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Agriculture Committee
February 01, 2011

[LB126 LB160 LB200]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, February 1, 2011, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB126, LB200, and LB160. 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. [LB126]

SENATOR CARLSON: I'm Tom Carlson, Chair of the committee. To my right, our research analyst who is Rick Leonard, and our committee clerk to my far left, is Barb DeRiese. Our page today is Kate DeLashmutt from Burwell. And senators to my right are Senator Norm Wallman from Cortland, Vice Chair of the committee; Senator Lydia Brasch from Bancroft; Senator Dave Bloomfield from Hoskins; and between them, eventually joining them, will be Senator Harr from Omaha; to my left is Senator Steve Lathrop from Omaha; and Senator Tyson Larson from O'Neill; and joining us in a bit should be Senator Russ Karpisek from Wilber. If you're planning on testifying, there's a green sheet back by the door. Please take that green sheet and fill it out, have it ready before you testify. And if you want your name entered in the record but do not wish to testify, there's a white form back there that you can sign in on and indicate your support for or your opposition to or neutral position on a bill that we're having a hearing on today. When you come to the mike to testify, please state your name and spell it for the record. And if you don't do that, I'll gently remind you right away so if it's in your remarks to do it a sentence or two later, move it up so you do it right away and then we get that taken care of for the transcript. If you do not wish to testify, you can submit remarks in writing and they will be read into the official record. If you have handouts, please give those to Kate, our page, and she will pass those out. We need twelve of them, so if you don't have twelve, let her know that and then she can make some copies, if necessary, if you have handout materials. Please turn off your cell phones or put them on vibrate and we won't have the hearing interrupted in any way. Are there any questions before we begin? We have a lighting system here that we may or may not use, depending on how many testifiers we have. If we begin to use the lights, you'll have five minutes and the green light comes on for the first four minutes and then the yellow light comes on at four minutes and then the red light comes on and you don't have to shut it off right away, but that's a sign, wrap it up. And then we can open and ask you questions. Any questions before we begin today? Okay, we'll open the hearing on LB126. And Senator Avery, welcome. You may open the hearing. [LB126]

SENATOR AVERY: (Exhibits 1, 1A, 1B, and 1C.) Thank you, Mr. Chair. For the record, my name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in central Lincoln. I am having passed out some letters of support for LB126. These letters come from the Center for Science in the Public Interest, the Corporate Accountability International, College of Public Health at UNMC, and from Edith Zumwalt, a nutritionist for Lincoln Public Schools. First, let me tell you what this bill is not about because we have had a

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Transcriber's Office

Agriculture Committee
February 01, 2011

fair amount of misinformation distributed about this bill and a lot of misunderstanding. It is not about limiting parental control, it is not about telling parents they're unsophisticated or incapable of making choices about what their kids will eat, and it's not about taking away kids collectable toys. LB126 is about, for the first time, seriously addressing the epidemic of childhood obesity in this state. Childhood obesity is a veritable problem. You'll hear more testimony about that later on from Dr. Rauner, who is a specialist in public health, and has taken on childhood obesity as a project for this year. I suspect it's a multiyear project. So childhood obesity is real. It is a problem. It is not fabricated. It is not political. And it certainly is not intended...or at least focus on this is not intended to insult any of Nebraska's families. This bill is about giving parents the means, the tools, and the options for better health and nutrition for their children. The bill is designed to tell corporations and franchise operations in Nebraska that you can no longer target our kids with toys and game giveaways to push your least nutritious, least healthful meals to make a profit. Childhood obesity is empirically linked to a number of illnesses, type 2 diabetes, high blood pressure, high cholesterol, heart problems, stroke, and cancer. Some would want to argue that this bill generates excessive government intrusion. According to a 2009 Gallup-Healthways Index released just this last week, direct costs associated with obesity and related chronic conditions total about \$50 million per 100 residents annually. This is about \$900 million in annual healthcare costs for the state of Nebraska. Now that's a big number. But we doubled-checked this, and it apparently is accurate according to Gallup-Healthways Index. Every major medical and health expert in the country has reported that one-third of our nation's children are overweight or obese. The Centers for Disease Control, the Robert Wood Foundation, the Mayo Clinic, the Annie E. Casey Foundation, these are all organizations nationally regarded for their medical and health expertise. They have nothing to gain. They have no political games to play. They're doctors and professionals who spend lifetimes devoting themselves to the science of medicine and they agree with these numbers. Even the Federal Trade Commission, the World Health Organization, and the United Nations have plans to tackle junk food advertising aimed at children this year. That came out just this week...or just last week, excuse me. Nebraska's kids are included in these high-risk figures. One-third of Nebraska's kids are overweight or obese. That's nearly 140,000 of our young people. Furthermore, the Nebraska Medical Association reported evidence just recently that the number of kids in Nebraska that are overweight or obese has risen since 2003 by 33 percent. So it's getting worse, not better. I recently decided that if I'm going to take on this issue, I need to do my homework. So my legislative aide and I arranged to have lunch with the second and third grade students at a school in the heart of my district. We saw firsthand what medical experts have been saying for years. According to LPS specialist, nearly 36 percent of all the students in that school are overweight or obese. Now what I saw in the lunchroom was encouraging. Kids were choosing skim and 1 percent milk. Chocolate, yes, but they were choosing the low-fat version. They were choosing two main small...choosing one of two main small entrees and choosing two or three fruits and vegetables. This is a result of an effort by LPS to do a better job of providing nutritious food for children. You

Agriculture Committee
February 01, 2011

don't have whole milk anymore in the schools. The government sanctioned national school lunch program which already regulates at least 180 kids meals, that's about 11 million breakfasts and 32 million lunches a day, this program is making strides and changing the dietary nutrition and healthful eating habits of our children. The USDA recently released 2010 nutrition standards. You may have seen that in the paper today. They want to minimize trans fats in our diets, increase whole grain substantially, serve 1 percent or skim, unflavored milk, increase fruit and vegetable options, while decreasing starchy vegetables. And for the first time ever, the USDA is establishing caloric maximums and minimums. The USDA regulates these meals to keep our kids healthy and to engage them in the school day in a healthful activity. But this is not the only solution. LB126 is an attempt to provide an additional tool to fight child obesity and overweight conditions. It sets nutritional standards for kids meals. The meals would be limited to 500 calories per meal or 400 for a breakfast meal; lower saturated fats; lower trans fats; lower sodium; lower sugar; more whole grains, fruits, and vegetables. This legislation targets businesses that advertise giveaway toys or games as incentives to purchase the least nutritious meals on their menu. Go to a fast-food place and check it out. It's not hard to see what's going on. It really shouldn't be hard for fast-food restaurants to do a better job of marketing and providing healthful options like apples, oranges, 100 percent fruit juices to our kids. Take, for example, the chicken nugget. And this...I'm taking this from a leading fast-food company that I will not name. It's a small piece. The chicken nugget is a small piece, reconstituted chicken suspended and preserved in something called TBHQ which, by the way, is a derivative of petroleum and used in lacquers and varnishes. Another antifoaming agent used in Silly Putty is also on the ingredient list. I found that shocking. I don't know if I'll ever be able to eat another one. (Laughter) We should have...I think what we ought to do is think twice about eating these foods and we should certainly think twice about marketing these to our kids. Much like the prohibition on the sale of cigarettes and alcohol aimed at kids, LB126 does not regulate or prohibit any fast-food restaurant from selling any type of food item in their location. It merely prohibits a type of sales practice that explicitly targets our kids with cartoon action figures and games. You may remember Joe Camel. Senator Larson, you may not remember Joe Camel, but I think most of the rest of us do. Joe Camel appeared alongside Camel cigarettes for ten years, a cartoon character promoting the sale of cigarettes that was aimed primarily at minors. And, eventually, it was more than America could take and more than we would tolerate. So in 1997, R.J. Reynolds settled a case out of court and took Joe Camel off the market. I have been heartened recently to see that many other corporate entities are also voluntarily removing trans fats and salts and sugars from their lineup. Walmart is bringing lower-priced fruits and vegetables to its shelves. Kraft Foods has kept portions of single serve snacks and has a policy of not marketing to children under six, not at all. ConAgra, a local corporation, aims to cut 20 percent of sodium in its products by the year 2015. General Mills dumped refined grains and replaced with whole grains in its breakfast cereals. Similar pledges have come from Pepsi Cola, Heinz, Sara Lee and Campbells. Finally, the Walt Disney Corporation severed its relationship with a major fast-food restaurant in 2006, largely

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

because it no longer wanted its licensed media characters linked with unhealthy foods targeted at children. These are steps in the right direction. But again, this is only part of the solution. I want to be clear, because I have seen a lot of reports, some from parents or from newspapers and reporters and newspaper editors. And I've gotten some e-mails from groups and from parents that misrepresent and misunderstand this bill. I am not calling for the elimination of toys from kids meals. I am not calling parents unsophisticated in the face of major corporate marketing spending campaigns. I am saying, look at the restaurants. You can and you can do better. I am talking to the fast-food restaurants here. Provide the parents with some tools. Help them, make these meals healthier. Eliminate the high salt. Eliminate the trans fats. Add fruits and vegetables and whole grains and then put the collectable toys in the box and give the parents a fighting chance. I'm a parent of a teenage son. I can remember not too long ago the begging, the pleading, and crying, getting the fast-food meal with a Lion King in it or the Toy Story character. I remember this very well. There is...I understand in the advertising field a term called the nag factor. And Dr. Rauner will talk about this in a few minutes. How many times does the kid have to nag the parent before the parent gives in? They know. They're sophisticated at this. Nag the parent, finally you get what you want. Every parent has been through that. I agonized over feeding my kid a meal of absolutely little or no nutritional value so he could complete a series of toy characters, and that he could get one this week and then next week, they have another one. It's a series. Now you want to get the whole set. You remember that, don't you, Senator Lathrop? Yeah, most of us do. It's a return sales mechanism instilling patterns and behavior on our children. The bottom line is that this is a time to address childhood obesity in the state. Poor diets, physical inactivity are the most important factors in contributing to this epidemic. That cuts across all segments of society, and we are going to spend generations paying for the consequences. But fast-food establishments have a responsibility to give their kids...or give our kids and our parents a fighting chance when it comes to healthful eating. So this is not a parental control issue. This is not big government out of control. It's not the nanny state, as I have heard so many times, telling parents how to feed their kids. This is sensible legislation aimed at adjusting lifestyle choices and promoting health and welfare of our future in this state. I have one final comment. I want to let you know that I did look at the fiscal note, which was rather stunning in its size. The Department of Agriculture is estimating that they're going to have to invest in sophisticated high-cost equipment and will have large setup costs in order to do sample collections and testing, plus they're going to have to have some ongoing costs. You've all seen these. This is on the back of the place mat in fast-food places. It's got all the nutritional values of every item they put on the menu. Can't the Department of Agriculture look at this and look at what is in the meal and determine whether or not it's complying? Do you need the sophisticated testing facilities and laboratory equipment and all of that? I don't think so. I've been here long enough to know if you don't like a bill and you don't want to do it, kill it by fiscal note. There is more to be said about this and I will wait to hear what questions you have and what the other testimony provides before I say more. Thank you for your attention. [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

