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Floor Debate
February 11, 2011

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LB178A LB178 LB181 LB191 LB215 LB401 LB410 LB410A LB471 LB474 LR73]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the twenty-seventh day of the One Hundred Second Legislature, First Session. Our chaplain for today is Pastor Reverend Valjean Warman of the United Methodist Church in Fullerton, Nebraska, Senator Dubas' district. Would you please rise.

PASTOR WARMAN: (Prayer offered.)

SENATOR GLOOR: Thank you, Reverend Warman. I call to order the twenty-seventh day of the One Hundred Second Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

ASSISTANT CLERK: There's a quorum present, Mr. President.

SENATOR GLOOR: Thank you, Mr. Clerk. Are there any corrections for the Journal?

ASSISTANT CLERK: There are no corrections this morning.

SENATOR GLOOR: Are there any messages, reports, or announcements?

ASSISTANT CLERK: Your Committee on Enrollment and Review reports LB474, LB181, LB94, and LB24 to Select File, some have E&R amendments attached. That's all I have this morning. (Legislative Journal page 513.) [LB474 LB181 LB94 LB24]

SENATOR GLOOR: Thank you, Mr. Clerk. We'll now proceed to the first item on the agenda, confirmation reports. Mr. Clerk.

ASSISTANT CLERK: Mr. President, the first report from the Transportation, Telecommunications Committee is on the appointment of Timothy Weander to the Board of Public Roads Classifications and Standards. (Legislative Journal page 495.)

SENATOR GLOOR: Senator Fischer, as Chairman of the Transportation and Telecommunications Committee, you are recognized to open on your confirmation report.

SENATOR FISCHER: Thank you, Mr. President and members. I would like to begin with the State Highway Commission. The Transportation and Telecommunications Committee held a confirmation hearing on Monday, January 31, for the appointment of

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E.J. Militti Jr. to the State Highway Commission. The Nebraska Highway Commission is composed of eight members, each of whom represents one of the eight field districts. They are appointed by the Governor for six-year terms with approval by this body. The commission, which serves in an advisory capacity, normally holds meetings the fourth Friday of each month, and at these meetings and various other hearings on proposed projects, the commission serves as a channel for citizens to voice their opinions concerning the state highway system. The Transportation and Telecommunications Committee recommends this confirmation with all eight members voting in favor. Thank you, Mr. President. Would you like me to continue with the next one or wait?

SENATOR GLOOR: No, we'll take individual votes for each report.

SENATOR FISCHER: Okay. Thank you.

SENATOR GLOOR: Thank you, Senator Fischer. Seeing no members wishing to speak, Senator Fischer, you're recognized to close. Senator Fischer waives. The question to the members is the advancement of the Transportation and Telecommunications confirmation report to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 514.) 35 ayes, 0 nays on the adoption of the report.

SENATOR GLOOR: The report is adopted. Senator Fischer. (Legislative Journal page 495.)

SENATOR FISCHER: Thank you, Mr. President and members. The Transportation and Telecommunications Committee held a confirmation hearing on Monday, January 31, for the appointment of Timothy Weander to the Board of Public Roads Classifications and Standards. Mr. Weander was appointed for a term which runs from November 16, 2010, to November 30, 2011. The Board of Public Roads Classifications and Standards oversees annual construction planning and fiscal reporting for state and local highways, roads and streets, as well as the application of minimum design, construction, and maintenance standards for functional classifications or categories of public roadways. The standards ensure that each segment can safely handle the traffic pattern and volume it is expected to carry as part of a policy enacted in 1969 to provide for the efficient management, operation, and control of an integrated system of state and local highways, roads, and streets. The 11 members are appointed by the Governor to four-year terms, subject to confirmation by this body. Mr. Weander is a new appointment and he will represent the Department of Roads on this board. He is currently employed with the Nebraska Department of Roads. Mr. Weander appeared before the committee and he testified in his own behalf. The committee recommends this confirmation with all eight members in favor. Thank you, Mr. President.

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SENATOR GLOOR: Thank you, Senator Fischer. There are no members wishing to speak. Senator Fischer, you're recognized to close. Senator Fischer waives. The question before the body is the adoption of the committee confirmation report. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal pages 514-515.) 35 ayes, 0 nays on the adoption of the report.

SENATOR GLOOR: The report is adopted. Mr. Clerk.

ASSISTANT CLERK: Mr. President, the next report is offered by the Government, Military and Veterans Affairs Committee, an appointment to the Nebraska Accountability and Disclosure Commission. (Legislative Journal page 502.)

SENATOR GLOOR: Senator Avery, as Chairman of the Government, Military and Veterans Affairs Committee, you are recognized.

SENATOR AVERY: Thank you, Mr. President. The Government, Military and Veterans Affairs Committee brings to this body a nominee for confirmation to the Nebraska Accountability and Disclosure Commission. The nominee is being appointed to a six-year term. He is a graduate of the University of Nebraska in construction management. He is the owner of a commercial building business in the city of Omaha. He is an active Rotarian, serves on the Grace University Foundation, the Millard School Superintendent Advisory Council and Young Presidents Organization. This person is Roger Bradford von Gillern and he appeared before the Government Committee on February 3 for his confirmation hearing, and the committee voted 8 to 0 to recommend his confirmation. And that is the recommendation to this body. Thank you.

SENATOR GLOOR: Thank you, Senator Avery. There are no members wishing to speak. Senator Avery, you're recognized to close. Senator Avery waives. The question is the adoption of the committee confirmation report. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk.

ASSISTANT CLERK: (Record vote, Legislative Journal page 515.) 34 ayes, 0 nays on the adoption of the Government Committee report, Mr. President.

SENATOR GLOOR: The report is adopted. (Doctor of the day introduced.) We move to the next agenda item, General File. Mr. Clerk.

ASSISTANT CLERK: Mr. President, LB98 was introduced by Senator Fischer. (Read title.) Bill was read for the first time on January 6 of this year, referred to the Transportation Committee. That committee reported the bill to General File without any

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committee amendments. The bill was discussed yesterday. [LB98]

SENATOR GLOOR: Senator Fischer, would you provide us a review of LB98. [LB98]

SENATOR FISCHER: Thank you, Mr. President and members. I gave a lengthy introduction yesterday on the bill and then we heard from some of our colleagues who supported it and then ran out of time at noon. Basically, what LB98 does, it is a federal buyback program. It's going to allow both the state and especially our local units of government an additional tool. It's going to allow them more flexibility so that they can use the limited funds that they have at the local level in a more efficient, effective, and timely manner for their projects. This is a buyback program that where federal dollars are received by the local governments, they can, in effect, exchange them with the Department of Roads for state money and, in that way, they don't have to go through a lot of the red tape that's required by the federal government in order to complete or even begin their local projects. It is a bill that received a tremendous amount of support from all of our cities and counties, and they view it as a way that truly they can become more efficient in their use of the limited resources they have in order to accomplish some of their highway, street and bridge problems that they're facing. Thank you, Mr. President. [LB98]

