposed to this bill, LB1102. As I see it, allowing Instant Racing Terminals is expanding gambling in Nebraska. Having said that, I urge the committee to do three things: don't expand gambling in Nebraska; send a message to our citizens that gambling dollars need to come from discretionary income; and don't borrow to gamble. Thank you, Mr. Chairman. If you have any questions, I'd be happy to remain and take them or I'll be... [LB1102]

SENATOR COASH: Thanks, John. [LB1102]

SENATOR ASHFORD: Any questions of Mr. Neuberger? Okay, thank you. [LB1102]

JOHN NEUBERGER: Um-hum. [LB1102]

SENATOR ASHFORD: Next opponent. [LB1102]

MARY FORESTER: My name is Mary Forester. I live at 6041 Oak Hills Drive in Omaha in the 12th District. I'm here as a citizen to ask you to oppose this bill. I came to Nebraska five years ago to be near my daughter and my grandchildren. And I looked forward to leaving the state of New Jersey which had much gambling and a lot of other things and very, very liberal, to come to a state that I saw as very family-friendly. And I watched...I was in New Jersey for 35 years as a young adult until I came to Nebraska.

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And I saw the tenacity with which the gambling industry had been trying to expand gambling. When I moved to New Jersey, 35 years ago, 40 years ago, Atlantic City was a beautiful seaside community. Now it's a gambling community. Conventions no longer go there that once did. It's not...they have actually abandoned as far as I can tell and gone to other beach communities for vacations. I know this is not directly but it's just to show that what happens when you allow gambling to take over a state. This bill is ultimately...video keno means video slot machines. The choice between keno and video keno is the choice between losing and losing really fast. Another thing is video slot machines are highly addictive, 60 percent of gambling machine revenues come from gamblers with an addiction problem. Addictive slots do not belong in Nebraska neighborhoods. The National Gambling Committee impact study concluded, in 1999, that neighborhood slot machines provide no measurable social benefits. These facilities benefit only a few operators while bringing gambling into neighborhoods in close proximity to families, children and families. They recommend that states cease and rollback existing neighborhood gambling operations. The slots would cost Nebraska far more than they provide. The most thorough cost-benefit study of gambling suggests that when you hear claims of \$250 million in community betterment, you would be right to conclude that \$500 million in community social cost. Neighborhood video slots would increase Nebraska's bankruptcy, addiction, bankruptcy, crime, child abuse, divorce, embezzlement, and even suicide. Medical examiners link 10 percent of Alberta, which is in Canada, suicides to gambling over video slots spread across the Canadian province. [LB1102]

SENATOR ASHFORD: Mary, I'm going to ask you to sum up if you would for me. [LB1102]

MARY FORESTER: Okay, sure. Tom Osborne has said every single congressman that he talked to when they expanded gambling...move in, have told me it's the worst thing that's ever happened. And I urge this committee to oppose this bill and do what is the best thing for the people of New Jersey. Thank you. [LB1102]

SENATOR ASHFORD: Nebraska? (Laughter) [LB1102]

MARY FORESTER: I'm sorry. Do you know that every time I come down here I say to my friends I'm going, I start to say Trenton. [LB1102]

SENATOR ASHFORD: Well, try... [LB1102]

MARY FORESTER: You know, that's...and, I'm sorry. [LB1102]

SENATOR ASHFORD: No, no, no. That was great. Next opponent. [LB1102]

DAVID BYDALEK: Chairman Ashford, members of the committee, my name is David

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Bydalek. For the record, that's B-y-d-a-l-e-k. I'm legal counsel and executive director of Family First. In the interest of saving time, previous testifiers really pretty much covered everything I wanted to cover. But I did want to relate before I moved onto this job I was in the Attorney General's Office for nine years. And a good friend of mine was actually the guy who worked on gambling, gambling issues in Nebraska. It was always interesting to see what the new thing in gambling was. There were always new things coming along, people pushing the cutting edge. And I think really what we see here is the reality is that historic horse racing is in essence very much akin to a video slot machine. It is a heightened form of gambling, it's a video gambling device. And we tell people at Family First, I've done a lot research on this issue, we've also dealt with families who have had tragedies because they got hooked on video gambling. And that is what they call the crack cocaine of gambling, it is very addictive. And so we remember...if you want to remember what actually video gambling does when it comes into a community, I call it the ABCD's of gambling. And (1) A is addiction; (2) is bankruptcy; (3) is crime; and (4), and unfortunately and sadly, is destruction of families. So we would ask that you IPP this bill, LB1102. Thank you very much. [LB1102]

SENATOR ASHFORD: Let me...can I just ask one quick...is there a line to be drawn somewhere here? If you...simulcasting is basically, obviously, a form of gambling. But you are viewing it...the race that is going on at that...in real time. [LB1102]

DAVID BYDALEK: Right. [LB1102]

SENATOR ASHFORD: Does that bother you in the same way? Or do you draw a line somewhere? [LB1102]

DAVID BYDALEK: Well, you know, I think we have a situation with off-track betting too. It's a situation where you can only gamble on so many races when you're doing off-track betting or simulcasting. What I understand with the way these machines are played it's quick. You can bet on... [LB1102]

SENATOR ASHFORD: No, I know. But I mean let's say it wasn't quick. If there is a process, like simulcasting, evaluating the race, evaluating...is the objection, and I'm not trying to put...is the objection the quickness of the action or is it just gambling, generally? [LB1102]

DAVID BYDALEK: Well, I think it's the video nature of it that really can't be divorced from the whole question. And the major objection, yeah, it's... [LB1102]

SENATOR ASHFORD: Is the quickness the major... [LB1102]

DAVID BYDALEK: ...the quickness. And you can lose a lot more in a lot less time. And that is... [LB1102]

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SENATOR ASHFORD: But simulcasting you watch the entire race. [LB1102]

DAVID BYDALEK: Absolutely, yeah. [LB1102]

SENATOR ASHFORD: So there's more of your evaluating the... [LB1102]

DAVID BYDALEK: The delay between your losses is less heightened when you have the video form of gambling. And that's what makes it so dangerous we believe. [LB1102]

SENATOR ASHFORD: It's the quickness. [LB1102]

DAVID BYDALEK: Yes, absolutely. [LB1102]

SENATOR ASHFORD: Okay. [LB1102]

DAVID BYDALEK: And the video nature of it, there's a reason why our kids play video games. I mean, I love Wii and stuff. I mean, it's just... [LB1102]

SENATOR ASHFORD: Okay, the attractive... [LB1102]

DAVID BYDALEK: ...it's an attractive thing. [LB1102]

SENATOR ASHFORD: Okay. Gotcha. Thanks. [LB1102]

DAVID BYDALEK: Thank you. [LB1102]

SENATOR ASHFORD: Any other opponents? How many other opponents do we have? Last one? Okay. Good afternoon. [LB1102]

LYLE JAPP: (Exhibits 10 and 11) My name is Lyle Japp. I live at 1505 South 97 Street in Omaha, Nebraska. Senator Ashford, members of the committee, I count it a privilege to take part in government, this great country that we have. I'm a treasurer for Gambling With the Good Life. Pat has told you what we've been doing. I became interested...I've spent, come this June, 60 years helping people to build estates and preserve estates, to take care of themselves in their old age or their families if they don't live that long. And I have seen any one member of a family can become addicted to gambling and destroy a lifetime of work in a big hurry. Addictions are no respecter of persons, they...we can look at Mr. Watanabe, a family business that he sold that had been built up over several generations, over \$100 million, and facing some charges. Bob Bennet who was Secretary of Education, supposedly lost like \$4 million at one time and his reputation, his ability to influence other people for good. Iowa did a study in 1989 before casinos

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came to Iowa. And 1.4 percent of the adult population, I should change that, 1.7 percent had a gambling problem. In 1995, that was before Council Bluffs, Osceola, and many of the casinos that are there today opened up, they did another study and they found that 5.4 percent of the adult population had a gambling problem. They haven't done anymore surveys, but I dare say that if they had one today it might be 10 percent. That would be like one in ten people who frequent the gambling establishments, would become addicted. And I've also been the assistant chaplain at the Douglas County Jail since 1975. And I have met many people who are there because of the crimes they committed to support this habit. I'm going to leave some charts here but showing retail sales in Iowa of towns that have casinos close or those who don't. And there's a vast difference in the retail sales between 1996 and 2000. Also the percentage of the addicts, 20 percent of the people who gamble lose 80 percent of the money, many of them lose their money, families, lose their lives as well. I look at the laws of the state like they're fences. And the job of you senators is to pass good laws, build fences that protect people, sometimes from themselves, and to take the fences down that we have to me is like taking a fence down, letting the wolves in after the sheep. And so I would ask you to keep Nebraska the good state, keep up the fences. Thank you. [LB1102]

SENATOR ASHFORD: Thank you, Lyle. And thank you for your work in the jail. I know about it. And you have done a lot of work there and you should be commended for that. [LB1102]

LYLE JAPP: Well, it's a privilege. [LB1102]

SENATOR ASHFORD: I know you don't need that commending, but I understand that. [LB1102]

LYLE JAPP: It's a privilege. Thank you. [LB1102]

SENATOR ASHFORD: Okay. Any questions of Lyle? Thank you. Opponents. Neutral. I know we have a neutral, don't we? I knew we had a neutral. [LB1102]

DENNIS LEE: Mr. Chairman, senators, my name is Dennis Lee, L-e-e. I am the Second Congressional District representative on the Nebraska State Racing Commission and have and currently serve as the commission chairman. I'm not going to repeat a lot of the things that were testified to earlier. You have a pretty full agenda today. So I'm going to keep my comments short. I've reviewed what's been proposed as LB1102 and from my review it does meet the current statutory test of the definition of pari-mutuel wagering. Just to fill in, I know Senator Council left, but just to answer her question. I've confirmed that there are 30 tracks that are in the database that make up this pool of historical horse races. They go back ten years. The database is updated three to four times a year. So if you do the math, there will not be any races from Ak-Sar-Ben that appear on the database in historical horse races. I've also had some conversations with

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the chairman of the Arkansas State Racing Commission. And as was testified to earlier, Arkansas was the first state that went down this road, similar to LB1102. Arkansas has determined and did determine before it went down this road that this was pari-mutuel wagering. Currently, at any of the five racetracks in Nebraska, with our simulcasting, there are between a dozen and 14 races that are going...dozen to 14 tracks that are being simulcast each day. Essentially, you could wager every five to six minutes, depending upon what time of the day that you're there and with the races that we have. The other thing that I find particularly intriguing about LB1102 and the whole concept of historical racing and the comments that were made to me by the chairman of the Arkansas Racing Commission is that, sometimes you go to the racetrack and you look at the program on a race and there's five, six, maybe seven horses. And that obviously would affect the results of the race in terms of the wagering. But the way this program is set up with historical horse races, it's a minimum of ten horses. So if you've got a race at Santa Anita in 2002, for example, that had eight horses in the race, you wouldn't be seeing that. The time to place the wager is somewhat limited. If this Legislature and the Governor were to approve this bill, the commission currently has in place adequate rules to regulate it. We may have to address some additional rules. But I am satisfied this is pari-mutuel and it does meet the pari-mutuel test. Be happy to answer any questions you may have. [LB1102]

SENATOR ASHFORD: Any questions? Senator Lathrop. [LB1102]

SENATOR LATHROP: Thanks for coming, Denny. Can I ask a couple of...just to understand the concept or the principle of pari-mutuel betting. Is that where a bunch of people that are betting on a horse race, they dump money into the pot and the pot determines the payoff? [LB1102]

DENNIS LEE: Exactly. You've got...let's say we... [LB1102]

SENATOR LATHROP: And that differs from...well, go ahead and tell us what the... [LB1102]

DENNIS LEE: We go around the table here and we all throw in \$2 and we all pick a number out of a hat. And we've got that horse. Well, that payout is going to be...what makes it pari-mutuel is that our \$2 that went into the pot right here forms the pari-mutuel pot. And so from that standpoint you've heard testimony earlier this afternoon about how that, let's say \$20 total, you're going to take a percent out of here, a percent per person, percent for the track, percent for the breeders fund, and then you're going to pay out the balance based upon the number of wagers that were placed on that race. Same situation in this situation. What hasn't been said today though is this, in Arkansas all of these historical racing machines are tied into a central pari-mutuel pool system, so that if you've got...applying that principle here in Nebraska, if you've got machines at all five of our racetracks, and there are people wagering on not necessarily that specific race

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but on the pari-mutuel historical racing offered at that track at that machine, the dollars that are wagered at that machine go into that pool and are distributed accordingly. Same thing as if you go to bet \$2 on the daily double at State Fair Park today. [LB1102]

SENATOR LATHROP: Back in the old days when we had Ak-Sar-Ben, pari-mutuel betting would be everybody dumps their money into the first race, we figure out what the odds are, we take off the percentages, and then we pay that very money out to everybody that gambled, depending on where their horse came in. [LB1102]

DENNIS LEE: Um-hum. And it's the same principle here. [LB1102]

SENATOR LATHROP: I'm wondering about there's a little bit of a difference, and I just want you to address it for me. And that is if these machines are all around town, if I sit down at a machine in one place and Senator Rogert sits down at one in South Sioux, we're not looking at the same race though, are we? [LB1102]