SENATOR CARLSON: Okay. Thank you, Senator Avery. Do we have any questions?
Senator Lathrop. [LB126]

SENATOR LATHROP: Maybe two observations, Bill, and I appreciate the goal of your bill. But I have...I guess the first observation I'd make is in your opening you were telling us about the companies that do business in this state that are voluntarily moving towards healthier diets. You said Walmart is bringing in more fruit. And I'm wondering, I appreciate that there's a place for the free market and sometimes we have to step in. But doesn't it strike you that we seem to be moving in that direction without ever regulating in it, that is, feeding our kids more healthy food? [LB126]

SENATOR AVERY: These are positive developments, Senator Lathrop, but this came about because of national pressure, popular...well, parents, for example, and other organizations. [LB126]

SENATOR LATHROP: Well, even if we looked at the Burger Kings and the McDonald's, aren't they putting more salads and more healthy foods? I don't go into those places, so. [LB126]

SENATOR AVERY: They are. But the point here is that they are targeting children with these enticing toys to nag the parent to buy that item. And if you look at what is in those Happy Meals or whatever meal you call it, these are the ones with the toy, it's the least nutritious meal or items on the menu. Now maybe they make more profit on that, but our children suffer. [LB126]

SENATOR LATHROP: Okay. And then the second point and maybe this is...I think a practical problem with regulating advertisement because you kind of get around that free speech and then up at Omaha we have, obviously we're across the river from Iowa, and if there's an Iowa radio station that advertises these toys for McDonald's or a fast-food joint in Council Bluffs, how are we going to stop that from coming across the river? [LB126]

SENATOR AVERY: You don't stop that. You don't stop that. And I'm not trying to stop the advertising. What I'm trying to do is stop what kind of food... [LB126]

SENATOR LATHROP: Well, you are, I think in... [LB126]

SENATOR AVERY: ...no, what kind of food is in the meal they're advertising. See, they're going to say... [LB126]

SENATOR LATHROP: But the practical problem... [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

SENATOR AVERY: ...buy this because it has more fat and more sodium. [LB126]

SENATOR LATHROP: On page 5, Section 16, you say these fast-food restaurants shall not advertise market supplies. So if they're doing that from Council Bluffs and it's coming across the river in a radio wave.... [LB126]

SENATOR AVERY: But then the parent that wants to feed their child that meal will have to go across the river to Council Bluffs to get it. If the child is listening to that advertising pitch here in Nebraska, and it says, buy this Happy Meal, and they go to a Nebraska venue to buy that, they're going...that place will have to serve a nutritious meal with the toy. Do you understand the point? [LB126]

SENATOR LATHROP: Yeah, but you're doing two things. You're regulating what they can serve with the toy and you're also telling them what they can say in their advertisements. [LB126]

SENATOR AVERY: No. No. What I'm saying here is that you can advertise these meals, but if you do advertise these meals, when you put the meal together it has to meet certain nutrition standards. [LB126]

SENATOR LATHROP: Okay. [LB126]

SENATOR AVERY: Am I unclear here, I mean... [LB126]

SENATOR LATHROP: Well, I think there's a clear prohibition against a certain type of advertising in Section 16. And my point is, let's say that I'm listening to XM radio and this is coming out of Washington, D.C., or somewhere else and I'm listening to it in my car in Nebraska. We can't stop those people in Washington or in New York City from putting that on the air and disseminating it into Nebraska. [LB126]

SENATOR AVERY: You may want to amend that, if that becomes an issue. But the objective that I'm after is not to stop advertising altogether, but to make sure that if you're going to sell that item that you're advertising, it's going to have...meet certain nutritional standards. [LB126]

SENATOR LATHROP: Okay. Thanks. [LB126]

SENATOR CARLSON: (Exhibit 2) Okay. Any other questions of the committee? All right, Senator Avery mentioned letters that are to be entered in the record in support of his bill. And there's another letter from Brenda Steiner, Northeast Ag Consulting, also in support of the bill. Will you be here to close? [LB126]

SENATOR AVERY: Yes, sir, I will stay. [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

SENATOR CARLSON: Okay. All right, thank you. Now we will proceed with the hearing and those of you that are here obviously see that we give the senator that presents the bill leeway in terms of how much time, and now we'll go five minutes. And first of all, we go through those that are proponents supporting the bill. And then we'll go to those that are opposing the bill. And to get an idea, how many of you are going to testify as proponents in support of the bill? Okay. Welcome. Please come forward. [LB126]

BOB RAUNER: (Exhibit 3) I'm Dr. Bob Rauner, testifying as chair of the Nebraska Medical Association Public Health Committee. My last name is spelled R-a-u-n-e-r and there's a handout there with the bullet points and the stats on the back, so. In support of this, this is something that actually already should be covered under law. Federal and state law already prohibit deceptive marketing. What's wrong right now is that due to weaknesses in enforcement, this isn't interpreted as deceptive marketing. Most child health experts, psychologists basically say that any marketing directed at children is inherently deceptive. This is because children's cognitive ability is such that they can't distinguish educational programming from marketing. So, for example, if they see somebody marketing Mountain Dew and they'll be better athletes and more active, they take that with the same credibility as their teacher telling them to eat broccoli. Kids younger than 12 don't conceptually get that like us adults. And that's why they almost universally say that any marketing directed toward a child under 12 is inherently deceptive which, therefore, should be illegal. And there are actually class action lawsuits across the country trying to make this case. It's especially a problem when we're in the midst of an obesity epidemic. If you look at the back, I've put some stats on here. One is just the national map. This is usually surprising when people see this, how fast the obesity epidemic in only 20 years. Below that is actually Lincoln Public Schools' stats where already 20 percent of our fifth graders are obese. I have another colleague who has got similar statistics for Kearney Public Schools as well. Senator Avery mentioned the nag factor, pester power. If you google those terms you'll find lots of articles written about how they do use this tactic. They do employ child psychology to take advantage of children's natural tendency to be collectors, for example. So you'll notice that almost everything is marketed...frequently marketed as collect all ten, because children are just natural collectors. That's why they start as stamp collectors and coin collectors, so it takes advantage of the children's natural tendencies. That nag factor number, it's about seven to ten times on average that it takes a parent to cave in. Not all parents do, of course. Some have more willpower, but not all. And regardless of the parents' ability to step in, it's still illegal, you know. Same way with a lot of other things. There's a reason why only some programming is during prime time because you can't be around your child 24/7. That's just the way it is. You can't prohibit everything, but you have to have some help for the parents on this. In an ideal world, fast-food companies would see this, be responsible like some are, like you mentioned. But still the majority are not. It's like stop signs. Maybe 50 percent of people would follow it if there was no enforcement, but we can't have 50 percent. We need 100 percent on

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

some of these things. Some other things that have been raised. This does not relate to free speech. Free speech does not encompass deceptive marketing, so free speech is not a correct argument on this. It also does not prohibit what people can put in their meal. It only prohibits the combination of an unhealthy meal and a toy. So the short version is, yes, you can market all you want the Buzz Lightyear doll in Nebraska. It's just that Happy Meal has to have, say, like an apple in it. It can't just be french fries. So that's the real intent of this. It doesn't prohibit them individually, only in combination. The other thing, I was surprised at the fiscal note. It mentions a lot of lab testing to be done. There's no need for any lab testing in the fiscal note. Like Senator Avery showed, all these things are available on the Internet. You can find out the nutritional value. Most dietitians can actually just look at what's in it and give you a pretty fair estimate of the nutritional value. So it doesn't require everybody to submit their Happy Meals for testing enforce and running up hundreds of thousands of dollars of bills to enforce this. I'm not sure why they came up with that, the fiscal note, other than using the death by fiscal note tactic, so. Thank you for your time and I'll answer any questions. [LB126]

SENATOR CARLSON: Okay. Thank you, Dr. Rauner. Do we have questions from the committee? Yes, Senator Larson. [LB126]

SENATOR LARSON: Thank you, Doctor. Why is the current marketing considered deceptive marketing in your...? [LB126]

BOB RAUNER: Well, it's not current, it's pretty much all marketing to kids is considered deceptive inherently if you talk to any child psychologist. [LB126]

SENATOR LARSON: Inherently or it is deceptive? [LB126]

BOB RAUNER: It is, because children just don't have the ability to tell the difference between marketing and education. [LB126]

SENATOR LARSON: But isn't deceptive marketing already not...I mean, legally is deceptive, I mean... [LB126]

BOB RAUNER: Um-hum. It's actually, historically, it was the case that it was illegal, but around 1980 some of those enforcements were relaxed. In almost every other country it is illegal, so in European countries you can't use any marketing toward children. So, if it's, for example, the Dora the Explorer is on TV, they can't have food advertising directed to kids on that, so. [LB126]

SENATOR CARLSON: Okay. Any other questions? I'd...the fiscal note for this. How do you think that the responsibility for compliance should be handled and what should be involved in it? [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

BOB RAUNER: Well, I think it's on page 6 and 7. Basically it says the director or his or her designee shall conduct periodic inspections. So during a restaurant inspection you can just look at the marketing on there and if there's Buzz Lightyear up there, you look at what's in the meal. Most nutritionists with a glance could tell you, that's not very healthy. I think most of you could probably tell that's not very healthy. If it's just chicken nuggets and french fries, it probably doesn't meet the enforcement. If it's got an apple, if it's got some carrots, a little carrot sticks that usually is easy to get kids to eat, that would be okay. You could also, of course, have complaints. So if somebody like me notices that could say, hey, why don't you go take a look at the McDonald's on 13th and F, for example. I'm not sure what the exact address is, but that's a way it could easily be done. [LB126]

SENATOR CARLSON: Now, I don't have an opinion one way or another on the amount of fiscal note. I can understand Senator Avery's concern about it. There is a cost. [LB126]

BOB RAUNER: Yes. [LB126]