SENATOR GLOOR: Thank you, Senator Fischer. The Chair recognizes Senator Hadley as we move to the discussion component of the review. [LB98]

SENATOR HADLEY: Mr. President, members of the body, I stand in front of you as the symbol of problems with the federal bureaucracy in highway projects, and I refer to the exit in Kearney. I sat a year ago in a meeting. Included in the meeting was the fifth mayor from Kearney who had worked on the project. The project had been in the works for over 15 years. We sat in the meeting. We heard that the consulting engineers that the city had hired had completed the environmental impact study. The Department of Roads had accepted the environmental impact study. The federal roads department had accepted the environmental impact study. But there was a new manager in the area for the federal department who said he did not accept the impact study, so we went back and started all over again. Fifteen years is a long time to try to get a project started. When you have the money, it is an exceedingly long time. Can you imagine when we're in a period of downturn in the economy what a \$50 million road project would mean in terms of stimulation of the economy? Hopefully, we have gotten the approval now. We hope to break ground the first of July. But I'm here to tell you that this is a good bill because it allows us to have cities and counties not to have to go through that, hoops, by exchanging money with the state department of highways. I fully support LB98 and encourage your green vote on it. Thank you, Mr. President. [LB98]

SENATOR GLOOR: Thank you, Senator Hadley. Senator Sullivan, you are recognized. [LB98]

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SENATOR SULLIVAN: Thank you, Mr. President, and good morning, colleagues. As I indicated yesterday when I spoke on LB98 that I am in full support of it, but I just have a couple little clarifications I'd like. So I wondered if Senator Fischer would yield for a couple questions. [LB98]

SENATOR GLOOR: Senator Fischer, will you yield? [LB98]

SENATOR FISCHER: Yes, I will. [LB98]

SENATOR SULLIVAN: Thank you, Senator. You indicated in your statement that this will fortunately eliminate a good deal of red tape and expedite some local projects, but my question is, just what sort of red tape will be eliminated? I know that some of the local projects have suffered, not suffered but have had problems with identifying a responsible charge person, the environmental reviews have been a problem. I just wondered if you could clarify what red tape will they no longer have to be dealing with. [LB98]

SENATOR FISCHER: Senator Sullivan, it's my understanding that there wouldn't be a need for that responsible charge person if state dollars are used. All projects, of course, especially those dealing with water--bridges--will still have to work with the Corps of Engineers on that. We still will have to meet environmental concerns. But in visiting with local people, it will be more streamlined through there, is what they've told me. For example, if they're going to put in a new light fixture, perhaps they won't need the scrutiny that's involved if federal dollars are part of the project just to dig the hole for the light fixture, is what I've been told. [LB98]

SENATOR SULLIVAN: Well, I'm glad to hear that about the responsible charge person. That's really been a barrier out in rural Nebraska. They, first of all, haven't known where to find the person that's qualified to carry this title and it's been a difficulty in terms of sometimes a person is miles away, in another part of the state that they've had to deal with. So if that's one of the eliminations of the red tape, I think this is a really good thing. Thank you. [LB98]

SENATOR GLOOR: Thank you, Senator Sullivan. There are no senators remaining in the queue. Senator Sullivan (sic), you are recognized to close on the advancement of LB98. Senator Fischer, excuse me. [LB98]

SENATOR FISCHER: I should probably have Senator Sullivan close, but (laugh) no. Thank you very much, Mr. President and members. This really is a very important bill and, as I said, we received a tremendous amount of support for it from our local governments because they understand what they have to deal with on any kind of road, street, bridge project if they're using federal money. And this will make those really

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scarce, precious, local dollars go further when we're facing such a shortfall. So I would definitely urge you to pass this on to Select File. Thank you, Mr. President. [LB98]

SENATOR GLOOR: Thank you, Senator Fischer. The question is the advancement of LB98 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB98]

ASSISTANT CLERK: 37 ayes, 0 nays on the advancement of the bill, Mr. President. [LB98]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB98]

ASSISTANT CLERK: LB178 was introduced by the Transportation and Telecommunications Committee. (Read title.) Bill was read for the first time on January 7 of this year, referred to the Transportation Committee. The committee reported the bill to General File with no committee amendments. [LB178]

SENATOR GLOOR: Senator Fischer, as Chair of the Transportation and Telecommunications Committee, you are recognized to open on LB178. [LB178]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB178 authorizes the Department of Motor Vehicles to administer new commercial driver's license, or CDL, requirements as required by federal regulation. The federal Commercial Motor Vehicle Safety Act of 1986 requires that states remain in substantial compliance with federal CDL laws. Failure to remain in compliance can result in the imposition of monetary penalties associated with federal highway funds. The deadline for compliance with this regulation is January 30, 2012. There are two specific areas of compliance that require changes in Nebraska law. First, LB178 provides new requirements for medical certification for CDL holders. The bill does not alter the medical fitness standards the CDL holders driving in interstate commerce must meet. Rather, the new regulation changes how medical fitness of CDL holders is enforced. Currently, CDL holders are required to carry their medical certificate with them. The CDL medical information is not provided to the DMV and is not available in any database. The new regulation requires every CDL holder to determine his or her medical fitness category. The regulation requires the transmission of the medical certification to the Department of Motor Vehicles. For a CDL holder who operates in interstate commerce and moves to another state, the DMV is required to send the medical information as a part of the CDL record. Consequently, LB178 provides the certification categories that CDL holders will select for self-certification, and authorizes the state to keep the medical certification information to downgrade drivers who fail to self-certify or maintain current certification and to transmit certification information to other states through the commercial driver's license information system. The changes require all CDL holders to provide medical certification information to the state no later

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than January 30, 2014. Any applicant who applies for a new or renewal CDL between January 1, 2012, and January 30, 2014, must meet the new medical certification requirements as part of the application process. The DMV will notify CDL holders whose licenses expire after January 30, 2014, that they must provide current medical certification information by January 30, 2014. DMV must downgrade the CDL of any driver who does not provide that required medical certification within 60 days of notification of a problem. To downgrade the CDL means the CDL is replaced with a normal Class O license. The DMV must determine if the CDL holder's medical certification is complete and determine if a driver can hold a CDL with a medical variance if the driver cannot meet the medical standards. The DMV will deny a CDL to any applicant that is not medically certified and does not qualify for a medical variance. LB178 also contains provisions that harmonize state statute with federal law pertaining to the operation of commercial motor vehicles in transportation of hazardous materials on Nebraska roadways. These required changes were identified in a 2009 Federal Motor Carrier Safety Administration audit. Failure to enact such changes puts the state at risk of losing 50 percent of its federal funds under the Motor Carrier Safety Assistance Program. Thank you, Mr. President. [LB178]

SENATOR GLOOR: Thank you, Senator Fischer. We now move to discussion on LB178. The Chair recognizes Senator Hansen. [LB178]

SENATOR HANSEN: Thank you, Mr. President, members of the Legislature, I was wondering is Senator Fischer would yield to a question. [LB178]

SENATOR GLOOR: Senator Fischer, will you yield? [LB178]

SENATOR FISCHER: Yes, I will yield. [LB178]

