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Agriculture Committee
January 25, 2011

[LB108 LB114 LB181]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 25, 2011, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB181, LB114, and LB108. Senators present: Tom Carlson, Chairperson; Norm Wallman, Vice Chairperson; Dave Bloomfield; Lydia Brasch; Burke Harr; Russ Karpisek; Tyson Larson; and Steve Lathrop. Senators absent: None.

SENATOR CARLSON: Welcome to the January 25 Agriculture Committee hearing. I'm Tom Carlson, Chair of the Ag Committee. Our research analyst to my right is Rick Leonard, and our committee clerk to my left is Barb DeRiese, and our page is Kate DeLashmutt, and she's from Burwell, so she is here to serve you in however she can help. Now senators to my right: Senator Norm Wallman from Cortland, who is Vice Chair of the Ag Committee; Senator Lydia Brasch from Bancroft; Senator Burke Harr from Omaha; and Senator Dave Bloomfield from Hoskins. To my left is Senator Tyson Larson from O'Neill. And Senator Steve Lathrop from Omaha and Senator Russ Karpisek from Wilber will be joining us shortly. If you have cell phones, please turn them off or put them on vibrate. Now those of you that are intending to testify, come to the chair that Senator Hansen is now in and take that spot to be heard. It's important if you're going to testify, fill out one of the green sheets there to the right of Senator Hansen before you testify and give that to Kate, our page, and she'll bring that up so that we have a good record of who is testifying. And it's a good idea, you can go ahead and get up and get it beforehand if you don't already have one and take care of filling out that sheet. And if you're testifying on more than one bill, you do need to fill out a sheet each time you testify. That keeps everything straight for us. If you have copies that you're going to hand out, there need to be 12 copies. If right now you intend to hand out copies of something and don't have 12 copies, raise your hand and Kate will come around and take material and make extra copies. So you might check that and see if you can comply with that. Now it's important as you start your testimony, you tell who you are and then spell your name. And this is for the transcribers so that they can recognize for sure who it is that is testifying. And so if you start out and you're a little bit nervous and you give your name and begin testifying, I'll stop you and ask you to spell it so that we keep everything straight. Try and keep your testimony concise and try not to repeat what somebody else has said. Today we are going to use the light system. So as you begin your testimony there will be a green light. You've got five minutes. (Laughter) And at the end of four minutes the...oh, thank you, Senator Hansen...the yellow light will come on to give you a warning you've got one minute to go. When the red comes up, don't panic but just please wind up what your testimony is and we'll try and be sensitive. If we think you've got something else that really needs to be said, somebody on the committee will probably give you time to express that as we open it for questions. If you choose not to testify but would like your name entered in the official record, there's a white form on the table there as you came in that you can sign in, and that will tell whether you're for a bill or against a bill or in a neutral position so you will be a part of

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the record, but you'll not be listed on the committee statement unless you actually come to the microphone and testify, which may be just stating your name and position. That enters you in the record on the committee statement. Are there any questions before we begin? So we'll open our hearing on LB181, and Senator Hansen, you're recognized to open. [LB181]

SENATOR HANSEN: (Exhibit 1) Thank you, Senator Carlson. My name is Tom Hansen, T-o-m H-a-n-s-e-n. I represent District 42, which is Lincoln County. It's great to see new faces on the Ag Committee and hope you have a great time in this committee. This is a committee I've never had the opportunity to serve on in serving the state's leading industry, agriculture. My family has been involved in the brand inspection process since 1919 when my grandfather was working on county brand recordings and before the state Brand Committee was formed in 1941 by the Nebraska Legislature. LB181, and there has been an amendment passed out, and the amendment is probably what you need to look at other than some of the minor changes in the legislation. But the amendment is LB81 to...AM81 to LB181. But LB181, this legislation was written for a group of producers who represent the Nebraska Brand Committee. They represent thousands of producers in western Nebraska who are cow-calf ranchers, growers of yearling cattle in the feedlot sector of our industry that live in the two-thirds western part of our state. In LB181 we're asking for legislative action that would allow a surcharge in addition to the current brand inspection fees. This surcharge would recoup part of the fuel reimbursement for inspectors who drive their personal vehicles to inspect cattle. The Brand Committee is responsible for the financial well-being of the Nebraska Brand Inspection Act of 1941. They inspected approximately 3,843,357 head of cattle in 2010. In 1997, they had 133 inspectors and staff. Today they have 103 total employees. If this legislation is passed, the Nebraska Brand Committee will be holding public hearings in the brand inspection area before they write rules and regulations on the proposed surcharge. Are there any questions so far? [LB181]

SENATOR CARLSON: Okay. Thank you, Senator Hansen. Any questions of the committee for Senator Hansen? Yes, Senator Harr. [LB181]

SENATOR HARR: Thank you, Mr. Chairman. I just have one quick question. This surcharge of \$20, who decides--it says up to \$20. Who decides (inaudible)...I mean I guess my question is, how do you determine the amount of \$20, whether to charge it or not to charge it? [LB181]

SENATOR HANSEN: It's up to \$20. [LB181]

SENATOR HARR: Yeah. Up to \$20, yeah. [LB181]

SENATOR HANSEN: That's what it should say on there. [LB181]

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SENATOR HARR: It does, okay. [LB181]

SENATOR HANSEN: And it says, may charge. So that's the reason for the public hearings out in the brand inspection area to get the feedback from the people and their feelings about it. You know, if a brand inspector has to drive so many miles. And I do have some figures here for break even. If a brand inspector is called to and asked to brand-inspect cattle at 40 miles away from their residence, it's an 80-mile round trip. And so with the 51 cents reimbursement, that all goes to the brand inspector because he's driving his own car. They have to inspect 54 head just to break even, and then at 20 miles they have to inspect 27 head. And even a 10-mile one-way trip, round trip, would be 20 miles, they have to inspect 14 head just to break even. And as you know, the fuel prices are going up and something has to give, I mean. [LB181]

SENATOR HARR: Okay. So it's the brand inspector who determines how much to charge and that's based on mileage, which can be then up to \$20 on top of whatever else they charge, is that correct? [LB181]

SENATOR HANSEN: That's correct. And if you've been to Washington, D.C., and gotten into a taxi cab and you see the concentric circles, so wherever you start, if you read the map correctly, then the taxi driver only charges you for that amount. I think... [LB181]

SENATOR HARR: They got rid of that luckily, but yeah. (Laughter) [LB181]

SENATOR HANSEN: But that's kind of the idea that I have. Not necessarily concentric circles or a whole bunch of them, but if they have to drive a long ways and inspect them, they need to break even at least. And a break-even situation would be much better than we're in now. [LB181]

SENATOR HARR: Thank you. [LB181]

SENATOR CARLSON: Thank you. Any other questions of Senator Hansen? Seeing none, do you intend to stay here and close? [LB181]

SENATOR HANSEN: Yes. [LB181]

SENATOR CARLSON: Okay. All right. [LB181]

SENATOR HANSEN: Thank you. [LB181]

SENATOR CARLSON: Thank you for your testimony. Now we will ask for those of you that want to testify as a proponent of the bill, please come forward and begin your testimony and don't be bashful. And before you start, Senator Karpisek has joined our

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conference here, Senator Karpisek from Wilber, so we're glad to have him on the committee. Welcome. [LB181]

GARY DARNALL: (Exhibit 2) Thank you. Thank you for this opportunity. My name is Gary Darnall, G-a-r-y, Darnall, D-a-r-n-a-l-l, and it's a real pleasure, Chairman Carlson and members of the Agriculture Committee. I'm chairman of the Nebraska Brand Committee and I'm here today on behalf of the Nebraska Brand Committee to testify as a proponent of LB181 with Senator Hansen's amendments. The Nebraska Brand Committee is made up of five voting members appointed by the Governor of Nebraska. All five members are livestock producers and, I'm proud to say, very conservative and fiscally responsible, as were our predecessors. The two handouts that have been passed out is testimony that the committee has been fiscally responsible and has reduced inspection fees when our cash reserves would allow it. That shows on Profit/Loss by Years graph. As the inspection fee was reduced by 5 cents, this returned \$1.5 million back to the industry and us producers over five years. The monies have been returned back to the producer four times since 1991 by the reduction of inspection fees. The Brand Committee has large variations of monthly and yearly incomes as you'll see on the Profit and Loss Comparison sheet. The Brand Committee has worked hard to become more efficient since 1997. We have reduced our employees by 16 percent while inspecting approximately the same number of cattle. The Nebraska Brand Committee is a noncode, self-supporting agency given the duty and responsibility to protect the livestock industry from theft of livestock through brand recording, brand inspections, and criminal investigations. The Nebraska Brand Committee was formed from the Nebraska Livestock Brand Act by the Nebraska Legislature in 1941. The Nebraska Brand Act is paid for by producers of the livestock industry without a cent from state funds. On the average, the Nebraska Brand Committee brand inspectors travel almost a million miles a year providing such a service to the industry. At the current rate of 51 cents per mile, mileage reimbursement to our inspectors over the next year will be about \$510,000. The mileage fees for the Nebraska Brand Committee are set by the state of Nebraska mileage fee. The Nebraska mileage fee was just raised from 50 cents to 51 cents, which equals an estimated \$10,000 on an annual basis increase. A 5-cent mileage increase would be an additional expense of about \$50,000. Gasoline is currently \$3.17 in the state of Nebraska, on an average, which is 46 cents higher than it was a year ago. And there are discussions of possibly that going to \$4. The Brand Committee, with input from the industry, is proposing this surcharge, and the reasoning for the bill is to help finance a possible increase in mileage fees. With the input from our industry partners over the last two years, we have concluded this proposed surcharge. Other service entities in our industry, such as veterinary services, repair services, freight companies, and so forth, use surcharge to help defray the increasing mileage costs. The committee is looking at a reduced revenue from cattle inspections as a result of less cattle numbers in the next two years. It looks like our cattle numbers are going down. Our revenues are the number of cattle inspections times the inspection fee. We're anticipating expenses will increase with the mileage fee,

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insurance premiums, wages, etcetera. The Brand Committee feels that the surcharge in LB181, with Senator Hansen's amendments, would help meet these financial needs required to provide the services of the Nebraska brand law. On behalf of the Nebraska Brand Committee, I would encourage the committee to advance LB181 with Senator Hansen's amendments. Thank you. [LB181]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of Mr. Darnall? Senator Wallman. [LB181]

SENATOR WALLMAN: Thank you, Senator Carlson. Yeah, thanks for coming. And we do like people that pay for their own way here. (Laughter) And you would rather have this surcharge than up the fee per animal, would it be better for you? [LB181]

GARY DARNALL: In the last two years, that has been the choice from the industry and the committee that we felt that the economic situation we have in the state, that the increased fee would be looked at possibly more like an increase in tax. And all we're trying to do is cover the expenses of providing the services. [LB181]

SENATOR WALLMAN: Thank you. [LB181]

SENATOR CARLSON: Okay. Senator...no? [LB181]

SENATOR HARR: That was my questions. Thank you. [LB181]

SENATOR CARLSON: All right, any other questions? For the benefit of new members on the committee, and I think you were pretty clear with that, but repeat again, define what it means, totally self-funded. [LB181]

GARY DARNALL: Self-funding means that the producers that raise animals and sell animals, it's inspected, and those fees are what pays for this service. So we as an industry, we as cattle producers, are paying for that fee of being able to make sure the rightful owner is getting the right funding from those animals. [LB181]

SENATOR CARLSON: Okay. And you don't ask for General Funds and you don't intend to ask for General Funds, correct? [LB181]

GARY DARNALL: That is correct. [LB181]

SENATOR CARLSON: Okay. Good. Thank you. Any other questions? Okay, thank you for your testimony. [LB181]

GARY DARNALL: Thank you. [LB181]

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SENATOR CARLSON: Next testifier. Welcome. [LB181]

ART BROWNLEE: Good afternoon, Senator Carlson and members of the Agriculture Committee. My name is Art Brownlee, A-r-t B-r-o-w-n-l-e-e. I'm currently the chairman of the Nebraska Cattlemen Brand and Property Rights Committee and I'm here today representing the Nebraska Cattlemen and beef producers in support of LB181. We would like to thank Senator Hansen for introducing this bill. And I'm a cattle rancher in the western end of the state. I was born in Omaha, worked for U.S. West out of Omaha for 16 years. My wife's family has been ranching in Cherry County for 135 years and I joined them about 16 years ago. Valentine is my county seat. It's 127 miles by road from my ranch. It's just a little bit different environment than Omaha, so that's why I laid that out there. One of the agenda items that has been discussed numerous times in the Nebraska Cattlemen Brand and Property Rights is how to be proactive in finding a more stable long-term financial platform for the Nebraska Brand Committee's operations. As you are aware, the Nebraska Brand Committee, as Mr. Darnall just informed us and Senator Carlson asked, is a cash-funded agency. And the greatest significance of that is that revenues are down, expenses are up, the Nebraska Brand Committee does not have the option of dipping into the larger state coffer, as they are totally self-funded. After numerous meetings across the state in the last couple of years, which included a cross section of interested parties invited by the Nebraska Cattlemen, the Nebraska Cattlemen members forwarded recommendations to the Nebraska Brand Committee on which to act. The Nebraska Brand Committee then presented the membership of the Nebraska Cattlemen, at our December convention, what is now the essence of LB181. I can report to you that the Nebraska Cattlemen membership voted to support this legislation. LB181 is not the perfect answer, but we believe that at this point in time it will give the Nebraska Brand Committee the flexibility it needs to address at least the near term of financial issues. Please allow me to conclude by thanking the committee for your consideration of this bill, and Nebraska Cattlemen respectfully requests your approval and forwarding LB181 on to the full legislative body for consideration. At this time, I will be happy to answer any questions. [LB181]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of Mr. Brownlee? This really is not any kind of an area of expertise on my part, but I drive on the highway and I see the sign "Leaving a brand inspection area." So you're in a brand inspection area? [LB181]

ART BROWNLEE: I am. [LB181]

SENATOR CARLSON: What percentage of ranchers do you think support the brand inspection program? [LB181]

ART BROWNLEE: You know, with your permission, Senator, I'm here discussing LB181, and we are currently in the process, as Nebraska Cattlemen, of doing a

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fact-finding trip across the state with a number of stops to attempt to find that out, to answer your question. I can only speak for myself, and I really...I would hesitate to say that I have a view of the entire state of where people stand with that at this point in time. It's something that hasn't been addressed since the 1940s. [LB181]

SENATOR CARLSON: And I'm not trying to start something that I shouldn't start, but is that study going to include those that are not in the brand inspection area? [LB181]

ART BROWNLEE: It is. Yes, sir. [LB181]

SENATOR CARLSON: Okay. So that would be an interesting result. [LB181]

ART BROWNLEE: Yes. We're going to attempt to make 12 stops across the state and bring in as much information as we can from across the state and then move forward to looking at what your question is. [LB181]