SENATOR CARLSON: And it has to be figured out, how often are things checked? Is it on complaint only? Is it some kind of a plan to hit every establishment so often? And then what happens when there's a violation? And there's got to be follow-up. So there is cost. It's not a free process. But I think that there hasn't been any attempt by this committee or anyone else that I'm aware of to make a fiscal note just look bad so that nobody will vote for it. That's not the case. But there are issues there that have to be dealt with. [LB126]

BOB RAUNER: Yeah. [LB126]

SENATOR CARLSON: Thank you. Any other questions? Okay, thank you for your testimony. [LB126]

BOB RAUNER: Thank you. [LB126]

SENATOR CARLSON: Senator Karpisek has joined our group and so has Senator Harr. Now again, we're using the lights so those of you...do we have anyone else testifying as a proponent of the bill? Okay, how many of you are going to testify as opponents of the bill? Okay, please make your way forward and don't be bashful and we'll proceed. Welcome. [LB126]

JIM PARTINGTON: Senator Carlson, members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I'm the executive director of the Nebraska Restaurant Association, and I appreciate the opportunity to appear before you to testify in opposition to LB126. The state of Nebraska has over 4,000 restaurants employing

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

about 61,000 people and generating revenue of approximately \$1.9 billion. The mission of the Nebraska Restaurant Association is to represent, educate, and promote this growing industry. Most of these restaurants are small businesses with 10 to 40 employees and face the challenges common to all small businesses, as well as some that are unique to this industry. The stated purpose of LB126 is to provide remedies for childhood obesity in Nebraska by restricting advertising and marketing methods for certain types of meals offered to children. It's not my intent to minimize the issue of obesity. This is a serious and complex issue for many Americans, but restaurants are not the cause and placing unwarranted limits on advertising is not the solution. Restaurants in Nebraska provide individuals the opportunity to choose from a varied menu of safe, healthy, high-quality and enjoyable cuisine. When customers enter a restaurant, they're presented with an array of choices designed to accommodate their individual tastes and preferences in the way the meal is prepared and the food items selected. The restaurant owner wants them to leave as satisfied customers who will return to enjoy the experience many times. All foods can be part of a balanced diet. Healthful eating patterns are not created or destroyed by one meal or one food. It's the overall pattern of food intake and choices over time that is important to a healthy lifestyle. It's also important to remember that 76 percent of meals served in America are not provided by restaurants, but are served in the home. Actually I have to correct that statistic. I called the National Restaurant Association today. I last used that in 2005 and they tell me that the trend is favorable to restaurants, it's now 75 percent instead of 76 percent. We'd like that trend to continue. We'd like more people to eat out, but as it stands right now, about 75 percent of the meals are served in the home. We will make more progress against obesity as a nation if we avoid controversial legislation and rely on education about the benefits of a balanced diet, moderation, and physical activity in maintaining a healthy lifestyle. To this end, the National Restaurant Association and the Nebraska Restaurant Association support federal legislation establishing standard menu labeling requirements. This was enacted as part of the Health Care Reform Act just recently. And this provides customers in all 50 states the information they need to make healthy choices for themselves and their families. The restaurant industry and the food industry also support the transition away from trans fats and other harmful fats in foods as well, and they're working at collecting a lot of research and working to make that happen as we progress and find replacements for these harmful ingredients. In summary, LB126 does nothing to address the issue of childhood obesity, and we believe it imposes excessive limits on the freedom of our members to advertise and market their products. Thank you for the opportunity to share my thoughts on this issue of great importance to the industry I represent. And I'll be happy to answer any questions you may have. [LB126]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of Mr. Partington? Seeing none, thank you. [LB126]

JIM PARTINGTON: Thank you. [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

SENATOR CARLSON: Okay. Next testifier, please. Welcome. [LB126]

ROGER MOODY: Welcome. Thank you. My name is Roger Moody, R-o-g-e-r M-o-o-d-y. I'm vice president and general manager of KLKN-TV here in Lincoln, and I'm representing the Nebraska Broadcasters. I'm filling in for Marty Riemschneider, our executive director, who couldn't make it from Omaha today. So, they kind of called me in on a last-minute notice and it's the first time I've testified, so bear with me if I am a little nervous. The broadcasters here in Nebraska oppose LB126 based on the difficult issue it raises pertaining to commercial free speech. Thirty years ago the U.S. Supreme Court ruled in favor of including First Amendment protection of commercial free speech in Central Hudson Gas & Electric Corp. v. Public Service Commission. And that was a note that Senator Lathrop alluded to. The court ruled that for commercial free speech to be denied First Amendment protection, it must be determined that the product is illegal or misleading. Next, it must be determined whether the asserted governmental interests to be served by the restriction on commercial speech is substantial. If both inquiries yield positive answers, it must then be decided whether the regulation directly advances the governmental interest asserted and whether it is not more extensive than is necessary to serve that interest. Clearly, the language of LB126 is not addressing issues, inaccurate or unlawful activity. It says it simply wants to, "encourage multinational and corporate responsibility in Nebraska by restricting advertising and marketing of licensed media characters and other consumer incentives." The NBA believes LB126 so-called encouragement of corporate responsibility by using free speech restrictions as a weapon falls far short of what the high court says can be done legally under the constitution. LB126 has vagueness about it that puts it into question, who would make determinations about specifics of the advertised offer? Is it the corporation, the franchisee, or does it fall on the media outlet to first pronounce that a food item is not nutritionally sound, and then second, declare that the promotional offer is somehow offering an incentive to purchase? LB126 creates interstate commerce concerns also. And this is another thing Senator Lathrop alluded to. There are a lot of TV and radio signals that spill into the state from South Dakota, Iowa, Wyoming, and Colorado. How do we regulate those? All border markets served by adjacent state stations would be free from restrictions and, at point, LB126 would be useless while putting Nebraska broadcasters at a competitive disadvantage. Cable systems in virtually every Nebraska community import television signals from distant areas not governed by Nebraska law and Internet advertising is likewise pervasive. LB126 will interfere with broadcasters' long-term network affiliate agreements. I have an agreement with ABC and I can't do anything to alter the network signal coming into my station without prior permission. Preempting a live, network-fed commercial, even if it were possible, could cause a breach of the local affiliate's network agreement. And that could lead to the loss of my license. Nebraska Broadcasters have a distinguished record of public service promoting programs intent upon developing and delivering good nutrition to children. A recent example, on a central Nebraska radio station is called Ask Why. It was initiated

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

and overseen by the Hastings Family YMCA. It serves nutritious snacks to children after school at no charge. They gladly promote this kind of activity on air and in various ways. In Lincoln, our TV station promoted Healthy Kids Healthy Families in conjunction with a local hospital and Time Warner Cable. This was a 17-week program that followed two families while they ate nutritional meals and exercised. And it was very successful. We're not unique. Stations all across Nebraska similarly address nutrition issues in news, interviews, and public service announcements in their communities. NBA member stations have devoted literally tens of thousands of minutes of noncommercial sustaining and public service announcements for the Nebraska Department of Health and Human Services focusing on among other things, the W-I-C or WIC program. So conceptually, the cause of good nutrition is one that we have championed. However, restrictions on advertising will reduce revenues and harm broadcasters' ability to continue to serve their local communities with vital news and information, Amber alerts, severe weather announcements, and valued entertainment programming. There are numerous nonspeech, nontrade, restrictive steps that Nebraska can take to address the childhood obesity challenge. The Nebraska Broadcasters Association believes LB126 is not one of those. Thank you very much for your attention and I would be open to any questions. [LB126]

SENATOR CARLSON: Okay. Thank you, Mr. Moody. Senator Harr. [LB126]

SENATOR HARR: Thank you, Senator Carlson. While I'm sympathetic to your plight, I do take issue with your argument that you do a lot of service projects in that, who, in your opinion, owns the public airway or the airwaves? [LB126]

ROGER MOODY: Well, the public. [LB126]

SENATOR HARR: The public and so as part of your license, that's what you do, what you do, is that correct? [LB126]

ROGER MOODY: There is no legal commitment that we do public service anymore. There was at one time. We do have to file a report with the FCC quarterly telling them that we're serving the needs of the community. [LB126]

SENATOR HARR: Okay. [LB126]

ROGER MOODY: And then showing them how we do that. [LB126]

SENATOR HARR: Exactly. Okay. But you are required to...maybe not public service, but you are required to be a service to the public. And if you aren't, you can have your license revoked. [LB126]

ROGER MOODY: Well, we have to show that we are serving the needs of our

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Transcriber's Office

Agriculture Committee
February 01, 2011

community to the FCC, yeah, that's true. [LB126]

SENATOR HARR: Okay. [LB126]

ROGER MOODY: And as far as public service announcements go, stations aren't obligated to carry any. But most do, especially in the state of Nebraska, because we feel an obligation to the community to strengthen it and to give back. So we do that voluntarily. [LB126]

SENATOR CARLSON: Okay. Any other questions? Senator Larson. [LB126]

SENATOR LARSON: Thank you, Mr. Moody. We heard the testifier before you saying that the current advertising is deceptive. Would you say our current advertising is deceptive? [LB126]

ROGER MOODY: Well, that's a pretty obvious question, no. (Laugh) I think there are enough... [LB126]

SENATOR LARSON: And, therefore, since it's not deceptive, this bill would limit the First Amendment. [LB126]

ROGER MOODY: Yes. [LB126]

SENATOR LARSON: Thank you. [LB126]

ROGER MOODY: I mean, if it was deceptive, it wouldn't be on the air or allowed to be seen or heard. [LB126]

SENATOR CARLSON: Okay. Senator Harr. [LB126]

SENATOR HARR: Thank you, Mr. Chairman. I guess my question is...the core of my question, what I was building to is, if this is passed, you would have...well, how would I say this...you would have...if you were required not to advertise, let's pretend you litigated and it was unsuccessful, you would follow that bill...or you would follow that law, wouldn't you? [LB126]

ROGER MOODY: We would attempt to. Right now, honestly, I have no way of controlling what the network sends down. I don't even know what they send down. I have an affiliation agreement that obligates me to carry their signal, not to alter it or do anything to it without prior permission. I don't get a log. Like a local station you get a log of the commercials. I know where my local commercials fall in network programming. I don't have any control over what the network sends down. So that would be an issue. It might require...I imagine the technology is there somewhere. It would require a large

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

expense to do. [LB126]

SENATOR HARR: Okay. Thank you. [LB126]

SENATOR CARLSON: Okay. Any other questions? Okay. I appreciate your testimony today and had to almost smile a little bit because you did fine. You were a little bit nervous to begin with and yet broadcasters put a microphone and sometimes a camera right in front of us and we're supposed to act like we've got everything in order and we know what we're talking about. [LB126]