DENNIS LEE: No, you're betting in the same historical pool. So with regards to that situation, and that's a programming issue that would probably be better directed to Mr. Payton from AmTote in terms of how is that technically addressed. But I do know it goes into the pool itself to be distributed to the winning wagers in that race. [LB1102]

SENATOR LATHROP: Does the amount that I win on one of these races, is it a function of how much is bet? [LB1102]

DENNIS LEE: In the pool? Yes. [LB1102]

SENATOR LATHROP: On that...not on that race but in a pool. [LB1102]

DENNIS LEE: In the pool for that particular event, not necessarily a race. And I know we're defining race and event differently for purposes of this... [LB1102]

SENATOR LATHROP: Can you just explain that so that I understand it? [LB1102]

DENNIS LEE: Pardon? [LB1102]

SENATOR LATHROP: As best you can, because it seems to me that this needs a constitutional amendment if it's not pari-mutuel betting, right? [LB1102]

DENNIS LEE: Well, and I understand where you're coming from, Senator. And I can tell you this, and I'm not going to begin to try and have the committee think that I understand the mechanics of the computer program itself. But I can tell you from the pari-mutuel perspective and what LB1102 is proposing here is to offer these historic wagering machines at the five racetracks. It wouldn't be at the convenience store, it

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wouldn't be at McDonald's, it would be at the five racetracks within a licensed racetrack enclosure under the jurisdiction of the commission. If you were to go up to one of those machines and say I want to select a race, and your race options are up, you want a sprint, a six furlong race, do you want a distance race, do you want a turf track, you want a regular track, you'll have those options. And then you'll be able to select the horse and you have the option of...not the option, but you have the past performances up to that race of that particular horses in that field. From that you make your wager. I'm in Grand Island, you're in Omaha, we're on the historic wagering system at the same time, our money goes into the pool. When it is...those races that we have respectively selected, and they could be different races, they probably would be, when those races have been completed and the determination that you had a winning bet and I had a winning bet, then the pool is calculated according to the pari-mutuel payout that we have in the system itself. So it's very similar to going to Horsemen's Park today, and while there's no live racing at Horsemen's, but going to Horsemen's Park and wagering on a race that is being simulcast on the win pool. Because really in each race there's several pools. There's a win pool, there's a place pool, there's a show pool, there may be a trifecta pool and an exacta pool, there may be a daily double pool. So really in one race there could be six to seven different pools that are being made up of people that are wagering on that race, albeit in different pools. Basically, the same principle applies here, even though we may be wagering on different races, all of the funds are going into the same historical racing pool. [LB1102]

SENATOR LATHROP: Are the odds the same as the odds were back when the original race was run? [LB1102]

DENNIS LEE: No. The odds are based upon what's wagered in the historical racing pool. So that's...and that's what makes it pari-mutuel is that it has...the odds that were in effect when the race that was run, going back to my example of the fourth race at Santa Anita on the turf course in 2002, the odds in the pool that was established on that race in 2002 at Santa Anita is not even considered, it's an irrelevant issue with regards to the pari-mutuel pool that would be in place here. Now, there have been some discussions concerning states tying together in a horse racing...historic horse racing pool. And I know Arkansas explored that at one time several years ago with other states that do historic racing. Frankly, I'm not going to tell the committee...I can't tell the committee what they've ever done with that. But it's the same principle there in terms of creating the pool so that when you have a first race pool at any track today that we wager on through simulcasting you're going to have six or seven pools. But you'll have the same principle with regard to historic racing. That's what makes it pari-mutuel. And that's why I wanted to come today and explain that from what my review of this and my understanding of what's been going on in other states it is pari-mutuel. [LB1102]

SENATOR LATHROP: Okay. I think that's an important piece... [LB1102]

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DENNIS LEE: It is. [LB1102]

SENATOR LATHROP: ...because if there's a challenge to this, assuming that it were to pass, if it were to pass, the distinction between whether it's just plain betting like you do on a slot machine or betting...or being involved in a pari-mutuel wager, that seems to be a critical difference in terms of whether we need to amend the constitution or not. That's why I asked the question, to give you an opportunity. I'm not sure I understand it still, frankly. But you've explained it... [LB1102]

DENNIS LEE: Well, I understand where the Senator is coming from in terms of the constitutionality of it. If this was not pari-mutuel and if it hadn't been pari-mutuel in other states, namely Arkansas and other states, then I wouldn't be here today. My presence here today is to inform the committee that the commission is aware of this, (1) that the commission is aware that this is pari-mutuel; and that we currently have rules to address it, although admittedly, if this were to pass, we'd have to adopt some additional rules in order to regulate it. But it does come within areas under the jurisdiction of the commission, which are licensed racetrack enclosures, currently five. [LB1102]

SENATOR ASHFORD: Okay. Denny, are the races...can you skip the races? Can you skip the race and bet on a horse and go to... [LB1102]

DENNIS LEE: I'm not sure I understand, Senator. You mean just not bet at all? [LB1102]

SENATOR ASHFORD: Do you see the race? No, you bet, but then you choose not to watch the race, you go...and you go to the winner and loser. Can you do that? [LB1102]

DENNIS LEE: I believe that you can, I mean... [LB1102]

SENATOR ASHFORD: You can fast forward through the race... [LB1102]

DENNIS LEE: Oh, I don't think you...no, I understand. I'm sorry, Senator. I think you can only see the race if there is a wager that is placed and that's my understanding. [LB1102]

SENATOR ASHFORD: So you have to see the race? There is no fast forwarding, there is no just picking a number and... [LB1102]

DENNIS LEE: Yeah. No, no. [LB1102]

SENATOR ASHFORD: ...so you have to watch the race? [LB1102]

DENNIS LEE: Yeah, you don't get a chance to see the race unless a wager is placed.

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[LB1102]

SENATOR ASHFORD: But then just to follow-up with Steve's question, and I don't understand it either exactly because it seems to me that it's different from...some degree different from pari-mutuel. It may be pari-mutuel betting in the sense there's a pool. But you're...the pool has wagers into the system, not on the race. It's pari-mutuel in the sense that you're accumulating all of the money. [LB1102]

DENNIS LEE: In the system. [LB1102]

SENATOR ASHFORD: But it's...you're not...it's not on that particular race, it's on... [LB1102]

DENNIS LEE: And you know, Senator Ashford, you and... [LB1102]

SENATOR ASHFORD: And without getting into long division, I just...just so I...that's something I did not understand. But that... [LB1102]

DENNIS LEE: Well, you and Senator Lathrop raised very valid questions concerning pari-mutuel. And I know Mr. Payton is here from San Diego. He knows a whole lot more about this than I do. [LB1102]

SENATOR ASHFORD: Okay. Well, yeah, and we can confer with him or bring him back or whatever. But I think we're, for the sake of the rest of the people here, I think we're going to move on. [LB1102]

DENNIS LEE: Okay. [LB1102]

SENATOR ASHFORD: But I appreciate your comments, Denny, thanks. Any other neutral testifiers? [LB1102]

DENNIS LEE: Thank you. [LB1102]

SENATOR ASHFORD: Okay. That concludes...well, I'm sorry. Senator Giese, do you wish to...(laughter). [LB1102]

SENATOR GIESE: Thank you, Senator Ashford and committee. And thank goodness for neutral testimony. I think, hopefully, that clarified some things. I just...I was glad to see the last testifier point out that these are only limited to racetracks. They won't be in these 7-Eleven's, they won't be in bars. So I think that issue is clear at last. And I do think on the...Senator Ashford, on your question about whether you watch the race, I think you have the option of watching the last 50 furlongs of the race rather than the whole race. And I could be wrong on that. But that's also... [LB1102]

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SENATOR ASHFORD: How long does that take to run? (Laugh) [LB1102]

SENATOR GIESE: The way I understand it, you can wager a couple of times... [LB1102]

SENATOR ASHFORD: During the race or...? [LB1102]

SENATOR GIESE: ...in a minute. [LB1102]

SENATOR ASHFORD: In a minute? [LB1102]

SENATOR GIESE: In a minute. [LB1102]

SENATOR LAUTENBAUGH: Depends on the horse, correct? [LB1102]

SENATOR ASHFORD: Yeah. [LB1102]

SENATOR GIESE: Yeah, depends on the horse. Thank you, Senator Lautenbaugh. (Laughter) [LB1102]

SENATOR ASHFORD: I'm sure there are variables. I'm sure there are variables. Thank you. [LB1102]

SENATOR GIESE: The...just a couple other quick points. I don't want to belabor this but you know... [LB1102]

SENATOR ASHFORD: (Laugh) Thank you, Senator Lautenbaugh. Yeah, go ahead. [LB1102]

SENATOR GIESE: ...we talked about...and we always talk about LB775 and the great things that does for the state. And we certainly should continue to do those things. I'm not so sure that even on a good day that any of these tracks would be eligible for LB775 under new expansion. But maybe someday they would be able to do that. Senator Coash is not here. I wanted to address his point on these looking like a slot machine issue. I think that, you know, you can make a go-cart look like a Corvette and it's still a go-cart and it would still only go 25 miles an hour. So that analogy, I think, is not correct in itself. And then finally the last thing I would say is we can do nothing with this LB1102 and the horsemen, they'll probably be back, but someday they won't be back. So I think this is another attempt to continue the long history that we've talked about and keep live horse racing in the state of Nebraska. So with that, I will close and appreciate the committee's support. [LB1102]

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SENATOR ASHFORD: Thank you, Senator Giese. Thank you. That concludes the hearing. I think Senator Rogert is next. Senator Rogert, LB880. [LB1102]

SENATOR ROGERT: Senator Ashford, however you want to run these next two bills is up to you. They're very similar. [LB880 LB881]

SENATOR ASHFORD: They are related to the same...yeah, why don't we take them together. [LB880 LB881]

SENATOR ROGERT: You can do that and some will be testifying... [LB880 LB881]

SENATOR ASHFORD: So for the benefit of everyone, LB880 and LB881, both introduced by Senator Rogert, we will...Senator Rogert will introduce both...each bill and then we will go to the public comments and you can comment on either bill, either LB880 or LB881, so. [LB880 LB881]

SENATOR ROGERT: I'll bet the transcribers love it when we do that. [LB880 LB881]

SENATOR ASHFORD: Well,... [LB880 LB881]

SENATOR ROGERT: (Laugh) It's okay though. [LB880 LB881]

SENATOR ASHFORD: ...it's a challenge, but you know we want to... [LB880 LB881]

SENATOR ROGERT: Senator Ashford, members of the Judiciary Committee, my name is Kent Rogert, represent the 16th Legislative District, introducing today LB880 and LB881, and I'll note that LB880 was brought to me by some members of the industry, and LB881 is on behalf of the State Fire Marshal who is here to testify on both of them. So LB880 is a bill that eliminates the requirement that the State Fire Marshal test fireworks that are currently and already being tested and nationally approved by the U.S. Consumer Product Safety Commission, also does LB881. This, if you look in the fiscal note on LB881, it shows to be about a \$20,000 a year cost savings, mainly due to the fact that they wouldn't have to be tested. Statutorily, it is required by the state that we test all fireworks that be sold, and by "we" I mean the State Fire Marshal's Office. There isn't a lot of money in their budget to do that. They don't have a lot of time to do that so basically they take a day and they go shoot off some fireworks and approve or disapprove anything that would be asked to be sold in the state. This legislation...LB880 would allow retailers to sell fireworks during two specific time periods within the year. The current allowable time period is June 24 to July 5. Those are the only times available. And the additional time period according to the bill would be set up to sell from December 28 to January 1 for the New Year's Eve celebrations. LB880 also makes it possible for a person to obtain a display permit to purchase fireworks outside of the specific time frame cited and this permit would carry a fee of \$25. LB880 raised the

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application fee for display permits and establishes a deadline to permit to get a late permit no later than ten days prior to the display. It would raise the application fee from \$500 to \$750, for the jobber license from \$200 to \$400. So there is a revenue factor in LB880 that basically washes out the extra cost associated with it. Both bills will eliminate wire sparklers that we currently use, and I think the folks behind you will tell us that they're probably the most dangerous thing they sell. They're very hot, more injuries. Senator McGill apparently says that's her favorite but... [LB880 LB881]

SENATOR MCGILL: (Laugh) Actually, I was burned by one once... [LB880 LB881]

SENATOR ROBERT: See, that happens. [LB880 LB881]

SENATOR MCGILL: ...so I hate those. [LB880 LB881]

SENATOR ROBERT: Those are...that is common, very, very common, and I think everybody would agree that nobody will be disadvantaged by removing those from our list of things. Still doesn't allow...neither of these would allow for expanded use of things we don't allow here today, such as bottle rockets, larger explosives like M-80s, and nighttime parachutes; wouldn't be doing any of that. Purpose behind LB880 is to save dollars from the current duplication tests that incur costs to the state, expand the time frame the retailer may sell fireworks, and expand the time frame for a person to purchase fireworks as long as they obtain a display permit. This way, we save money, provide initial revenue to the State Fire Marshal's Office, and promote economic growth for retailers inside Nebraska, and enhance sales tax revenue for the state. On LB881, there is a list of broad-based categories developed which would be...which provide clear guidance about items that could not be sold in Nebraska. It would be, it's under my understanding that if we went to the...we moved off our testing standards and went back to the national Consumer Product Safety Commission standards, it would instantly allow us to sell a lot more things because we don't have to test everything. And I'm under the assumption that the more things we can sell, the more revenue we create for the retailers and the more tax dollars that come in because of it. By removing the need to list consumer fireworks by name, the products available to the retailers will dramatically increase, as well as allowing the State Fire Marshal's agency to focus more on lifesaving requirements rather than making sure that a product has a correct name and it is actually safe enough for us to use. I'll try to answer any questions. That's the gist of both answers (sic). The legal counsel for the Fire Marshal's Office is here and the folks from the industry are here, and I think you'll enjoy some of those things they have to ask for today. [LB880 LB881]