SENATOR CARLSON: Okay. Senator Karpisek. [LB181]

SENATOR KARPISEK: Thank you, Senator Carlson and thank you for that question. I didn't want to steer this in a different path either. But that same question was on my mind is, should it be the whole state, should it be none of the state, should it be how it is? So I will be looking very forward to seeing what you find out, and I think that's very smart of you to be doing that and I appreciate that, and thank you for bringing it up, Senator. [LB181]

SENATOR CARLSON: Okay. Good. Any other questions? Okay, thank you for your testimony. Next proponent. Welcome. [LB181]

ROSS GARWOOD: Thank you. Good afternoon, Senator Carlson and members of the Ag Committee. My name is Ross Garwood, and that's R-o-s-s G-a-r-w-o-o-d. I'm a cow-calf producer from Amelia, Nebraska. I am also a past state board member of the Nebraska Farm Bureau Federation. In that capacity I also served as the chair of Nebraska Farm Bureau's western issue advisory committee which, on many occasions, discussed issues related to the Brand Committee and state brand inspection. I'm here today on behalf of the Nebraska Farm Bureau Federation to offer the organization's support for LB181. Over the past several years our organization has had many conversations with the Nebraska Brand Committee, specifically Executive Director Stanec, about the funding challenges facing the Brand Committee and its ability to continue to operate the state brand inspection program that meets the needs of both the Nebraska beef producers and the committee's statutory obligations under state law. We have and continue to be supportive of the brand inspection program as not only a theft prevention mechanism but also a way to add the layers of proof of ownership of cattle in Nebraska. Through the conversations with the Brand Committee, our members have

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adopted policy that supports the establishment of a surcharge of up to \$20 on a per-site visit basis specifically for purposes of brand inspection. While we generally do not support fee increases for programs, this program is of great importance to our members and should help to ensure the continuation of a viable state brand inspection program in Nebraska. And I've had lots of experiences being involved in the cattle business, since I was old enough to pull on a pair of pants I guess. And, you know, the brand inspectors and the whole system have functioned extremely economically and efficiently. For a number of years I was involved in the transportation business. And you knew when you backed up to a chute in the brand area and you were going out of the brand area, you didn't move that truck, and they were there guaranteeing the ownership of those cattle and that somebody else's cattle were not there. Not often, but quite often there were strays. And I, as a cattle producer, was not real excited about not having that strong, viable, functioning, efficient committee in the brand inspecting process not only for the return of lost livestock and so forth and the work they do there, you know, it's a cop in the system. Without it, you know, we have enough problems of loss and folks helping themselves to other people's property with it, and I could only imagine what it would be without. And also the whole thing that I mentioned too, if you've ever had the experience of borrowing money using livestock cattle as collateral, your bank wants to know what the brand is on those cattle, and you state your reputation on that, that that committee in that state agency is verifying, doing all they can to say those are your cattle and your collateral is secure. And so it serves a viable point to our industry that we need to keep viable and they're able to use. In closing, I want to thank Senator Hansen for introducing the legislation and reiterate our support for LB181. And I'd be glad to take any of your questions. [LB181]

SENATOR CARLSON: Okay. Thank you, Mr. Garwood, for your testimony. And Senator Lathrop from Omaha has joined our committee. And are there questions of Mr. Garwood? Senator Bloomfield. [LB181]

SENATOR BLOOMFIELD: Mr. Garwood, I'm wondering what the \$20 surcharge...and perhaps you're not the one to ask. Is there a fairness issue there between the 100-cow man and the 1,000-cow man when we do a comparison of what it would cost per head? [LB181]

ROSS GARWOOD: You ask a good question. Usually, you know...in Nebraska, you know, if you've got 100 cows or less, you're obviously going to be involved in some other type of commerce for your family. And you're still...I mean, the odds of you having to have those cattle inspected in a situation where you would be paying \$20 extra on the surcharge, I think it would be small because almost all of the inspections go on at a sale barn and so forth. These type of things, you know, what we've been involved with, and there's been times I've just hated to give that brand man a call to come out and inspect cattle because we've sent...and we've all, like some specialty cattle, like to Indiana and Illinois for club calf projects and that sort of thing. They might drive 40

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miles, or I might drive to them and meet them along the way somewhere to look at five head. Now the point I make is, they're expensive animals. I'm not worried about 20 bucks, okay? But I want to make sure that the transfer of ownership is correct and complete and the inspections are all done across state lines, because you're dealing at that point with a higher priced animal and a commodity, which is usually what is going on when you're selling less than, you know, your 20 head. It's a specialty thing. So it's a little unique that the fairness thing may not enter into because it is usually a high-dollar animal. Not always, but more often than not it is. [LB181]

SENATOR BLOOMFIELD: If it might, then instead most of this takes place at the sale barn or a lot of it takes place...I'm not in a brand inspection area so I'm not real familiar with the process. [LB181]

ROSS GARWOOD: I'm sorry. (Laughter) [LB181]

SENATOR BLOOMFIELD: When that occurs at the sale barn, are we going to charge more than one producer that \$20 or...? [LB181]

ROSS GARWOOD: Well, no. At the sale barn, as I understand, I mean that wouldn't be applicable to a sale barn. That's just for country visits, which is where the expense is coming to our Brand Committee. [LB181]

SENATOR BLOOMFIELD: Thank you. [LB181]

SENATOR CARLSON: Any other questions? Yes, Senator Brasch. [LB181]

SENATOR BRASCH: Thank you, Senator Carlson. Thank you, Mr. Garwood. Just a basic question. How many inspectors, brand inspectors, are there? [LB181]

ROSS GARWOOD: I believe he quoted 100 and some...103 total. [LB181]

SENATOR BRASCH: And about how many sale barns have inspectors at them? Three hundred...is it about the same number or...? [LB181]

ROSS GARWOOD: I'd have to defer...no, I mean there's one for every...you know, those inspectors service the barns as well. [LB181]

SENATOR CARLSON: And that's okay. If you don't know the answer, Senator Hansen will clean it up in his closing, so. Any other questions? [LB181]

SENATOR BRASCH: Thank you, Mr. Garwood. [LB181]

SENATOR CARLSON: Okay. Thank you for your testimony. [LB181]

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ROSS GARWOOD: Thank you. [LB181]

SENATOR CARLSON: Any other proponents? Welcome. [LB181]

DALE BERNDT: My name is Dale Berndt, D-a-l-e B-e-r-n-d-t, and I live out at Lakeside, Nebraska. We're a cow-calf producer. I've been on the ranch since 1970. My grandpa homesteaded it in 1912, and we have had the brand inspection thing. As a whole, it's fantastic. Don't mess it up whatever we do, because it put money in our pockets over the years, I am sure. We've had animals that we didn't even know were missing, showed up. I was talking to a lady the other day and said that a year or so ago they had two of them that showed up just before Christmas. The brand inspectors found them. She said it was a nice Christmas present. And the surcharge thing, I can see it from the point that...from the small producer, maybe it is higher if they're selling a few head. But generally speaking, most of those few head are going to be going through a sale barn. They're not going to be going right off the place. The brand inspectors for the rest of us do a whale of a job. We can call them, two days later or three days or whatever, you know. We call them. They find somebody that's available to come out and inspect our animals. And it is a fantastic service. I mean it's great. And a little...and I can see if they drive 40 miles out to our place to brand-inspect two head, I think I deserve to pay them that for that, because if I have somebody else come out there it's going to cost me a lot more than \$20, so. And that's all I had. I just wanted to add my own personal aspect to this. [LB181]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of Mr. Berndt? [LB181]

DALE BERNDT: Thank you. [LB181]

SENATOR CARLSON: Thank you. Next testifier. Welcome. [LB181]

LINDA ANDERSEN: Thank you. My name is Linda Andersen, L-i-n-d-a A-n-d-e-r-s-e-n. Chairman Carlson and members of the legislative Agriculture Committee, I am here to testify as a proponent of LB181 with Senator Hansen's amendments. As a beef cattle producer in the western part of the state, it is important to our business to help maintain the viability of a successful brand inspection system. Living in the Sandhills where our closest town is 35 miles away, I am well aware of the distances traveled and the importance of prompt inspections in our area. And the reason for that is, you know, we talk about cattle, but when you analyze the situation, we're talking about a perishable commodity, because if these cattle have to stand for any period of time, they shrink. If they're not on their regular feed and water, they shrink. And when they shrink, it's dollars to the seller. So like Mr. Berndt, we also very much appreciate the service we get from the brand inspections. Rising gas prices and the travel involved in the

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inspection process create a potential burden on the budget for the Nebraska Brand Committee. The Brand Committee needs the ability to assess a surcharge to offset the added expense. Last week I was talking with a young ranch couple from south of Valentine. The young woman told me that they had two cows recovered through brand inspection at the Ogallala sale barn, which is about 200 miles from where they live. As she said, the approximately \$1,800 revenue from these cows will pay a lot of brand inspection fees. And their story isn't unique. It's not uncommon out in big country to have cattle slip through the fence and end up quite a ways from home. As a proponent of LB181, it is my opinion that the Nebraska Brand Committee should have the authority to implement the surcharge to offset the expected mileage fee increases. And I would urge you to advance LB181 with Senator Hansen's amendments. Thank you. [LB181]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of Ms. Andersen? Yes, Senator Karpisek. [LB181]

SENATOR KARPISEK: Thank you, Senator Carlson. Thank you for coming. So if you just have a couple of steers show up, don't know whose they are, you load them up and take them to the sale barn and know that they'll find the right spot and place to...? [LB181]

LINDA ANDERSEN: Well, you know, often...often you recognize them as the neighbor's cattle that have slipped through the fence. So a lot of those issues are cleared up that way. If there's cattle that come into the country to be summered and then are shipped out, that's often when mix-ups occur and that's often when the brand inspectors catch those strays that shouldn't have been in that group. [LB181]

SENATOR KARPISEK: It just seems that we've heard a couple of stories about them maybe at the sale barn being... [LB181]

LINDA ANDERSEN: Yes. And the sale barn is a good place to catch them because that's where the brand inspectors are. And, like I say, oftentimes it's when cattle are brought in to summer pasture, they're not...I mean, the owner of the land is not necessarily the owner of the cattle. So they're not as familiar with the cattle. So that's often why they're caught at a sale barn because everyone is inspected at the sale barns within the inspection area. [LB181]

SENATOR KARPISEK: But I'm just wondering, is it kind of a good Samaritan type of thing. These aren't my cattle, I don't know whose they are, so I'm going to haul them in with my load and that way it will end up to the rightful owner? [LB181]

LINDA ANDERSEN: You know, if people realize they have strays, that's often what they do or they call their local brand inspector and they can help them determine ownership. [LB181]

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SENATOR KARPISEK: It surely wouldn't be that they're just trying to sneak them through with theirs? [LB181]

LINDA ANDERSEN: Well, it can happen. (Laughter) [LB181]

SENATOR KARPISEK: Okay. Thank you for your testimony. [LB181]

LINDA ANDERSEN: Thank you. Any other questions? [LB181]

SENATOR CARLSON: Any other questions? Okay. Thank you for your testimony. Any more proponents? [LB181]

DAVID WRIGHT: My name is David Wright and I'm the president of Independent Cattlemen of Nebraska, D-a-v-i-d W-r-i-g-h-t. And I would like to start by thanking the committee for having this hearing and I would like to thank Senator Carlson for the opportunity to speak. The Independent Cattlemen of Nebraska are going to testify in favor of this bill, but we're doing it reluctantly. There's been information out there that's been put out that the Brand Committee is broke, which we find out that it's not. There's been information put out there that says the 15 head is what has cost them a lot of money, if you have to go check 15 head or less. And according to the numbers that I have received, those 15 head or less have cost the Brand Committee \$40,000 in losses. On a \$4 million budget, that's 1 percent. Shoot, if you get through calving season with a 1 percent death loss, you're a dang good rancher and I want to come work for you or I want you to come work for me. So we hear that the surcharge is the only thing that will go, and the producers in our area don't...we're forced...we have no options, we have no choices. That's the problem here. We held meetings in Hyannis, Valentine, and Gordon, and we're going to have three more meetings in February in Bassett, O'Neill, and Atkinson. And when we ask the producers, and they're not members, they're just producers, just whoever is here after the sale, stop, and we're going to have a brand discussion. And when asked if they want to keep the Brand Committee and a brand inspection, they all say yes. And when asked if they would be willing to raise the cap to a \$1, it's just...it's enormous, they all want it. But we're not given that option. This is the only option that's being put out here today. So that's why we testify in support of it because we don't want to lose the inspection. Now a little bit about myself. I live in Neligh and the ranch is 10 miles in and I live 10 miles out, so I cross that brand line twice a day, sometimes six, seven times a day. I see a tremendous value in maintaining inspections. Senator Louden had made an interesting comment on a conference call that maybe those sale barns outside the brand area should have a paid brand inspector there that the sale barns pay for to help generate this revenue. I think that's a great idea, considering I work on both sides of the darn thing. But like I say, we're testifying in favor but we're a little disappointed in our options. Because once it becomes a law, then what do we do? We come back here later and say, we changed our minds, there's

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something different, or a different idea? So that's where we're coming from. The one senator who made the comment about taking them to the sale barn, I don't...do you own cattle? Do you raise cattle? [LB181]

SENATOR KARPISEK: Not anymore. [LB181]

DAVID WRIGHT: Not anymore. Well, you know then... [LB181]

SENATOR KARPISEK: I'm sorry. I shouldn't have asked. [LB181]

SENATOR CARLSON: Our procedure here is, Dave, you can't ask the questions, we do. [LB181]

DAVID WRIGHT: Oh, I'm sorry. I'm sorry. (Laughter) Well, I guess, we're not drinking a couple of beers having a discussion, are we? (Laughter) [LB181]

SENATOR CARLSON: That has to come later. [LB181]

DAVID WRIGHT: Thank you. [LB181]

SENATOR CARLSON: I shut you off there, I didn't mean to. Okay, thanks for your testimony. Any questions of Mr. Wright? Okay. And you know, part of the process, Mr. Wright, is that, yeah, you might want to come back again and that's what this whole thing is about is a law is kind of dynamic and it's subject to change, so. But appreciate your testimony today. Thank you. [LB181]

DAVID WRIGHT: Thank you. [LB181]

SENATOR CARLSON: Any other proponent? Okay, do we have anybody testifying as an opponent to LB181? And anyone testifying in a neutral position? Senator Hansen, you set this up really well so you can come forward and close. [LB181]