SENATOR HANSEN: Thank you, Senator Fischer. The statement of intent states that this is a substantial compliance with federal laws so...and I did notice that it has an A bill, so would you consider this an unfunded mandate from the federal government? [LB178]

SENATOR FISCHER: Absolutely, Senator Hansen. [LB178]

SENATOR HANSEN: And it's \$38,000 this year and \$75,922 next year. Section 12 of the bill, and you stated it in your introduction, too, that the self-certification process of a truck driver, that's...it gives the option, either self-certification exemption or medical exemption. So is that saying that after a truck driver has a health issue that they can say I'm okay to drive to DMV? Can they come in and claim that? I'm not sure what the self-certification process is. [LB178]

SENATOR FISCHER: I believe, Senator Hansen, when the drivers are intrastate, they

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can self-certify. But when they travel between states, when it's interstate, they cannot under this federal requirement. Now I would imagine, I'm going to have to...I will have to check on your specific question. [LB178]

SENATOR HANSEN: Okay, just that term. I drive the interstate quite a bit so I see, you know, interstate drivers, intrastate drivers, doesn't matter. Some of them can't tell the difference between black ice and black highway, so they, you know, sometimes they...and I know truckers are very independent, they all are, and they say, I'm fine, I can drive. So if that's a self-certification effort, I don't think that's quite what should apply anyway. But I did want to make the point that this looks like a federally unfunded mandate. Thank you, Mr. President. [LB178]

SENATOR FISCHER: Senator Hansen, could I...would you like me to respond to that? [LB178]

SENATOR HANSEN: Yes. Yes. [LB178]

SENATOR FISCHER: As far as I know, the state of Nebraska is not changing...with this bill, we are not changing any requirement that is currently under that self-certification. We're continuing as we have been with regards to federal requirements on that. But I will get the details of what that involves and get that to you. [LB178]

SENATOR HANSEN: Thank you. [LB178]

SENATOR GLOOR: Thank you, Senator Hansen. Senator Wallman, you are recognized. [LB178]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. Would Senator Fischer yield to a question? [LB178]

SENATOR GLOOR: Senator Fischer? [LB178]

SENATOR FISCHER: Yes. [LB178]

SENATOR WALLMAN: Thank you, Senator Fischer. This CDL thing, what did Kristen Gottschalk have against this bill? [LB178]

SENATOR FISCHER: Oh, the one opponent to the bill came in because there are a few of the drivers with electric cooperatives that would have to meet these requirements. She was representing those people and she did realize that they do have to meet those requirements, it is federal, but was expressing opposition because those drivers didn't feel that they should be covered under it. But she also recognized that, yes, those drivers are covered under federal law. [LB178]

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SENATOR WALLMAN: So even a local farmer would have to do this too? [LB178]

SENATOR FISCHER: I'm sorry, Senator, a local...? [LB178]

SENATOR WALLMAN: Farmer with a CDL. Say I just stay in my state. I'd have to do the same thing? [LB178]

SENATOR FISCHER: We're not changing who is required to have a CDL under this bill. It's how it will be enforced and where the information is going to be held. [LB178]

SENATOR WALLMAN: Thank you, Senator Fischer. Thank you, Mr. President. [LB178]

SENATOR GLOOR: Thank you, Senator Wallman. Senator Fulton, you are recognized. [LB178]

SENATOR FULTON: Thank you, Mr. President. Previous two speakers did touch on some issues that I...or questions that I had and I think Senator Larson might be pleased to know that I will not, therefore, beat a dead horse. (Laughter) But I do have one question for Senator Fischer, if I could ask, please. [LB178]

SENATOR GLOOR: Senator Fischer, will you yield? [LB178]

SENATOR FISCHER: Yes, I will. [LB178]

SENATOR FULTON: Senator, recognizing...Senator Hansen picked this up and we've already talked about it, but it seems that now this is the second bill that we put forward because the feds have caused us to have to do something. I expect we'll see more. My question here has to do with the Truckers Association and what truckers on the ground. Can you give some feedback? I notice they didn't testify and that's probably because we don't really have much of a choice as it relates to this bill. But is there any feedback, further feedback that you could offer there? [LB178]

SENATOR FISCHER: I would assume, Senator Fulton, I have not heard from the Truckers Association on this but they're a professional association and they realized what is required by the federal government the state has to be in compliance with. [LB178]

SENATOR FULTON: Yeah. Okay. [LB178]

SENATOR FISCHER: And they follow federal law because of the interstate commerce. [LB178]

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SENATOR FULTON: Okay. Good enough. Thank you, Senator Fischer. Of course, I'll be in support of this bill. I just want to point out that this is another example where it may be well-intended but we're forced to do things and spend monies because of a decision made up high. And this actually may be one that comports to sound reason, but we see it over and over and over, and every so often I think it's important to point that out. I'll stop there. Thank you, Mr. President. [LB178]

SENATOR GLOOR: Thank you, Senator Fulton. There are no senators remaining to be recognized. Senator Fischer, you are recognized to close on LB178. Senator Fischer waives. The question is the advancement of LB178 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB178]

ASSISTANT CLERK: 36 ayes, 1 nay on the motion to advance the bill, Mr. President. [LB178]

SENATOR GLOOR: The bill advances. We continue with General File. [LB178]

ASSISTANT CLERK: Mr. President, LB178A, introduced by Senator Fischer. (Read title.) [LB178A]

SENATOR GLOOR: Senator Fischer, you are recognized. [LB178A]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB178A appropriates funds from the DMV Cash Fund for the driver's license vendor to modify the license to add the new endorsement for CDL holders with medical variance and for notifications, postage, informational brochures, and office equipment. Money is also appropriated from the DMV Cash Fund to hire an additional staff assistant to process all the paperwork involved in this medical certification. Once again, these expenses are being paid through the DMV Cash Fund and it has no General Fund impact. Again, this is required by the federal government. Thank you, Mr. President. [LB178A]

SENATOR GLOOR: Thank you, Senator Fischer. There are no senators waiting to be recognized. Senator Fischer, you are recognized to close. Senator Fischer waives. The question before the body is the advancement of LB178A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB178A]

ASSISTANT CLERK: 33 ayes, 0 nays on the advancement of LB178A, Mr. President. [LB178A]

SENATOR GLOOR: The bill advances. Mr. Clerk. [LB178A]

ASSISTANT CLERK: Next bill, Mr. President, is LB215, introduced by Senator Fischer. (Read title.) Bill was read for the first time on January 10, referred to the Transportation

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Committee, reported to General File with no committee amendments. [LB215]

SENATOR GLOOR: Senator Fischer, you are recognized to open on LB215. [LB215]