SENATOR LATHROP: Can I ask just a... [LB880 LB881]

SENATOR ASHFORD: Yes. [LB880 LB881]

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SENATOR LATHROP: ...straightforward question? Did you...it sounded like in the early part of your testimony or your introduction that you said that money wasn't the issue, that it's time, they don't have enough time. They have the money but they don't have the time to do all this? [LB880 LB881]

SENATOR ROBERT: I think money... [LB880 LB881]

SENATOR LATHROP: Here's where I'm going. [LB880 LB881]

SENATOR ROBERT: Yep. [LB880 LB881]

SENATOR LATHROP: We're increasing the fees and I'm wondering,... [LB880 LB881]

SENATOR ROBERT: Yeah. [LB880 LB881]

SENATOR LATHROP: ...we've watched, in the special session we see these cash accounts accumulate fees and then we go steal it to go balance the budget during... [LB880 LB881]

SENATOR ROBERT: Right. [LB880 LB881]

SENATOR LATHROP: ...a crisis. And I'm wondering, is it necessary that we increase the fees? [LB880 LB881]

SENATOR ROBERT: I think that if you look, the fee increases are coming from the industry bill. They're asking to increase the fees on themselves to make sure that there's enough money to police their industry. I don't know that anybody is sold on it, whether...I'm not...it doesn't matter to me whether we raise the fees. They haven't been changed in quite awhile. When the fees were set, things were valued at a lot less. I think raising the fees maybe professionalizes the industry a little bit and puts...might take out some folks that don't want to pay it. [LB880 LB881]

SENATOR LATHROP: I will tell you before we look at putting this out, my own thoughts on it. [LB880 LB881]

SENATOR ROBERT: Uh-huh. [LB880 LB881]

SENATOR LATHROP: If there is enough money coming into the cash account to allow for what we...the purpose for which the account is set up, whether that's following and checking the licenses on these guys, I don't...I don't favor raising the fee just because we haven't done it in awhile. [LB880 LB881]

SENATOR ROBERT: I agree. [LB880 LB881]

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SENATOR LATHROP: Because if it's generating enough money to take care of what the purpose of the account was set up for in the first place, that's probably where we ought to stop. So maybe you can look at that or maybe somebody behind you has something to say about it. [LB880 LB881]

SENATOR ROBERT: I think the guys can tell you a little bit more about it. I also think that under LB880 they're asking to do some more things and be there some more time. If you look at the fiscal note on LB880, the increased revenue comes...coming from fees offsets the overtime costs they require...they're saying it will cost them to do the Christmastime, New Year's time sales period. So those dollars coming in, looks about \$27,000, they're going to spend it to further enforce, so it's almost awash. It's not a big increase. [LB880 LB881]

SENATOR LATHROP: Okay. [LB880 LB881]

SENATOR ASHFORD: Thank you, Senator Robert. [LB880 LB881]

SENATOR ROBERT: Yep. I'm going to...I've got other bills up in Health, so I'll be in and out. [LB880 LB881]

SENATOR ASHFORD: Okay. Proponents of either LB880 or LB881. [LB880 LB881]

MARVIN KOHLER: (Exhibits 12, 13, and 14) Senator Ashford, members of the Judiciary Committee, my name is Marvin Kohler, M-a-r-v-i-n K-o-h-l-e-r. I reside at 1739 Ingalls Street in Grand Island. I believe if you pass LB1102, we should have fireworks at every racetrack. (Laughter) I will try to be brief and basically the information that I'm handing out to you is three items: first of all, my written testimony; second of all I'm giving you a sample copy of a testing that was done in China on a particular item that we actually unloaded in our warehouse on January, this was done in December; and the third piece of information I'm giving you is actually information on one of the major testing labs that does testing for consumer fireworks. I'd like to thank Senator Robert for his effort in helping us introduce this bill. Basically, the \$20,000 that we're referencing here is what the Fire Marshal's Office has told us that they are currently spending on the two nights of testing that's being done. There is a...the items tested is new items that are brought into the marketplace each year and that's what's been submitted. That's what we have to submit each year for testing. LB880 would eliminate the need for that testing. LB880 would also give us, I believe, an opportunity to show that we're not...we're concerned about the safety aspect of it and that meaning that testing is being done in China. I have with me...we were hoping to have a gentleman attend today from the American Fireworks Laboratory, Safety Laboratory. AFSL is the abbreviation there. This is actually what their manual looks like and there's 12 different categories of fireworks and each of those categories is dealt with in a separate testing process. I will also tell you that as of

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today, there is a new regulation being imposed by the U.S. Consumer Product Safety Commission. It's called COC. It means it's put in place to basically require that every piece of every firework item that is sent from China be tested, and so that if you want to have some items sent from China you must have them tested, and this certificate of compliance will be what that evolves. I see I've got a red light here so I'm going to tell you that I also have in here a list of some of the changes that we are proposing with our bill, LB880, which I think would bring it very close to being in uniformity with LB881. Just a final brief comment: One of the issues that...and this is...I'm speaking today on behalf of the Nebraska Fireworks Retailers Association. We represent over 600 retail locations in the state. I also would like to make a personal comment. I would like to see that, if possible, we could work a situation where those people that do consumer fireworks shows could have a similar license to what is offered in the display fireworks processing that's being done, display fireworks permitting that's being done. [LB880 LB881]

SENATOR ASHFORD: Okay. Any questions? Seeing none, thanks. [LB880 LB881]

MARVIN KOHLER: Thank you. [LB880 LB881]

SENATOR ASHFORD: Other proponents of either LB880 or LB881. How many testifiers do we have on either of these bills? Okay. How many proponents? Are we all proponents? [LB880 LB881]

_____: For which bill? [LB880 LB881]

SENATOR ASHFORD: Either one, LB880 or LB881. [LB880 LB881]

_____: (Inaudible) [LB880 LB881]

SENATOR ASHFORD: Okay. How many opponents? Do we have opponents? Oh, okay. Oh, this is confusing. Let's start here. [LB880 LB881]

CRAIG HAMRE: (Exhibit 15) Senator Ashford, committee members, my name is Craig Hamre. I'm from Oxford, Nebraska. I'm representing myself, a fireworks retailer in the state of Nebraska. My family and I sold fireworks in South Dakota for five years and, due to a relocation with my regular job, we moved to Nebraska. We love the state of Nebraska, especially the winters here. They're livable. However, we have faced challenges in selling fireworks in Nebraska. We've been selling here for the past four years. It has been somewhat difficult to offer a great selection of quality products in Nebraska due to the permissible list that we're held to. In South Dakota, if a fireworks item was available from one of our distributors, we could sell it to our customers. These fireworks met the safety standards established by internationally recognized testing labs and were covered under our product liability insurance. In Nebraska, as a retailer I'm only able to sell fireworks that are listed on a permissible fireworks list. When we

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opened our first location in Kearney, I experienced something new. As I was trying to help my customers put together their backyard show, many told me that they already picked up most of their fireworks in Missouri and they were just filling some gaps. Last year in 2009, we opened an additional location in Hastings and experienced much of the same, many customers saying, yeah, we've already been to Missouri and picked up most of our fireworks; you know, we wanted the big stuff, even though it's really no bigger. They're held to the same amount of pyrotechnic material that we are. And I would just have to say in allowing Nebraska...allowing the sale of the same fireworks in Nebraska that are sold in South Dakota, Kansas, and Missouri would keep that money and sales tax revenue from going out of state. Our current selling season in Nebraska is June 25 through July 4. Sales at some of our locations in 2009 were hurt due to wind and rain on the Fourth of July. Missouri allows fireworks to be sold through July 10, and South Dakota and Kansas allow the sale of fireworks through July 5. I would like to see the Nebraska season extended to July 5 to allow for bad weather conditions on the 4th and also to allow fireworks retailers to sell through their remaining inventory, thus giving us an increase in our overall sales and a boost in sales tax revenue. Thank you. [LB880 LB881]

SENATOR ASHFORD: Yes, Senator Coash. [LB880 LB881]

SENATOR COASH: Thank you. If we were to amend this bill to allow you to sell through your remaining inventory, okay, that means you could sell until your last little firework is gone. I mean, wouldn't that mean you could be open forever? You know what I mean? [LB880 LB881]

CRAIG HAMRE: (Laugh) Right. [LB880 LB881]

SENATOR COASH: I know you buy it all at once, try to sell it all at once, but I mean if we were really to say you can sell through your remaining inventory, I mean... [LB880 LB881]

CRAIG HAMRE: No, I guess... [LB880 LB881]

SENATOR COASH: ...something that nobody wanted... [LB880 LB881]

CRAIG HAMRE: Right. [LB880 LB881]

SENATOR COASH: ...you could sit up there and nobody would ever buy. [LB880 LB881]

CRAIG HAMRE: No. No. I would say if we...like in South Dakota, we sold on the 5th and individuals were allowed to shoot off fireworks on the 5th. It helped us if we had bad weather on the 4th and it also, if we had some shop-worn items or, you know, just some

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items that we thought maybe we wouldn't carry the next year, we could sell them at a discount on the 5th. [LB880 LB881]

SENATOR COASH: So you're not really saying until everything sells. [LB880 LB881]

CRAIG HAMRE: Exactly. [LB880 LB881]

SENATOR COASH: Would rather see it through the 5th. [LB880 LB881]

CRAIG HAMRE: I'm saying through the 5th, right. [LB880 LB881]

SENATOR COASH: Gotcha. Okay. Thanks. [LB880 LB881]

CRAIG HAMRE: Exactly. [LB880 LB881]

SENATOR ASHFORD: So would you...do you support both bills or...? [LB880 LB881]

CRAIG HAMRE: I do, uh-huh, yes. [LB880 LB881]

SENATOR ASHFORD: And this would allow you...both these bills would allow you to sell the same fireworks that the other...that are sold in these other surrounding states. [LB880 LB881]

CRAIG HAMRE: That is correct, with the exception of wire sparklers and rockets, skyrockets. We would still not sell those in Nebraska. [LB880 LB881]

SENATOR ASHFORD: Okay. And the reason for that difference is just safety or...? [LB880 LB881]

CRAIG HAMRE: Yes, and in South Dakota we sold...we sold rockets in South Dakota and a lot of fires were caused by rockets because of them being unpredictable, so that is one reason I would agree that we shouldn't sell rockets in Nebraska. [LB880 LB881]

SENATOR ASHFORD: Okay. All right. And there are 600 dealers, supposedly, in Nebraska that was mentioned earlier? [LB880 LB881]

CRAIG HAMRE: Right, that sounds...yeah. [LB880 LB881]

SENATOR ASHFORD: It's quite a bit. Okay. Good. Thank you. [LB880 LB881]

CRAIG HAMRE: Okay. You bet. [LB880 LB881]

SENATOR ASHFORD: Other proponents? Some of you are opponents of other...of

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another...of other bills. That's fine too. [LB880 LB881]

CLARK SCHNASE: (Exhibit 16) Good afternoon. My name is Clark Schnase, S-c-h-n-a-s-e. I have retailed fireworks in Nebraska since 1978 and one of the owners of Davey Fireworks. It's an LLC Nebraska organization located in Davey, Nebraska. I'm also an active member of the Nebraska Fireworks Retailers Association that represents the firework retailers from across the state. I want to thank you for the opportunity to speak to you today as a Nebraska citizen, as a member of the NFRA, in support of LB880 and I'm seeking your support as well. Of particular interest to me is the language used to propose a new fireworks season that aligns to New Year's Eve. On page 9, lines 17 through 19 of LB880 defines a new fireworks season between December 28 and January 1, in addition to the current sales date between June 24 and July 5. Also, it was mentioned earlier about the fee structure which is described in the same section in the language that NFRA does not support. Instead of a \$35 fee for the June 24 through July 5 season and a separate \$15 fee for the December 28 through the January season, a one-time fee of \$50 is required to sell fireworks during these two fireworks seasons. So we're looking to go more towards an annual fee structure if we introduce a new time period. The language to describe when fees are due and penalties, if they're considered late, is supported by the NFRA, so mostly I was just more from a bill review point of view, just some of the technical wording that was used during the drafting of the bill. That's where more of my concerns come into play in representing myself and also a member of the NFRA. [LB880 LB881]

SENATOR ASHFORD: Okay. Any questions? I don't see any. Thank you. [LB880 LB881]

CLARK SCHNASE: Thank you. [LB880 LB881]

SENATOR ASHFORD: And what is your position on LB881? You support both of them or...? [LB880 LB881]

CLARK SCHNASE: I do support both of them. The Fire Marshal's Office supports...is the LB881 and the language is very similar. [LB880 LB881]

SENATOR ASHFORD: Okay. Next. Next testifier. [LB880 LB881]