SENATOR HANSEN: Thank you, Senator Carlson, and thank you for the testimony that we did hear today. I don't have very much other than to say to Senator Karpisek, it's not being a good Samaritan that you haul someone else's cattle in. You can ask for expenses to do that, and then the Brand Committee looks at that if those cattle are retrieved or sold. If they're sold, if they can't find an owner, they do go ahead and sell them and then those proceeds go back to the school district, but the person who hauls them can be reimbursed for those expenses. Cattle numbers are down but it's higher in 2010 than it was in '09, so it's variable. You ask why are cattle numbers down? We produce as much beef as we have in the past with less cows. But for one instance, buffalo numbers are up. Buffalo numbers are way up. They're not under the brand inspection law and they have replaced a lot of cattle out there. There's...other people

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question if the population is going down in some of our counties but we still have the same number of cows, we still put up the hay, all those things get done. But we do have fewer people and we have fewer cows. But we're still, I think the number...still the number one industry in agriculture is raising cows. The sale barns will be exempt because the brand man is going to go there, spend most of the day. They may go to another town to help another brand man at a big sale or special sales, but no...as I understand, no surcharge will be asked for in that situation. It's just if you...imagine that you need a semi-load of fuel, you need a semi-load of gas or a semi-load of diesel, it depends on where you live, and they're going to charge you a surcharge on the amount of mileage they have to take that. That's in lieu of changing the price of gas or the price of diesel that they add that surcharge on there. That's kind of the way we got the idea of this surcharge amount. We'll just try to keep it through the hearing process out in the country, we'll try to keep that limited and just try to recover some of those costs. I don't know the number of inspectors. I know the number of inspectors is down from what it was 15 years ago. There are more, they're running more, running their cars more, they're running all the time in the fall and the winter to different sales and different private treaty sales. So the Brand Committee, from my perspective, is run very frugally. I've sat on that board and it is...they watch their pennies and their dimes and sometimes they're losing inspectors because of not increasing their wages enough, or any at all, and I don't think they've had a wage increase for three years. So they became more frugal than the state did, so. And now we're just catching up with the idea that...how the Brand Committee runs. We're catching up with that in the rest of the state in the rest of the agencies, so. The cash on hand right now from...we looked at that in Appropriations the other day, it's about two months' business. They can stay in business for two months on the cash reserves that they have right now. And during the special session that we had in 2009, that's when the Governor would like to sweep those funds out of agencies that have what looks like a pretty good sizable amount of cash, but when you look at an agency that has this much expenses and mostly in travel, that those cash reserves are pretty important for two months. That's all I have. Thank you. [LB181]

SENATOR CARLSON: Okay. Thank you, Senator Hansen. Questions? Yes, Senator Karpisek. [LB181]

SENATOR KARPISEK: Thank you, Senator Carlson. Senator Hansen, Mr. Wright brought up some different options maybe, and we can amend things, and that's why we're having the hearing. Have you...did you think about anything, a per head charge or anything like that other than just this way? [LB181]

SENATOR HANSEN: We certainly did. I don't know, there was a bill of sale. If you had 15 head of cattle or less, you could write a bill of sale for them. That, without making a special bill of sale, it would go through the Brand Committee, you would kind of lose track and kind of lose the purpose of the Brand Committee and the brand inspection. We also talked about raising the fee per head, but it's not...well, it is and it isn't, but

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when you raise the cost per head, you raise money also, but that's not the problem. The problem is gas expense. It's the expense of running. Years ago, in the old days, Russ, or Senator Karpisek, everybody took their cattle to a railhead and the brand inspectors met them at the railhead. They made sure that all the brands were right and then they'd load them on the railcars and take off. Now people have private treaty sales. They sell at the ranch, they sell at the sale barn, and several different ways to sell. So those Brand Committee people involve a lot of travel, therefore a lot of fuel expense. [LB181]

SENATOR KARPISEK: How do they charge per head now, do you know? [LB181]

SENATOR HANSEN: Seventy-five cents per head. [LB181]

SENATOR KARPISEK: And it doesn't matter how many? [LB181]

SENATOR HANSEN: No. [LB181]

SENATOR KARPISEK: I guess just quickly off the top of my head, I wondered if there was a way to go more...if you had 15 head it was \$1 a head, if you had 100 head it was 50 cents. Okay. [LB181]

SENATOR HANSEN: It's all 75 cents per head. [LB181]

SENATOR KARPISEK: It's very new to us on this side of the state. It's very interesting though. Thank you. Thank you, Senator Carlson. [LB181]

SENATOR HANSEN: And we don't have to brand cattle. You can live in the brand area and not brand. We are not promoting everybody must have a brand. When people talk about including the whole state in the brand area, it's not necessary to brand cattle. But they have to be inspected if you're within the brand inspection area as a no-branded calf or a no-branded cow, so. [LB181]

SENATOR CARLSON: Okay. Any other questions? Then, Senator Hansen, you're comfortable with the amendment that you handed us and would recommend that we approve that amendment as a part of the bill. [LB181]

SENATOR HANSEN: That is right. The only change is from "shall" to "may,"... [LB181]

SENATOR CARLSON: Okay. [LB181]

SENATOR HANSEN: ...those two words we fight over all the time. [LB181]

SENATOR CARLSON: Senator Lathrop. [LB181]

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SENATOR LATHROP: Can I ask a question you'd expect out of a city lawyer? (Laughter) If you brand a calf on your ranch and then sell it to somebody who's got a different brand, do they rebrand it? [LB181]

SENATOR HANSEN: Yes. They don't have to but they certainly can, yes, as long as they don't interfere with the original brand. [LB181]

SENATOR LATHROP: And that was going to be my next question. [LB181]

SENATOR HANSEN: Can't brand over the top, no. [LB181]

SENATOR LATHROP: Pardon me? [LB181]

SENATOR HANSEN: You can't brand over the top of an existing brand. [LB181]

SENATOR LATHROP: So you just put a second brand right next, along side... [LB181]

SENATOR HANSEN: Correct. Correct. Or you don't have to brand them, either one. A lot of people use ear tags. They fall out. [LB181]

SENATOR LATHROP: But if you...okay, so...(laugh). I'm just trying to understand this and learn something while I'm usurping here. So the calf gets branded on your ranch. You sell it to producer number two. He doesn't brand it, and he takes it in to sell it at the sale barn and the only brand on it is yours. What happens then? [LB181]

SENATOR HANSEN: He has to retain that paperwork that says they were brand inspected and the transfer came from my ranch to his operation, and then at the time of sale he has to show the brand. If it's in the brand inspection area, they have to show that paper. If they leave the brand inspection area, they have to show a brand man that they left the area, but the ownership stays with the paper. [LB181]

SENATOR LATHROP: So the brand man is doing more than just putting his eyes on the cows as they go by. [LB181]

SENATOR HANSEN: Correct. They do a lot of paperwork. [LB181]

SENATOR LATHROP: Okay. Thank you. [LB181]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you, Senator Hansen. [LB181]

SENATOR HANSEN: Thank you. [LB181]

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SENATOR CARLSON: And with that, we close the hearing on LB181. Thank you for your testimony and thank you for those who testified. If anybody wants to leave, we'll give you an opportunity to do that before we start the next hearing. And Senator Dubas, go ahead and...okay. All right, let's proceed with our hearing and this is LB114. Senator Dubas, you're recognized to open. [LB181 LB114]

SENATOR DUBAS: Good afternoon, Senator Carlson and members of the Ag Committee. My name is Annette Dubas, D-u-b-a-s, and I represent District 34, and it's really good to be back here with you guys. I miss you. I'm sure you miss me too. I really enjoyed the last bill's discussion. I can relate. Several years ago I was approached by a honey producer from my district about the need for a definition for honey. Mr. Keith Nielson, who is my constituent and who will be testifying today also, spent time educating me about honey, about honey production in our state, and why it's important to his industry to adopt a uniform standard. It was my hope that we could do this simply through an administrative procedure, and after quite a few phone calls and visiting with various people over at the Department of Agriculture and doing some more research, it was finally determined that it would take legislative action to have this standard adopted. For our producers, as well as our consumers, this bill would create a legal basis for recovering damages, economic or otherwise, from products falsely posing as pure honey. Last session I introduced LR426 to have the Ag Committee take a look at this issue and help us gather more information as to exactly why this definition is needed. That hearing was held last summer in Grand Island at the brand new State Fairgrounds on the opening day of the fair. There has been a push to have the federal Food and Drug Administration adopt a uniform honey standard, but to date this has not happened. The American Beekeeping Federation, the American Honey Producers, National Honey Packers and Dealers, Sioux Corporation, and Western Honey Packers and Dealers are working to have this standard adopted nationally, but since it's not happening, the push is to take actions into their own hands and have states individually adopt standards. So how would a state standard work? By adopting the revised Codex standard, the honey industry will gain their constitutional right of access to the courts. It gives producers civil recourse. This would put the burden of proof with the plaintiff. Several years ago, one of the largest honey packers in Michigan was sued for adulterating honey. The case was lost by the producers because the court said there simply was no definition for what honey truly is. So why is it necessary? Currently, there is confusion within consumer groups as to what is honey. It seems like it's pretty obvious what honey is, but 42 percent of those surveyed believe that pure honey contains additives and 17 percent believes it contains some type of syrup. The Honey Board is very concerned that the meaning or the definition of what pure honey is, is eroding. With no standard definition of honey, pure honey is competing with lower quality, cheaper products containing corn syrup, cane sugar, artificial sweeteners, or even antibiotics. Some products titled as honey do not even contain real honey. Honey producers feel a sense of urgency to help their consumers understand what honey really is. They feel their best recourse is to reclaim their product and gain...is to gain

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standing in civil courts. There is also hope that as more states adopt these standards, the FDA will step up and make this a national standard. But without a uniform standard, honey producers have little recourse to defend their product. While the honey industry in our state may not compare to our grain and livestock production, it is still a very viable business. It fits quite well into niche markets and I know at the farmers' market in Lincoln, in particular, it's a very popular purchase. The movement to adopt a uniform definition for honey is gaining momentum. Florida, California, and Wisconsin have already adopted such a standard, and there are 14 other states who are at someplace in the process in taking this action. So really the bottom line for the adoption of a honey standard would serve two specific purposes. As more states move to adopt a uniform standard for honey, hopefully it will encourage the Food and Drug Administration to create a national standard. And I am aware that Senator Johanns has communicated this with the federal Food and Drug Administration about the need for a national standard. And number two, it will give honey producers standing in court to take civil action and preserve the integrity of the honey industry. This bill does not require the Department of Ag to get involved in any testing or enforcement actions. It simply asks them through an administrative process to create a uniform standard of defining honey. No fiscal impact accompanies this bill. And I know that I have several honey producers behind me to come forward and testify, and I'll attempt to answer any questions you may have but the experts are really behind me. [LB114]

SENATOR CARLSON: Okay. Thank you, Senator Dubas. Any questions? Yes, Senator Lathrop. [LB114]

SENATOR LATHROP: Senator Dubas, paragraph (3) says that a person who suffers damages as a result of the improper labeling that would presumably come out of the work that you're directing in paragraph one, would have a cause of action for their damages or \$1,000. What are the damages or who are the potential people that would have a claim under this bill? [LB114]

SENATOR DUBAS: Well, I would say first and foremost the producers, the damage to their industry in not being able to define what is pure honey versus what may be some adulterated form. [LB114]

SENATOR LATHROP: Okay, here's the question then. Let's say that I produce pure honey on my farm with honey bees and I don't add anything to it, and my honey meets somebody's definition, the department's definition of what pure honey is. And the guy down the street at the farmers' market is selling something that's laced with syrup or sugar or something like that. What are my damages as the guy who is selling pure honey? [LB114]

SENATOR DUBAS: I think...I knew a lawyer would ask me a question. (Laugh) [LB114]

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SENATOR LATHROP: I'm just wondering if we're creating a cause of action, what's the cause of action, what are the damages? [LB114]

SENATOR DUBAS: It's going to be a damage to the pure honey producer's integrity and ability to compete with the person who is adulterating their honey. He may be able to sell that honey at a cheaper price because it's not pure, they're doing other things to it, and I know the gentlemen behind me will be able to go into a little more detail about exactly what it is this definition will provide for them as far as being able to take civil action. [LB114]

SENATOR LATHROP: Okay. And did you lift this idea from some other state? Does this statute or your bill look like something that's done in California or a place like that? [LB114]

SENATOR DUBAS: Florida is the one that...I visited with the lady in Florida who is really kind of the leading spokesperson leading this charge for states to adopt their individual standards. [LB114]

SENATOR LATHROP: Okay. Thanks. [LB114]

SENATOR CARLSON: Any other questions of Senator Dubas? Senator Larson. [LB114]

SENATOR LARSON: Thank you, Senator Dubas. We're giving the Department of Agriculture the right to test these products regularly, correct? [LB114]

SENATOR DUBAS: We're not asking them to do any testing. We're asking them simply to adopt a definition. [LB114]

SENATOR LARSON: Okay. And that will be enough to protect our local honey producers? [LB114]

SENATOR DUBAS: Honey producers could have access to testing, do their own testing, do a variety of things. Again I'm assuming that the gentlemen behind me will be able to go into a little more detail, but we're not asking the department to take on any responsibilities other than just promulgating this definition of honey. [LB114]

SENATOR LARSON: Okay. So who will actually be the governing force of what Senator Lathrop brought up? You know, who will decide the damages? [LB114]

SENATOR DUBAS: Basically, the courts will. The honey producers will be able to use the...I know there are testing methods available and how it's done. It's also outlined in the proposed rules that other states have adopted and they would be able to take this to

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a court of law. [LB114]

SENATOR LARSON: Even if the other honey producers are out of state, they're not in-state producers, they'll be able to take the out-of-state producers to court in Nebraska. [LB114]

SENATOR DUBAS: I'm not exactly sure on that. Thanks for that question. [LB114]

SENATOR CARLSON: Okay. Any other questions? Senator Brasch. [LB114]

SENATOR BRASCH: Thank you, Senator Carlson. Thank you, Senator Dubas. What I'm wondering is, at this point if I go to the grocery store I could buy vanilla or imitation vanilla and I know exactly what I'm getting. Could somebody go buy honey or imitation honey? Could somebody be legally labeled as imitation honey and putting corn syrup and things like that, but just you're defining pure honey and is that the intent? [LB114]

SENATOR DUBAS: Correct. We are looking for a definition for pure honey. [LB114]

SENATOR BRASCH: Pure honey. And other products could be on the market, but... [LB114]

SENATOR DUBAS: Right. [LB114]

SENATOR BRASCH: ...it would have to be clear and truthfully labeled as imitation or honey flavored or... [LB114]

SENATOR DUBAS: This...I mean, this could overlap into labeling laws. That's not where we're looking to go with this. We're just looking to give...to create in statute to allow our Department of Ag to develop a definition for pure honey, which in turn gives those producers the ability to take civil action. [LB114]

SENATOR BRASCH: Thank you, Senator Dubas. Thank you. [LB114]

SENATOR CARLSON: Senator Harr. [LB114]