ROGER MOODY: Yeah. [LB126]

SENATOR CARLSON: It's quite a challenge, but you did fine. [LB126]

ROGER MOODY: Well, thank you. I appreciate that. [LB126]

SENATOR CARLSON: All right. Thank you for your testimony. [LB126]

ROGER MOODY: You bet. Thank you. [LB126]

SENATOR CARLSON: Next testifier. Welcome. [LB126]

TIM KEIGHER: Good afternoon, Chairman Carlson and members of the committee. My name is Tim Keigher. First name is T-i-m, last name is K-e-i-g-h-e-r. I appear before you today on behalf of the Nebraska Petroleum Marketers and Convenience Store Association in opposition to LB126. And just so you know, I'm color-blind so I don't know which light is the red one and which one is the green, but I'm sure you'll let me know. (Laughter) Besides that, I'm going to be brief. We talked about this at our executive committee session and just felt that, you know, this should be left up to the parents through education. As Mr. Partington said, 75 percent of meals are served at home, and felt that it should be a parenting role as opposed to a government role, so. With that, I don't have anything else to add to what Mr. Partington said, so. Be happy to answer any questions. [LB126]

SENATOR CARLSON: Okay. Thank you. Any questions? All right. Senator Brasch. [LB126]

SENATOR BRASCH: Thank you, and thank you, Mr. Keigher. Just one comment. I would encourage the restaurants are to provide and I think this has been more healthy foods. You know, I am a grandparent and we do go through fast-food restaurants quite a bit. I've raised questions about those McNuggets once they cool off and they get pretty stiff and I said, nuggets, not a brand. But I do think that you're limited. It's hot...you know, basically, you come to hot dogs, those nuggets, you know, that there

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

should be something a little bit more healthy. I don't, you know, as far as the advertising is concerned, we use the ads as incentive to eat your meal. No meal, no toy, that type of thing. But I just don't think there's enough, you know...my experience across the board is, yes, you can get fries or apple slices, you know, that type of thing and that would be the encouragement here is, you know, out of good faith for our children and their future and good health that each restaurant, I don't know if it needs to be a bill, but they would build towards a healthier menu like the public schools do. [LB126]

TIM KEIGHER: Well, I think that a lot of my members pay attention to what their customers say. You know, they carry different products based upon the neighborhood that they're in and the requirement that that neighborhood has. Some of them have started carrying, you know, fruits and vegetables and that because the neighborhood has asked for those things, so. [LB126]

SENATOR BRASCH: Thank you very much. [LB126]

TIM KEIGHER: Thank you. [LB126]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you, Tim. Welcome. [LB126]

KATHY SIEFKEN: (Exhibit 5) Senator Carlson and members of the committee, my name is Kathy Siefken, Kathy with a K, Siefken is S-i-e-f-k-e-n. I'm the executive director and lobbyist for the Nebraska Grocery Industry Association, here in opposition of LB126. I apologize for the handout that you're getting. I didn't think I was going to make it to this hearing because I was down the hall at another hearing and I was going to have Mr. Otto hand this in for me, so it says that I'm not going to be here and, in fact, I am. So we're here in opposition for...the main reason is that as the food industry, we take healthy food very seriously. And there are a number of things that we are doing that will help consumers make better healthy food choices and I have attached to those...the second page of the handout, the one with the bright pink or the red on it, is a new...you haven't seen it in the stores yet, but this is a voluntary program that will have...we call it FOP, front-of-package labeling. And we have been working with the federal government to try to get this standardized and everyone to approve this format. It will be voluntary and we believe that most of the manufacturers will step up and use this label on the front of the package. Now the handout that I gave you, that says it's page 6. The handout was 14 pages long and it basically just showed the different variations of this label that would be on the front of the package. The second thing that we are doing to let consumers know and to help them to make healthy food choices, there is a NuVal system that some of our stores are using. And again, I just took a couple of pages off the Internet to try to explain to you and show you what those programs are all about. The NuVal system was put together and it actually rates healthy food, so when you go into, for example a HyVee store, the numbers are right on the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

shelf tags. We, as an industry, are investing a lot of time, money, and effort into educating consumers because we think consumer choice is a very, very important thing; and we (inaudible) want consumers to have the choice of what they want their families or the rewards they give to their kids when they're being exceptionally good. We don't think the government should interfere in those kind of things. And I was here to...when senator introduced the bill and I understand that he's saying this isn't taking away choices, but in reality it is affecting the choices that people have. And what I'm trying to tell you is that we, as an industry, are stepping up. We understand the message. We get it. We are doing what we can, but we only move as fast as government allows us to. As a matter of fact, the front-of-package labeling has been in the works for probably a year and a half, and it still isn't quite finalized because we're working with the White House to make sure that everyone meets those guidelines. We're doing what we can as quickly as we can, and we think that these kind of things shouldn't be legislated. We think that education is the key. So if you have any questions, I'd be happy to try to answer them. [LB126]

SENATOR CARLSON: Okay. Thank you for your testimony. Senator Bloomfield. [LB126]

SENATOR BLOOMFIELD: Kathy, you said this front of package label is volunteer. Do you have any kind of a time line of how long that will take that industry to get that done voluntarily? [LB126]

KATHY SIEFKEN: My understanding is they want to move forward as quickly as they possibly can, but it still hasn't gotten final approval from the White House, so call your President. [LB126]

SENATOR BLOOMFIELD: I'd rather not do that. (Laughter) [LB126]

SENATOR CARLSON: Senator Wallman. [LB126]

SENATOR WALLMAN: Thank you, Chairman Carlson. Welcome to our committee here, Kathy. [LB126]

KATHY SIEFKEN: Thank you. [LB126]

SENATOR WALLMAN: And this NuVal score, is the higher the number the worse it is? [LB126]

KATHY SIEFKEN: No. The higher the better. [LB126]

SENATOR WALLMAN: Okay. [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

KATHY SIEFKEN: And so what I did in the examples here, I tried to take something that was a little bit more unhealthy so that you could see the actual scores. And when you go into the store, you can actually look at the shelf, look at the juices and see which one is healthier than the other and you will be surprised. Private label is not...private label is, in some cases, healthier than 100 percent juice. [LB126]

SENATOR WALLMAN: And I miss the food pyramid, the pyramid. Thanks. (Laugh)
[LB126]

KATHY SIEFKEN: Yeah, things change. One of the other things that Senator Brasch asked about was...or you had made mention of the restaurants and labeling. There again, on a federal level there is a menu labeling bill that we have been working on. We just finally passed a food safety bill on the federal level and the menu labeling issue would require nutritional values on all of the...like in the delis in our grocery stores, you'd have to have a nutritional value for, you know, bacon and eggs, or whatever is up there on those menus. Now the smaller restaurants would be exempt from that. But I guess the point is, the trend is for grocery, deli, restaurants to give consumers what they're asking for. And they are asking for nutritional information so that they can make healthy choices. And when the...your constituents and the citizens of the state are asking for those things, sometimes you need to give industry time to develop, like the NuVal scoring system, and to put those things in place before we react with legislation. Let us do what we do best. That's what we're asking for. [LB126]

SENATOR CARLSON: Senator Harr. [LB126]

SENATOR HARR: And I'll be quick. I guess, I got my issue and I love all this labeling. It's great and it's wonderful and it's informative. And I can make a choice. My issue lies with my two-year-old daughter. She does not know how to read labels. She does understand toys very well. And so I am concerned with the fact that she will choose by food, toy, not the label. And I understand there's a role of a parent in there. [LB126]

KATHY SIEFKEN: Thank you for saying that. [LB126]

SENATOR HARR: But where is the role of the industry? [LB126]

KATHY SIEFKEN: I think the role of the parent is to use those kind of products as rewards, if that's what they want. You know, when my kids were little, maybe I was just, you know, the wicked mother, I don't know. But we didn't eat at fast-food places unless it was part of a reward system and that's how we used it. And so maybe parents really need to be parents. [LB126]

SENATOR HARR: Okay. I guess, let's step back though. To answer my question, what is the role of the industry? Do they have no role? Is that what you're saying? [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

KATHY SIEFKEN: No, no, not at all. What I am saying is, we are stepping up and I've shown you the different roles that we are taking by providing parents with information so parents can make good decisions for their children, because parents are parents.
[LB126]

SENATOR HARR: Okay. Thank you. [LB126]

SENATOR CARLSON: Any other questions? Kathy, we look at the NuVal sheet here. Until Senator Wallman asked, I'm looking at that and I'm thinking, which ones of these are toxic? (Laughter) Well, it looks like a couple of them there. Is that what that means?
[LB126]

KATHY SIEFKEN: Yeah, that little one on the bottom looks...that's what that means. It doesn't mean it's toxic, it just means that on the list, it's the least healthy. And so, frankly...and what this does is, this NuVal system will provide motivation to manufacturers to make sure they're not the bottom one on the list. It's just...it is a program that has been developed by scientists and they went through and they've got all of these points that they factor into these grades or into these scores. And the same thing with the front packaging labeling. The front-of-package labeling, you really don't want to be the guy that's not on the label because people are going to go through the stores and they're going to look for those labels because...and that's the beauty of this system in having everyone voluntarily step up is that it's not mandated so it's not going to increase the price of food. They'll work it into their packaging as new packaging is developed. But what it will do is, if you don't have that front-of-package labeling on your product, it doesn't set you apart from the rest of them. Everybody will want it. So we believe that more people will step up and put that labeling on the front of the package. If the label isn't there, people are going to think twice about, wait a minute, why would I buy this? It's too difficult to flip that over and look at the nutrition on the back, especially when you've got just those little squares that are...they just pop. So we think everyone will do it. [LB126]

SENATOR CARLSON: Okay. You gave a good answer because if you'd agree it was toxic, then I was going to say, what are you selling it for? (Laughter) [LB126]

KATHY SIEFKEN: There is no such thing as bad food. There is such a thing as bad food choices. It's sort of like aspirin. Aspirin is a miracle drug. Look what it's done for society and for all of us. You take too much, you don't survive. So there are balances in life that you need...you just need to be aware of and make the right choices. [LB126]

SENATOR CARLSON: Okay. Thank you. Any other questions? Thank you for your testimony. [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

KATHY SIEFKEN: Thank you. [LB126]

SENATOR CARLSON: How many more do we have to testify? Okay. Welcome.
[LB126]