CURTIS SCHNASE: (Exhibits 17, 18, and 19) Good afternoon. Dear members of the committee, my name is Curt Schnase, S-c-h-n-a-s-e. I am also...have retailed fireworks in the state of Nebraska since 1978 and I am one of the owners of Davey Fireworks, LLC, a Nebraska organization located in Davey, Nebraska. That was my brother that spoke ahead of me. I am also an active member in the Nebraska Fireworks Retailers Association and represent the firework retailers from across the state. I want to thank you for the opportunity to speak to you today as a Nebraska citizen and as a member of

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the NFRA in support of both LB880 and LB881. I'm combining two testimonies here so I'm going to be talking about both. In regards to LB881, I am in support of the bill. However, there was language in the bill that was proposed that was submitted to you. I'm starting off with LB881, I apologize. I was going to do LB880, but will go LB881. On the Fire Marshal's bill that was submitted, Section 28-1241, located on page 6, lines 20 through 21, states firecrackers that are greater than one inch in length with a water safety fuse as an item that would be disallowed within the state. This language would eliminate a very popular line that is currently approved for sale by the State Fire Marshal's Office under current law. I have attached some photographs that were handed out to you, hopefully by now, that show different measurements of fireworks. Under this scenario, the picture on figure 1 is the item that this wording is trying to prevent the sale of in the state and currently is. When it was written into this new proposal, this was now readded again and I am in opposition of this. As you can see the firework directly below it is actually basically the same firework with a different fuse and my understanding is several years ago this firecracker was used to crack a porcelain toilet when flushed. So this is what caused the issue of this firework being banned. However, as you can see, most of the fireworks that are pictured behind there are larger than this firecracker and wouldn't be eliminated under that current wording. What my request is if you all would take a picture or look at figure 12, that's the inside of one of these other firecrackers listed. You notice that the manufacturers insert a one-inch firecracker and insert plaster into the paper casing, which basically is essentially a large firecracker now with a small firecracker in the inside of it. And a quick note is all of these firecrackers use exactly the same amount of powder content. There is no such thing, by federal law now, that would allow an M-80 to even be sold at retail. I also request the language on Section 28-1241(viii), located on page 7, lines 9 through 11, it states fireworks that have been tested by the State Fire Marshal's Office as a response to complaints and have been deemed unsafe, this area is a concern of me also on this bill because they basically can take a phone call, make a gut reaction and pull the firework and test it under a scenario that's really based on a nonscientific, you know, process. What I would propose is that there would be some sort of a certified testing facility, such as AFSL or another recognized facility to handle that process. And I guess I would allow...ask for another brief moment to...part of the second bill. [LB880 LB881]

SENATOR ASHFORD: Well, let's do this, Curt. You've...why don't we...we've got your comments so... [LB880 LB881]

CURTIS SCHNASE: Okay. [LB880 LB881]

SENATOR ASHFORD: ...why don't we go with that and if there are any questions of Curt, why don't we go that route. Any questions of Curt? Seeing none, well, we've got your testimony, Curt. Thanks. [LB880 LB881]

CURTIS SCHNASE: Okay. Thank you for your time today. [LB880 LB881]

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SENATOR ASHFORD: Yeah, thank you. Next testifier. [LB880 LB881]

KIRK MYERS: (Exhibit 20) Good afternoon, Senators. I am Kirk Myers of Crete, Nebraska, that's M-y-e-r-s. I'm here today representing myself, owner of Kracklin Kirks Fireworks and also the NFRA, Nebraska Fireworks Retailers Association, of whom I'm treasurer. Like to testify today on the additional sales days that could be afforded in LB880, testifying as a proponent of that bill. For December 31, 1999, going back a few years, special legislation was in place to allow for sales during that special time in history. Each year since then, about ten minutes before midnight I start to hear fireworks going off. These fireworks have pretty much come from one of two places. They were either bought in a different state and brought into Nebraska or they were purchased in Nebraska during the regular selling season and were then saved in the consumer's basement or garage or favorite stash until New Year's Eve. In either case, there would be some benefit to having a retail location for the consumer to purchase those items around December 31 of each year--either having the item purchased in Nebraska and not in another state or the consumer not having to store the items themselves. I am for the additional sales dates in the New Year's time frame each year. We sold during the special 1999 millennium sales. I do have a correction here to add on here. The stand locations I'm going to give you are for the city of Lincoln. At that time, during the July time frame, I believe there was approximately 75 retail stands in the city of Lincoln. During December 31, when things got a little chillier, we had about six stands that sold for the millennium. So you can see that not everyone that has the opportunity to sell at that time will, but there are some that will take advantage of it. I'm also for a sales date of July 5 as well. While I would not always sell on it, it would be nice to have as a fall back in case of bad weather. For example, last year we had sales in Hickman, Nebraska, and sales were going good, and then on the 3rd, on that evening from 7:00 to 10:00, there was a great rain that night. Sales the next day on the 4th were down dramatically. Sixty to seventy percent of our sales come in those two days. If we have bad weather on the 4th, it can really hinder sales and the consumer's opportunity to enjoy the firework season, and by having the July 5 date the consumer would have the opportunity to purchase and/or shoot on the 5th of July. I'd like to thank you for your time and consideration of this testimony. [LB880 LB881]

SENATOR ASHFORD: Thank you, Kirk. Any questions of Kirk? Thank you, seeing none. Next testifier. [LB880 LB881]

ROLF EDWARD SHASTEEN: (Exhibit 21) Good afternoon, Senators, members of the committee. My name is Rolf Shasteen. I happen to be an attorney here in town. I just heard about the hearing so I...page around? [LB880 LB881]

SENATOR ASHFORD: Here you are. Okay. [LB880 LB881]

ROLF EDWARD SHASTEEN: I just wanted to say a few words in opposition to one small section of LB881. I think it's probably on...looks like page 7 of the bill, (6)(A)(c)(v), top of page 7, you're regulating there a device that's not very familiar to Nebraskans, although it's more familiar on the West Coast, and it comes to us from Southeast Asia. I brought one with me. The entire device, including its propellant, is contained in this little package. If anybody wants to see it, just ask me. I can show it to you. It's called a sky lantern and what it is, is a rice paper hot-air balloon. Has a small paraffin source of heat. You flip it up, you light it, it's on some wires and it's quiet, it floats off into the evening. I first became aware of them at a commemorative ceremony and at that time I went over to watch them being lit, because I'd never seen them before, and it was a commemorative ceremony for a man who was a pyrotechnic fan but who had died and he was also a Vietnam Vet and his wife was there. She was Vietnamese. And children were sending these off and they drifted across the sky on the evening of the Fourth of July, but she was off to the side and she was crying and just quietly, you know, and saying something but I'm pretty deaf and she was pretty soft voiced so I assumed she was praying. Her husband had been dead awhile so I asked around about the nature of this and I came to find out that these sky lanterns are an ancient, multiple-hundred-year-old device whereby nonmonotheists, in other words, people who don't believe in one God, don't have the same religious background that we do communicate or have a symbolic communication with the deities that populate their cosmos through these balloons, and they take it very seriously. The balloon is harmless. The material I pointed out to you, I brought to you, would show that they're literally launched by the tens of thousands in the orient over cities that are not made of anything much more substantial than this, and they don't find they need to regulate them and they're not burning down. What happens is, it's a hot-air balloon so it goes up and it stays in the air until the temperature differential between the inside and the outside changes and it falls back to earth, and by the time it gets back to earth not only is it out, it's cold. I've personally been around now a number of launchings of these and have seen them work. My point is this: I'm afraid that the language is so broad and it makes them a criminal that we're going to...criminal act, that we're likely to bump into the free exercise of religion clause with this, because literally if you're a Buddhist and some other belief systems, your world is different than ours and they communicate through these things. And I can see somebody on their way to a funeral or a wedding getting pulled over by a sheriff or the State Patrol and getting a huge stack of tickets. And what I would recommend that you do is nothing on this particular section until you get a little more input maybe from some of the members or citizens here who are of East Asian extraction and see if the Fire Marshal really has any hard data on why this is a danger and needs to be made illegal. [LB880 LB881]

SENATOR ASHFORD: Okay. Any follow up? [LB880 LB881]

SENATOR LATHROP: Very interesting. [LB880 LB881]

ROLF EDWARD SHASTEEN: Yeah, I think it's something to think about. [LB880 LB881]

SENATOR ASHFORD: That's definitely true. Next testifier. [LB880 LB881]

REGINA SHIELDS: Chairman Ashford and members of the Judiciary Committee, for the record, I am Regina Shields, R-e-g-i-n-a S-h-i-e-l-d-s. I'm legal counsel for the State Fire Marshal's agency. I'm here to testify on behalf of State Fire Marshal John Falgione, who apologizes for not being able to be present today. I'm here to testify in support of LB881. I want to thank Senator Rogert for sponsoring this bill. The firework industry is highly regulated, both nationally and internationally. There are stringent standards governing the manufacturing, importing, and transporting of fireworks. Currently, state law requires the Fire Marshal's agency to test and list by name consumer fireworks which may be sold in this state. This requires a considerable amount of time and manpower which could be better utilized in conducting life safety code inspections on the fireworks stands rather than determining that a single firework has been listed by the correct name. LB881 would eliminate the Fire Marshal testing requirement for individual consumer fireworks and replace this requirement with a requirement of meeting national testing standards. Further, a list of broad-based categories has been developed that would eliminate individual items to be eligible for sale. An example of these categories would be firecrackers containing more than 50 milligrams of explosive composition or fireworks that are rockets mounted on sticks or wire and project into the air when ignited, which are commonly called bottle rockets. These changes would greatly expand the market for the industry and provide more products for Nebraska citizens to choose. Further, LB881 also harmonizes the criminal statutes regarding the penalties involved in violations regarding consumer fireworks. There is also a provision allowing for the license revocation period to be lengthened from a period of one year up to three years. I want to thank the committee for their time, consideration of this issue, and I'll be happy to answer any questions you have. Further, if need be, I can certainly clarify some of the questions that have been asked. [LB880 LB881]

SENATOR ASHFORD: Any questions? I think you're...yes, Senator Coash. [LB880 LB881]

SENATOR COASH: Any comments on LB880? Are you speaking to LB881? [LB880 LB881]

REGINA SHIELDS: We have several technical concerns with LB880. There are parts of the bill that, again, mirror LB881 quite commonly. There's a few language changes specifically in the categories themselves that causes us some concern, especially the one considering bottle rockets. In LB880, it would not include things that don't have extender wires externally attached which can be problematic because it's still a bottle rocket. So there's some issues like that. Some of our big concerns would include things like the section that talks about if we receive a complaint and then testing is done on a

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firework to determine if it's safe or not. LB881 would require that we test 20 samples of that item, dictates that there must be at least a 50 percent failure rate, and that an industry representative must be present for that testing. We have no problem offering to allow a representative to be present. That is not our concern. Requiring us to acquire 20 samples of an item to test becomes extremely costly. Some of these items, as we figured in our fiscal note, cost an average of \$50. If we get 20 complaints, we're up to \$20,000. That's quite a bit of testing for the Fire Marshal's Office to try to encompass. Also, the 50 percent failure rate is somewhat of a concern to us. If we're testing a product and let's say we are testing 20 of them and even 5 of them come down in flames and start five fires, to us, that's a significant safety risk. I don't need ten of them to do that to tell me that's a significant safety risk. We think that's an issue that should be left to the Fire Marshal's Office to determine public safety. As Mr. Kohler testified, there is a section that would talk about allowing a new license to be issued for Class C consumer shows. As the bill is worded currently, it is technically impossible to implement because the bill requires that a person would be required to have a display license before they could come to our office to seek a permit to purchase. A display license can only be issued for the use of Class B fireworks, which are explosives, which are regulated by our office, the State Patrol, and the ATF. We could never issue a display permit to someone who wants to use Class C fireworks. It's just technically impossible to implement. There is also the issue, again, of raising fees, as Senator Lathrop talked about. Again, the Fire Marshal's agency did not ask for the fees to be raised, however, there will be significant costs associated with some of this. Senator Lathrop, to address some of your questions earlier, you talked about current money being allocated for this, two years ago when the fireworks came up before, AM889 to LB315 appropriated \$20,000 for the 2010-2011 year for the Fire Marshal Cash Fund for firework testing. It's our understanding that if you eliminate the requirement for testing, that money will not continue to be available since it was specifically allocated only for the purpose of testing. As such, there is no additional cash given to the Fire Marshal's agency or the appropriation to allow to use the cash funds to handle things like the new selling period, unless the committee would like to address that. [LB880 LB881]

SENATOR ASHFORD: Okay. Good. Good explanation. Thank you. Next testifier.
[LB880 LB881]

AMY PRENDA: Chairman Ashford and members of the Judiciary Committee, my name is Amy Prenda, last name is P-r-e-n-d-a. I'm here as the registered lobbyist for Shelton Wholesalers. Shelton Wholesalers is headquartered out at Eagleville, Missouri, and it operates 15 fireworks stores in four states. Mr. Shelton, who is the owner, would have liked to have been here but of a scheduling conflict he was unable to attend. He wanted me to pass on a couple points. One thing is that he thinks that Nebraska should keep its present testing system because it gives Nebraska residents more protection against dangerous fireworks. (Laughter) Mr. Shelton...Mr. Shelton is a member of the American Fireworks Standard Laboratory, which is one of the only third-party testing groups

recognized by the Consumer Product Safety Commission. This Consumer Product Safety Commission has only been requiring the larger firework importers right now to be tested overseas in China and there's some problems with the program because smaller firework importers have not been tested which brings in fireworks into the country that might not be tested and then put in the marketplace causing some challenges. There also might be some challenges with local law enforcement as far as knowing what's a legal firework and what is an illegal firework. The other thing that Mr. Shelton wanted me to bring up with you today is that both LB880 and LB881 limit Nebraska residents' right to choose where they want to buy their fireworks from. His understanding is that if you're going to expand where a number of labels can be bought in Nebraska, that the feeling is that you should be able to buy your product from Missouri or any surrounding state and bring it into Nebraska, and right now the law prohibits you from doing that unless you have a distributor's license. And I'd be happy to answer any questions that you might have. [LB880 LB881]