SENATOR HARR: Thank you, Senator Carlson. And I just have a quick question. It says, such...in Section 1(1) it says, "Such standards shall be consistent with the Codex Standard 12-1981, as revised in 2001, from the Codex Alimentarius Commission of the Food and Agriculture Organization and the World Health Organization of the United Nations." What are those? I don't understand what those standards are. [LB114]

SENATOR DUBAS: That is something that the World Health Organization has adopted as a standard to define what... [LB114]

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SENATOR HARR: And that's 100 percent pure or what is that standard or...? [LB114]

SENATOR DUBAS: Correct. It defines honey as...this is the basic definition: a natural sweet substance produced by honey bees from the nectar of plants or from secretions of living parts of plants or excretions of plants or plants sucking insects on the living parts of the plant which bees collect, transform, or combine with specific substances of their own, it goes on, to create honey. It becomes much more involved because every state's honey is a little bit different based on the plants that the honeys are taking the nectar from. Again I'm not going to pretend to be an expert, so while there may be some deviations in the Codex based on the type of honey that's produced in your state, the basic definition of honey is this first little paragraph that I've read to you. Again that was developed by the World Health Organization. [LB114]

SENATOR CARLSON: Okay. Any other questions? Senator Karpisek. [LB114]

SENATOR KARPISEK: Thank you, Senator Carlson. Senator Dubas, did you think about putting more teeth into this or would that cause a fiscal note? [LB114]

SENATOR DUBAS: Yeah, we didn't want to go that direction with requiring the department to go into the testing and evaluating. I mean, that could get quite sizable. And I know there are...some of the other states, I believe, have put a little bit more enforcement into theirs. But my understanding is, the national movement is just to try to get states to adopt this uniform standard of defining honey, which, and again will hopefully get FDA moving to adopt a national standard. Because ultimately that's what FDA is already starting to say, well, we don't want 50 different definitions of honey, and this would help them also deal with the export questions, honey coming in from other countries. So we weren't looking to create any more work for the Department of Ag to do, and my understanding is just by having a definition again giving producers some recourse. [LB114]

SENATOR KARPISEK: Okay. Thank you, Senator Dubas. Thank you, Senator Carlson. [LB114]

SENATOR CARLSON: Any other questions? Have you...you've spoken with the department about this and we don't have a representative here today, but they're okay with your bill? [LB114]

SENATOR DUBAS: I guess they didn't tell me they weren't okay with it. [LB114]

SENATOR CARLSON: Well, they didn't come here to testify in any kind of position. [LB114]

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SENATOR DUBAS: No, no. And as I said, we visited with them. I started visiting with them early on in the hopes that we wouldn't have to do a bill, that we could just do it through a rule and reg, and that became obvious that we weren't. So we ran this by them. Again, I'm not going to say they're supportive of it, but they aren't telling me they're opposed to it either. [LB114]

SENATOR CARLSON: Now, could it be boiled down that the purpose of your bill is that if anybody markets something as pure honey, it needs to be pure honey. [LB114]

SENATOR DUBAS: Yes. [LB114]

SENATOR CARLSON: If anybody markets something as honey, it doesn't need to be pure honey. [LB114]

SENATOR DUBAS: Well, again that goes into labeling, and that's a little bit past what my bill is looking at. But honey, pure honey, has a definition. [LB114]

SENATOR CARLSON: But you would be looking for...well, I could maybe ask some other testifiers, but in my mind, pure honey is pure honey. Honey is maybe pure honey. [LB114]

SENATOR DUBAS: It leaves a little bit of an open door there for what may be in the honey. [LB114]

SENATOR CARLSON: Okay. All right, thank you. Any other questions? We've worked you over the coals pretty good. Oh, Senator Larson, you're not through yet. [LB114]

SENATOR LARSON: It's a small question. And I guess I didn't read the Codex standards, to be honest. But the...like what about like flavored honey? Is that pure honey? Or like, you know, you see the flavored honeys out there. And I don't know if our local producers produce flavored types of honey. Does that fall into this or would they know about... [LB114]

SENATOR DUBAS: I'm going to let the experts answer that. But I know the flavored honey that I bought, I'm very well aware that it's flavored and there's been some things added to it, so. [LB114]

SENATOR LARSON: Okay. Thank you. [LB114]

SENATOR CARLSON: Okay. Any other questions? And are you going to be here to close? [LB114]

SENATOR DUBAS: I will be here, yes. [LB114]

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SENATOR CARLSON: Okay. Thank you for your testimony. Now we are ready for proponents and of LB114, and I'm going to review again for those of you that are going to testify on this bill or anybody that's going to testify on the bill following, we are using the lights today. And so as you begin your testimony and give your name and spell it, the green light goes on and you have four minutes of green and one minute of yellow, and the red comes on, wind up what you have to say. Okay. Welcome. [LB114]

WARREN NELSON: Thank you, Senator Carlson and committee. My name is Warren Nelson. That's W-a-r-r-e-n N-e-l-s-o-n. I am here representing two groups today. First is my business, Valhalla Bee Farm. We're here in Lincoln, Nebraska. My wife and I own the company. We are beekeepers. We also sell beekeeping equipment to other beekeepers, and we bottle and distribute honey in the...basically, in the Lincoln and Omaha area and we are branching out in that and continuing farther as well. One of the things that...oh, and the other group that I'm representing too, I'm sorry, is the Nebraska Beekeepers Association. I am the president of the Nebraska Beekeepers Association. We are in favor of this bill, the reason being, as has been talked about with the adulteration of honey, pure honey has a very unique characteristic to it and when you start adding things to it, it takes away from its goodness and its purity and its wholesomeness and the good things that it does for you. So we, you know, when you start looking at some of the imports that come in that have, as Senator Dubas said, have all kinds of other things added to them, high fructose corn syrup, have antibiotics in them from different chemicals that have been added, people don't know that those things are there. They see honey on the label, they think that's what they're getting. The labels that we use for our products that we sell in the stores has pure honey on it. We do have, to answer your question, Senator Lathrop, with some of the flavorings, we do have some honeys that we do put flavorings in and it does not say pure honey on it. The ingredients label does stipulate that there are flavorings in it as well, so. You know, we are ahead of the curve in this factor with our business. The main thing that we want to stress here is that there are also products out there on the shelf currently. The question was asked about imitation honey. There is imitation honey in the stores now. Imitation is in very, very small print. You almost need a magnifying glass to read it, but the honey is in very large words. The consumer doesn't take the time to look, you know, as they're grabbing quickly, they'll see, well, this is very inexpensive, it says honey, I'm going to buy it. You know, I'll get the cheapest thing that I can. So we want to make sure the consumer knows what they're getting and that goes into some of the labeling laws that, you know, that they'll have to look at, not the state of Nebraska, but, you know, down the road to make sure that the labeling in it does state what is inside of the container. So I just wanted to say, you know, that we do support this and we ask that you also look at passing this bill. And I'll entertain any questions. [LB114]

SENATOR CARLSON: Okay. Thank you, Mr. Nelson. Questions of the committee? Yes, Senator Bloomfield. [LB114]

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SENATOR BLOOMFIELD: Thank you, Senator Carlson. Mr. Nelson, I don't know a lot about beekeeping but I do know that sometimes through the winter the bees are fed sugar to keep them going. [LB114]

WARREN NELSON: Yes. [LB114]

SENATOR BLOOMFIELD: Does that affect what we would call pure? [LR114]

WARREN NELSON: No, it won't because the bees will consume that as they get started in the springtime, and so by the time nectar is coming in they will have consumed any of the sugar syrup or sugar that has been put on there so that they can survive the wintertime. And then what is coming out of the hive then is going to be pure honey. [LB114]

SENATOR BLOOMFIELD: What about comb honey? [LB114]

WARREN NELSON: Comb honey is as pure as you can get. It's exactly what the bees made and that's what you're buying. [LB114]

SENATOR CARLSON: Okay. Any other questions? Now in looking at the wording in the bill: "A product shall not be labeled as honey or be labeled as to imply that the product is honey unless the product meets the standard for honey." I used the terminology of pure honey with Senator Dubas, but what is the standard for honey? That doesn't mean pure honey then, or does it? [LB114]

WARREN NELSON: That's a good question and I'd probably have to think on that a little bit. We probably don't have enough time for me to do that. You know, again it would be going back with the Codex, you know, that national standard that...or the worldwide standard, I should say, that would be the defining factor there. [LB114]

SENATOR CARLSON: Okay. Maybe this will come up again later on, but any other questions of Mr. Nelson? Okay, thank you for your testimony. [LB114]

WARREN NELSON: Thank you very much. [LB114]

SENATOR CARLSON: Next testifier, please. [LB114]

KEITH NIELSON: Okay, my name is Keith Nielson, K-e-i-t-h N-i-e-l-s-o-n. Chairman Senator Carlson and members of the Natural Resources Committee and Senator Annette Dubas, I would like to thank you for hearing the concerns of the Nebraska Beekeepers and beekeepers nationwide. During my testimony at the September hearing, I urged you to adopt the honey standard for the state of Nebraska and I

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continue to urge you to advance LB114 to the floor of the Legislature. The needs of the beekeepers in this great state are not being met by the FDA, which continues to drag their feet in issuing a national honey standard. Because of a lack of standards, honey producers are cheated out of a fair price for their product by having it adulterated either with fructose corn syrup or cane sugar syrup. This is evident by the case in Michigan where the court agreed that the product was adulterated but ruled in favor of the packer because there was not a definition of standards for honey in the state of Michigan or nationally. Sourwood honey in North Carolina was being cut with corn syrup at a low price and being sold as sourwood honey for \$10 a pound. What will they do with Nebraska honey? Since federal government will not address the concerns, it is up to the states to set the standards of honey in their own state. This is no different than the automobile industry in California where they have set standards that are higher than the EPA standards for exhaust emissions on vehicles. Nebraska beekeepers are working together with other state beekeeping organizations promoting a standard for honey in each of their own states. A standard already exists which meets the needs of Nebraska and other states which is the Codex Alimentarius 12-1981, which was adopted by the World Health Organization and the Food and Agriculture Organization. Currently, neighboring states of South Dakota, Kansas, and Iowa are in the process of adopting the Codex as their standard for identity of honey. Currently, 22 states have either adopted or are in the process of adopting the Codex as their standard for the identity of honey. LB114 would give honey producers in the state of Nebraska a standard that would be upheld in the courts, a legal means by which honey producers can police the packaging of their product and bring confidence back to the consumer. I was asked in September about the number of commercial packers in Nebraska to date and there are only three. But recently, I made trips to several large supermarkets and the number of packers varied from five to eleven. I examined the labels of each packer of honey and found that they did not always list a country of origin or who packed the honey. What is being done about honey that is being shipped into the country and being adulterated before it reaches our shores or doesn't meet the standards of the identity? LB114 would give honey producers a means to pursue a legal action against those packers. Nebraska beekeepers are not alone in this fight for our economic well-being and confidence in our product. Twenty-two other states are on board to do what our FDA will not do. We live in a global economy and our state association talks with other associations about who is packaging our product. Rest assured, we will find those who are adulterating our product and prosecute. LB114 would not cost the state any tax dollars in its implementation, but gives honey producers in our great state a means to prosecute those who alter pure honey. I would also like to note that the country of India has also recently in the last month adopted the Codex as their national standard for honey. To address some of the questions that you had earlier about other honey products, I know Senator Dubas has talked about flavored honeys. This is not addressed in this bill. We're looking at producers who are producing honey to go on the shelf. The farmers' market people, yeah, we flavor honeys, but it will be listed on the label as to what that honey is being labeled. I was also in GROW Nebraska in Grand

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Island, and much to my surprise I found several products there that were listed as pure honey, but in their labeling of contents had high fructose corn syrup in it--a very gross misrepresentation of our product. And I would like to thank you for letting me testify and I'd like to thank Senator Dubas for bringing this bill to the Legislature. Do you have any questions? [LB114]

SENATOR CARLSON: Okay. Thank you, Mr. Nielson, for your testimony. Any questions of the committee? Thank you. Next testifier. [LB114]

MICHAEL O'HARA: (Exhibit 1) Hello, my name is Michael J. O'Hara, M-i-c-h-a-e-l, middle initial J, last name O'H-a-r-a. I'm from Omaha. I'm appearing here as myself. I'm a faculty member at the University of Nebraska at Omaha so I must make sure I say that I am not appearing as the University of Nebraska. The handout you have, if you attended the committee's hearing, much of that is the same. One difference is an extra attachment is the FDA's reply to the U.S. Senator's request for action. And as you were going through your questions I noticed something that is missing that I will provide to the committee clerk, and that is a URL for the Codex itself, so that your record is complete. I'll focus on the main points in the written testimony and then go to some of the comments or questions that concerned senators had. Basically, this is unfair competition. The state already has laws on unfair competition. However, how you prove that something is unfair competition is the core of this, and that is, how do you prove someone is not selling honey? It sounds easy but, as you've probed with some of your questions, it doesn't turn out as easy as it sounds. Adulteration, which is the problem, comes in two types, and that's contamination where you add something that's harmful physically to the person, and economic adulteration and that's where you're trying to steal by pretending you're selling something valuable when you're not. If you add other sweeteners, then you mask the sweetness of honey, which is one of the things people are going for, and you can substitute something that is very cheap for something that is very valuable. You also change the health effects, but probably, probably, not by an amount that is legally actionable. If high fructose corn syrup is in everything, how you would prove that is harmful when you eat that instead of honey, I don't know. But it does create a competitive disadvantage, and that how you'd measure that competitive disadvantage, I'll comment on that. In terms of the federal system, the feds are focused on trying to deal with the contamination problem. And the contamination problem is quite serious. If you recall, several years ago there was a guy who had TB and they wanted to get him off an airplane and they took him to Denver and put him in ICU. The reason they put him in ICU was the drug they were going to give him. One percent of the people you give that drug to, which goes against all drug resistant drugs, kills you. If you're in ICU, you might survive. That's the drug that is the contaminant in a lot of the Chinese honey, and that is the concern the FDA has. The FDA doesn't handle the economic adulteration, although that also has been a problem with Chinese honey, where even the Bush administration, not exactly a group renowned for wanting to go against free trade, raised the import duty on Chinese honey from less than 20 cents a