JESSICA KOLTERMAN: Thank you, Senator Carlson, members of the Agriculture Committee. For the record my name is Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. I represent Nebraska Farm Bureau Federation where I serve as the director of PAC and state governmental relations. I come before you today in opposition to LB126. Our Farm Bureau policy adopted by our membership maintains the belief in freedom of the individual. This legislation begins down a slippery slope of removing that freedom of choice of food from the individual. It places specific caloric and fat contents into statute and those two things cause our members great concern. While we recognize Senator Avery's attempt to address childhood obesity, we believe that the emphasis in addressing this issue should be placed on the personal responsibility of the individual in a nonlegislative manner. Finally, during this time of reductions in spending and cuts to services, we bring concerns about the additional responsibilities this legislation would place on the Department of Agriculture. With that, I will be happy to answer any questions you may have. [LB126]

SENATOR CARLSON: Okay. Thank you. Any questions of the committee? Thank you.
[LB126]

JESSICA KOLTERMAN: Thank you. [LB126]

SENATOR CARLSON: Next, please. [LB126]

JIM OTTO: Senator Carlson and members of the committee, my name is Jim Otto. First name, J-i-m, last name O-t-t-o. Please don't spell it backwards. (Laughter) I'm president of the Nebraska Retail Federation, also a registered lobbyist for the Nebraska Retail Federation, and I am here to express the opposition of the Nebraska Retail Federation to LB126. First of all, I would like to answer or at least address some of the concerns that have been raised because I don't think they were quite...they're based on maybe some false assumptions. It was mentioned earlier that these are the least nutritious...I also lobby for the Nebraska Restaurant Association, so I'm somewhat aware of that, these are the least nutritious meals. Least nutritious, that was mentioned several times. And I guess I'm going to make it my responsibility to send you off of the Web site of various fast-food companies, their children's meals that offer toys, and you will find that there is fruit available, that there are healthy choices. Many of them, at least some of them, are less than 500 calories. But the other thing that was mentioned was that all they're asking is to throw an apple in. That is not true. If you really read the restrictions that are provided by this bill, it's much more restrictive than throwing an apple in. And also it was mentioned that it just addressed fast food and the target was fast food; and if

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

that were true, I don't think the convenience stores would have been here. I don't think the grocers would have been here. I wouldn't be here if this didn't go much further than fast food. So I am also a grandparent, Senator Brasch, and face those same things, but there actually is, maybe we as grandparents haven't searched the menu enough to realize that, hey, you can get that toy and you can have a pretty healthy meal. And maybe that might answer some of your concerns too, Senator Harr, because the industry is, both in the prepared food industry and in the restaurant industry, is moving to much more healthy choices. And as Mr. Partington said earlier, 75 percent of the meals are eaten at home. We got issues with sedentary lifestyle, etcetera. So I'd just like to close with a little bit of a story and take you back to when I was a Boy Scout in Troop 134 in Kearney, Nebraska, and we used to go on overnight campouts and cook our meal on the campfire and then we'd make S'mores with graham crackers to Hershey bars and roasted marshmallows, and then a lot of times there would be a skit for the rest of the troop around the campfire. And one of the skits that I remember that kind of sticks in my mind is, there would be one scout that would go up and crawl on his hands and knees around the campfire and, after a little bit, several other scouts would join him and say, what's going on? What's the matter? And he'd say, well, I lost my official Boy Scout pocket knife. And so they started crawling around the campfire with him looking for it and finally one of the other scouts says, well, where did you lose it? He said, out there in the woods. He says, well, why are we looking here? There's more light. Anyway, I...(laughter) you know, a Boy Scout skit. But when you really think about it, LB126 has us looking around the campfire. The solution is out in the woods, and it's much more complicated than just this bill. So with that, I would encourage you to indefinitely postpone LB126 and be glad to address any questions. [LB126]

SENATOR CARLSON: Okay. Thank you for your testimony. Senator Wallman. [LB126]

SENATOR WALLMAN: Thank you, Chairman Carlson. And welcome, too, Jim. You know there used to be a president named John, remember what he emphasized? Physical fitness. And I think that's missing. If we're going to do something, exercise, exercise. As a child I didn't know, maybe one person obese. And we ate a lot more fat than we do today. Thank you. [LB126]

JIM OTTO: You might have worked fairly hard on that farm, though. (Laughter) [LB126]

SENATOR CARLSON: Okay. Any other questions? Seeing none, thank you. [LB126]

JIM OTTO: Thank you. [LB126]

SENATOR CARLSON: (Exhibits 6 and 6A) Anyone else testifying in opposition? Anyone that want to testify in a neutral position? I do have letters in opposition from Keith Scarborough, senior vice president, government relations, the National Association of Advertisers; Michael Domgard, President of the American Advertising

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

Federation; and, well, we had Jessica with a letter as well as being here to testify. With that, Senator Avery, you're called on to close. [LB126]

SENATOR AVERY: Thank you, Mr. Chair. I am glad to give Mr. Otto an opportunity to tell a bad joke (laughter) and an opportunity to earn his pay. A number of things were said that I need to address. I want to talk about Ms. Siefken's discussion, because if you listen carefully to what she had to say, she was actually, mostly making my case for me. She was talking about what the grocery industry is doing to offer more choices to consumers. And she said consumer choice is important. I agree. Partly, this bill, LB126, is about that--providing parents with better choices. When you're in that fast-food restaurant and the kid is pulling on your arm, begging for the meal with the toy, the default option for the restaurant is to give you the least nutritious items they have on their menu. Now Mr. Otto mentioned that if you ask, they might give you an apple. If you specifically say, don't give me all that saturated fat and trans fatty acids and sodium, then they might ask you, well, what do you want? But the default option is exactly what I said. So we need to make that clear. Ms. Siefken, in my opinion, the grocers don't have a dog in this fight. So I was quite interested in why she might have chose to oppose this bill because this is providing parents with choices. This is, in fact, quite consistent with what her industry is trying to do. But I thought Senator Harr made a good point. His two-year-old can't read those labels, but the two-year-old can certainly consume that advertising and certainly knows what it means. Mr. Keigher said, leave it to the parents. That's what I'm saying, leave it to the parents. But the parents have to have at least a fighting chance in that fast-food restaurant. Give them a fighting chance, because the advertisers know that if that kid pulls on your arm enough times, before you can get from the back of the line to the front of the line, you probably changed your mind and you'll buy the meal with the toy, the nag factor. It takes about seven naggings for a kid to change the parent's mind. That's what the psychologists have determined. Advertisers know this. Now if you are concerned about First Amendment issues, I think that one has to be very careful about how far you extend this argument. Commercial free speech does not permit the marketing of alcohol to young people. Commercial free speech does not permit the marketing of cigarettes to young people. Manufacturers of children's products cannot market dangerous products to kids. This is a dangerous product. If you are concerned about the commercial free speech issue, then I would say, have your committee staff work on the bill. My staff would be happy to work with you. And if you find the advertising element too difficult to deal with, then I would urge you to focus on the part of the bill that deals with the contents of the meals. Because if you're getting advertising from Scottsbluff or from Washington, D.C., or wherever, and the advertising is saying, buy this meal, and you're in Nebraska and your kids say, I want that meal. But that meal in Nebraska, if you pass this law, is going to have to have a certain number of items in it that meet these nutritional standards. So it doesn't matter what the advertising is coming out of Iowa. So I would urge you to take a good long look at this. I've been accused of a number of things. One of my favorite was an e-mail that started out, with all due respect, sir, you are a scumbag. (Laughter) [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

SENATOR HARR: I apologize. (Laughter) [LB126]

SENATOR AVERY: Thank you, Senator. That same e-mail went on to say in the last sentence, changing the box of the toy won't change the ingredients you are ingesting. Now do you think that person read the bill or understood what the bill tries to do? I'm not changing the box. I'm not changing the toy. Changing the ingredients is exactly what this person was saying we should do, and he called me a scumbag. Well, I'm a scumbag and if advocating for child health makes me a scumbag, I'll wear that label proudly. I'm going to end with a quote here from Marice Ashe, who is executive director of Public Health Law & Policy. Parents can make good commonsense decisions about their children and what they eat, but we need public policy to mirror good parenting to make the healthy choice, the easy choice. Thank you. [LB126]

SENATOR CARLSON: Okay. Thank you, Senator Avery. Questions? Senator Harr. [LB126]

SENATOR HARR: Thank you, Mr. Chairman. And I am...you may be a scumbag, but I'm a bad dad because I don't let my kids go to fast food. But I do have a question. There's been a lot of talk about choice and this bill is to a certain degree, as you say, to allow choice. Would a simpler bill be merely to require restaurants to sell Happy Meals, or whatever, toys, separately as a stand-alone product? Would that get at the same...would that solve the problem in the same way? In that way you would still get the kid going to the restaurant of choice but it would be a compromise and then that kid would...the parent could then say, okay, we went to your restaurant, now I'm going to force you towards this food which is healthier. [LB126]

SENATOR AVERY: I think if you look in the bill we might have language in there that prevents the restaurant from giving toys away or sharply discounting the unhealthful meals in order to entice people to buy them. I'm not sure that would solve the problem. [LB126]

SENATOR HARR: But what if it's just a stand-alone? You buy it separately thereof. It still gets the kids in the restaurant but it also solves the problem to a lesser degree of having to buy that meal which may or may not be healthy. [LB126]

SENATOR AVERY: You know that might be an approach to it. My guess is the parents wouldn't want to buy the toy. It's the free toy. That's the enticement. [LB126]

SENATOR HARR: I'm just looking for a choice. Okay. [LB126]

SENATOR CARLSON: Okay. Senator Larson. [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

SENATOR LARSON: Thank you. One comment and then a question. You mentioned that, you know, we can't advertise cigarettes and alcohol to youth. And I'd make the comment that those products are illegal. Food is not for those minors. Second of all, you commented how you didn't think the grocers had a dog in this fight. Reading Section 16, food establishments is one of the things that you outlined and then it goes down to where they can't, you know, sell or put in basically the toys in the packaged goods. What about cereal boxes? I mean, when you figure it out, a cereal box will have...if it exceeds 400 calories, and at that point, we can't... [LB126]

SENATOR AVERY: You want to write standards, you want to write standards for cereal and add it to this bill, I'd probably support it. [LB126]

SENATOR LARSON: I'm just saying right...my question is, will we be able to have cereal boxes with toys in this state because of this legislation? [LB126]

SENATOR AVERY: I think you would, yes. [LB126]

SENATOR LARSON: But would there be more than 400 calories in that box, total? [LB126]

SENATOR AVERY: You mean in a serving? [LB126]

SENATOR LARSON: But how do we control the serving? I mean... [LB126]

SENATOR AVERY: Well, every box of cereal has what is considered a serving. [LB126]

SENATOR LARSON: So many servings. But how do... [LB126]