SENATOR FISCHER: Thank you, Mr. President and members of the body. LB215 is the continuation of a review of Nebraska's driver's license and identification card issuing process that began in 2005. LB215 is an attempt to strengthen the Nebraska driver's license issuing process so that when a person presents a license or identification card we can be sure that he or she is actually the person depicted on the license. LB215 implements several new processes to the driver's license issuing system. By January 1, 2014, background checks will be required from all employees who have the ability to affect information appearing on the driver's license. These background checks will include criminal history, past employment references, and lawful status. The bill requires all driver's license and identification card applicants to prove date of birth and lawful status through a limited source document list. The DMV will retain images of an applicant's source documents in its system and may verify the documents with the issuing agency. Individuals will not be allowed to hold a driver's license and state ID card at the same time. Temporary licenses will be issued for noncitizens legally in the United States after such proof is furnished. The document will be marked temporary and limited to the expiration of the person's authorized stay or, if no expiration date, for one year. Thank you, Mr. President. [LB215]

SENATOR GLOOR: Thank you, Senator Fischer. Are there senators wishing to be recognized? Seeing none, Senator Fischer, you are recognized to close on the advancement of LB215. Senator Fischer waives. The question is the advancement of LB215 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB215]

ASSISTANT CLERK: 32 ayes, 0 nays on the advancement of the bill. [LB215]

SENATOR GLOOR: LB215 advances. We continue with General File. Mr. Clerk. [LB215]

ASSISTANT CLERK: Next bill, Mr. President, is LB43, introduced by Senator McCoy. (Read title.) Bill was read for the first on January 6, referred to the Banking, Commerce and Insurance Committee. That committee placed the bill on General File with no committee amendments. [LB43]

SENATOR GLOOR: Senator McCoy, you are recognized to open on LB43. [LB43]

SENATOR MCCOY: Thank you, Mr. President and members. Here to introduce LB43 which amends a section in the Trust Deeds Act. LB43 corrects an internal reference by clarifying that the procedure for limiting optional future advances under state statute

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76-1002 only applies to any future advances to be made at the option of the parties and not to future advances necessary to protect the security. LB43 had no opponents or neutral testifiers in committee and was advanced unanimously, and I ask for your support to advance it to Select File. Thank you, Mr. President. [LB43]

SENATOR GLOOR: Thank you, Senator McCoy. Are there senators wishing to be recognized? Seeing none, Senator McCoy, you're recognized to close. Senator McCoy waives. The question is the advancement of LB43 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB43]

ASSISTANT CLERK: 32 ayes, 0 nays on the advancement of the bill, Mr. President. [LB43]

SENATOR GLOOR: LB43 advances. (Visitors introduced.) Continuing with General File, Mr. Clerk. [LB43]

ASSISTANT CLERK: Mr. President, LB410 was introduced by Senator Utter. (Read title.) Bill was read for the first time on January 13 of this year, referred to the Banking, Commerce and Insurance Committee. That committee placed the bill on General File with committee amendments. (AM197, Legislative Journal page 433.) [LB410]

SENATOR GLOOR: Senator Utter, you are recognized to open on LB410. [LB410]

SENATOR UTTER: Thank you, Mr. President. Good morning, colleagues. Today I am here to introduce LB410. LB410 would adopt the Appraisal Management Company Registration Act and subject appraisal management companies to regulation and supervision by the Nebraska Real Property Appraiser Board. Appraisal management companies, or AMCs, play a critical part in the mortgage lending process and have done so for many years. However, with the implementation of the home valuation code of conduct by Freddie Mac and Fannie Mae, passage of the Dodd-Frank Act, and appraisal guidelines adopted by federal regulators, the use and need of appraisal management companies has been enhanced in recent years. Given the significance of maintaining independence in the issuance of appraisals for mortgage lending purposes, an appraisal management company offers a number of advantages. Appraisal management companies help increase efficiencies and lower operational costs for both lenders and appraisers. AMCs also add a professional expertise to support the appraisal process. In particular, due diligence and quality assurance services are provided by AMCs that improve the overall reliability of the appraisal process, thus, benefiting appraisers, lenders, loan servicers, and homeowners. LB410 passed through Banking, Commerce and Insurance Committee with each committee member voting in favor of it. There were no opponents to the bill in committee as well. The bill also has the support of the Nebraska Real Estate...or, well, the Real Estate Valuation Advocacy Association, the Nebraska Bankers Association, the Real Property Appraiser Board,

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and the Nebraska Realtors Association. I should also mention that there will be no cost associated with this bill. An amendment to LB410 which increases the registration process...and processing and renewal processing fees will change the fiscal note to balance to zero. There are committee amendments to follow and Senator Pahls has asked me to open on those committee amendments as well. [LB410]

SENATOR GLOOR: Thank you, Senator Utter. As stated, there are amendments. Senator Utter, in the absence of Senator Pahls, you're recognized to open on the amendment. [LB410]

SENATOR UTTER: Thank you, Mr. President, and the opening on the amendments follows. The committee amendments were developed with the consultation of the interested parties to this bill. It is the expectation of the interested parties and the Banking Committee that the adoption of the committee amendments will eliminate the fiscal impact of enactment of the Nebraska Appraisal Management Company Registration Act. The committee amendments would accomplish the following. Number one, the committee amendments will strike the provisions from the bill which would expand the Real Property Appraiser Board to include a representative of the AMC industry. Number two, the committee amendments would establish a requirement for an AMC registered in this state to maintain a surety bond in the amount of \$25,000. The bond would be in favor of the state for the benefit of any person damaged by a violation of the act. Number three, the committee amendments would provide for an application fee of no more than \$350. As introduced, the bill did not provide for an application fee. In addition, the committee amendments would provide for an initial registration fee of no more than \$2,000, good for two years, and renewal registration fee of no more than \$1,500. The Real Property Appraiser Board would establish the fees. As introduced, the bill would provide for processing fees and renewal processing fees of no more than \$500. The increase in the initial registration and renewal fees is intended to be sufficient to address the fiscal note. Number four, the bill as introduced would allow the Real Property Appraiser Board to levy a maximum \$5,000 fine on an AMC for a violation of the act. The committee amendments would provide that the maximum \$5,000 fine would be for a first offense. The committee amendments would provide a maximum \$10,000 fine for second or subsequent offenses. Number five, the committee amendments would clarify that any individual associated with an AMC conducting an appraisal review must be licensed in this state. Number six, the federal Dodd-Frank Act provides that an AMC with a reasonable belief that an appraiser has failed to comply with applicable laws or the uniform standards of professional conduct must report that matter to the Real Property Appraiser Board if the failure to comply is material. The committee amendments would strike provisions which provide that a failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling. These changes would leave it to the Real Property Appraiser Board to establish the basis for reporting by rule and regulation. Number seven, the committee amendments would add provisions that would restrict an AMC from prohibiting an

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appraiser from including the fees received for an appraisal assignment within the body of the appraisal report. Number eight, the committee amendments would add provisions that would require an AMC to make payment of appraisal fees to appraisers within 60 days of completion of the appraisal assignment. These are the committee amendments and I urge their adoption. Thank you, Mr. President. [LB410]

SENATOR GLOOR: Thank you, Senator Utter. (Visitors introduced.) We move to discussion. The Chair recognizes Senator Fulton. [LB410]

SENATOR FULTON: Thank you, Mr. President. Would Senator Utter yield to a question? [LB410]