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pound to over \$1.20 a pound because the Bush administration saw a proof of dumping. So the economic problem is significant. And as I note, the relative size of the Chinese honey coming in to America is that it's swamping the market, so that it is a huge economic problem. Going to then the questions that were asked. Honey...Senator Carlson, you mentioned is this pure honey or honey? Pure honey is redundant. That this would define the word honey and you would not have to say pure honey because it was honey. If you added anything to it, you would have to mention what you add. And that comes in a variety of ways. Senator Larson, you asked about flavored honey, and there are varietal honeys where the beekeeper deliberately focuses the bees on a particular plant and that gives a flavor. That would not have to be labeled, but everyone who does that since it's so difficult, would label it because it draws particularly two to three times the price per pound. Additives would change flavor and that would be something along the lines of...Warren Nelson, who testified, sells creamed honey and it has flavors in it, but that's clearly labored because what you're looking for is raspberry honey, which is different than honey that was solely off of raspberries. In terms of consistent with Codex, what is Codex? As I said, I will send a copy of the URL for the Codex itself. It is a scientific definition. It's the way a chemist would define honey, how much water in it, how many particulates, things of that nature. So that it by definition of what it should contain, it excludes what it ought not contain. In terms of who would actually be a plaintiff and how they would prove this, beekeeping breaks out into hobbyist beekeepers, sideliners, and commercial. Hobbyist would be 24 or fewer hives. I'm a hobbyist. Sideliners would have 25 to 299 hives; this would be the guys at the farmers' market. And then commercial would be over 300. And well over 90 percent of the honey in the nation is produced by the commercial people and there are fewer than 2,000 of those nationally. [LB114]

SENATOR CARLSON: How much more do you have? [LB114]

MICHAEL O'HARA: I was merely going to mention that you could then prove through ordinary unfair competition the loss that you suffered when you drove out. What you're proving is a loss of goodwill and that someone contaminates the market and gets people to withdraw. And you can see the magnitude of that when you look at the reaction of people to immunization and how many people have withdrawn from immunization just on the fear that there is a contaminant. And once you put the fear that there's a contaminant in the honey, people withdraw and then you can show lost sales. [LB114]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Senator Lathrop. [LB114]

SENATOR LATHROP: I do have a thought about the paragraph (3), and because I don't, you know, I know what honey is or at least I think I did before I sat down, but I do understand something about litigation. And I'm wondering if in paragraph (3), let's say

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that you have six honey producers in Lincoln and somebody brings one of these jars of adulterated Chinese honey in here and tries to sell it, if we don't put some limitation in paragraph (3), all of them would each have a chance to sue that producer, right? [LB114]

MICHAEL O'HARA: Each...anyone can, as you know, anyone can sue anyone at any time for anything. Whether or not you survive the motion to dismiss is something else again. [LB114]

SENATOR LATHROP: Well, you're exactly right. We call that anybody can sue a ham sandwich. But the reality is that a bill like this needs some limitation so that if somebody is going to get dinged once for selling adulterated honey, that not everybody that sells pure honey has a crack at him, right? [LB114]

MICHAEL O'HARA: You would have to be in competition, because as it says on line 12, "Any person who suffers damages as a result of improper labeling..." you would have to allege the causal relationship and then prove the causal relationship, so you'd have to have been a participant in the farmers' market. [LB114]

SENATOR LATHROP: Okay, well then let's take...to make my point, maybe we'll make that an example out of it. Down at the farmers' market, there are four people selling real honey and one guy down at the end of the line that's selling adulterated honey. Now all four of them are competing with the one guy who is selling adulterated honey, and this bill, as it's written, would give all of them a cause of action. And they don't really need to show damages. All they need to do is to collect \$1,000 by saying, I'm competing with a guy who is selling adulterated honey. [LB114]

MICHAEL O'HARA: Each of the persons harmed by the person selling adulterated honey would have a cause of action against the person who caused the harm, yes. That if you harmed four people, four people get to sue you. [LB114]

SENATOR LATHROP: All of them getting \$1,000 for the guy who is selling two jars of honey down at the farmers' market. [LB114]

MICHAEL O'HARA: The question is, what will be the impact on the farmers' market participants in an extended participation in a farmers' market? So that if you phrase it... [LB114]

SENATOR LATHROP: But the bill doesn't require that you have...you can have nominal damages, but you're going to get \$1,000 for each person who gets in line, and they're going to get attorney fees. I'm just suggesting that the bill needs some work because you can't have...this is the concept of a private attorney general,... [LB114]

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MICHAEL O'HARA: Correct. [LB114]

SENATOR LATHROP: ...which is if we're not going to turn the Ag Committee or the Ag Department... [LB114]

SENATOR CARLSON: Department of Ag. [LB114]

SENATOR LATHROP: ...Department of Agriculture into an enforcement mechanism and we're going to rely on civil suits, so there has to be some limitation on how many times somebody can be sued for the same wrong. [LB114]

MICHAEL O'HARA: The Department of Agriculture could enforce its own regulations, and once those regulations are in existence under the existing criminal law, the county attorneys and the state Attorney General could enforce it. However, if you used the record of the FDA and the Department of Justice, it would be extremely unlikely that any one of those three would. [LB114]

SENATOR LATHROP: I think the county attorney in Douglas County would probably tell you he's got other things to do. [LB114]

MICHAEL O'HARA: Not until they had a contamination issue... [LB114]

SENATOR LATHROP: Right. [LB114]

MICHAEL O'HARA: ...and a health consequence, at which point the FDA would be there in an instant. [LB114]

SENATOR LATHROP: Okay. [LB114]

SENATOR CARLSON: Okay. Senator Larson. [LB114]

SENATOR LARSON: One question to go off Senator Lathrop's questions, first...well, both of mine kind of do. But if the guy at the end of the line--sorry to use your analogy again--isn't labeling it as pure honey, then he can't be tried. Correct? [LB114]

MICHAEL O'HARA: If you have a jar of something that looks like honey with no label on it at all, and you're selling it at a farmers' market... [LB114]

SENATOR LARSON: But even if he's saying it... [LB114]

MICHAEL O'HARA: Actually at that point, the Department of Agriculture does get ticked because we have a Weights and Measures and they will show up and get you. (Laugh) [LB114]

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SENATOR LARSON: In terms of what if he's saying not...or 50...or if it's just honey and it's not like, well, pure honey. [LB114]

MICHAEL O'HARA: If you say it's honey, it is pure honey. That was Senator Carlson's question. You don't have to say it's pure honey if it's honey. If you say it's pure honey, it is honey. If you say it's honey, it is pure honey. They are synonymous. [LB114]

SENATOR LARSON: They're synonymous. [LB114]

MICHAEL O'HARA: Because the word "pure" is redundant. [LB114]

SENATOR LARSON: Okay. And in the letter that you gave us, it says right now nearly 70 percent of the U.S. honey supply comes from China. Honestly, what are the chances that they would be able to win a litigation case against a company in China and force them to pay, first of all. Is this going to backlog our court systems, to a certain extent, when there is no enforcement mechanism? If the Chinese company loses the case or doesn't show up or whatnot, can we bar them from selling in the state? I mean what repercussions is there really to the company that's out of the country and really doesn't have to listen to us? [LB114]

MICHAEL O'HARA: If there's no jurisdiction of Nebraska law over the company, then the motion to dismiss will be granted. [LB114]

SENATOR LARSON: Okay. [LB114]

MICHAEL O'HARA: If the person has, however, satisfied jurisdictional requirements to be before a Nebraska court, then enforcement will be a separate question. Enforcement would be of a low probability in this context because what really ticked off the Bush administration was the fraud was so rampant that the importers were putting up bonds that were bogus. They would say, I have a bond for \$100,000, and in fact, there was nothing, because they had put up a shell corporation to back the bond and then withdraw. And you're right, getting enforcement against someone who is that detailed in implementing their fraud is extremely difficult. However, in terms of the \$1,000, in terms of...one of the risks you always have when you do that is called green mail, where I'm going to become a nuisance suit, and if you can...the attorney fees would only be awarded if the plaintiff won. So if it's truly a nuisance suit, the defendant would go, no, you can't win that because I can prove I satisfy the Codex. And if you're out of jurisdiction, there's nothing we can do about it. You're not in Nebraska, it's not our concern. The FDA would have sole control over the Iowa sales, but only if you do come into the state do we have jurisdiction. Now I'm not worried about the farmers' markets. Where that becomes a genuine question, though, is... [LB114]

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SENATOR LARSON: Even in supermarkets and everything else. [LB114]

MICHAEL O'HARA: ...is the supermarkets. [LB114]

SENATOR LARSON: Can you stop the Chinese companies from selling in the supermarket? [LB114]

MICHAEL O'HARA: Yes. I'm an economist. Yes, you can always stop things by raising the price so they...(laugh). [LB114]

SENATOR LARSON: Well, yeah, you can with high enough tariffs and everything. [LB114]

MICHAEL O'HARA: And you ask me as a lawyer, I'll say, well, good luck on that. (Laugh) If you create the cause of action that makes it expensive enough, yes, you will always change behavior. [LB114]

SENATOR LARSON: I understand the cause of action that makes it expensive. I mean, we can tax everything to death. [LB114]

MICHAEL O'HARA: And that's part of what the idea is, is right now the harm is imposed with no risk of any cost. [LB114]

SENATOR LARSON: So should Nebraska put a tariff on all honey that isn't made inside the state? [LB114]

MICHAEL O'HARA: That would be unconstitutional. [LB114]

SENATOR LARSON: Okay. [LR114]

SENATOR CARLSON: Okay. Let's...Senator Brasch, you were... [LB114]

SENATOR BRASCH: Okay. The intention of LB114 is to define and protect the integrity of what we typically know as honey from an insect to a plant and the product. There aren't any known diseases or contaminants. Honey has no danger of its own. I mean the danger comes when someone pretends it's honey and adds a flavor or does something to alter honey. I mean, are there sick bees and are there bad plants? Can you get bad honey, is there such a thing? [LB114]

MICHAEL O'HARA: The sick bees would reduce the economic efficacy of the hive but not change the honey. [LB114]

SENATOR BRASCH: The production of it. [LB114]

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MICHAEL O'HARA: But there is a danger if you are an infant. There will not be enough...I'm not sure, I don't want to speak to the chemistry. An infant can get sick eating honey. [LB114]

SENATOR BRASCH: And I believe pediatricians tell infants to wait awhile for...I mean, there's a time. But honey itself... [LB114]

MICHAEL O'HARA: It's pure. [LB114]

SENATOR BRASCH: ...and so we're saying it's pure and healthy. And what you're doing is defining that, putting it in a category, and protecting it where if some of this imitation or blend or flavor has potential health hazards, that it isolates and protects the honey producers. [LB114]

MICHAEL O'HARA: Well, actually it wouldn't have to have a health hazard to be labeled. If it's anything other than honey, you would have to say it's something other than honey. Now... [LB114]

SENATOR BRASCH: Such as peanut butter. You know, when there's a peanut butter alarm, then we're all worried about peanut butter. But honey is honey. And if there was a raspberry honey syrup that had a recall, then honey producers could be confident that it does not affect our industry here in Nebraska. [LB114]

MICHAEL O'HARA: Correct. If you had a recall of honey, it would be because of the additives, not the honey. [LB114]

SENATOR BRASCH: Not the honey, okay. [LB114]

SENATOR CARLSON: Senator Burke. [LB114]

SENATOR BRASCH: Thank you. [LB114]

SENATOR HARR: Thank you, Senator Carlson. Just quickly, back to the damages. [LB114]

MICHAEL O'HARA: Quickly back to the... [LB114]

SENATOR HARR: The damages issue. Going to Senator Lathrop's hypothesis or example where we have...you...we were using fellow bee producers as damages. If I'm the end user who buys the bad honey, I would be able to sue for damages too, is that correct? [LB114]

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MICHAEL O'HARA: If it was contaminated honey, you would be able to show that you suffered damages. If it was economically adjusted honey, I hadn't entertained that thought until you asked it, but as I think about how we do anticompetition law, generically sales to consumers are excluded, it has to be a competitive consequence. [LB114]

SENATOR HARR: Don't I have damages since I didn't actually buy honey when I thought I was buying honey, though? [LB114]

MICHAEL O'HARA: You are...I'm not sure you have damages. [LB114]

SENATOR HARR: Well, it says here any person who suffers damages. I guess then maybe we need to do a better job of explaining or defining damages. [LB114]

MICHAEL O'HARA: I'm sorry, I'm not speaking...I'm speaking technically. Legally, the concept damages is a legally recognized harm with pecuniary value, and what harm would be suffered by the consumer would not be of sufficient economic magnitude to rise to the level of damages. [LB114]

SENATOR HARR: According to you. But I think that really is a question for the jury, isn't it? That's a question in law if it's sufficient enough. [LB114]

MICHAEL O'HARA: That would be a fascinating case to be able to come up with a--particularly in Nebraska--to come up with a person who had a sufficient emotional response to the information, I didn't buy honey, that Nebraska would warrant that that was a compensable injury. [LB114]

SENATOR HARR: All right. [LB114]

MICHAEL O'HARA: Now in California, you'd be right on. (Laugh) [LB114]

SENATOR CARLSON: Okay. Any other questions? Okay. Thank you for your testimony. [LB114]

MICHAEL O'HARA: Yep. And if I can help at all, let me know. [LB114]

SENATOR CARLSON: Next testifier. [LB114]

JOHN HANSEN: Mr. Chairman and members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n. I'm the president of the Nebraska Farmers Union. I'm here before you today as our president and also our lobbyist. We are in support of this bill. We have been somewhat familiar with this issue for some time. We've had the opportunity to attend Keith Nielson-sponsored seminars on this subject at some length

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during the Nebraska State Fair, which goes on, I point out, for ten days. And so down through the years, this has been an ongoing issue. It's been an issue that has floated around for some considerable time. It has been an issue that a lot of ag organizations, ours included, both at the state and the national, have encouraged the FDA to step up to the plate and come up with a definition that makes some sense so that there's an opportunity for fair competition and appropriate labeling, both for domestic producers as well as domestic consumers, and FDA has drug their feet. We have similar situations that happened in this arena. I have served as a member of the United States Trade Representative's office as a representative for wheat and feed grains. And so in the business of food and international commerce, definitions are, of course, front and center when there's a point of conflict. And the Codex Alimentarius Commission, which is an independent scientific group, is the international standard to define the particulars of all the international commerce, so from my vantage point, is this an appropriate standard? This is where this issue is going to end up anyway, you just as well start there because that's where it's headed. So I think that the standard from the Codex Alimentarius Commission is appropriate. And the case of the Chinese doing what they're doing with honey is not surprising. They put commercial urea-based fertilizer in cat food and pet foods. And where there's an opportunity to make a buck and slide it by, a lot of times this happens. So I would also point out to the committee that sometimes it's really important and appropriate for states to step up and do that which seems so common sense and reasonable to do when the folks at the federal level don't act. And so, for example, thanks to Nebraska's efforts, we now have in place a federal mandatory price reporting system that has served agriculture and livestock producers extremely well, because the state of Nebraska stood up and did that which needed to be done, and the USDA and Congress had not seen fit to move forward with mandatory price reporting. So this is an issue that I think is going to have to get pushed from the states in order to get FDA off the dime and do that which they've been asked to do for a very long time and have not done. So with that, I'd be glad to end my testimony and answer any questions and, hopefully, do at least as well, maybe even better than I did on the lime testimony last week. [LB114]