SENATOR AVERY: But it says a serving is this amount. [LB126]

SENATOR LARSON: But they could eat all of it at one serving at the same time because... [LB126]

SENATOR AVERY: They could eat the whole box. [LB126]

SENATOR LARSON: Well, because it's available to them. So you could still have the toy in the box even though it has more than 400 calories. [LB126]

SENATOR AVERY: I don't see many toys in cereal anymore. Crackerjacks maybe but I...and we buy a lot of cereal at our house and I haven't seen a toy in one in years. But if you want to expand this law to include cereals, I might be willing to... [LB126]

SENATOR LARSON: There's a lot of products out there, I think, in grocery stores that

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Transcriber's Office

Agriculture Committee
February 01, 2011

have...that could be over... [LB126]

SENATOR AVERY: We're not talking about grocery stores. That's why I was so mystified by Ms. Siefken's testimony. [LB126]

SENATOR LARSON: But I mean food establishment, but it says food establishment. I'd classify a grocery store as a food establishment, any place that sells food. [LB126]

SENATOR AVERY: But it...read on into the bill, it's pretty clear we're talking about mostly fast-food restaurants. [LB126]

SENATOR CARLSON: Senator Bloomfield. I saw your hand earlier. [LB126]

SENATOR BLOOMFIELD: Thank you. My only question was to kind of go back and maybe clarify what Ms. Siefken said. You said she mentioned choices, giving more or less choices. And I understood her to be talking more about information, not choices. The labeling gives us more information. [LB126]

SENATOR AVERY: Well, she did talk about that they are providing more healthful choices in their grocery stores now and she's right about that. And I applaud that. I found her testimony to be a little bit oddly positioned in this debate. [LB126]

SENATOR BLOOMFIELD: I'm coming from the point where the more information we put out there, the better, so. And on the labeling and on...if we're going to do something with the fast-food industry that you're rather aiming at here, I think maybe it should be more in the line of labeling so that the parent knows what he's buying for his two-year-old. [LB126]

SENATOR AVERY: That's not a bad idea, Senator. Maybe we should put a warning label on these boxes that says, consuming this product may be harmful to your health. [LB126]

SENATOR BLOOMFIELD: No, maybe perhaps we should put a label on there that says that consuming this hamburger with mayonnaise and everything else we put on it, will give your child 732 calories. [LB126]

SENATOR AVERY: Well, actually you don't have adequate labeling on the actual meal. You have plenty of information, as I showed you, that...provided on your place mat actually. Right here is a place mat from a fast-food restaurant that has on the back of it each individual item and the nutritional content or the nonnutritional content. And you can sit down and figure it out, but it takes...it takes a bit of an effort. Maybe that's a way to go. That's not what I'm trying to do with this bill, but I appreciate your point. [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

SENATOR BLOOMFIELD: I wouldn't have a problem with them putting out that a hamburger Happy Meal has X number of calories. I wouldn't have any problem with, you know... [LB126]

SENATOR AVERY: And so much saturated fat and sodium. [LB126]

SENATOR BLOOMFIELD: ...I can see them doing that first with the hamburger and, right, put it out for the entire meal rather than just the individual item. [LB126]

SENATOR AVERY: That this package of food has this much in it and this is...but then you could...that would be a way to go. But I'll bet you that the industry would come in screaming and yelling on that one. [LB126]

SENATOR CARLSON: Senator Brasch. [LB126]

SENATOR BRASCH: I do agree that there needs to be better choices, as Mr. Otto said, that you can look long and harder, ask for special things. Would you be willing to say that...you know, I would like to protect those toys, basically, because I do think that part of the fast-food experience, and those people do work hard in there and there are good choices, increasingly every day. I just think in light of children's obesity problems we face that we should focus on what are these kids eating. As a parent, we hardly went to fast food. But as a grandparent, what the kids want, what the grandkids want, it's the venue. It's the fun. It's, you know...and I would like to encourage...the advertising I don't think so much takes the children there. I could be wrong but I do think that when you go in there you should be able to see wholesome, healthy foods and as a parent or grandparent make that decision to move that way. But I do believe that food piece there is very important here forward and the country recognizes that. [LB126]

SENATOR AVERY: I used to, when my son was younger, I used to try to pick the fast-food place with a play area and I would try to have...make sure I had enough time to get him in there so that he could work off some of the food that he had just consumed. And he usually managed to do that. He's quite lean now. I don't know if that helped that much, but it might have. [LB126]

SENATOR CARLSON: Any other questions? Senator Karpisek. [LB126]

SENATOR KARPISEK: Thank you. Senator Avery, you talk about the nag factor. Is that the adult? [LB126]

SENATOR AVERY: No, this is a...(laughter). [LB126]

SENATOR KARPISEK: Well, before the adult will give in after seven nags? [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

SENATOR AVERY: Yes, about seven nags. [LB126]

SENATOR KARPISEK: I've got a couple of bills that I'll be seeing you seven times on. (Laughter) [LB126]

SENATOR AVERY: It might work. (Laughter) [LB126]

SENATOR KARPISEK: It hasn't yet. I think your threshold is higher. (Laughter) I just did want to say, I understand where we're trying to go with this. Any grocery store owner worth their salt knows that you put all your candy by the checkout and those sort of things. [LB126]

SENATOR AVERY: I didn't hear Ms. Siefken say that. [LB126]

SENATOR KARPISEK: I didn't either. I'm saying that. You put that there because if there's a lineup, the kids get it. I mean, I think that's why we're hearing from other people because it spirals out. But I know what you're trying to do. Anyway, if you have anything... [LB126]

SENATOR AVERY: And if we can just keep the focus on the content of the advertised item, and if you're worried about the commercial free speech, let's focus on the content. Put some minimal nutritional standards on what goes in those meals, the ones that use the toy to entice the kids. And you don't have to...the kids usually know about this before they ever go out to get a hamburger. They know that there is a Burger King down here or a McDonald's down here and they got this toy there and they got this toy there. They know. And maybe they already have two of the four or five in a series and they want to complete the set. I have a basement full of those toys still. (Laughter) [LB126]

SENATOR KARPISEK: Thank you, Senator Avery. Thank you, Senator Carlson. [LB126]

SENATOR CARLSON: Thank you. Any other questions? Okay, Senator Avery, don't get in a hurry now. I get my chance. [LB126]

SENATOR AVERY: Oh, I thought you would have gone first, sir. [LB126]

SENATOR CARLSON: No, but let's set the stage here. You are the business owner and this day you happen to be behind the counter, and I come in with my five-year-old grandson and he wants the toy. And your meal, that you've predetermined, is some pure juice, fruit juice... [LB126]

SENATOR AVERY: You mean under this bill? [LB126]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

SENATOR CARLSON: Yes. [LB126]

SENATOR AVERY: Okay. [LB126]

SENATOR CARLSON: A little container of sliced carrots and celery... [LB126]

SENATOR AVERY: Or apple. [LB126]

SENATOR CARLSON: No, let me finish. (Laughter) Another little container of apple slices or orange slices, and a sandwich that's a ham and cheese wrap. That might qualify as a healthy meal? [LB126]

SENATOR AVERY: It probably would, yes. [LB126]

SENATOR CARLSON: Now, my grandson says, Papa, I don't want that wrap, I want a hamburger. So I say, can I substitute a hamburger for that wrap? [LB126]

SENATOR AVERY: Then here's the response. That hamburger, depending on how it's constructed, if it's a large hamburger with a lot of saturated fat that would jack up the caloric content of that total meal, and had dripping in grease and cheese, it may not. But they probably would be able to put a small hamburger in. In fact, those cheap hamburgers that you get, the \$1 hamburgers that you get off the value meal, they probably would fall within the saturated fat restrictions that I'm proposing. [LB126]

SENATOR CARLSON: Okay. And remember that in this transaction, you are expense and I'm revenue, so you're trying to please me. So now you make a decision on that hamburger and maybe it's a smaller one so you say, that's okay. Then I say, well, rather than the carrots or celery, can he have french fries? And you say? [LB126]

SENATOR AVERY: I would say probably then you have crossed the threshold outside the nutritional standards. And then you'd say to the customer, I'm sorry that does not meet state law with regard to nutritional standards for these types of meal. If you want that kind of meal, then you can buy...perhaps you can put that in the bill, you can buy the toy separately. [LB126]

SENATOR CARLSON: And then, so you kind of ended it there, because then I was going to get to the ice cream cone instead of the apples or oranges. (Laughter) But whether it's you, and the next time it's not you, it's somebody that you've hired that doesn't understand the food values as well as you may, there's a decision to be made. And you have an employee that needs to make that decision and it's not really satisfying what the customer asked for, and that's a difficulty. [LB126]

SENATOR AVERY: The easiest and simplest way to handle this is simply say, this is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

the meal that meets the state law on minimal nutritional standards, no substitutions. That's the easiest way. That's what I would do if I were the owner of the business. [LB126]

SENATOR CARLSON: Okay. Thanks for going along with me. Thank you for your testimony. And with that we close the hearing on LB126. And we are ready to open the hearing on LB200. Welcome, Senator Council, and you're recognized to open. [LB126]

SENATOR COUNCIL: Yes, thank you, Chairman Carlson, members of the Agriculture Committee. I am Brenda Council, last name is spelled C-o-u-n-c-i-l. I represent District 11 for the record, and I appear before you this afternoon for the purpose of introducing LB200. And there are so many new faces on the Agriculture Committee and I regret that our structure prevents me from remaining one of the faces of the Agriculture Committee. I'd like to just give you a little background. LB200 was drafted basically in response to the findings included in a study on food deserts that was conducted last year pursuant to LR453. Through LR453, the Legislature approved the conduct of the study but didn't appropriate any funds to carry out the study. So as a result, the study was basically conducted by members of the Agriculture Committee staff. And at this point in time, I want to publicly acknowledge and thank the research analyst for the Agriculture Committee, Rick Leonard, because he put in a tremendous amount of work in preparing the information that was presented to the Ag Committee this summer at the LR453 hearing. And it was from that information that was gathered through that study that LB200 was drafted. When we first began discussing food deserts, I think the assumption of many was that because much of the national research on food deserts focuses on the lack of access to healthy and affordable foods in urban areas, that that would be the focus of the study under LR453. And that would be, in fact, the finding from LR453. But I think members of the committee would be surprised to know that under the definition that is commonly used nationally for food deserts, the vast majority of food deserts in Nebraska exist in rural areas. And that there is a need for us as a state to address the elimination of those food deserts and improve access to healthy and affordable foods for all Nebraskans. And in order to begin eliminating these food deserts and, in turn, reap the healthcare costs benefits of a healthy and more economically viable communities, LB200 establishes a mechanism for providing financial assistance to those who are currently engaged in or desire to be engaged in enterprises or operations that improve access to healthy, affordable foods. In sum, LB200 establishes Nebraska Healthy Food Financing Initiative Cash Fund to be administered by the Rural Development Commission. As drafted, LB200 provides for an initial transfer of \$200,000 from the Value-Added Agricultural Grant Fund during this biennium, with hopes that we will eventually be able to obtain an annual General Fund appropriation to carry out the objectives of LB200. And the objectives of LB200 is to provide grant opportunities to public and private entities or individuals who desire to, for example, establish a new farmers' market, expand community gardening, expand their current convenience type store to a full-service grocery store. And that's how food