SENATOR GLOOR: Senator Utter, would you yield? [LB410]

SENATOR UTTER: Yes. [LB410]

SENATOR FULTON: Senator, I think that you covered this in your opening on the bill. Just to clarify, the fiscal impacts that are indicated on the fiscal notes are...they are...they go away with the amendment? Is that what I understood? [LB410]

SENATOR UTTER: They should go away and they will be covered by the fees as was stipulated in the amendments. [LB410]

SENATOR FULTON: Okay. So we're talking not about General Fund obligations here but, rather, cash funds, if there are any. [LB410]

SENATOR UTTER: That's correct. [LB410]

SENATOR FULTON: Okay. Second, and this...I heard you talk a little bit about provisions of the federal government, Freddie and Fannie, making necessary some of the provisions of this bill. Would that be an accurate statement? Did I hear that correctly? [LB410]

SENATOR UTTER: Well, it's a combination of...frankly, it's a federal mandate and it's a combination of things that have happened at the federal level that really make this necessary. I would say the largest part of it come as a result of the requirements under the Dodd-Frank bill. [LB410]

SENATOR FULTON: Okay. This seems to be a recurring theme down here and, again, I'm not going to beat that equine. But this morning the Obama administration released a white paper in which they are proposing the phasing out and shutting down of Fannie and Freddie, and I'm just getting caught up with it. I heard it in a news report and I've started to read about it, but it sounds like this is going to be...these two government

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agencies are going to be phased out by the year 2018. So I guess a question I have to ask here is, do we know that LB410 is a necessity in the time being? Is this something that we're going to create today that may not be needed tomorrow? Can you comment to that at all, Senator? [LB410]

SENATOR UTTER: Let me just say...give you an inexperienced opinion and I will tell you, just because of the potential closure of Fannie Mae and Freddie Mac, and I assume their replacement with some other federal agency, the requirements of this bill are still mandated primarily under Dodd-Frank and certain other regulations of other regulatory agencies in Washington, D.C. [LB410]

SENATOR FULTON: Okay. Thanks, Senator. And this was information that I just learned this morning and as you were going through your opening I thought it prudent to at least put it into the record as a marker because one day things could be much different in Washington and, therefore, different here. But I'll support the amendment and the bill, and thank you, Senator Utter. Thank you, Mr. President. [LB410]

SENATOR GLOOR: Thank you, Senator Fulton. Senator Lathrop, you are recognized. [LB410]

SENATOR LATHROP: Thank you, Mr. President. And, colleagues, good morning. I'd like to ask Senator Utter a couple of questions, if I might. [LB410]

SENATOR GLOOR: Senator Utter, will you yield? [LB410]

SENATOR UTTER: Yes, I will. [LB410]

SENATOR LATHROP: Senator Utter, I was listening as you introduced the bill and the amendment and you were talking about the fiscal note or the fiscal impact of an amendment and it sounds like some of this is run by cash funds and some of it may need General Funds. Can you talk to me or give me a little background on the fiscal note? [LB410]

SENATOR UTTER: Absolutely no General Funds, Senator Lathrop. The amendments...well, the bill, as originally provided, certainly would require...the fiscal note would require a cash fund or a General Fund injection. As amended, the fees were raised upward. The maximum fees are at a level that should be sufficient to carry on the provisions of this act without the requirement of any General Fund appropriation. [LB410]

SENATOR LATHROP: Okay. Are those...is your bill or the amendment increasing the fees or are you telling us at the current fee level, it will cover the cost of your bill and the amendment? [LB410]

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SENATOR UTTER: Up to now, Senator Lathrop, there has not been a regulation in the state of Nebraska that covers appraisal management companies. So these are initial fees that cover the initial registration and the ongoing licensing and renewal licensing of the appraisal management company, and so in all essence there are a brand new set of fees covering the requirements that we license appraisal management companies to do business in Nebraska. Up till now they have not been licensed in the state and have not been regulated, and this provides a basis for that regulation, licensing, and meeting the commitments that are required of us under Dodd-Frank and the other regulatory agencies. [LB410]

SENATOR LATHROP: And what section would I find all the fees for this new undertaking in? [LB410]

SENATOR UTTER: I'm looking through...for help. It would be in the amendments and I can...and I can review those for you. [LB410]

SENATOR LATHROP: I'll see if I can find them, Senator Utter. I appreciate your answers to the questions. I wasn't trying to put you on the spot and I have a committee statement in front of me. I'll look and find out where the fees are in that statement. Thank you. [LB410]

SENATOR GLOOR: Thank you, Senator Lathrop. There are no senators remaining to be recognized. Senator Utter, you are recognized to close on the committee amendment. [LB410]

SENATOR UTTER: Thank you very much, Mr. President. These amendments form an integral part of this legislation and are important to the passage of the overall bill, so I urge you to vote green on these amendments. [LB410]

SENATOR GLOOR: The question is, shall the committee amendment to LB410 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB410]

ASSISTANT CLERK: 35 ayes, 0 nays on the adoption of committee amendments. [LB410]

SENATOR GLOOR: The amendment is adopted. Discussion continues on the advancement of LB410. Seeing no senators wishing to be recognized, Senator Utter, you are recognized to close on the advancement of LB410. [LB410]

SENATOR UTTER: Thank you, Mr. President. And let me just say in closing that I don't like additional regulation any better than anyone else in this body does, but sometimes

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we are forced to do things that we don't necessarily like. And I think it's important that...for the people of this state that we continue down this line and comply with the requirements that are passed on from on high. Thank you. [LB410]

SENATOR GLOOR: Thank you, Senator Utter. The question is the advancement of LB410 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB410]

ASSISTANT CLERK: 36 ayes, 0 nays on the motion to advance the bill, Mr. President. [LB410]

SENATOR GLOOR: LB410 advances. Mr. Clerk. [LB410]

ASSISTANT CLERK: Mr. President, LB410A, introduced by Senator Utter. (Read title.) [LB410A]

SENATOR GLOOR: Senator Utter, you are recognized to open on LB410A. [LB410A]

SENATOR UTTER: Thank you, Mr. President. And as I pointed out early and on the earlier bill, this bill is entirely funded by cash funds and so we are providing for that vehicle to go ahead and take care of this bill. Thank you. [LB410A]

SENATOR GLOOR: Thank you, Senator Utter. Seeing no senators wishing to be recognized, the question before the body is...Senator Utter waives. The question before the body is the advancement of LB410A to E&R Initial. All those in favor signify by saying aye; all those opposed, nay. Have you all voted? Record, Mr. Clerk. [LB410A]

ASSISTANT CLERK: 32 ayes, 0 nays on the advancement of the bill, Mr. President. [LB410A]

SENATOR GLOOR: LB410A advances to E&R Initial. Mr. Clerk. [LB410A]

ASSISTANT CLERK: LB108 was introduced by Senator Carlson. (Read title.) Bill was read for the first time on January 6 of this year, referred to the Committee on Agriculture. That committee placed the bill on General File with committee amendments. (AM223, Legislative Journal page 436.) [LB108]