SENATOR CARLSON: Okay. Thank you, Mr. Hansen. Senator Harr. [LB114]

SENATOR HARR: Thank you, Mr. Chairman. I guess my question is, is the purpose of this bill to protect the consumer or the producer of honey? [LB114]

JOHN HANSEN: Senator, in my opinion, until you have a clear definitional standard, you can't do either. [LB114]

SENATOR HARR: Okay. Well, as I read this bill, we give a definition in Section 1, part 1, so that's fine. So okay, now we have defined honey. Damages, as I understand it, are only paid to producers, not to the actual consumer. Is that how you interpret this? [LB114]

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JOHN HANSEN: Well, I am not a lawyer, and I'm not sure what the threshold would be for a consumer to be adversely impacted by less than accurate labeling. But there has to be a standard to begin the process for labeling or there's no hope of further remedy, it would seem. You have to begin someplace. [LB114]

SENATOR HARR: If I sell you a Cadillac, and it turns out to have a Yugo engine in it, you're not damaged. [LB114]

JOHN HANSEN: Well, I would say that I probably was damaged. [LB114]

SENATOR HARR: Okay. So similarly here, if it's not what it says it is, there's damage. [LB114]

JOHN HANSEN: In my opinion, I am sympathetic to that point of view and our organization has been a consistent supporter of labeling across the board, but you have to have a standard for labeling first before you can have damages. [LB114]

SENATOR HARR: And I understand that. I'm just not sure who this bill is for, the consumer or the producer, is my concern with this bill as it's written. And I'll leave it at that. Thank you very much. [LB114]

JOHN HANSEN: And I really can't speak to the particulars of what the threshold should be for damage. But in this particular area you have to begin with a basis for labeling, and then, after that, then the business of enforcing it and all that goes with it relative to food labeling and food product labeling, which is a very complicated area I would say. I think that would be a fair summary. [LB114]

SENATOR CARLSON: Senator Larson. [LB114]

SENATOR LARSON: Right now, again I'm referring back to the letter that was handed out, and it says, right now, "The antidumping duty currently in place for Chinese honey distinguishes between pure honey and 'honey' that is less than 50 percent pure." So, and maybe I probably could have done this with the last testifier. I'm sorry, Mr. Hansen. But in that estimation, if it's more than 50 percent pure right now to current U.S. antidumping or antidumping duty, if it's more than 50 percent it would be pure honey right now under current U.S. [LB114]

JOHN HANSEN: I think so, but I think that again it goes back to the absence of a clear standard. [LB114]

SENATOR LARSON: And I'm going off your labeling. So right now, and I understand that this is a whole move to get the federal government to do something, but in terms of

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labeling, would that...are you kind of advocating that they have a different label in Nebraska than they do in other states or...because following what the federal government is doing right now, our antidumping duty is right at 50 percent. [LB114]

JOHN HANSEN: The Codex Alimentarius Commission standard is a standard that I think is, again as I started out in my testimony, is where we're headed. And in order to get effective trade enforcement of antidumping, you have to have a clear standard. In order to get fair competition, you have to have a consistent basis for comparison. And the problem with the Chinese is that they don't play fair by the rules and that's a...of all of the nations in the world that I've dealt with since 1994, in my official capacity, there is no other nation that has more consistently found ways around normal commercial standards and practice. If there's a shortcut, they're going to find it. And so then the problem gets to be enforcement. So in this case, I would say that enforcement is a darn good place to start, and then at that point then you have to go back to the trade mechanisms to try to get them to do a better job there. But even if you had a more effective enforcement of antidumping, you still would have the problem of labeling. [LB114]

SENATOR LARSON: Are they following our current antidumping standards in terms of, to get the proper labeling they need? [LB114]

JOHN HANSEN: I would say that, first off... [LB114]

SENATOR LARSON: I mean you're talking about shortcuts and they're taking as many as shortcuts as possible, but are they following the current U.S. standards in terms of antidumping to get the labeling in which they need? [LB114]

JOHN HANSEN: No, they're not necessarily following the antidumping standards to get the labeling they need. They're just simply, they're simply doing what they're doing in terms of merchandising a product, but there's no real clear remedy because there's no real clear standard for what the product is to begin with. And so this is one of those areas where you wouldn't think you ought to have to pass a law or have to develop these kinds of standards. Everybody kind of thinks they know what honey is and should be, and it's fairly simple and straightforward. And yet to the extent that some folks have taken advantage of that has made it clear that you need to have a definitional standard. [LB114]

SENATOR LARSON: Thank you. [LB114]

JOHN HANSEN: I don't know if I answered your question or not, but... [LB114]

SENATOR CARLSON: Senator Brasch. [LB114]

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SENATOR BRASCH: Thank you, Senator Carlson. Thank you, Mr. Hansen. My question is, is it the WHO, the World Health Organization? Okay, is that what we use for dairy products like milk from cows versus silk milk made from soybeans versus milk made from rice? Is that what the Department of Agriculture or farmers typically use the WHO as a basis for defining a product? Is that typical or are you aware of that? [LB114]

JOHN HANSEN: We are not as consistent about using Codex Alimentarius standards all of the time as you might think. And so in the case of sometimes we do, sometimes we don't. In the case of milk, for example, we have another product, a milk protein concentrate right now which comes in, that is creating huge dairy issues right now that we...our trade negotiators and our USDA and USTR have not wanted to get into that business of creating the same kinds of tariffs and treatment that they do for other milk components. And yet it's not necessarily a milk component. It was a product specifically manufactured to get around the existing tariff that had already been agreed to, and so it is a manufactured loophole. So these kinds of things happen all the time in the case of world trade. And so when they come up, then it's incumbent on folks who see the problem to go forward, and so I commend the Nebraska beekeepers and the beekeepers around the country for trying to bring about some remedy for their particular issue, which is a lack of a definitional standard for honey. [LB114]

SENATOR BRASCH: And the WHO organization is not limited to food products. Last year I was aware of a program, it was with physical exercise. There's...they had standards for, you know, for age, height, weight, the amount of calories, exercise. And so I think WHO is very broad-based and not just focused on food products. It's...unless it's a whole different organization. [LB114]

JOHN HANSEN: I think that the World Health Organization is separate from the Codex Alimentarius Commission, which really is a scientific definitional standard setting entity who struggle, frankly, on a lot of these kinds of issues. And that's why we've always advocated that the U.S. be involved with the Codex Alimentarius because it is the rules of the game. It is the definitional standards of how we do international commerce back and forth on an equitable basis, and so you have to have some...you have to start out with some common understanding of the terms in order to be able to go forward and do things in a straight-up understandable fashion, if that makes sense. [LB114]

SENATOR BRASCH: Thank you, Mr. Hansen. Thank you, Mr. Carlson. [LB114]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you, John, for your testimony. [LB114]

JOHN HANSEN: Thank you, Mr. Chairman and members of the committee. [LB114]

SENATOR CARLSON: Any other proponents? Any opponents? Okay, come right

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forward, and welcome to the committee. Okay, you can begin. [LB114]

SPENSER HASZARD: (Exhibit 2) Thank you, Senator Carlson. Good afternoon, senators on the Agriculture Committee. It's my first time testifying before the Nebraska Legislature. I'm here today... [LB114]

SENATOR CARLSON: Would you give your name and spell it? Okay. [LB114]

SPENSER HASZARD: Sorry. My name is Spenser Haszard, S-p-e-n-s-e-r, Haszard, H-a-s-z-a-r-d. I'm here today representing myself as a Nebraska citizen as well as a new beekeeper. My testimony today is to express my opposition to LB114. This bill would not be good for Nebraska for the following reasons: The bill would hurt local producers. Major honey importers are known for watering down their products with high fructose corn syrup and selling their products as pure honey, whether that be in bottled honey or in processed products such as cereal. However, LB114 would not fix this problem. This bill only regulates the local producers and says nothing in regards to the major honey producers. Carefully review Codex 12-1981 quoted excerpts: "1. SCOPE--from page 1. 1.1 Part One of the Standard applies to all honeys produced by honey bees and covers all styles of honey presentations which are processed and ultimately intended for direct consumption. Part Two covers honey for Industrial uses or as an ingredient in other foods. 1.2 Parts Two of this Standard also covers honey which is packed for sale in bulk containers, which may be repacked into retail packs. PART TWO, from page 8, Honey for Industrial Uses or as an Ingredient in other Foods. This part is subject to further consideration." Notice how this would leave out the major honey importers. Local producers that sell their products must directly face their customers. Being so closely involved with their customers, the local producers would be far less likely to water down their honey. Unfortunately, this bill will only hurt the local economy of small-time honey producers, who love their bees, forcing them to either pay exorbitant fees in testing of honey or cease honey sales altogether. Secondly, the bill is not needed. Nebraska already has the Pure Food Act, revised in 2008. This law allows the Department of Agriculture to go into any sales outlet, test any product, and if found not to meet label specifications, they can, and do have the power to remove any product from being sold in the state of Nebraska. Therefore, we already have a law in place to protect and ensure pure honey. Clearly, a new law is not needed. According to the Pure Food Act 81-2,284: "It shall be unlawful for any person to deceptively pack or package any food or for any person to distribute, offer for sale, or sell any food that has been deceptively packed or packaged. A food shall be deemed to be deceptively packed or packaged if: Any substance has been added to, mixed with, or packed with the food so as to increase its bulk or weight, reduce its quality or strength, or make it appear to be better or of greater value than it actually is." With these points in mind, LB114 would not be in the best interest of the people of Nebraska. It is not needed. It will hurt producers. Please disqualify LB114. Thank you for your time. [LB114]

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SENATOR CARLSON: All right, Spenser, thank you. You were well organized in presenting your testimony today. Any questions of Spenser? Senator Wallman. [LB114]

SENATOR WALLMAN: Thank you, Chairman Carlson, Senator. Yeah, thanks for coming here. Do you know if this has ever been used for honey producers, this Pure Food Act, do you know? [LB114]

SPENSER HASZARD: I don't know if it is, but it...you know, on the law, it states that it can be. It can be used. [LB114]

SENATOR WALLMAN: Okay. Thanks. [LB114]

SENATOR CARLSON: Okay. Any other questions? Senator Lathrop. [LB114]

SENATOR LATHROP: Again, where are you from, Spenser? [LB114]

SPENSER HASZARD: I'm from Lincoln. [LB114]

SENATOR LATHROP: From Lincoln. And you raise bees here in Lincoln? [LB114]

SPENSER HASZARD: Yes. [LB114]

SENATOR LATHROP: And how much honey do you produce in a year? [LB114]

SPENSER HASZARD: I'm a new beekeeper so I'm not starting selling honey yet. [LB114]

SENATOR LATHROP: But are you making it already? [LB114]

SPENSER HASZARD: Yes. [LB114]

SENATOR LATHROP: All right, good. Well, thanks for coming down. It's good to hear from you and it's good to see that guys your age are involved and paying attention, so thanks for coming down. [LB114]

SENATOR CARLSON: Any other questions? This is the first time you ever testified in front of a committee, isn't it, Spenser? [LB114]

SPENSER HASZARD: Yes. [LB114]

SENATOR CARLSON: I think you may have set a record in the state of Nebraska and we appreciate you be willing to do this, so thank you for your testimony. [LB114]

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SPENSER HAZARD: Thank you. [LB114]

SENATOR CARLSON: Okay. Any other testimony in opposition? [LB114]

KELLIE HASZARD: (Exhibit 3) Good afternoon, dear Senators of the Agriculture Committee. My name is Kellie Haszard, Kellie, K-e-l-l-i-e, Haszard, H-a-s-z-a-r-d. I'm here as a Nebraska citizen and as a parent of entrepreneurial beekeepers. This is my second time ever testifying, and to me it's kind of funny that it's my children who end up putting me in this seat. So here I am again. We respectfully, my husband and I, state our opposition to LB114. LB114 will be bad for the Nebraska citizens. This bill does not protect the citizens from adulterated honey originating from the large honey importers or processed foods containing such adulterated honey. And then I ask you at this time, if you can turn the page, I have the actual Codex Alimentarius standard here. And if you take a look at page 1, it talks about the scope that Spenser had and on page 8 it also does, where I've highlighted it. And it shows the accuracy of my comment that this will not actually affect the people that this bill is proposed to stop from producing inferior honey. Codex does go into here. On these pages here, it does go into specifics about testing and labeling, listing these as mandates, between pages 2 and 4. This bill will remove a substantial amount of local, pure, high quality honey by this labeling and testing mandating offered by very small producers, thereby limiting citizens' options to only buying from the adulterated products of the great big repackers, and you can see below as to why. LB114 will be bad for Nebraska small honey producers: (a) This bill will require weighty and cost prohibitive regulations which extensive honey analysis and burdensome labeling on very small producers who only sell directly to their customers, looking them in the eye with honesty. This bill would impose \$1,000-plus in fines for those who do not have the U.N. Codex-stipulated label. Pure honey has been sold since the beginning of recorded history with no United Nations labels, and Nebraska does not need them now or ever. It's really scary to issue or impose international law on to Nebraska. This bill will make Nebraska known for adopting laws which will put small business, small entrepreneurial businesses out of business. Lest you think we are for adulterated honey, please understand that our sons voluntarily follow stringent standards for beekeeping in hopes of becoming certified naturally grown, as they are proud to produce a pure quality product. LB114 goes after the wrong group of honey producers. If you take a look again at those highlighted areas on the Codex standard, Codex cleverly only regulates direct sales and does not begin to regulate the largest portions of honey sold, which includes proven adulterators such as the honey imports; the industrial use that goes into all of our processed foods--we have no idea that that's really true honey or is it adulterated; or bulk honey that actually ends up on our grocery store shelves because it was repacked. By the passage of LB114, it will actually expand on this adulterated honey sales in Nebraska because it does not regulate the corrupt businesses which will go on with their corruptions uninterrupted. Honestly, have that many small producers ever given the state of Nebraska a reason to think that they're all guilty of corruption? Are we not all innocent until proven guilty? I thought that was what I

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learned when I went to school. LB114 is not needed. It will lead to the weakening of the Nebraska Pure Food Act. Nebraska Department of Agriculture's Pure Food Act 81-2,287 already clearly provides for "adulteration, misbranding, deceptive packaging, or false advertising of food." And if you search further, 81-2,284, that my son had mentioned, goes into more detail. So the Department of Agriculture already has the authority to stop sale or remove products which it deems to be in violation of their act. The Department of Agriculture already requires honey to be labeled according to the Pure Food Act, and you know, also need to have the weights and measures. LB114 will confoundedly confuse. Just look at the confusing language in the standard. And it will accumulate disproportionate and unjustified costs to small producers. LB114 is severely misdirected and it does indicate labeling and thereby testing and it's not fair to very small producers. If any future Nebraska-initiated legislation towards honey standards need to be addressed, it should be included in the Pure Food Act. It should be focused on honey importers, major honey producers, industrial users, food processors, and repackers for retail, exempting the small direct-to-customer honey producers who work hard for the honest respect of their customers. I have one more final item in closing. Is it not ironic that this U.N. Codex standard was originally created in 1981, it was revised in 1987 and in 2001, yet in 30 years the writers never felt the need to regulate the most corrupt avenues of honey sales by never developing Part Two, the most grave, vital, and far-reaching parts of this code, the major honey producers. Thank you. [LB114]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions? Yes, Senator Larson. [LB114]