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

deserts are identified--by the number and locality of full-service grocery stores where people can get fresh fruit, fresh vegetables, dairy, and meats. In many of our communities, the residents have to rely on convenience stores, where you just had this discussion about nutritional content, where you go into a convenience store and you will never see fresh vegetables. You'll never see many fresh fruits, and if you see fresh fruits, they're priced at such a rate that people can't afford to acquire those items. And what we've seen across the state and across the nation, in fact, are focusing on ways to increase local production of foods that can be consumed within our communities, as well as to build these partnerships between rural and urban communities to provide sources to market locally produced foods. I shared with the then composed membership of this committee my trip to Milwaukee, now would have been two years ago this month, to visit a state-of-the-art, internationally recognized urban food production enterprise. In fact, it's a full circle in terms of food. It's production, it's distribution, it's consumption, and recycling. And there are a lot of groups in Nebraska who are interested in duplicating those kinds of systems around the state, particularly in urban areas. And at this time, for the record, Chairman Carlson, I would like to note that there were a number of individuals who are a part of a coalition that has been developed in the Omaha area around the elimination of food deserts who wanted to be here today to testify. They have provided me with some comments on improvements to the current language of LB200, but they were all prepared to come and testify in support of LB200. And in the event that the hearing on this is scheduled for another time, they will be prepared to come and offer their personal testimony. If there is no rescheduling of the hearing, I will encourage them to provide their input to you via e-mail or regular mail. But LB200 provides for this initial \$200,000 appropriation into the Cash Fund, and that money coming from the Value-Added Agriculture Cash Fund that is administered by the Rural Development Commission. At the time LB200 was drafted, I had no idea that the Value-Added Agriculture Cash Fund had already been identified by the Governor as a source of the funding for one of his economic development initiatives. So, currently, there are two competing bills for the money that's available in the Value-Added Agriculture Cash Fund. Now LB200 would not extinguish all of the funds in that fund, but the Governor's bill takes all of the Value-Added Agriculture Cash Fund balance for purposes of that initiative. And in light of that, I have found another source of funding for LB200 and will be prepared to offer an amendment to LB200 that identifies that alternate funding source. It does not require General Fund dollars and it is from a current cash fund that as a result of some other legislative activity, that cash fund is being reduced to a point where its objectives really can't be carried out with such a small amount of money, so that it would be an appropriate source of transfer. It's about \$150,000 annually for the two-year biennium that would be available, and it would allow us to implement the program, the grant program, under LB200. And it is a competitive grant program. The bill outlines what the criteria that the Rural Development Commission is to use to distribute the funds and to make the grants, and all of the coalition has been supported by urban and rural alike. And those who were on the committee recall during the hearing this summer that we had support from the Center

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

for Rural Affairs; we had support from a broad-based coalition in Omaha called No More Empty Pots; from the University of Nebraska, and the bill does provide for a more in-depth study to be conducted by the University of Nebraska. So with that I'll answer any questions that committee members may have. [LB200]

SENATOR CARLSON: Okay. Thank you, Senator Council. And it's my understanding you had a conversation with the Department of Economic Development and weren't given any guarantees, but certainly encouraged to pursue that angle, so. [LB200]

SENATOR COUNCIL: Absolutely. [LB200]

SENATOR CARLSON: Okay. Thank you. Do we have questions? And also just to announce to the committee I've talked this over with Patrick O'Donnell and we may be rescheduling this so that these testifiers are able to be here. But we went ahead...we're going ahead with what we can do today. [LB200]

SENATOR COUNCIL: Okay. And just leaving you with my hope that the committee, whether we reschedule the hearing or not, would advance LB200. I will get that amendment to you and I will waive closing. [LB200]

SENATOR CARLSON: Okay. Thank you, Senator Council. Now do we have anyone testifying as a proponent of LB200? Okay, please come forward. If we have any other positive testifiers, please make your way to the front and be ready to testify next. Welcome. [LB200]

BRIAN KRANNAWITTER: (Exhibit 1) Good afternoon, Senator Carlson and members of the committee. Thank you for the opportunity to testify on this bill. My name is Brian, B-r-i-a-n, Krannawitter, that's spelled K-r-a-n-n-a-w-i-t-t-e-r, and I am the government relations director for the American Heart Association. I am kind of a last minute fill-in for a volunteer of ours who could not make the hearing today due to the weather. But on behalf of the AHA, I did want to express our support for LB200. There are a number of obstacles in changing one's dietary habits. One of these obstacles includes residing in an area with limited access to affordable and healthy foods, or what is sometimes referred to as living in a "food desert." The American Heart Association supports efforts to provide greater access to nutritious foods. Along with regular exercise, weight management, and not smoking, a healthy diet is proven to reduce the risk of cardiovascular disease, stroke, and other chronic conditions. Diet can be a powerful weapon in the war against cardiovascular disease and even a pattern of small changes can bring health rewards. LB200 is a step in the right direction in addressing the challenge of access to healthy foods such as fruits and vegetables. I urge the committee to support this bill. Thank you. [LB200]

SENATOR CARLSON: Okay. Thank you for your testimony. Any questions of the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

committee? Okay, hearing none, thank you for coming. [LB200]

BRIAN KRANNAWITTER: Thank you. [LB200]

SENATOR CARLSON: Anyone else as a proponent? Seeing none, anybody wish to testify as an opponent of LB200? And seeing none, do we have anybody to testify in a neutral position? Welcome. [LB200]

JERRY STILMOCK: Thank you. Good afternoon, Chairperson Carlson and members of the Agriculture Committee. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying in a neutral capacity on behalf of the Nebraska Bankers Association on LB200. The bankers that form our membership of our association are involved in the lending process, obviously, in...when a retail grocer, retail convenience store needs to obtain funding, we want to be first in line to make those loans. We step forward in a neutral capacity because the language in LB200 speaks in terms of a public-private coalition or a public-private combination of supplying that funding that you heard Senator Council talk about down to the ultimate recipient or the applicant under the program. We just wanted to stress with the committee that it's been our historical position that any funding that might come about from the public side be done in conjunction with and cooperation with private lenders, private financial institutions. Principally, we do that in a few different ways: by direct grants, which Senator Council spoke of. And then as we have done in other legislation in the past as well as this year, that there be loan participation program as well as perhaps interest rate participation so that interest rate might be reduced to the applicant in cooperation with and based upon the underwriting performed by financial institutions, those that are, you know, in the day-to-day business of reviewing a loan and a application for a loan as compared to the commission, the Rural Development Commission perhaps stepping into an area that they are not trained to do, and that's review and underwrite for loans. And we visited with...I was unable to visit with Senator Council this morning, but shared with her staff expressing our desire to work with her in trying to bring about a participation by the state in conjunction with private financial institutions. Thank you. [LB200]

SENATOR CARLSON: Okay. Thank you. Questions of the committee? I have one, Jerry. What's the advantage for the individual who needs these funds of going through private lenders versus government funds? [LB200]

JERRY STILMOCK: Well, the advantage would be that you're having someone that has the ability that does this in their day-to-day operations as part of a financial institution to review. The idea is not to make...I assume the intent behind it is not to make poor loans, but to make loans based on good, solid business judgment. And those that may need a little boost, a little kick from the public side, that that's where the public funds would be used for the interest rate buy-down or for the loan participation where, perhaps, the public funding is used at 20 to 30 percent of funding the loan, but the majority of it would

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

be funded by the private side, Senator. [LB200]

SENATOR CARLSON: So then that's looking at it more in terms of making the project possible rather than simply replacing government participation. So if the dollars from the government were a grant, they're still going to need more money needed probably and that's where the private lending institutions would come in. [LB200]

JERRY STILMOCK: Yes, sir. [LB200]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you for your testimony. [LB200]

JERRY STILMOCK: Okay. Thank you. You bet. [LB200]

SENATOR CARLSON: Welcome back. [LB200]

KATHY SIEFKEN: Senator Carlson and members of the committee, my name is Kathy with a K, Siefken, S-i-e-f-k-e-n. I'm the executive director of the Nebraska Grocery Industry Association, here in a neutral capacity. And this is a tough bill for us to testify on. Our board talked about this bill in detail, and I participated with Douglas County in identifying food deserts in Omaha. And there are some. The difficult part comes in that while you want healthy food to be available to everyone, there is a delicate balance in some areas where if you change the way people shop, it could put existing businesses at risk. And the last thing that we want to see is a smaller entity offering more goods, pulling business away from another business that's just barely hanging on, and then that area loses an entire grocery store. So we're not opposing the bill. It's just as you move forward and as this grant process comes into play, those things need to be considered because losing a grocery store, and frankly there are a lot of them out there right now, because of the economy, that are just barely hanging on by their fingertips. And we're not talking about the big stores. We're talking about the little mom and pops on the corner. We're talking about something that started out as a C-store. The product mix in those retail locations are what they are because it's what people in those communities are willing to purchase. And if you have items in those stores that people in the community are not willing to purchase there like old fruit, then to put a cooler into those areas and try to make them something they're not, it's not sustainable, and it doesn't do the retail industry in that region a lot of good. And so I don't want to sound like we don't want competition to come in. I'm just saying there's a delicate balance and people need to pay attention to that. And that's why we're neutral is because you can't...can't say we don't want healthy food because we do want healthy food. But you just have to be careful about how you go about it. [LB200]

SENATOR CARLSON: Okay. Thank you for your testimony. And maybe for the benefit of our new people on the committee, can you explain what makes an area a food

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

desert? [LB200]

KATHY SIEFKEN: An area is a food desert and it's within a certain number of miles that, I think it's a ten mile...no, it's not, because in Omaha there are...an example is you go into north central Nebraska. And I think there's three grocery stores up there. And that may be stretching it. And the reason there are three grocery stores is because there aren't...it's such a sparse population. And so if there's not healthy food that you can buy right there in your neighborhood, you're defined as a food desert. That doesn't mean that healthy food is not available. It's more difficult to get. [LB200]