SENATOR GLOOR: Senator Carlson, you're recognized to open on LB108. [LB108]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I would invite those of you that are interested to get on your gadget, as Senator Chambers would say, and look at the green copy, and I'm going to, in my opening, really address Section 1. Last year, Senator Sullivan had a bill, LB667, that addressed

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fence law in Nebraska, cleared up and changed the way we approach fence law. Her bill is now in statute that really says that where there is a fence that is appropriate and geared for rural Nebraska, outside city limits, that it is shared duty and shared cost on the construction of a fence, of a legal fence. But fence law is currently vague that the shared duty for maintenance of a division fence includes related vegetation management, which again contributes to confrontation, even among traditional agricultural landowners. We're finding that an increasing point of contention of fencing disputes is not only the shared liability for costs of the materials and labor to construct the fence itself but in disputes regarding related vegetation management, particularly where a fence may traverse a wooded area where the removal or trimming of brush and trees on or very near the fence line is necessary to build and maintain the fence correctly. Now referring to Section 1 on the green copy, LB108 does two things. First, it would insert a new statutory section that expressly states a duty of adjacent landowners to maintain a fence in good repair and that this duty includes the necessary removal or trimming of vegetation within or encroaching upon the fence line. Secondly, this section would further recognize that failure in this duty, allowing the proliferation of vegetation in or near the fence line that causes damage or dislocation of the fence, shall constitute a private nuisance to the neighbor's possessory interests in his or her property. That is the essence of LB108 and I will give the balance of my time, and then in the opening on the amendment I'll further describe what we're recommending in LB108. Thank you, Mr. President. [LB108]

SENATOR GLOOR: Thank you, Senator Carlson. As the Clerk stated, there are amendments from the Agriculture Committee. Senator Carlson, as Chair of the committee, you're recognized to open on the amendment. [LB108]

SENATOR CARLSON: The amendment, AM223, to LB108, if we go back into the green copy, includes Section 2, and Section 2 is current law. There was discussion to strike a portion of Section 2. After extensive discussion on the part of the Agriculture Committee, which was good discussion, and the hearing that we had, the committee decided that Section 2 should remain in law as it now is, and the portion that we were going to strike, we want to remove the striking. So Section 2 will remain, we're recommending it remain as is in current law, and that's the purpose of AM223. And with that, I would ask for your support of AM223 and your support of the underlying bill, LB108, and I'm open to comments or questions that the body may have. Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Carlson. Mr. Clerk. [LB108]

ASSISTANT CLERK: Mr. President, Senator Heidemann would offer AM308 as an amendment to the committee amendments. (Legislative Journal page 511.) [LB108]

SENATOR GLOOR: Senator Heidemann, you are recognized to open on the

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amendment to the committee amendments. [LB108]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. I do have some concerns on LB108. I understand what Senator Carlson is trying to achieve here. I will start with offering this amendment to the committee amendment. It just changes the word on page 2, lines 4 and 6, it strikes "vegetative" and inserts "trees and woody." We did that out of the concern that we was probably going a little bit too far, that if your neighbor has some weeds, if you didn't like your neighbor you could actually force your neighbor to actually remove his weeds, which I think goes a little bit too far. I actually did work with Senator Carlson and his legal staff on this. I don't believe there's a problem with this. I do have some questions on the underlying bill, though, that I will bring up later. But with that, I would appreciate support on AM308 to AM223. If you have any questions, I would be happy to try to answer them. [LB108]

SENATOR GLOOR: Thank you, Senator Heidemann. We move to discussion. Senator Lathrop, you are recognized. [LB108]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I really don't have a judgment about AM308. I might after I look at it, but I don't think that's a problem and I don't think Senator Carlson believes it is either. What I wanted to do was to stand up and talk about AM223. I appreciate that probably under the rules I ought to wait till AM308 is done, but I've turned my light on early so I'm going to do it anyway. When this bill came to us, we were trying to clarify, and I say us because I'm in Ag Committee now, it came to us in Ag Committee, we were trying to clarify some issues that have to do with division fence and who has responsibility for them. And then, as introduced, the bill struck a section that said this section does not authorize any alterations to adjacent landowner's property, essentially, to remove trees and that sort of thing without the consent of the owner or a court order, and we were going to take that out. And the effect of taking that out, and Senator Carlson's amendment, AM223, puts it back in or leaves the section alone, would be that a neighbor can go on a neighbor's property without permission and start cutting down weeds and trees and things like that. And what struck me during the committee hearing was there was one guy that said this guy's trees are encroaching, and they were a long ways from the fence. And so my judgment is, I feel kind of strongly about this as ag issues go, my judgment is that you shouldn't be going on somebody's property without either their permission or a court order. Now let me talk a little bit about permission and what that means, because when we talk about consent or permission we're talking about some pretty fundamental things that we learned in law school in the first class that we took, which was property. You can have express permission to go on somebody's property. So if I want to go onto Senator Sullivan's ranch, I call her up and I say, you know, there's a tree down or my cattle are in your pasture, can I go over there? She says, yes. I now have express permission. If my cows regularly go into her ranch or her farm or trees are falling on the fence line and she regularly says, Steve, that's fine, I don't care, you don't have to ask me, then the next

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time it happens I can go on there because I have her implied permission. She may not have told me each time that I have her permission, but it's not unlike driving the car. If you let somebody drive your car all the time, they get to a point where they don't even need to ask. That's what we call implied permission or implied consent. And so I think leaving this language in there that requires the permission or consent of the owner or a court order is important because, otherwise, all we are doing is trying to take sides in the Hatfields and the McCoys and we're taking the wrong side. We're saying it's okay for John Harms to come onto my property to do some work that he claims is cutting down a tree when I don't want him there, and I think that's bad policy. Senator Carlson asked me to make an offer to answer any of the property questions that come up, and if you want to take up the policy in Section 1 he'd be happy to answer those questions. Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Louden, you are recognized. [LB108]

SENATOR LOUDEN: Thank you, Mr. President and members of the committee (sic). Would...first, on the amendment that Senator Heidemann has, I kind of question when he wants to change that from vegetative to, what, woody and whatever it says on there. I think that's all right in your tree areas and stuff, but as you get out west in some of the Sandhills area, a lot of times you have a big bunch of soap weeds growing in a fence line and stuff that have to be taken out of there, and sometimes you have to take a tractor and move some dirt and the whole works. So I don't have a problem with that as it's described in there as vegetative in there because I don't know if you can classify soap weeds as trees or woody material because they're more of a vegetation. So that part I don't have a problem with. The other one part I would like to...wonder if Senator Carlson would yield for questions. [LB108]

SENATOR GLOOR: Senator Carlson, will you yield? [LB108]

SENATOR CARLSON: Yes, I will. [LB108]

SENATOR LOUDEN: Yeah. Now do I understand this other amendment you have correctly that you'll be coming up with where it says, "Strike original Sections 2 and 3"? Does that take all that stricken language out of the bill that's down there in Section 2 now and leaves Section 2 like it is? Is that what you're trying to do with that? [LB108]