SENATOR LARSON: Real quick. You said that you'd have to label, small local producers would have to label their honey with U.N. Codex standards. How much would that cost the local producer or someone like...that has a small business like that? [LB114]

KELLIE HASZARD: That's a good question. We don't know what the laboratory tests would cost, but if you have... [LB114]

SENATOR LARSON: Even the labeling, yeah, all of it together. [LB114]

KELLIE HASZARD: Right. If you are going to get into the labeling of being able to say specifically what flower content and such like that, I mean our kids' bees are in the back yard. They're basically going anywhere they choose to. There's no way to verify what flower content you're talking about. For a small honey producer, it would be very disproportionate compared to somebody who is going to be compiling a lot of honey stores that they would be selling. [LB114]

SENATOR CARLSON: Okay. Any other questions? Thank you for your testimony. [LB114]

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KELLIE HASZARD: (Exhibit 4) Before I leave I would like to pass out a written statement from my other son who is also an entrepreneurial beekeeper, and I'd like to have it entered into the record. [LB114]

SENATOR CARLSON: Okay. Our page can take care of that. Thank you. Any other one testifying in opposition to the bill? Do we have anybody testifying in a neutral position? Seeing none, Senator Dubas, you're recognized to close. [LB114]

SENATOR DUBAS: Thank you very much, committee members, for your attention to this. I think it is obvious, those of us who have been here a little while and those of you who have just come, there are no simple issues in the Legislature, even the ones that we think may be simple and something as pure as honey. I appreciate all of those who came to testify today, those in support as well as those in opposition. That's the best way for us to learn. We're crafting policy. We need to take all things into consideration. I think there has been some very good points, good questions raised, especially as to paragraph 3. I don't think those are insurmountable things that...I brought this legislation forward for the producers, but I think you have raised a very specific concern: does this involve consumers as well? So I think we should be able to address the purpose of this legislation. I worked with small producers on this. I've talked with producers in other states who really, ultimately, their main concern is, how do we protect the integrity of the product that we produce in conjunction with our bees? I support and applaud the young man who came forward and testified. He is our future, and we don't want to do anything that would impede his ability to continue on with his business and grow that business. This is not asking anybody to put a label on their product. It's not asking them to test their product. It's not asking anything other than for the department to look at the Codex, the initial part of the Codex where it talks about what honey is and develop a definition for the state of Nebraska. I'm glad that they brought up the Pure Food Act because we do have that, and when I first began talking to the Department of Ag that was brought up. The Department of Ag does have some enforcement abilities through that Pure Food Act, but this bill isn't looking to go that direction. Again, producers are looking for a way to defend their product. And what they have found to date, that without a definition in place they don't have the ability for any civil recourse. Again, working with the...getting all of the states to move forward in this direction, and it hopefully will light that fire under the FDA. It's the FDA who deals with the imports and all of these other things. That's not the state. The state doesn't go there. And I've been told by federal officials on more than one occasion, you know, sometimes it takes the state to start things before we'll step up and pick up the ball. So that's where the push is as I've talked to producers in other states. They really want the FDA to get involved in this. They want the FDA be involved with imports and making sure that consumers are being protected. That's where the FDA comes in. So again, this isn't looking at putting any requirements on our producers. I mean, I can hardly think that the producers that came to me would want any additional requirements put on their business. They're looking to

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protect and defend a business that they're very proud of. It's my hope that we will be able to advance this bill out of committee. I'm very willing to look at the questions that have been raised. I think they're very valid and legitimate questions, and would be willing to make whatever changes we need to make to make that happen. So I thank you for your attention. [LB114]

SENATOR CARLSON: Okay. Thank you, Senator Dubas. Any questions on her closing? Okay, thank you, and with that we close the hearing on LB114. Now, as Chair of the committee, we've got 22 minutes until 4:00. The Chair needs to get up and move around a little bit and we're going to take a seven-minute recess and we'll start the hearing on LB108 at a quarter till according to that clock, so thank you for your patience. [LB114]

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SENATOR CARLSON: Okay. We'll reconvene our hearing. And as I make my way to the front, I'll turn it over to Senator Wallman. [LB108]

SENATOR WALLMAN: Welcome to the hot seat, Senator Carlson. [LB108]

SENATOR CARLSON: Okay. Thank you, Senator Wallman and members of the Agriculture Committee. I am Tom Carlson, C-a-r-l-s-o-n, representing District 38, and it's my pleasure to introduce LB108. LB108 arises from interim study resolution LR444, which directed the committee to examine the duties and privileges of landowners arising from the law of division fences and common law to address vegetative growth and conflicting with division fence construction and care. As we've heard before in this committee, and I anticipate testimony again today, necessary vegetation management is an increasing point of fencing conflict for a number of reasons. And I'm going to short-circuit a little bit. I'd ask each of you to go to the page of the actual bill itself, LB108, on page 2. And Section 1, "Every person liable to contribute to the construction and maintenance of a division fence or any portion thereof shall maintain his or her portion in good repair, including the necessary removal or trimming of vegetative growth within or encroaching upon the fenceline to repair or avoid damage to, or dislocation of, the division fence. The occurrence of vegetative growth within or encroaching upon a division fence that causes damage to, or dislocation of, the fence shall constitute a private nuisance to the adjacent landowner's possessory interests in his or her land." Now this obviously is additional language. We will discuss this bill and this does not answer all the problems and questions in regard to fences. Two years ago we changed the law which said that instead of having a proportional responsibility, you have two neighbors, one wants a fence and the other one doesn't, and then it became a decision, what was the proportion of benefit. The new law, the law as we have it today says that if Senator Harr and I are neighbors and I want a fence and he's not too keen on the fence, that we will share fifty-fifty in the cost of a legal fence. Now if I want to build a fence

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better than a legal fence, he's still just responsible for 50 percent of the cost of the legal fence, and I'll accept the cost of the additional better fence as long as he's okay with me putting in that better fence. In the process, you have the probability and the possibility of vegetation that needs to be dealt with. This law will not clear up everything. And one of the things that's very confusing and frustrating is that in talking with Rick Leonard, and he and I have discussed this, but under present law my understanding through him is that...again I'll go to Senator Harr and I have a fence, now it's established. And in that fence line is the trunk of a tree and it's partly on my property and partly on his. Because some of it's on his and some of it's on mine, neither one of us own that tree entirely. We own it together, so we have to have agreement to remove the tree. That's the frustrating part. We're not going to answer that with...we're not going to clear up everything with this. But this is an attempt to again head in the right direction and clear up some misunderstandings. If you look at the bottom of page 2, there's a section that's crossed out. And another decision we will be looking at and making is whether or not, in fact, to cross this section out or whether to leave it in. So this will be the essence of what we're going to discuss on this bill, and I'd ask you to listen to the testimony of those that have come, and then as a committee we will pursue it from there. Thank you for listening and I'd entertain any questions. [LB108]

SENATOR WALLMAN: Senator Lathrop. [LB108]

SENATOR LATHROP: I have a couple of questions. First of all, do these statutes apply to city dwellers too, or are these somehow apply just in the ag settings? [LB108]

SENATOR CARLSON: It's meant for country, I'm going to say it that way. But it's very possible that there can be a couple of circumstances where one side of the fence might be a subdivision, the other side might be a field or a pasture. [LB108]

SENATOR LATHROP: But we have just a piece of a statutory scheme. And my question, though, is does this...is this limited exclusively to the ag setting? [LB108]

SENATOR CARLSON: No, it's...I would say it's not limited exclusively to ag setting. [LB108]

SENATOR LATHROP: So if I have a neighbor, as I do, and a fence, which I do, and there's some weeds growing up in the middle and it's starting to mess the fence up, and I live in the city of Omaha, can I avail myself of this or is it excluded or exclusively for rural settings? [LB108]

SENATOR CARLSON: No, it's not meant for that. Now I don't know if I'm 100 percent accurate in talking to you about this, that's not what it's intended for. And to try and clear up the fence law also is to address those issues where a person buys some property out in the country, because the country is a wonderful place to live. But I'm right next

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door and I've got pasture and I've got livestock, and you don't want a fence because you bought that property but I want a fence, and I'm going to tell you, you need one because you don't want my cattle running across your backyard. So there is a reason why a fence is good for you and there's an obvious reason why it's good for me. It's not geared for inside city limits. [LB108]

SENATOR LATHROP: The other question I have is, I didn't participate in the hearing, but what's going on with all these division fences that we keep having bills on this? Like what precipitated this? Do you...is there a big problem out in the country with what to do with the grass or the stuff that's growing up in the fence line? [LB108]

SENATOR CARLSON: As I'm sitting here, I've lost my terminology that we used to have fence...I want to say fence rider. That's not it. [LB108]

RICK LEONARD: Fence viewer. [LB108]

SENATOR CARLSON: Fence viewer, fence viewer. It there's a dispute between you and me, the fence viewer was called in or fence viewers to settle our dispute on a proportional basis. And they would decide, well, I get 70 percent of the benefit, so I'll pay 70 percent of the cost. And you get 30 percent of the benefit, you pay 30 percent of cost. That's the way disputes were settled. It's not easy to find fence viewers. Who wants to get mixed up in the dispute between you and me? So we changed the law because there were requests to look into that, and now the law is if there is a fence between us, we're going to pay 50 percent...we're each responsible for 50 percent of the cost and responsible for 50 percent of the cost of maintenance and repair. [LB108]

SENATOR LATHROP: And my question, though, was are you as the Chair of Ag Committee getting a lot of complaints that neighbors are fighting over their fences or who is going to take care of the weeds that are growing up in between? [LB108]

SENATOR CARLSON: I think you will hear in testimony some actual circumstances that come about that I'll say demand some kind of a way to settle these. So there are some, yes. [LB108]

SENATOR LATHROP: Okay. And then the last question I have is, you're creating a private nuisance, so effectively we're setting the standard for who can sue whom over the fence line? Okay. Good. [LB108]

SENATOR CARLSON: Fortunately or unfortunately so. [LB108]

SENATOR LATHROP: Yeah, for good or bad. Yeah. [LB108]

SENATOR CARLSON: Okay. Any other questions? [LB108]

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SENATOR WALLMAN: Any other questions? Senator Brasch. [LB108]

SENATOR BRASCH: Thank you, Senator Wallman. Thank you, Senator Carlson. My question is, this is making each party responsible for costs, correct? [LB108]

SENATOR CARLSON: The law already makes each party responsible. This is directing attention more at when we're trying to get something done, either building a fence or repairing a fence, and there's vegetation that needs to be taken care of, how do we deal with that. [LB108]

SENATOR BRASCH: Okay. Thank you. No more questions. [LB108]

SENATOR WALLMAN: Any other questions? Do you want to close, Senator Carlson? [LB108]

SENATOR CARLSON: Yes, I will. Thank you. [LB108]

SENATOR WALLMAN: Any proponents to this bill? [LB108]

ART BROWNLEE: Good afternoon again, Chairman Wallman, temporary Chairman Wallman and the rest of the Ag Committee. My name is Art Brownlee, A-r-t B-r-o-w-n-l-e-e. I'm currently the chairman of the Nebraska Cattlemen Brand and Property Rights Committee. I'm here today representing them, the Nebraska Cattlemen Association, and Beef Producers in support of LB108. Once again, I'm a rancher in western Cherry County and was born and raised in Omaha and worked in Omaha for 20 years. And to use an old adage that has survived because it's real is: good fences make for good neighbors. And I would add an additional level to that and say: good laws on good fences make for good neighbors. And the Nebraska Cattlemen supported LB667 last year, and Rick here did just a yeoman job and was a very excellent legal analyst in just trying to change a couple of words, and we found out how difficult that was to set that aright. And I just want you to know that we support this as an additional, no pun intended, tightening of the fences and tightening some holes in the fences. And as Senator Carlson said so aptly, it does not solve all the problems, but it helps to resolve some issues that had to do with accountability and responsibility for fencing. And if you have any questions, I'd be glad to entertain them. [LB108]

SENATOR WALLMAN: Anybody have any questions? Senator Lathrop. [LB108]

SENATOR LATHROP: Well, maybe just one. Part of this bill would eliminate...in Section 2, and I'm sure you've read this, that says existing law is you can't go on to somebody else's property to work on the fence unless you have their permission or a court order. How do you feel about somebody coming on to your property to fix the fence, the

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common fence? [LB108]

ART BROWNLEE: It's a necessary part of owning property is the way I look at it. And if you've got fence to repair, you need to find a way to repair it, and sometimes that involves going on property. [LB108]

SENATOR LATHROP: So you think it's a good idea to take that provision out of there? [LB108]

ART BROWNLEE: The provision, you mean, that somebody has... [LB108]

SENATOR LATHROP: It says you either got to have your neighbor's permission or a court order to go there and fix it. [LB108]

ART BROWNLEE: No, I don't have any trouble with that. I think that's just having...I think it's a necessary part of having to have a fence and having property with the fence is having to be on the neighbor's. But I don't have any trouble with having (inaudible) permission that you're fencing there. [LB108]

SENATOR LATHROP: Okay. I'm not sure I'm understanding the answer. [LB108]

ART BROWNLEE: I don't see any problem with that. I don't see any problem with letting your neighbor know that you're working on a fence. [LB108]

SENATOR LATHROP: Well, right now you have to have the neighbor's permission or you have to have a court order. This bill would eliminate that. Do you think that's a good idea, or do you think you should have your neighbor's permission or a court order to go on your neighbor's property to fix the fence? [LB108]

ART BROWNLEE: I guess what I'm saying is, is that's part of having property and having fences is being able to go on your neighbor's. Taking it away, I don't have any problem with, or leaving it in, I don't have a problem with. I think it's a good idea to call your neighbor and let you know you're. In each cultural situation, whether it's western Omaha or western Nebraska, are two different situations. I think I'd like to have the freedom for people to use a responsible way of addressing it. If they've got a problem with their neighbor already, it's probably a smart thing to do to let them know you're fixing a fence. [LB108]

SENATOR LATHROP: What if I have a stand of corn and the neighbor comes through my corn to go fix the fence we have in common? [LB108]

ART BROWNLEE: I'm sorry, one more time. If you have a what? [LB108]

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SENATOR LATHROP: Well, I just...going onto somebody else's property without their permission strikes me as problematic. [LB108]