SENATOR ASHFORD: Any questions of Amy? Seeing none, thank you. How many more testifiers do we have? Just one, one more? [LB880 LB881]

PATRICK SULLIVAN: (Exhibit 22) Good afternoon, Senators. My name is Patrick Sullivan. I represent Bellino Fireworks, who is also a member of the Nebraska Retailers Association, and I've kind of been called to do, for lack of a better term, a little mop up on some of the testimony that we've had. I want to make it clear both LB880 and LB881 the industry supports and the main issue there is that we go to the national testing standards. The AFSL, which is American Fireworks Standards Laboratory, even though it's an industry supported association, has more stringent testing than even the Consumer Product Safety Commission does. This would just eliminate creating a bunch of work. In a sense, it would be that the state of Nebraska would then have an inspection on each car that comes into the state and then reinspecting, even though we already have national standards on inspection. So if anything out of these bills that we want to make sure that gets produced is that we go to this national standard and we aren't trying to interpret a list every time that something comes up. I've handed out to you just a short sheet on two other issues. One of them is the unsafe fireworks in which the Fire Marshal can pull. We understand that the Fire Marshal does need to have this authority. The issue is we do need to have some due process. What I proposed in there is that those fireworks be quarantined and if the person or licensee that had those fireworks would then like to have those rechecked or see whether they're unsafe, they can elect to do so. If they found...retested and checked it and they are safe, then they could be put back into the market. If they're retested and they're unsafe, then they would have to be destroyed. If for some reason they were tested and safe but it was one of those specified fireworks that Nebraska has eliminated, you could at least get rid of your inventory and sell that to another distributor in a state that does permit that type of fireworks. And that's the language that I provided at the top. On the second page you will see whether it goes in LB880 or LB881. The language is a little bit different so I

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wrote that to interpret for both pieces. The other major issue is the revocation. It's a concern particularly in the Fire Marshal's bill, LB881, that it says a minimum up to one year, so any type of infraction could end up having the individual lose their license for a year. Like to see that "at a minimum," change that to "up to three years but not at least one year." Additionally, it would appear that there has to be some language allowing a proper hearing before that suspension occurs. So I provided language for both of that. If I understand the testimony from the Fire Marshal's Office, they don't have any objection to the New Year's sales, and that is the fourth item that the industry would like to see as a priority amongst the several items that were spelled out today. Additionally, at the very bottom of LB880 I have provided language to clarify the billing or I should say the fees that are in there. I think if the...if we go to a New Year's period, we should also have an additional fee because there is going to be further enforcement costs. The idea was to make it as one fee, whether you use one or both seasons, just from an administrative position. And I understand the Fire Marshal doesn't necessarily want to process two fees. But that's something that can be ironed out. [LB880 LB881]

SENATOR ASHFORD: Thank you. Any questions or comments? Thank you. Seeing none, thank you. Next testifier, last testifier I think. [LB880 LB881]

ERIC SANDERS: Good afternoon, Senator Ashford and committee members. My name is Eric Sanders, E-r-i-c S-a-n-d-e-r-s. Live in Norfolk, Nebraska. I currently have 13 retail locations in northeast Nebraska and southern South Dakota, and I've been in business since 1997. I'm currently the vice president of the Nebraska Fireworks Retailers Association, who represents the majority of retailers in our state. I'd like to thank you for the opportunity to testify before you today and would also like to thank Senator Rogert for introducing LB880 and my senator, Senator Flood, and his staff for the help and guidance over the past three years, and ask for your support of LB880. I'd like to shed some light on the distributor/jobber retail permit fee structure in the bill. The association decided to look at our bordering states' fee structure and decided as an association, to be fair and healthy to our industry and the state, that we should raise our fees from a distributor fee of \$500 to \$750, a jobber from \$200 to \$400, and a retail from \$25 to \$35, and a \$15 fee for the New Year's sales. Since I've been in business, we have not seen a fee increase. And just one other comment: If we were selling fireworks year-round, I believe Shelton would probably be here setting up a stand or several. [LB880 LB881]

SENATOR ASHFORD: Thank you. Thanks for your comments. [LB880 LB881]

ERIC SANDERS: Any questions? [LB880 LB881]

SENATOR ASHFORD: Thanks for coming, coming down. [LB880 LB881]

ERIC SANDERS: Yep. Thank you. [LB880 LB881]

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SENATOR ASHFORD: Believe that ends the...Senator Rogert has left because he had another bill so that will conclude the hearing on these two bills. We'll next move to Speaker Flood to talk about LB868. [LB880 LB881]

SENATOR FLOOD: Thank you, Chairman Ashford, members of the committee. For the record, my name is Mike Flood, F-l-o-o-d. I represent District 19, which includes the city of Norfolk and all of Madison County. The fundamental piece of this bill is the result of several meetings and discussions I've had with Mayor Sue Fuchtman of Norfolk and District 7 chief probation officer Kathryn Liebers. I've also met and talked with other local leaders, state Probation Administrator Ellen Brokofsky, local law enforcement, judges, attorneys, and young people. In sum, it is my intent with this bill to both strengthen existing community service programs and encourage new programs, thereby expanding the number of meaningful community service placements. These community service opportunities will in turn help us keep up and support our communities. In the warmer months, this might surprise you, I exercise. I enjoy walking through the older neighborhoods of Norfolk and our neighborhoods, unlike...are not unlike any of yours in any towns across the state. Some homes are kept up immaculately. Other homes and properties, for whatever reason, are in need of a little cleanup or some weed pulling, or an overgrown shrub trimmed. In one sense, these are small things, but they go a long way toward beautifying our communities. This kind of work would bring together an offender and a grateful owner who is perhaps disabled or elderly. This kind of work would provide real benefits, help rehabilitate offenders, and aid neighborhoods and communities. Under this bill, any city, village, county, or nonprofit can set up a community service program. They would have to be authorized by the chief probation officer of the local probation district. The community service program would need to have a supervisor, appropriate projects, the necessary equipment, and provide supervision, as well as report on the progress of the community service to the sentencing court. One of the significant hurdles, I believe, for communities or entities that keeps them from putting together a community service program has been workers' comp coverage and liability. Thus, this bill would exempt the community service program from providing workers' compensation benefits, as well as provide a measure of protection from liability for injuries that may happen to the offender or that would happen as the result of the offender's conduct. I realize full well there are good community service programs up and running, and I'm glad that a gentleman from the Sarpy County service directors agency is here and will testify. My intent with LB868 is not to take away from any of the good that is going on currently. My thought was that this bill might help get more communities invested in this concept as well. Outside of the community service part of this bill, Section 2 would provide additional administrative sanctions under Section 29-2266, including referrals for employment, skills, or cognitive programming. Section 2 also lists new noncriminal violations, including a probationer's failure to attend self-help groups or rehabilitative programming as ordered. These changes in Section 2 were suggested to me by the Office of Probation Administration and I think they make sense. The ACLU did contact me regarding one of the new

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suggested administrative sanctions. That is at the bottom of page 6: "Refraining from the use of computers or other electronic communication devices." And I want the committee to know that I appreciate their concerns with this sanction and would work with the committee to alleviate their concerns. Finally, Sections 18 through 20 which stiffen the penalties for teens who are caught violating our underage drinking laws by providing the impoundment of the offender's motor vehicle operator's license for a period time of 90 days for the first offense and one year for any second or subsequent conviction. These are increased penalties and they are similar to those put forward by Senator Harms. And I fully support his bill, LB258, the one that you sent to General File last week. On this topic, I am grateful that Dr. Burton, director of trauma and surgical critical care at BryanLGH Medical Center in Lincoln is here today. He has been working with the county attorney on this issue and he often sees young people in his trauma service with drug- and alcohol-related injuries. With that, thank you for looking over my bill. If there are any questions, I'd be happy to answer them. [LB868]

SENATOR ASHFORD: Any questions of Speaker Flood? Seeing none at this moment. [LB868]

SENATOR FLOOD: Okay. If it's okay with you, Mr. Chair, I will waive my closing. [LB868]

SENATOR ASHFORD: Yes, it is. Thank you. [LB868]

SENATOR FLOOD: Thank you. [LB868]

SENATOR ASHFORD: Proponent testifiers on LB868. [LB868]

AL RODER: (Exhibit 23) Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Al Roder. I'm the city administrator of the city of Norfolk. I would like to ask the committee's support of LB868, specifically the removal of the workers' compensation liability for individuals performing community service. The desired outcome of a community service program is to provide certain offenders with the opportunity to give back to the community affected by their crimes. This is not feasible under the current law, which requires a municipality to place those performing community service under workers' compensation insurance as an employee of the municipality. As an example, 80 hours of community service would have a perceived value to the city of Norfolk of approximately \$1,381. This is based on the type of work generally contemplated for community service to be conducted. The exposure to the city of Norfolk under the current law would be approximately \$13,500. This is the average workers' compensation claim payout over the last three years for the city of Norfolk. In fact, it would take approximately 800 hours for the community service program to justify the consideration of utilization under the current law due to the perceived risk of the program. This level of risk renders the utilization of a community service program

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unwise and unrealistic for the city of Norfolk. I'm sure it's true for most municipalities. LB868 corrects this inequity for municipalities and would provide a mechanism for providing community service opportunity to offenders while providing a valuable service to our communities. We ask for your support in moving this bill forward. Thank you. [LB868]

SENATOR ASHFORD: Thank you. Any...otherwise the bill, these other community service options are acceptable to you, correct? [LB868]

AL RODER: We're okay with...I'm sure there's rationale for the other purposes. Our concern specifically... [LB868]

SENATOR ASHFORD: Is workmen's comp? [LB868]

AL RODER: ...is the workers' comp piece, yes. [LB868]

SENATOR ASHFORD: Okay. All right. Any...Senator Lathrop. [LB868]

SENATOR LATHROP: It doesn't only have the workers' comp piece to it though. [LB868]

AL RODER: We understand. [LB868]

SENATOR LATHROP: It has essentially an immunity for negligence. These people, are they going to be sent, are they going to be driving somewhere with somebody? [LB868]

AL RODER: My experience with other states and the way that they would provide this type of a service is, no, they are not allowed to operate a municipality's motor vehicles. [LB868]

SENATOR LATHROP: So let's take Norfolk for example, and if we...let's say they round up on a Friday night ten kids, catch them all doing the MIP thing, and they've been drinking and now they're all going through and they get arraigned and they all plead guilty on the same day and the judge says, you know, there's some big weeds out there at the regional center and I'm going to send you kids out there to pull the weeds. Is somebody taking them out there or are they always getting there on their own? [LB868]

AL RODER: My understanding of the bill's language is there must be an agency that provides the supervision and the oversight to this. In general, there would be an application provided through that agency. It would not have come straight from the judge, for example, to provide those services. [LB868]

SENATOR LATHROP: However they're referred to this, there's an immunity in here. It's

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what I'm getting at. How are they getting from, you know, home or after school out to the place where this work is going to be done? Are they always going to be driving themselves? [LB868]

AL RODER: Well, in your example, sir, with the MIP, if this bill were to pass they would not be allowed to drive for a minimum of, what, 90 days or a year. I think the transportation piece has to be worked out. I believe that that's an issue that's resolved through the agency that's providing that oversight. And again,... [LB868]

SENATOR LATHROP: Okay. We're doing two things with an immunity. [LB868]

AL RODER: Correct. [LB868]

SENATOR LATHROP: And the work comp, I think that's a piece that we can just say...there's no employment relationship, right? [LB868]

AL RODER: That's correct. [LB868]

SENATOR LATHROP: So there isn't really a work comp issue even though you're obviously very concerned about it. The thing that does concern me is if you have somebody, for example, in using Senator Flood's example, some lady who's elderly, needs to have her...the weeds pulled and the house painted or something and they send somebody over there that has a history of stealing from older women. They're doing something negligent, right? [LB868]

AL RODER: Correct. [LB868]

SENATOR LATHROP: And they're going to be immunized from that. In other words, they can be as careless as they want to be in who they send to wherever they send them, and they can put people, these offenders, in a relationship with somebody that's going to have work done that can create some risk of harm. [LB868]

AL RODER: Well, again, my understanding of this portion of the bill is there is a requirement for supervision so that we are not sending an offender carte blanche into somebody else's neighborhood or into their yard. There is a requirement for some supervision and some oversight that goes with that. In most of your community service or sentence-to-serve programs, again, there is a requirement for some level of supervision that would prevent that. [LB868]

SENATOR LATHROP: So you think that would never happen? [LB868]

AL RODER: Never is a long time, sir. [LB868]