SENATOR CARLSON: That's what that striking means, and I understand. I was confused with that for a little bit too. It means remove the lines that are down there and then Section 2 remains as is, which is current law. [LB108]

SENATOR LOUDEN: Oh, yeah, and I agree that there's some of it perhaps redundant through there but, on the other hand, I think that has to be some language in there for

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some protection along the line someplace when it comes to fencing because nothing can cause any more trouble than fighting over fences usually over the years. So I support that amendment. Senator Heidemann's amendment, I don't think I can support that amendment because I think as the description is in there we're probably better off with it than going with taking that "vegetative" out of there. Thank you, Mr. President. [LB108]

SENATOR GLOOR: Thank you, Senator Louden. Senator Carlson, you are recognized. [LB108]

SENATOR CARLSON: Thank you, Mr. President. I would like to address Senator Lathrop, if he would yield. [LB108]

SENATOR GLOOR: Senator Lathrop, will you yield? [LB108]

SENATOR LATHROP: Yes. [LB108]

SENATOR CARLSON: Senator Lathrop, you may have said this. I don't think you did because I was distracted a little bit on part of your testimony. Would you go explain to the body your interpretation of what implied consent means and how that could enter the picture in regard to fences? [LB108]

SENATOR LATHROP: I did talk about that and I'd be happy to talk about it generally again, which is implied consent or implied permission is the notion that between...because you have a relationship with that person or a history with that person or a practice, maybe is a better term, if I routinely go onto John Harms's property to retrieve my cattle, I don't need to call him every time at some point because I have his implied permission. He's told me yes so many times, I don't even need to ask him anymore. The same would be true about working on a fence line. If I've called John in the past and said, John, you know, I'd like to come over on your property. It's going to be easier if I bring my pickup truck into this process on your side of the fence line, for whatever reason, and he says yes, after a time I have his permission, even if it's not expressed, and I don't need to go to him every time. That would be a defense to trespass, which is ultimately what we're talking about here. [LB108]

SENATOR CARLSON: What about a situation where we have an absentee landowner and I either don't know how to get ahold of him and then we have something happen, I've got to take action? [LB108]

SENATOR LATHROP: I think then we get into...Burke Harr, I think, called it a privilege and that's maybe because he's closer to law school than I am. I would call it a defense. You can have emergent situations, and I'm thinking of cattle escaping into somebody else's cornfield, I think the emergent situation would permit you to go into somebody's

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property to retrieve your cattle. [LB108]

SENATOR CARLSON: Okay. Thank you. And I would comment, I appreciate Senator Louden's concern here about AM308. I really don't have a strong feeling. I'm not opposing it. And if the rest of the body is in support of AM308, I would be as well. And that's part of why we're doing what we're doing, because we express whether we're for or against something and then we'll take the vote on it. Thank you, Mr. President. [LB108]

SENATOR GLOOR: Thank you, Senator Carlson. Chair recognizes Senator Hansen. [LB108]

SENATOR HANSEN: Thank you, Mr. Chairman, members of the Legislature. When we start talking about rural fencing and livestock, we've got a whole nother realm to think about, in my mind anyway, is when we have...we're out checking cattle. We check the windmills and we put out mineral and salt, and one of the things we do is we go locate the cattle, find out where they are in a section pasture. A lot of trees have come up even in the Sandhills over the years where cedar trees invade a fence row due to birds eating seeds and then spending a little time on the fence or a post. That's where the fences (sic) start. So whichever side that bird was on, I guess that fence is going to have a tree on it. But it does become a problem. If you come out and you find the fence in disrepair and you have cattle missing, you have to be able to go on the neighbor's property to get those cattle back. He's not going to want those cattle, my cattle, on his side, and I don't want his cattle on my side either for a variety of reasons. But the inability to go onto a neighbor's property to retrieve your livestock, because the fence is in disrepair, is not a good idea. And I certainly don't want to go to court to get that done. I want to be able to do that. I mean that's how we're going to do it anyway, especially like in places...remote places like McPherson County and six miles off the highway. When you're there, you've got to fix a problem. You can't wait. I think there's other instances. I would like to hear more from Senator Heidemann. I will yield to Senator Heidemann, if he wants to explain his amendment, AM308, because I'd like to know more about the trees and the woody stuff and vines that grow on fences. And I talked to him briefly off the mike but I would like to hear that discussed. So if Senator Heidemann would like some time yielded, I would certainly do that. [LB108]

SENATOR GLOOR: Senator Hansen, are you yielding your time or are you yielding... [LB108]

SENATOR HANSEN: Yes. Yes. [LB108]

SENATOR GLOOR: Two minutes fifty seconds, Senator Heidemann. [LB108]

SENATOR HEIDEMANN: Thank you, Senator Hansen. This is something that I have

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questions on. I appreciate Senator Louden, when he brings up his side. He's from the northwest corner of the state and I'm from the southeast corner of the state and things are different, there's just no doubt about it. We consider trees almost weeds where we're from, as fast as they grow. They'll come up in a tree line, a fence line and, the next thing you know, it's difficult to actually take care of your fence. I have some questions that I would like to address to Senator Lathrop, as not being a lawyer, I'm trying to grasp the legal side of this, if he would answer or yield to a few questions. [LB108]

SENATOR GLOOR: Senator Heidemann, you are on Senator Hansen's time. [LB108]

SENATOR HEIDEMANN: And that wouldn't be allowed then, would it? [LB108]

SENATOR GLOOR: It would not be allowed. [LB108]

SENATOR HEIDEMANN: I think my light is on. We'll try that later on then. I do think that AM308, and I'm going to try to justify AM308 a little bit here, we have neighbors sometimes, the majority of them, 99 percent of the time, they get along. And the other 1 percent they don't get along and then there's a part of that 1 percent then that they try to antagonize each other more than anything else. And I believe if you would take AM308 and take the vegetative growth out and just make it the woody material, it doesn't give quite as much leeway for them to start picking at each other. Because as a neighbor, and if I don't like another neighbor--and I don't have that problem, I get along with my neighbors--I could say, though, I don't like your weeds and I want you to do something about them. A tree will impede you from fixing a fence, but if you can't move a weed to put a couple staples in a fence, put some wire around it to fix it up,... [LB108]

SENATOR GLOOR: One minute. [LB108]

SENATOR HEIDEMANN: ...I think it's going just a little bit further than what we have to. The problem that I have with the whole underlying bill, I believe that we need to sometimes let neighbors work things out amongst themselves, and I don't like to give them any more tools than we have to up here, the Legislature, as a state to say, okay, the Legislature said this, now you have to do it. And that's kind of the problem that I have with the whole underlying thing. When my light comes up, I want to try to get Senator Lathrop and ask some legal questions, and I will wait until that time. Thank you. [LB108]

SENATOR GLOOR: Senator Heidemann, you are next in the queue. Would you like Senator Lathrop to yield? [LB108]

SENATOR HEIDEMANN: Yes. [LB108]

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SENATOR GLOOR: Senator Lathrop, will you yield? [LB108]

SENATOR LATHROP: Yes, I will. [LB108]