ART BROWNLEE: I could see it being problematic, although I would hate to make it into a problem and give someone a legal basis to make it a problem. If you've got cattle on the neighbor, your cattle...generally, your neighbor would like the cattle removed. I mean that's the way it generally works. And that happens if there is not a good fence. [LB108]

SENATOR LATHROP: Okay. [LB108]

SENATOR WALLMAN: Senator Larson. [LB108]

SENATOR LARSON: I grew up...or I represent O'Neill, and so I understand where you're coming from. And let me ask you something to try to address some of Senator Lathrop's concerns. When you're repairing fence and to go on to...I know Senator Lathrop's concerned about going on to other, you know, the (inaudible), the adjacent property. When you go on to the adjacent property to fix fence, how far into their property would you say you have to go into to get the fence fixed? [LB108]

ART BROWNLEE: Sometimes inches, sometimes a couple of feet. It probably depends on the fence. [LB108]

SENATOR LARSON: A couple of feet. And in terms of a couple of feet, you know, how far away is corn usually from the fence line? [LB108]

ART BROWNLEE: Anymore with the \$7-a-bushel corn, it's pretty close. (Laughter) [LB108]

SENATOR LARSON: Well, this is true. Seven-dollar corn, it does get awful close. But one would estimate that there would be enough room between any... [LB108]

ART BROWNLEE: Right. It shouldn't disturb any of the property. [LB108]

SENATOR LARSON: Any of the property. And in terms of a few feet, oftentimes you could say, in common sense, it's not usually a big deal? [LB108]

ART BROWNLEE: Correct. [LB108]

SENATOR LARSON: Thank you. [LB108]

SENATOR WALLMAN: Any other questions? Senator. [LB108]

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SENATOR BRASCH: I do live on a farm and I'm trying to picture our fences right now, and there's hot-wire fences, and the only time there's a situation where there could be a problem is when we have cattle, our neighbor has cattle, and the fence is down and we have a field of corn right next to that. So good fences are very important. And when we talk about vegetation, we're not very picky on our farm unless it's a thistle or a tree growing in a fence line or something like that. So here the problem is that it's a matter of maintaining the fence and the vegetation that's at issue at this point. [LB108]

ART BROWNLEE: Correct. [LB108]

SENATOR BRASCH: That it's a shared responsibility and each has a legal right of way to alleviate that. [LB108]

ART BROWNLEE: Correct. There are so many variations that Senator Carlson is attempting to resolve, that, you know, as we say, as we go from one extreme western Omaha to western Nebraska, there's so many variations in it that is... [LB108]

SENATOR BRASCH: So it's mandated cooperation between property owners, basically. [LB108]

ART BROWNLEE: Right. [LB108]

SENATOR BRASCH: Thank you. [LB108]

SENATOR WALLMAN: Senator Bloomfield. [LB108]

SENATOR BLOOMFIELD: Thank you. This might be something better for Exec Committee but it's just the opposite of what Senator Brasch brought up. I've got a wide fence between me and a neighbor. Neither one of us use it for livestock. There have been, since before I got there, plum thickets and trees. I figure if we took that fence out, that isn't much of a fence at all, we could each gain probably three acres of farm ground off that half mile. He refuses to do anything with any of the fence. He wants a place for his pheasants to land. Under what I see now, I have no recourse to do anything, except... [LB108]

ART BROWNLEE: No, I don't think this bill brings that either. [LB108]

SENATOR BLOOMFIELD: ...I could take out my side, but his trees are still going to kill my corn (inaudible). So is there anything in this bill that addresses that, or is that something we want to talk about in Exec? [LB108]

ART BROWNLEE: I don't see that here. [LB108]

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SENATOR CARLSON: Ask me at another time. [LB108]

SENATOR WALLMAN: Any other questions? [LB108]

ART BROWNLEE: To your question, Senator Bloomfield, as I said, we're just merely trying to tighten the fence law and close a few holes. There's more there. [LB108]

SENATOR WALLMAN: Thank you. Any other proponents? [LB108]

DAVID WRIGHT: My name is David Wright, D-a-v-i-d W-r-i-g-h-t, and I represent the Independent Cattlemen of Nebraska. We're testifying in favor of this. It just adds to the previous laws that were passed, and as Art had said before, it tightens up the laws. As for an example, our ranch is at Ewing, Nebraska, and the Elkhorn River runs through Ewing...or runs through the ranch. This spring the river flooded and it was a mess for quite a while. We had cattle sorted off and down along the river but we couldn't get fences across because the river was so high. In the process in the late summer, a cottonwood tree falls from my neighbor's across the fence. So I have a choice. Either I can go across the fence and cut the cottonwood tree up and fix it or I can be looking for cows in Omaha because there's no fence between Ewing and Omaha because of the Elkhorn River. A similar problem is where I happen to live there's also farming operations, and as we talked before about the building a good fence in between the two, sometimes on the other side of the fence maybe plum thickets will grow up. And when we have the winters that we've had lately, you know what a set of plum thickets will do to a fence. It will drop it down. Now the interesting thing about cattle are, is they can smell the fence when it's down. So my choice becomes, even if it is a cornfield or not, or whatever crop is on the other side, I can either call the neighbor, look for a court order, or I can go fix the fence. Because in the meantime, those cows aren't going to obey no law. They see that crop on the other side and it looks good to them, whether it's, you know, a neighbor with flowers or whether it's corn or whether it's alfalfa. So the decision has to be made now, what you're going to do about the situation now, because they're going to move. They're not going to wait. So that's what we see that, the entry part, if I get across the fence to cut the cottonwood tree up, you know, to prevent the problem that's being caused. This summer I had cows get out in a cornfield and it took us three days to get them out. And I called the neighbor and I said, I mowed down one row of corn. Well, I had no choice. What was I supposed to do about it? To which, as neighbors, he said, I understand; I have cattle, they get out too. Now those are understanding neighbors. I don't know what you do with the Hatfields and McCoys, but if you don't make a decision at that moment, that entire herd will keep moving, so. [LB108]

SENATOR WALLMAN: Thank you. Any questions? Proponent? [LB108]

JOHN HANSEN: Vice Chairman Wallman and members of the Ag Committee, for the record, my name is John K. Hansen, H-a-n-s-e-n. I am the president of the Nebraska

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Farmers Union. I'm here before you today as our state president and also our lobbyist. Based on my track record, the fact that I would support any kind of fence bill at all should just automatically throw it out, because I was awarded, I think, pretty much all of the Ag Committee's attempts for the last 21 years, to try to make fence law more clear and straightforward. In my defense, I would say that the changing demographics of agriculture have really had a lot to do with why this committee has struggled so many times to try to come up with what seems like fairly simple, straightforward, reasonable, commonsense kinds of approaches to issues that didn't really used to be. And a lot of that has come with land ownership and tenure. We have...we used to have neighbors that both had livestock, both had a vested interest in fixing a fence. They both worked at it together. Then we saw, as we see more and more land owned by absentee landowners who have different kinds of ideas and also different land uses, we have a lot of absentee landowners who have no idea what their fences look like because in a lot of cases they certainly not only don't ride them, they've never seen them. And so they have no interest in keeping their fence up. So we are in support of this bill and I hope that doesn't, Senator Carlson, cause your bill to go down to defeat. But this seems like to me, if I'm reading the language correctly, seems like to me providing the opportunity for...usually there's one party, if there's neither party cares about a fence then, you know, it's kind of a standoff of sorts, and so it falls into disrepair on kind of an equal basis. But where there's competing use and somebody has livestock and somebody doesn't, there's obviously somebody has a lot more clear of an interest in trying to keep the fence up. This section looks like to me, if I'm reading it correctly, says that at least somebody who wants to take care of keeping the fence up has a fair opportunity to do it. And so if you've ever kept up fences, then you become very familiar with birds and where they park and where they deposit and the problems that come with that, and the corresponding Chinese elm trees and cedar trees and all the other things that grow up in fence lines, and so if you don't spray, they're going to grow. And so if they're going to grow, they're going to cause dysfunction in the fence and they're going to cause problems, and eventually the trees are going to come over on the other side and it's going to cause a whole host of problems. So it looks like that this is a reasonable approach to try to allow someone who actually wants to keep up a fence to do so. And I've been on both sides of the issue. As a producer, I've been the livestock guy who had neighbors who had absolutely no interest whatsoever in keeping up their fences. And I remember a situation where I had cattle that used to pasture on the Elkhorn not far from Battle Creek that, thanks to our neighbor's not only unwillingness to put up a fence, but willingness to take fences down, that we tracked cattle down the Elkhorn River in a dry stretch that made it right to the edge of Norfolk by the bridge. And running cattle up a dry river is a fairly taxing thing. And so we've also had good neighbors. But the changing demographics would be my summary in land use and ownership patterns why we continue to struggle with this issue. And with that, I would close my testimony and answer any questions in the chance that I might be able to do so. [LB108]

SENATOR WALLMAN: Does anybody have any questions of John? Thank you, John.

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[LB108]

JOHN HANSEN: Thank you. [LB108]

MARK ROEMER: (Exhibit 1) Good afternoon, Senator Wallman, members of the Ag Committee. My name is Mark Roemer, M-a-r-k R-o-e-m-e-r. I've got a handout that I would like to have you follow along with me quickly with. I won't spend a whole lot of time on the handout. I would like to, however, explain the pictures and that's what these are. And possibly this will help you understand through illustration of what it is that we're trying to accomplish with LB108. I am a supporter of the bill. And you can remove it from the package, if you would. There's six pages and it's fairly quick. Some of these are reprints from testimony I presented a year ago. And I'm aware that some of you were not members of the committee at that time, so bear with me and ignore the pictures if you've seen them once before. Some of them, again, are new. I'm a cow-calf producer. I live just west of Lincoln, Nebraska. In fact, the picture on the top where it says "Division Fences," shows a picture of the Capitol in the distance if you can take a look at the horizon. My operation requires maintenance and repair of approximately 15 miles of fence, and my yearly goal is to rebuild and replace at least one mile of fence with new fence. And the picture on the bottom, underneath "Division Fences," would tend to indicate what my project looks like before I begin. There are some places where I have recently installed new fence, and you can see the two-year-old trees and bushes already are attacking that new fence line. And there's places where there's three-year-old trees which were growing three to four feet from the fence line that are continuing to cause problems. Most of these trees are feral, volunteer, seeded by wildlife, propagate rapidly, and quickly overtake fence lines. Imagine the mulberry trees in another 20 years, and they cause a lot of problems including rendering electric fences useless and they short out electric fences, and that's the same as having no fence. A picture of a county road, what it looked like one year ago and then what it looked after the county people helped me remove the trees from that area. It certainly makes for a safer roadway and system. And now I have an area where I can install a fence and relatively expect cattle to remain inside the fence line, keeping them off the roadway. That's an expensive operation to remove trees when you have to bring in heavy equipment. You can see some places where they have intentionally planted trees next to a property line, a fence line. And those trees, after...even though they are intentionally planted, when planted too close become a problem not only for the property owner and those people wishing to do fence maintenance work, but also for public utility companies. And those trees grow tall enough to get into the electrical high line wires and that becomes extremely expensive for public utilities to maintain those rights of way. You can see some personal property encroachment, and I believe LB108 tends to remove language that protected personal property from being placed in fence lines. And then you notice some interesting pictures of trees that really don't know which side of the fence they ought to be on, so they just literally go around the fence, and you know, this happens more often than not. And quite honestly, in removing that tree, what I found out through the legal channels is it's very

similar to obtaining a divorce with your neighboring landowner. Neither one of you are allowed to touch that tree. And, at one point in time, you decide how much of the tree can you remove when literally half of it is on your property and half of it is on his. A fence line is a very fine line. And if you go back to principles of mathematics, it's probably thinner than this piece of paper. So how far are you allowed to deal with it in order to obtain the task of keeping livestock where they belong? The next picture is of some trees that are falling down due to a lack of maintenance and just old age with trees. They just get old after awhile and crack and fall down, whether it be a lightning strike, act of God, or they just rot and fall over. These fallen trees, as with previous testimony we heard, become avenues for cattle to wander off and become problems not only to neighbors but also public roadways. Nothing worse than a herd of cattle or a herd of horses on a road. These trees are, in effect, trespassing in neighboring property. My particular experience with trees and fence lines finds me being presently involved in a lawsuit as a defendant for removing one of the trees that I had removed from my property and had fallen...excuse me. [LB108]

SENATOR WALLMAN: Can you wrap it up? [LB108]

MARK ROEMER: Yeah, I'll do that...the lawsuit which is preventing me from building trees. In closing, I'd like to thank you for continuing to work on the fence line issues, and LB108 in particular. I would, however, urge you to consider a buffer zone, eight feet on either side of a fence line, and ask for language to encourage or at least to prevent litigation from preventing vegetation within that buffer zone, and remind you that further clarification definition prevents arguments and lawsuits and laws for a better world. Thank you for your time. [LB108]

SENATOR WALLMAN: Thank you. Any questions? Senator Harr. [LB108]

SENATOR HARR: I grew up fencing since I was knee-high to a duckling, and I think part of the reason I left the state was because I hated fencing so much, for college. So I understand your frustration with rebuilding fences. But as I read this statute or proposed statute, a lot of these pictures would fit within the vegetative definition of vegetation. As long as you get to it before it goes to the line, you would be able to go back a reasonable amount now. That's the issue is what's reasonable. But do you not agree you would be able to cut back some of those, even those it's on your neighbor's property, to prevent the encroachment? I mean it would require your watchfulness, but you would be able to. Do you not agree? [LB108]

MARK ROEMER: As I read the legislation that's being presented, it's my responsibility to keep my vegetation from encroaching upon the neighbor's property. Correct. But I would not be able to reach across the neighbor's, the fence line, to reduce any vegetation encroachment upon my property. [LB108]

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SENATOR HARR: Okay. Thank you. [LB108]

SENATOR WALLMAN: Any other questions? Are you done, Senator Harr? [LB108]

SENATOR HARR: Yes. [LB108]

SENATOR WALLMAN: Okay. Thank you. [LB108]

MARK ROEMER: Thank you. [LB108]

SENATOR WALLMAN: Any opponents? Neutral? Senator Carlson, you're welcome to close. [LB108]

SENATOR CARLSON: Okay. Thank you, Senator Wallman and members of the committee. Thanks for your patience and thanks for the patience of those that came and testified. I appreciate the testimony that we've had. I think you can see that this is a start in the direction of clearing up some things. It's not the total answer, and I would suggest that we discuss some further issues on this bill in an Executive Session, but thank you for allowing me to testify. [LB108]

SENATOR WALLMAN: This completes the hearing for today. Thank you. [LB108]

SENATOR CARLSON: Okay, this does complete the hearing on LB108. Thank you for coming. And again, committee, you've been very patient. I'm going to ask you to be patient for a few more minutes to go into Executive Session. [LB108]