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SENATOR LATHROP: Well, whenever I see these things come along, I don't try to argue with everybody about it except that if there's...if it's contemplated that there's always going to be supervision then why do we need to...what are we worried about? [LB868]

AL RODER: I'm not following you, sir. [LB868]

SENATOR LATHROP: What do you...who is going to sue whom if you have...if you have a 20-year-old kid that's been picked up for shoplifting, now he's going to do some community service. He's going to do it under supervision. Who's going to sue whom? What's the concern? [LB868]

AL RODER: Well, again, the concern that I would carry is primarily in the workers' compensation area. [LB868]

SENATOR LATHROP: Okay. So it's not the civil liability but the work comp. [LB868]

AL RODER: The workers' comp specifically is what I am concerned about. That would preclude us in the city of Norfolk from using this type of a program today. [LB868]

SENATOR LATHROP: I think we can fix this, if that's your concern. None of these people make any money doing this kind of work? [LB868]

AL RODER: From my experience, no, sir. [LB868]

SENATOR LATHROP: Okay. Good. Thanks. [LB868]

SENATOR ASHFORD: Thank you, Al. Next testifier. [LB868]

CURTIS RAINGE: Good afternoon. My name is Curtis Rainge, that's spelled R-a-i-n-g-e. I'm the director of community service in Sarpy County. And, Senator Lathrop, I can jump right in to what you have to say about that. I have three other employees that work for me. When we do those projects, like what you were just asking about, we do have one of my people go on and supervise those because we do not want to put those offenders in harm's way to allow them to fail. So that's how we prevent that, by having the supervision from my office take care of that. The portion of it I do question about the bill, and I do support the bill and I think there needs to be one in place, however, the workmen's comp is one of those ones where we've had several of those organizations that will not take some of our community service offenders because of workmen's comp. We do purchase insurance on...I think it's about \$1,600 a year to cover accidents, going back and forth, traveling for them, going from their home to their work site and back home, also for any other accidents they may have while they're out doing their community service work, wherever it may be. Whether it's cleaning up an

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elderly yard or snow blowing or whatever the case may be, we do have that in place. My only thing we have now is whenever a person is set to do community service, the court order comes to my office, I distribute it, I have one lady that works strictly with juveniles, one works strictly with adults, and then I have one that works with the more severe offenders. We also have stipulations. We have 655 agencies we do placement at throughout the metropolitan areas and Pottawattamie County. They are the ones that we partner with. We also take that information from their probation order and we try to pair them up with the correct community service project that will help them, help the community, beautify the community and those type things. And using those 655 agencies, I think we only had about 4 or 5 that we've gotten rid of because of when the offender goes out to do their community service work, we ask them a series of questions. If they feel uncomfortable, feel offended by when they're there someone asked them what they're there for, they are not to disclose that information because we've already talked to the agency, what they're there for, so that we have all those things in place. It's been approved by our judges. Our District 2 probation chief, Jodi York, and her assistant also have been approved by this and I've been working in this position for ten years. I think we've had two or three young men that got injured while they were doing their community service work. Our (inaudible) insurance took care of those injuries and everything has been fine since, so we have those things in place. I do support the bill. The only thing I have about it, inside of the bill, is having to take the information back to the judges and have them to approve it, the probation chief to approve it, and a probation officer to approve it. That's why we're in place, to take that burden off of them because once we send a person to do their community service hours, we do follow up. We make sure when they do their hours, the paperwork come back to us, we justify, make sure that the signatures for the organization they went to are correct. We have all those signatures on file so we know if anyone is trying to beat the system or trying to cheat the system. And if we find those, we tell them that whatever hours they worked already does not count toward their community service work; they have to start over. We give that information to the probation officer and judges. I think in my ten years that we've been called to court about twice to question some community service work that's been done in the community. [LB868]

SENATOR ASHFORD: Very good. Any questions? That's a very thorough explanation. Thank you. [LB868]

CURTIS RAINGE: Thank you. [LB868]

SENATOR ASHFORD: Gary. [LB868]

GARY KRUMLAND: Senator Ashford, members of the committee, my name is Gary Krumland, K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities, appearing in support of LB868. As you've heard, some cities have been hesitant to engage people in fulfilling their community service obligations, mainly because of the

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workers' comp issue, some to a lesser extent the liability issue. LB868 addresses that and I think sets up a good, solid procedure for working with probation and setting up a program so that it would be easier for cities to get involved with this. And for that reason, we do support LB868. [LB868]

SENATOR ASHFORD: Okay. Any questions of Gary? Very good. [LB868]

GARY KRUMLAND: Okay. [LB868]

SENATOR ASHFORD: Any further proponents? [LB868]

REGINALD BURTON: Thank you, Senator Ashford, for letting us...and the committee for letting us present our feelings on this, both LB868 and Senator Harms's bills too. I am the director of...Reginald Burton, B-u-r-t-o-n, I'm the director of trauma and surgical critical care at BryanLGH West and have been since 2002. In my line of work, we come across a lot of minors that have been in drug and alcohol problems. We have developed a program through the years trying to assist these individuals, both in understanding how drug and alcohol use led them to where they are, as well as trying to give them goals and moving on through their...on to being a successful citizen. We have felt for a long time that the current MIP law and the way it is administered does a disservice in multiple ways. Most of the patients that I see that have had an MIP have not had just one MIP. In fact, the norm is that they've had four and five. And the...pointing out the ineffectiveness of what currently was...what is happening when you discuss it with them, the MIP doesn't mean anything to them, it's a joke. The programs that are set up to do it, if you fill out your coloring book and do it correctly they'll let you go, those types of things really does not seem to have the impact that it should. And in discussing how we could make that different before these even came up, the idea that what would be effective would be to take away the driver's license from these minors, both in that they would hate to have that happen because that limits their freedom but, in our viewpoint, it is also a risk behavior for trauma and getting injured as the minor that has been identified as having trouble with drug and alcohol. And the way that it all currently is set up, that not only does it not cause them to stop their behavior but it actually inhibits them further so that when we do actually give them goals and they can come up with a goal, those goals are inhibited because now they have misdemeanors and things on their record. That doesn't matter in a lot of different lines of work you're going to go into, but as Andrew Karpisek, who's also going to be testifying, if they do happen to be very smart people and brilliant scientists that are going to go on into a future line of work, it is inhibited because when they look on their...when they do the checks, they see the MIP and they can't even get into medical school. So we are testifying in favor of the MIP having more...hopefully a more significant deterrent to the youth as well as developing a whole system where we can actually cause change. [LB868]

SENATOR ASHFORD: Let me ask you this. Thank you for the work you do at Bryan. In

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your view, would the deterrent value of the suspended license, I take it, is critical to you or you believe it to be critical. It would be more critical, would it not be...would it be more critical than having this MIP on someone's record? The fact that they're going to have...no longer be able to drive would have more impact, would it not, than the eventual having it on their record? They may not think about that part. [LB868]

REGINALD BURTON: Correct, and that's part of my point, is that we need something that means...that will deter them now, that they see this as very important and it deters them not only they don't want to lose their driver's license but they can't then get to the little...to all the parties that they go to in which they get a lot of the alcohol. And we find that very common in the youth that we interview, as well as the fact that not only is it not deterring but they're getting a record that they don't realize is going to inhibit their future success. [LB868]

SENATOR ASHFORD: They don't necessarily realize it, so the suspension, which I agree with, is really the deterrent. [LB868]

REGINALD BURTON: I agree. [LB868]

SENATOR ASHFORD: Okay. Thank you very much. Next testifier, proponent. [LB868]

ANDREW KARPISEK: My name is Andrew Karpisek, K-a-r-p-i-s-e-k, and I'm here today to give support for LB868. I'd like to thank the committee for allowing me the opportunity to view my opinions and experiences in this matter and tell you why I believe that the current system fails the youth that it's intended to dissuade alcohol use. Like many people in this state, I was born and raised on a farm. I had parents with good values. They attend church. I went to parochial school. But I think in this matter I'm neither the norm nor the exception. The reason for that is in my graduating class of 42 people there were 7 people who had multiple alcohol convictions before graduation. That's nearly 17 percent, and that's not including those individuals who had one infraction or else those two-and-a-half years until you reached the age of 21. So it's kind of hard to draw the line between who's the norm and who's the exception here. As far as the current system, I think it fails because it fails to produce behavior that is conducive to avoidance and change. There's no immediate threat posed to the youth and youth tend to be risk...do not tend to be risk adverse in the first place. They'll undertake higher risk behaviors more frequently. But I think this bill would have an effect because it would impact their freedom. You can state the fact that where are the parents and schools, but a lot of times in many areas this has become an accepted practice and if it's not accepted it is not deemed punishable enough. And also with the schools, where I went to high school there was a...there was a structure where if you were caught you would be suspended for school activities. Well, there lies a failure right there. You restrict an individual from an activity that's engaged, you know, supposed to structurally engage them, they usually turn back to the behavior they were before. So I believe this, the punishment

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that is in line with LB258 and LB868, would be a deterrent. I'm not passing blame on anybody for my past behavior. I'm just trying to allow other people to realize the risks that come with this. I, myself, had three MIPs: first offense was community service and alcohol class; the second offense, a fine; third offense, jail. All of those were kind of...the last one was kind of a deterrent, but the first one, the pecuniary results was kind of like the courts throwing their hands in the air, pay your toll and do what you like. But really, the consequences didn't become evident until I decided to pursue a career in medicine and that's where everything has kind of hit a roadblock because they see an individual with multiple offenses on their record. They think it's a behavior that is going to continue. So since then, I've graduated. I have a double major. I am in graduate school right now. All this is a secondary plan. I've worked in research both clinically and in a laboratory setting. But I would like to encourage you to consider this and set in place a bill that would be beneficial to the youth of this state and help curb the problem that has come about. And like Dr. Burton said earlier, the law is ineffective in producing change, but it does give minors a record that can potentially inhibit their future. Thanks. [LB868]

SENATOR ASHFORD: Andrew, thank you very much. It's great testimony. It's wonderful to have younger people come here and tell us about the way it really is. Sometimes adults get it mixed up a little bit. [LB868]

ANDREW KARPISEK: Uh-huh. Yeah. [LB868]

SENATOR ASHFORD: But I agree with you and this committee is about trying to find ways of front-loading the deterrent so that, in effect, we can get the point across, we don't want you to be drinking out there, possessing alcohol, and make it serious enough so that you won't do it again because the lasting consequences are out there. And I think this is very good testimony and helpful testimony because I think it does reflect the general sense out there that "who cares." And hopefully you can get into medical school at some point here. [LB868]

ANDREW KARPISEK: Yeah, hope so too. [LB868]

SENATOR ASHFORD: Are you going to keep trying? [LB868]

ANDREW KARPISEK: Yeah. I'm going to apply again after I finish graduate school, so. [LB868]

SENATOR ASHFORD: All right. Well, good luck. [LB868]

ANDREW KARPISEK: All right. Thank you. [LB868]

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

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JOHN LINDSAY: Senator Ashford, members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y. Appear on behalf of the Nebraska Association of Trial Attorneys in opposition basically to Section 6 of the bill, no position on the underlying purposes of the bill. But that section, there's two pieces of it and, Senator Lathrop, if I could start with the second one because it's a little bit of a response to what you had brought up on workers' compensation. Section 6(2) eliminates the requirement to provide workers' compensation for anyone performing community service activities. That has to be read in conjunction with existing law which can be found on page 25, lines 3 through 6. Under current law...excuse me, lines 4 through 6. Under current law, any person doing community service is deemed to be an employee of the governing body and I think, Senator Lathrop, that gets to your question about...that you had earlier of one of the proponents about whether there is workers' compensation coverage in effect. While you're correct with the wages, that there wouldn't be wages paid, I don't think the disability benefit is the issue but rather the medical coverage. Question would be if somebody is up on a...towards the second story of a house, painting a house as part of the community service, falls from the ladder, gets injured, if that person does not have health insurance who is going to be covering the medical bills? Work comp would step in, in a normal situation where they're performing services, but otherwise the question of whether that is Medicaid, whether that is...it's an unanswered question of who would be providing that medical care. Second objection to the bill is Section 6(1), which is, as Senator Lathrop I guess pointed out in some questioning, an immunity from liability, and while the bill does have a general provision for supervision in Section 7(1), it requires that there be an assigned supervisor and in section (5) just below that it provides supervision of the offenders. But it doesn't really give an indication of how far that supervision would go. And while I think...and the proponents may be obviously would be correct that maybe most programs do not have a prohibition on the operation of motor vehicles, I don't see that in the bill, that there is any prohibition on the use of motor vehicles. So that section, Section 6(1), would apply to provide that there will be no liability if an offender driving a motor vehicle owned by a nonprofit company that may have insurance on it and runs a red light, hits Senator Coash's vehicle, there would be no liability because this section would absolve them of that liability, notwithstanding the existence of insurance. For those reasons, we oppose primarily Section 6 of the bill. [LB868]

SENATOR ASHFORD: Okay. Any questions of John? Seeing none, thank you. Any other testifiers? (See also Exhibits 29 and 30) Neutral? Speaker Flood waives. Thank you. That concludes the hearing. LB874. Who's introducing that bill? [LB868]

CHRISTINA CASE: Senator Giese.

SENATOR ASHFORD: Okay.

CHRISTINA CASE: He's coming.