SENATOR CARLSON: And that distance is cut way down in an urban area. [LB200]

KATHY SIEFKEN: In an urban setting, it is. I think it's a couple of miles. [LB200]

SENATOR CARLSON: I think it is too. Okay. Any...Senator Bloomfield. [LB200]

SENATOR BLOOMFIELD: I was just going to go a little further on what you just asked about the distance there because if you get on out into western Nebraska, it's 50 miles between stores. [LB200]

KATHY SIEFKEN: And that's why you get up to Cherry County, there's hardly anything up there. [LB200]

SENATOR BLOOMFIELD: Are we proposing to put the store every ten miles whether you're viable or not? [LB200]

KATHY SIEFKEN: See, that's not viable and it's not sustainable. And I guess that's really the point. [LB200]

SENATOR BLOOMFIELD: Is that what the food desert bill would do, though? [LB200]

KATHY SIEFKEN: No, no, it wouldn't. But again there's a delicate balance even in Senator Council's district in that some people survive as business people and other people don't. And for government to go in and put in equipment into a location that will not sustain that, but will only bleed off business from another retailer....again, it's hard to oppose healthy food but you want...you don't want to decrease the opportunities that people have to buy food right now. I guess that's where I'm coming from. [LB200]

SENATOR CARLSON: Okay. Any other...Senator Wallman. [LB200]

SENATOR WALLMAN: Thank you, Chairman Carlson. Yes, picking on this a little further here. You know, some grocery stores have healthy food sections, and do they buy from...it's hard to really certify that as healthy food, isn't it? I mean, is it homegrown,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

is it...how do they do that? [LB200]

KATHY SIEFKEN: Well, there are...I'm not sure. There are organic sections and they have to meet certain thresholds to be sold as organic. [LB200]

SENATOR WALLMAN: Do we police that very well as a state or...? [LB200]

KATHY SIEFKEN: I think consumers police that. I don't think the state polices that. But consumers are pretty savvy, especially in those areas where they have organic foods. I mean the grocery store that I shop at...well, actually I shop at a lot of them. But in a lot of them they have an organic section and it used to be the organic section was clear over against the wall and you kind of had to go find it. Right now the bananas, the organic bananas are right next to the regular bananas and there's a reason for that. It's because consumers want those organic bananas. And so as retailers, we give our customers what they will buy and that's how we survive. If we put foods in our stores that our customers don't want, we're out of business. So I'm just trying to...the message I'm here today with is, try not to upset the balance, but yet we need healthy food. Everyone needs access to it. [LB200]

SENATOR CARLSON: Good. Any other questions? Yes, Senator Bloomfield. [LB200]

SENATOR BLOOMFIELD: It's not a question, it's just a comment. I have watched some of these small grocery stores that she's referring to, bring in a case of apples. That's the way they get their case of apples. And they end up throwing half of them out because they can't sell them. And after a week in the cooler or two weeks, depending on the fruit you're talking about, that's no longer a healthy food. And not knowing the distance limit here, I need to study this a little more, but I think she's absolutely right. We can't force the stores to carry grapes if they can't preserve them. [LB200]

SENATOR CARLSON: Okay. Any other questions? Okay, thank you for your testimony. [LB200]

KATHY SIEFKEN: Thank you. [LB200]

SENATOR CARLSON: Anyone else in a neutral position? Seeing none, that closes our hearing on LB200. And I see that Senator Campbell is here and so we'll open the hearing on LB160. Senator Campbell, welcome to the Agriculture Committee. [LB200]

SENATOR CAMPBELL: Thank you. Chairman Carlson and members of the committee, it's a pleasure to be here. My name is Kathy Campbell and I represent the 25th Legislative District, C-a-m-p-b-e-l-l. And it is a pleasure to be here. I have never been before the Ag Committee before, so. You would think that given our business, I would be, but I haven't, so this is a pleasure. LB160 is a bill to eliminate a duty of the county

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Agriculture Committee
February 01, 2011

assessor relating to information on trusts that own agricultural land in the county. And the Nebraska Association of County Officials asked me to present this bill and sponsor it. And according to Jon Edwards, and Mr. Edwards is here this afternoon and will follow me, and surely, probably, has the answers to your technical questions. There is no clear understanding of the need for the report. The assessors in some counties are not doing this, the report. And they don't seem to be...you know, they don't want to be in violation of the law. And some are unclear as to exactly what they are to report. Assessors submit report to the Secretary of State annually and the Secretary of State maintains those reports on file. But according to our research, it's extremely rare that anyone asks for the reports. And in some situations, from Lancaster County for instance, they cannot remember when anyone ever asked for the report in recent times. So this bill is meant to eliminate a duty that many people feel has...needs to be delineated from statute. I'll take any questions about the bill, Senator Carlson. Mr. Edwards is here and probably can tell you a lot more about the counties. Some of the counties are keeping great track of these and others not so. [LB160]

SENATOR CARLSON: Okay. Thanks for your introduction. Any questions of Senator Campbell? Okay. We'd like you to come back so we're not going to be too hard on you today. [LB160]

SENATOR CAMPBELL: Oh good, good. [LB160]

SENATOR CARLSON: Are you going to be here to close? [LB160]

SENATOR CAMPBELL: I am not. I'm going to waive closing because I'm going back to Transportation. [LB160]

SENATOR CARLSON: Okay. Thank you. [LB160]

SENATOR CAMPBELL: Thank you, Senator Carlson. [LB160]

SENATOR CARLSON: Now we'll ask for those that are proponents of the bill. Welcome. [LB160]

JON EDWARDS: Good afternoon, Chairman Carlson and members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm here today representing Nebraska Association of County Officials in support of LB160, and we want to thank Senator Campbell and her staff for working on this bill for us and introducing it for us. Our assessors came to NACO's legislative committee, which is the NACO board, presented this bill, this idea for this bill, to our committee and the board and they decided to make this a part of our legislative agenda this year. So it is a bill that Senator Campbell has introduced on behalf of us and it is part of our agenda. And so with that, the substantive part of LB160 is it's a straightforward bill, is actually the outright repeal

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Agriculture Committee
February 01, 2011

of 76-1517, which is the requirement that the senator spoke about that deals with the need for each county assessor in every county every year to produce a report identifying ag lands held by trust and submit that report to the Secretary of State. And essentially, that's where it ends. There is reference...you'll see in the green copy as well on page 2 in 76-1523, which is language that will be stricken due to the fact that this provision is eliminated. But that's the only identifier regarding the report that talks about using it to assist the Secretary of State in making determinations about ag land in trust. And to our understanding for the most part, I think that most assessors do produce this report and file it every year. What we've been told by our assessors and some of the research we've done in our office, some of our staff has talked with the Secretary of State's office and they can't indicate to us any purpose for the report, and furthermore, my understanding is they couldn't give us an example of anytime in which the report was requested. So based on our assessors' history with this and the fact that there doesn't seem to be any clear need for this report, we're just asking to eliminate this provision from statute. And it's really, you know, it's an efficiency thing and a convenience thing. I'm certain the assessors can produce the report, that's not really a problem. It's just a matter of the necessity of actually doing it. And as we looked through statutes, our different affiliates do every year in trying to figure out how to more efficiently do their jobs, this is one that popped up this year. And so, I would also mention that in 76-1520 there is a provision within that statute that requires that any trust that holds ag land report that to the Secretary of State. So there's kind of duplicative there. They're structured a little bit differently. But in any event, the Secretary of State has two different angles from which they're supposed to be receiving reports regarding ag land held in trust. So with that, I won't belabor the point with the committee, but it's our understanding the reports aren't used. We can find no information regarding any use of it, so we would certainly ask that the committee look favorably upon this statutory change and vote it out to the floor for debate. And with that, I will conclude my testimony. [LB160]

SENATOR CARLSON: Okay. Thank you. Any questions of Mr. Edwards concerning this bill? [LB160]

JON EDWARDS: Thank you. [LB160]

SENATOR CARLSON: Okay, thank you for your testimony. Anyone else as a proponent of LB160? Anyone as an opponent of LB160? Then I guess, we'll ask...anyone in a neutral capacity? Welcome, John. [LB160]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record my name is John K. Hansen, H-a-n-s-e-n, and I am the president of Nebraska Farmers Union. I appear before you today as our president and also our lobbyist. To tell you the truth, Mr. Chairman, when I first saw this bill I was fairly concerned about it. But that Larry Dix guy is such a charming fellow and so convincing, that as I worked with NACO and tried to

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Agriculture Committee
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get a better idea of what we were actually doing here, I became more comfortable with this bill. The history of this was originally when in '81 this was passed, it was passed as a way to, I think, throw the folks who were supporting a restriction on nonfamily farm corporations a bone, and to get them off the trail a bit. And so it was not satisfactory because it really wasn't substantive. And so they went forward with the efforts then in '82 and so, some of the reporting requirements then as we went forward and Initiative 300 was successful in '82, and then was implemented in '83, then some of the reporting requirements that were tied up with I-300 were incorporated as a part of the trust. And the question I have about this effort is, to what end would you be using a trust today given the status of the law that you would be using it in some sort of deceptive way to shield ownership? And there may be a legitimate reason for doing that, but if there is, by golly, I can't figure out what it would be. Because as you look at the lines of demarcation over who in the case of a trust, who can and cannot use a trust, you know, you have family members. It restricts nonfamily farm members or nonfamilies not of the family in excess of 25, I believe. But if they're family members, fine. If they're a nonprofit, fine. The restriction, I believe, would be that if they were a...the beneficiary of the trust was a corporation, that that would be a line of demarcation, but if that were the case today, they could own it as a corporation. So I'm...we've had issues in the past about shells being used to hide ownership. But I'm not sure to what extent we would be using a trust right now that would cause serious landownership questions. So to that end, I appear neutral, but I am trying to do more research and look at this. But it seems like, on the face of it, to be a reasonable thing. At least, Mr. Dix, who is a good friend of mine, assures me that it is. [LB160]

SENATOR CARLSON: Okay. All right. Thank you for your testimony. Any questions of Mr. Hansen? Seeing none, thank you. [LB160]

JOHN HANSEN: Thank you, Mr. Chairman and members of the committee. [LB160]

SENATOR CARLSON: Okay. Anyone else in a neutral position? Seeing none, that closes our hearing on LB160 and thank you for coming, those of you that are still here. And I would like us to go into Executive Session. We have a motion by Senator Lathrop and second by Senator Wallman to go into Executive Session. All those in favor say aye; opposed the same. Okay, we are in Executive Session. [LB160]