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SENATOR ASHFORD: Okay. Senator Giese, you're up again. I wish we could have put...I don't know why we didn't put them together for you but that's my fault I think. I think Christina had them together and then I disrupted the flow. Welcome back.

SENATOR GIESE: (Exhibits 24 and 25) Thank you, Senator Ashford and members of the committee. My name is Robert Giese, G-i-e-s-e, and I represent the 17th Legislative District, which includes Dakota, Dixon, and Wayne Counties in northeast Nebraska. LB874 is being brought on behalf of the Wayne County Board of Commissioners and is designed to address an issue of growing concern for county governments in many rural Nebraska communities. Currently, the state and counties employ a cost-sharing arrangement for the operation of local probation offices, with the state paying the bulk of total costs, including employee salaries, travel expenses, and computer equipment. Meanwhile, the counties are responsible for the costs associated with operation of individual offices, which include rental costs for any outside office space, utilities, and office supplies. LB874 would not alter the current cost-sharing arrangement with the state and is designed to address how the costs of maintaining probation offices are split amongst counties in multicounty probation districts. The bill was not intended to address the State Probation Administration office and the committee should have received an amendment which clarifies that issue. Historically, most county probation offices were located within their respective county courthouses. As the duties of various county officials have grown, some counties have been forced to purchase or lease outside office space to house their probation offices. Under current statute, each county is responsible for their entire costs of providing and maintaining office space or other necessary facilities for probation officers, but the costs of maintaining the principal office are split amongst the counties based upon population, number of investigations, and probation caseload. Despite the fact that all counties in a probation district must contribute to the costs of maintaining the principal office, current statute does not provide each county with the equal opportunity to make decisions which impact those costs. Essentially, current law allows the county that houses the principal office to purchase or lease office space for that office and shift much of those costs to the remaining counties which have no say in decisions regarding the size of cost in that office. This exact situation occurred in one of the counties in my district when Wayne County saw its reimbursement costs for the 7th District principal probation office nearly triple last year. Under LB874, the purchase or rental costs of the principal office, as well as any satellite offices in a multicounty probation district, would be the responsibility of the county in which that office is located. All other expenses related to the conduct and maintenance of the principal office, which includes utility costs and office supplies, would continue to be shared equally amongst the counties in the probation district, based on population, number of investigations, and probation caseload. I believe that this arrangement represents a fairer distribution of the cost of maintaining probation offices and that under the bill counties which receive most of the economic benefits of housing the principal office would no longer be able to force smaller counties to pay a

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greater share of probation costs than they should be responsible for. The circumstances which led to the introduction of LB874 clearly demonstrate the need to examine the existing statutory structure for probation district offices. The current process where the county that houses the principal office makes decisions regarding district probation expenses, with little or no input from other counties, needs a tweaking at the minimum and likely requires a complete revision. Thank you for your time and I would be happy to take any questions. [LB874]

SENATOR ASHFORD: Thanks, Senator Giese. Is this something they've worked out, the counties have worked out together, or is this a dispute? (Laugh) [LB874]

SENATOR GIESE: I don't...I don't think that we have. [LB874]

SENATOR ASHFORD: Okay. So that... [LB874]

SENATOR GIESE: So you may hear...you may hear some other... [LB874]

SENATOR ASHFORD: So this may be a dispute. Yes, Senator Christensen. [LB874]

SENATOR CHRISTENSEN: Thank you, Chairman Ashford. Senator, explain to me again. Take one of these small counties up here, like Arthur, that may have not had even a court case in six, seven years. They're going to share in the cost of maintaining the primary office and, like I'm looking at Arthur so it would be Ogallala and North Platte in this case, they're going to share in all of them there or is it they're just going to share in the one in North Platte? Because some of these counties have 500 or less people in them. Most of them are going to be older adults that probably aren't getting in trouble so virtually aren't going to use the facility but they'll pay equally, correct? [LB874]

SENATOR GIESE: That's right. I'm not familiar, Senator Christensen, with how they do it in Arthur County but I am familiar with in Wayne County and, as I laid out in the bill, that they are being...they're responsible for just the office that is in their district and there is another cost-sharing equation to that which they are being charged and they have no control over that cost of the particular office that's in their county other than providing for that office. So there is an additional charge that comes from the district which they in turn pay. And somebody might explain that a little bit better than I just attempted to, but that is, in general, how that is worked out, or not worked out in this case. [LB874]

SENATOR CHRISTENSEN: You know, I don't think your bill addresses this or not but the problem I see is some of these counties virtually have no cases versus, and I pick on that same area again, Arthur is going to have next to nothing, you get around North Platte, where there's a larger population, there's going to be a lot of them. That's why I wondered about the... [LB874]

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SENATOR GIESE: Well, hopefully we will have testimony that will enlighten the committee further on this issue. [LB874]

SENATOR CHRISTENSEN: Okay. [LB874]

SENATOR LATHROP: Senator Council. [LB874]

SENATOR COUNCIL: Yes, thank you, Senator Lathrop. Just following up on Senator Christensen, Senator Giese, as I understand it, there is a district probation office in a multicounty district. So there is the main district probation office, and it's my understanding that the costs associated with that office is somehow divided between the counties who comprise that district. [LB874]

SENATOR GIESE: Right. [LB874]

SENATOR COUNCIL: And I thought I heard in your testimony you say that the proportional share of that cost is based upon the cases originating out of each county. So in the hypothetical that Senator Christensen provided, if Arthur County had no probation cases then...and the district office is in North Platte's county, then wouldn't North Platte's county bear all of the costs of that if they didn't have any, if that's what I understood your testimony to be, how they do the cost share? Or is it just divided equally? [LB874]

SENATOR GIESE: Oh, I think it's just divided equally, Senator Council, and as I said, I hope somebody will clarify that, that is going to testify after me to the specifics of that. But in general, yes, that's how it works. [LB874]

SENATOR COUNCIL: Okay. So as I understand it, the basic issue, I mean the core issue is the cost of the district probation office. Because I would imagine that if, in the scenario that Senator Christensen painted, if Arthur County doesn't have, you know, many cases, if any, there wouldn't be a satellite office in Arthur County, would there? [LB874]

SENATOR GIESE: No, I don't believe so. [LB874]

SENATOR COUNCIL: Okay. So it wouldn't be a concern about paying the cost of the satellite office because there probably wouldn't or shouldn't be a satellite office in Arthur County. But it's the cost of a district office that's located in North Platte's county. [LB874]

SENATOR GIESE: Yes. [LB874]

SENATOR COUNCIL: Okay. Thanks. [LB874]

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SENATOR LATHROP: Any other questions? Seeing none, thank you. You want to stick around for a close? [LB874]

SENATOR GIESE: I will. [LB874]

SENATOR LATHROP: Okay. Thanks, Bob. Proponents of LB874? [LB874]

KELVIN WURDEMAN: I'm Kelvin Wurdeman, K-e-l-v-i-n W-u-r-d-e-m-a-n, and I am the commissioner from Wayne County and I was the one that went to Senator Giese about this bill. Where it's coming from--and, Senator Christensen, I can address yours right away--I don't know if Trevor Fitzgerald gave you it but each county is given...it's based on caseload population. So like you said, Arthur County, if they had no caseloads, yes, they still would pay a percentage of it because it's based on population. And then the very last item is other charges and that refers to any person that is on probation in another county. It is divided up equally between all the counties. So Arthur County would pay a certain percentage to North Platte for their district office, which in the statute is called a host office. And why I'm here is because Wayne County had the host office at one time. When he retired, it was moved to Norfolk. Wayne County is a satellite office and Wayne County taxpayers approved, the board of commissioners, to spend \$400,000 to renovate what was our jail, which turned into our juvenile center, which now is our probation office/district judge. So if you split the cost, Wayne County taxpayers paid \$200,000 to renovate the probation side of the office. So now Wayne County taxpayers are not only paying that \$200,000 bond but where the host office is now, they built a new building which they are renting. In the statute, if you do not own the building and you are renting it, it is divided up equally between...or proportionately between all the counties involved in that district. So that's why Wayne County's expense went from \$5,000 to a little over \$15,000. And what I am arguing about it on is it's basically taxation without representation. Madison County decided to build a building and my taxpayers didn't have no say-so. There's nobody that sits on that board that they could go to. They could go to me but I have no say-so, and that's where I'm arguing against the representation of that. And in today's society, everybody is talking about economic development. The host county already is getting a big economic boom because now the building is built in their county where they are collecting taxes on that building and, as District 7, it's a little over a \$1 million payroll, which is most the majority going to that district. So I feel they're already getting a big economic boom so why should the rest of the counties have to pay for theirs? And then second is I don't know if Trevor gave you a copy of the rental agreement. It does have the option in there that they can buy the building any time at five-year intervals. So that raises my question. If they decide to buy the building, who owns that building? Does the county own the building that it resides in or does the district own the building when it was my tax dollars used to pay for that? And if you have any other questions, thank you. [LB874]

SENATOR LATHROP: It's an interesting perspective and an interesting discussion. I

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don't see any questions so thanks for coming down. [LB874]

KELVIN WURDEMAN: Thank you. [LB874]

SENATOR LATHROP: Any other proponents? Anyone here in opposition to LB874? Anyone here in a neutral capacity? [LB874]

LARRY DIX: Senator Lathrop and members of the committee, for the record, my name is Larry Dix, L-a-r-r-y D-i-x. I'm executive director of the Nebraska Association of County Officials here today in a neutral capacity. This is a very, very interesting situation. I would tell you this isn't only a Wayne and Madison situation. We've had a similar situation happen between Holt and Custer County. And a little bit more to the story in Wayne and Madison, Madison didn't fight to get the probation office moved to Madison County. That was a decision made by a state agency. And so now we have a situation where the counties and the counties in that group really didn't have a lot to do with making the decision as to where that probation office would be, but the state agency decided we're going to move it from Wayne to Norfolk. Then it becomes incumbent upon the Madison County board to find them space because in the law the county has to provide space for the state probation office. And so Madison County didn't have any additional space in their existing courthouse so they had no option but to go out and to buy, rent, lease, find this facility. When that happened, of course, that created the situation that we're in now. The distribution of money is coming from the small counties into Madison County, whereas if the counties probably would have been able to get together and to work it out they would have probably said, there's no reason for us to move this probation office; we would rather have the person drive from Madison to Wayne and leave the office in Wayne because we've already paid for that office one time and we're sharing the cost. When that office was in Wayne, there wasn't a battle over who was paying the costs. The counties got together, they agreed how to split out those costs. It happened once the office was moved. The other situation, Holt and Custer, sort of a similar situation, the probation office I think is in Holt County. The county board there authorized some expenditures of which the Custer County board disagreed and they said, no, you know, we don't want to pay that, that additional expense. So when Senator Giese opened and said this whole thing needs to be looked at, I would certainly agree. For members of the committee, I think maybe Senator Lathrop might have been the only one here, a number of years ago Senator Synowiecki and I worked through it. We actually got a little bit through the process in how to resolve this as far as space in the county offices. It got advanced out of committee. We ran out of time on the floor. The bill never really went any farther. So it is something...Senator Giese said it is something that needs to be looked at. We would agree. It's sort of a convoluted system the way it's set up right now where we've got a state agency making decisions on space and moving requirements and counties then having to really pick up the bill. So with that, I'll be happy to answer...try to answer any questions that you may have. [LB874]

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SENATOR ASHFORD: Senator Coash. [LB874]

SENATOR COASH: Thank you, Senator Ashford. What state agency are you talking about, Larry? [LB874]

LARRY DIX: State Probation. [LB874]

SENATOR COASH: State Probation, okay. [LB874]

LARRY DIX: State Probation, yeah. [LB874]

SENATOR COASH: So they made the call to... [LB874]

LARRY DIX: Yeah, I believe that's where that decision is made. [LB874]

SENATOR COASH: Okay. [LB874]

_____: Larry, it's the Supreme Court. [LB874]

LARRY DIX: Well, Probation is under the Supreme Court. [LB874]

SENATOR COASH: Okay. All right. [LB874]

LARRY DIX: Yeah. [LB874]

SENATOR COASH: Thanks. [LB874]

SENATOR COUNCIL: Can I please? [LB874]

SENATOR ASHFORD: Senator Council. [LB874]

SENATOR COUNCIL: Larry, how did the bill that advanced out but didn't get to be debated, how did it compare to LB874? [LB874]

LARRY DIX: It was...it was a whole different concept. It was...in fact, I have that here. It...back in 2008, it was LB1130, and I'd have to go back. It actually was the bill that talked about the merger of probation and parole services. [LB874]

SENATOR ASHFORD: That was a big bill. [LB874]

LARRY DIX: Big monster bill, but it opened up that section of what we're talking about here today where it talks about what the county's responsibility is to pay for and things

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like that. Senator Synowiecki and I, at that point, at that point in time there was a problem going on in Otoe County in which the courthouse had space allocated for the probation office, and the probation office said, we don't have enough space, we require you to give us more office space. And they were remodeling the Otoe County Courthouse at the time and that one is on the Historic Register and so there were some things that they could and couldn't do. So there got to be a big battle back and forth. It ended up Otoe County actually had to move probation out but actually had to go buy another building because State Probation said, you're not giving us enough space. So like I said, it's a convoluted...the battles have changed on, you know, as they rotate around the state from time to time, but that's what was going on then. That's when Senator Synowiecki and I started to look at the problem. [LB874]

SENATOR ASHFORD: Thanks, Larry. Yeah, any...thank you. [LB874]

LARRY DIX: Yeah. [LB874]

SENATOR ASHFORD: Any other testifiers? No one else wants to talk about this? All right. (Laughter) Senator Giese. I thought we'd get the same result. Thanks, Senator Giese. Last bill, LB795, Senator Council. [LB874]

SENATOR COUNCIL: (Exhibit 26) Chairman Ashford, members of the committee, I'm Brenda Council, C-o-u-n-c-i-l, the senator representing the 11th Legislative District, and I am here today to introduce LB795, and I will try to address the issue in a nutshell. I was apprised by members of the Papio Natural Resources District that there were issues regarding their ability to actually protect very expensive recreational facility improvements throughout their district. Many of these recreational facilities are in remote areas. And while the current law provides that law enforcement personnel can enforce the sections of the statute with regard to any damage or destruction, that it was becoming difficult because of the remote locations and depending upon the sheriff's department to patrol the areas on a regular basis. The Papio Natural Resources District approached me about the issue of whether or not the current law permitted the natural resources district to enter into an interlocal agreement and pay the local law enforcement agencies to more regularly and frequently patrol these areas. Well, if you look at the existing law, why, it says that any law enforcement officer, including members of the State Patrol, local police, can enforce. The law also says a district shall not employ law enforcement personnel and shall be prohibited from expending any funds for such purpose. While it appeared that the intent of that was that...to prohibit the natural resources districts from basically developing their own internal police departments and coming up with the equivalent of game wardens, it has been read broadly enough to prohibit them from entering into these interlocal agreements to have other law enforcement officials provide that. Our first attempt to clarify this was to request an opinion from the Attorney General's Office as to whether or not the language of the current statute actually prohibited them from entering into an interlocal agreement

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and using natural resources district funds to pay for law enforcement under an interlocal agreement. The Attorney General's Office advised me that it would be a good month before I could receive a definitive Attorney General Opinion but they did give me what is called a response, which is what they expect the legal opinion to state, and that is that just the literal reading of the current statute would prohibit the Papio Natural Resources District from engaging a local law enforcement agency to provide the law enforcement protection. So upon receiving that, I introduced LB795 for the purpose of allowing the Papio Natural Resources District to be able to enter into interlocal agreements with, like, the Sarpy County Sheriff or the Douglas County Sheriff. Well, after introduction, the other natural resources districts advised that they encountered the same problem and as the law currently, as we introduced it, it was for basically Papio Natural Resources District. I do have an amendment, based upon the desires of the other natural resources districts to also be allowed to enter into interlocal agreements for law enforcement protection. The amendment just provides for the striking of language limiting it to areas within a city of the metropolitan class so, you know, basically apply to any natural resources district and give them the ability to enter into interlocal agreements or other agreements for law enforcement. It's not the intent to allow them to develop their own police forces and that is what the language...it was originally designed to prevent, because we have game wardens with the Game and Parks Commission and we didn't want to duplicate that. This allows them to expend natural resources district funds to employ or otherwise secure the services of certified law enforcement personnel. So with that, I will close and answer any questions. [LB795]

SENATOR ASHFORD: Okay. Senator Christensen, then Senator Lautenbaugh. [LB795]

SENATOR CHRISTENSEN: Thank you, Chairman Ashford. Thank you, Senator Council. I guess I'll make a statement. You can answer to it I guess if you want. We have a lot of interlocal agreements back in my area among cities, with sheriff patrol, and in the beginning they worked extremely well. Now what we've seen is it's costing each city more and more and they won't enforce the city rules, and we're having less and less protection, even though they're paying as much and more. And so now they've went to breaking interlocal agreements or stopping them and back to hiring their own. And so I guess my question would be, is this going to be a short-term cost savings to pay them to do it over making the law so they could actually have their own protection to go protect their picnic benches or projects, things this way? I guess I've seen a failure in it in my area because sheriffs aren't enforcing the city rules and there's a separation here, well, we can't...I can't even tell you the full extent of the arguments and problems. But we're actually reverting back the other way where cities are hiring their own again, even though it might be a town of 300 and it's very expensive. We're having...the interlocal agreements aren't working. Is there a way we can set it up to make sure it's going to work for them or are we better to give them the authority to actually do it themselves? [LB795]

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SENATOR COUNCIL: Well, I think that the way the bill is drafted, Senator Christensen, it allows them to enter into interlocal agreements or otherwise secure the services of certified law enforcement personnel or security services to patrol. While the intent was to enable the districts to enter into interlocal agreements because there is existing law enforcement agencies out there who otherwise enforce it if they're available, I mean if they're in the area and patrolling, but the intent of this is if that should fail it does give them, the district, the authority to otherwise secure certified law enforcement personnel. [LB795]

SENATOR CHRISTENSEN: Thank you. [LB795]

SENATOR ASHFORD: Senator Lautenbaugh. [LB795]

SENATOR LAUTENBAUGH: Oh, I just...I just wanted to thank you for bringing this, Senator Council, because when I had the pleasure of being called out in the lobby this morning by Mr. Sedlacek, saying he wanted to talk about the NRD bill, the enthusiasm on my face I'm sure was visible, thinking of years gone by. (Laughter) And I'm just reveling in the moment. [LB795]

SENATOR COUNCIL: It's not that. (Laugh) [LB795]

SENATOR LAUTENBAUGH: Okay. Thank you. Thank you. [LB795]

SENATOR COUNCIL: Thank you. [LB795]

SENATOR ASHFORD: Yes, good point. All right. Proponents? (Laugh) Well said. No dams, nothing. (Laughter) There's just guns. [LB795]

SENATOR COUNCIL: (Laugh) No, no, no, they don't leave that to me. [LB795]

JOHN WINKLER: I know this room is a little empty compared to what I'm used to testifying, of course. (Laugh) [LB795]

SENATOR ASHFORD: Yeah. Are you finished yet? (Laughter) No. [LB795]

JOHN WINKLER: (Exhibit 27) Chairman Ashford, members of the committee, thank you for the opportunity to testify today. My name is John Winkler, J-o-h-n W-i-n-k-l-e-r, and I am the general manager of the Papio-Missouri River Natural Resources District. I'm also here as a representative of the Nebraska Association of Resources Districts to present their support for the bill. In addition to our conservation and flood control duties, we also have many recreational and significant recreational opportunities for our citizens. The Papio NRD manages seven recreation areas which encompass 1,300 acres. Over the last just past year and a half to two years we've spent close to over \$1

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million rehabbing our recreational facilities. The reason we're doing this is, obviously, we want to make them safer and more family-friendly for our constituents that we serve. And we hope LB795 helps protect this public investment because it has been significant, and with the operation and maintenance of those facilities it's significant every year. Over the years, the Papio NRD has experienced a number of incidents at its parks and recreation areas: destruction of gates and fences; graffiti; trees cut down, vandalized and burned; illegal dumping of trash, tires, and appliances; car break-ins; stolen vehicles; dumping of biohazard materials; picnic tables stolen and burned; solar panels, well pumps, bathrooms, and parking bollards destroyed; signs, rest rooms, trees, benches, playground equipment shot at with various firearms and damaged. The above items cost the district anywhere between \$10,000 and \$20,000 a year to replace or repair. As Senator Council discussed, the current law does allow the district to promulgate rules and regulations which govern our recreation areas and also the protection of those. However, current law does not allow us to go outside of just the normal police protection that we discuss with our local law enforcement officers every year. We've tried to bring them together as a group with the NRD and we present them with our rules and regulations that our board adopts periodically, and so basically...but we're set in a pecking order. And since most of our facilities are pretty remote then, you know, we obviously don't get the patrol that we need at this time. We hope that LB795 addresses these particular issues and helps us protect this public investment and also provide a safe and family-friendly environment in our recreation areas. We, like I said, we spend a significant amount of time and effort and resources making these parks and recreation areas nice for the public and what we're having, though, is a problem of protecting that investment. And we...hopefully this bill will allow us to do that. And I would accept any questions that the committee might have. [LB795]

SENATOR ASHFORD: Any questions of John? Senator Coash, then Senator Lathrop. [LB795]

SENATOR COASH: Thank you, Senator Ashford. John, I'll just use Papio NRD as an example. If this law were enacted, how much of your budget would you use on law enforcement, a number, would you anticipate? [LB795]

JOHN WINKLER: Right. I'm a village board member in my town and we contract with an interlocal agreement with our Cass County Sheriff. We've had very good enforcement. We haven't run into those issues but we've heard about the other experiences. We contract for about 30 hours a month for patrol in our community and it's about \$1,500. Our parks and rec are only open for six months out of the year so even if we were in that ballpark, you know, we're looking at probably less than \$10,000 a year to do that, which, if you look at what we're spending per year in replacing and fixing these things,... [LB795]

SENATOR COASH: That's what I was trying to get at,... [LB795]

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JOHN WINKLER: Yeah. [LB795]

SENATOR COASH: ...would you spend more or less on... [LB795]

JOHN WINKLER: No, we would spend significant... [LB795]

SENATOR COASH: ...law enforcement than you're already spending on... [LB795]

JOHN WINKLER: Right. [LB795]

SENATOR COASH: ...repairing all these things? [LB795]

JOHN WINKLER: The idea, too, here is that we would contract for specific hours where we're having problems. We know the weekends and those area of times when the parks are the highest use that we would need more patrol. Hopefully, the word gets out. Typically what it does is that, hey, these aren't the kind of parks and recs to hang out anymore, you're going to get in trouble if you do illegal activity, and so we take care of some of that. And so I'm anticipating we have a higher expenditure at first but then, as time goes on and that word that these are not the kind of activities you do at our rec facilities, then that will decrease. And that has been the case that I've experienced personally with...as working as a village board member, so. [LB795]

SENATOR COASH: Gotcha. Thank you. [LB795]

SENATOR ASHFORD: Nothing. I was just distracted for a moment. Any other...Senator Rogert, Senator Rogert is back by the way. [LB795]

SENATOR LATHROP: Same question I was going to ask. [LB795]

SENATOR ASHFORD: Senator Lathrop. [LB795]

SENATOR ROGERT: I came back for you. [LB795]

SENATOR ASHFORD: (Laugh) [LB795]

SENATOR ROGERT: All right. I don't have any questions. [LB795]

SENATOR ASHFORD: Okay. Thanks, John. [LB795]

JOHN WINKLER: Okay. Thank you. [LB795]

SENATOR ASHFORD: Next proponent. [LB795]

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MICHAEL ONNEN: (Exhibit 28) Senator Ashford and members of the Judiciary Committee, my name is Mike Onnen, manager of the Little Blue Natural Resources District in Davenport and I'm here...also I've provided some testimony, written testimony from Bob Hilske, who is the manager of the Nemaha Natural Resources District at Tecumseh. We'd like to offer our support for this bill. Obviously, the bill is directed at the Papio NRD, but I support also the amendment that Senator Council has introduced. We believe that this is a very important opportunity for also the rural districts that have recreational facilities and maintain those. In the Little Blue NRD, we have six public use facilities. Three of those are more rustic in nature. They're public hunting and fishing areas without very many facilities, but we do have three more developed areas that are highly developed for our area: picnic tables, shelters, camping facilities, camper pads, boat ramps, boat docks and the like, and some handicapped hiking trails, for that matter. Matter of fact, one of the main areas we developed about five years ago is located about seven miles south of Milligan, Nebraska, so if you're ever there for...they have a good steak at Evening with Friends, drop down to our recreation area south of town. I'll give a little commercial for it. It's one that the state folks who have cost-shared on that program call a gem in the rough because it is one of those small areas that really provides a lot of benefits for the local people. But we have experienced some of the same type of vandalism problems that John mentioned. They're prevalent in the rural areas, especially in these areas where there are not a lot of people around Friday nights after the ball games, the weekends. Those are the times when we don't have staff people working. Those are the times we most often have difficulty. We have talked to the sheriff's patrol in the counties and they make a point to try to get through those occasionally, but there's no real routine that we can count on. I was just thinking about the different districts, the rural districts that also have recreation areas. They include the Lower Elkhorn NRD, Lower Platte North, Lower Platte South, the Nemaha, Lower Big Blue, Upper Big Blue, Lower Loup, as well as the Little Blue in outstate Nebraska, and I think it would be very advantageous for us to have this enabling legislation that would give us the opportunity perhaps to work out some kind of an agreement with our local law enforcement. And the one example that I'll give you, we did have a couple situations where one of our local maintenance people was at the site when there was some activity going on and he tried to stop the activity. Shortly after that, he talked to me and he said, you know, I was probably foolish for trying to do this on my own because I put my own self at risk, not even knowing what I'm getting into, and I think that's one of the things we, without that authority, face, is we put our own people at risk when they go into situations that they may not exactly know the outcome. So we would encourage you to approve this legislation and also the amendment that Senator Council has offered. And I'd be glad to take any questions. [LB795]

SENATOR ASHFORD: Any questions of Robert (sic)? Seeing none, you're off the hook. [LB795]

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MICHAEL ONNEN: Thank you very much. [LB795]

SENATOR ASHFORD: Next proponent. Opponent. Neutral. Okay. I guess that end...well, I'm sorry. [LB795]

SENATOR COUNCIL: I waive closing. [LB795]

SENATOR ASHFORD: Senator Council waives closing. That ends the hearing and all the hearings for the day. Thank you. [LB795]