SENATOR HEIDEMANN: Senator Lathrop, if my neighbor's tree, which is ten-foot on his side and it's a great big tree and it falls over on my fence, to fix my fence do I have the right to cut it back to the property line? [LB108]

SENATOR LATHROP: Sure. If his...if a branch falls on your fence, without getting his permission, even if you didn't get along with him or you couldn't do it because he lets you do those kinds of things generally, if you cut it right on the fence line there's no problem with that. You haven't gone onto his property. You're cutting it on the fence line. [LB108]

SENATOR HEIDEMANN: Okay. He has a live tree that's three-foot from my property line. It's on his line, starts to grow. His branches are coming over into my side of the property line, the boundary line. Can I trim them back legally? [LB108]

SENATOR LATHROP: You can trim them back to the boundary line, sure. [LB108]

SENATOR HEIDEMANN: What happens if that tree dies? [LB108]

SENATOR LATHROP: And... [LB108]

SENATOR HEIDEMANN: Or am I liable because I killed his tree? For some reason, without trying to purposely hurt that tree, but by trimming that tree down, back right to my property line, am I liable if his tree dies? [LB108]

SENATOR LATHROP: I don't think so. [LB108]

SENATOR HEIDEMANN: And I don't know what... [LB108]

SENATOR LATHROP: I'm guessing though. I'm guessing, but I don't think so. I think a landowner has the right to trim the neighbor's vegetation back to the fence line. [LB108]

SENATOR HEIDEMANN: And this has been several years ago and this was a newspaper article from another state, and this was in an urban area in the suburbs where there was a large tree and part of it was going on over to the neighbors and over his house and this guy actually got a tree company in there and...right down to the property line, and he got sued and he lost. Is it different in an urban area versus...or different states? [LB108]

SENATOR LATHROP: Well, I told you I was guessing. (Laughter) I might have guessed

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wrong. I think this bill is mostly about ag, so they're not ornamental trees. If I had a very, very, very expensive oak tree and...with a beautiful canopy and I'm fighting with my neighbor about something and I'm going to get even by shaving back the oak tree to the property line and I kill it, that may be a whole different set of worms. And I've never litigated anything like that so I can't tell you I know the answer for sure. But I know that if you're cutting back mulberry trees out in the country or something that's in the windrow and that tree dies, no, I don't think you're responsible for it. And if you were, it wouldn't have any value. [LB108]

SENATOR HEIDEMANN: LB...somebody's tree is always valuable. I found that out. That's a side comment. LB108 has no...nothing to deal with a village in a rural area, a city, or even an urban. When you talk about a division fence, what's the definition of a division fence? Can that be actually inside of a village? [LB108]

SENATOR LATHROP: These are all the same things that we talked about in committee, because I'm an urban guy, I said, does this apply to me? And I think our Chairman said, yes, there's nothing about this that says if you're out in a sparsely populated portion of the county so...or the state. These are the same rules that would apply to Jim Smith and I when we were next-door neighbors. [LB108]

SENATOR HEIDEMANN: So you could then actually, under LB108, just to make sure I get this right, you could force your neighbor to take his tree out? [LB108]

SENATOR LATHROP: You're not forcing them to take the tree out. [LB108]

SENATOR HEIDEMANN: Well,... [LB108]

SENATOR LATHROP: And this doesn't let you force the neighbor to take the tree out even in a rural setting. What it does, what it says is just that you can...the first section has to do with the duty to maintain it. It's the second section that I was concerned about which had to do, can you come onto my property to take care of a downed tree when I don't want you there? [LB108]

SENATOR GLOOR: One minute. [LB108]

SENATOR LATHROP: I guess I look at this whole permission thing as there's two groups of people, if you don't mind. I don't want to take your time. [LB108]

SENATOR HEIDEMANN: No, go ahead. [LB108]

SENATOR LATHROP: But there's two groups of people that we're talking about. There's the people that can get along, okay? It's the majority of neighbors, right? Tree goes down on a fence, they don't have to even call each other. They know, it's implied,

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it's understood, go ahead and come on, cut the thing down; the first guy there, take care of it and whatever. The question is, what do we do when the neighbors don't get along? And the language that...if we'd had stricken the language in Section 2, what we would have said is it's okay for the guy who doesn't want somebody...if I don't want you on my property this would have said it's okay for you to come over, and that creates all kinds of mischief, in my opinion. You either learn to get along, do it with permission or implied permission or with an understanding neighbors have, but I'm not going to give somebody permission... [LB108]

SENATOR GLOOR: Time, Senator. Thank you, Senator Heidemann and Senator Lathrop. Senator Larson, you're recognized. [LB108]

SENATOR LARSON: Thank you, Mr. President and members of the body. I rise today, I guess I'm following Senator Lathrop's lead, I'm speaking out of turn and talking more on AM223. I rise today against the committee amendment, AM223, but in support of the overlying idea of the bill. I think it's a good bill and it offers some clarification. The reason I'm against the amendment is I think there's enough in the statute already to protect both landowners. If we look at the bill as introduced, and I'm reading section 34-112.01, "An owner of land may enter upon adjacent land owned by another person to construct, maintain, or repair a division fence pursuant to sections 34-102 and 34-112, but such access shall be allowed only to the extent reasonably necessary to construct, maintain, or repair a division fence." So under statute, we already have the ability to step onto the adjacent landowner's land to fix the fence. The original bill continued on and this is what LB108, the original LB108, strikes in statute: This section does not authorize any alterations to adjacent land owned by another person, including removal of trees, buildings or other obstacles without the consent of the adjacent landowner or a court order or the removal of any items, personal property lying within (sic) the consent of the adjacent landowners or a court order. My problem is I feel that those two sentences that I read are redundant and the state is using its heavy hand. If somebody...in the first action, it says only reasonably necessary. I understand in the original bill they were probably trying to clarify what that meant, what was reasonably necessary, but I think they went, to a certain extent, too far. And I'm guessing, and even though I'm not a lawyer, there's probably case law that already talks about what reasonably necessary would be. The fact that I probably couldn't go across and cut down the tree, as other members are suggesting, that I'd be able to move in and alter their land on their side of the fence, I just don't think that that's the case. And I just...I support the original bill as introduced. I don't support the amendment because I think it's government taking too much of a heavy hand and opening up to more frivolous lawsuits that we definitely don't need because one person was worried about somebody stepping on another person's land. So I'll continue listening to debate but I do not support AM223 but support LB108 as a bill. [LB108]

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SENATOR LANGEMEIER: Thank you, Senator Larson. Continuing in discussion, we have Senator Lathrop, Carlson, Wightman, Heidemann, and others. Senator Lathrop, you're recognized. [LB108]

SENATOR LATHROP: Thank you. Interesting discussion because, as I was just telling Senator Heidemann off the mike, and I started to explain before I ran out of time, there are going to be two groups of neighbors; that in the world of division fences out there, there's going to be two groups of neighbors. There are going to be the people that get along, right, and that's 99 percent of them. If Senator Harms is my neighbor, we're going to have coffee together, we're going to meet each other at the mailbox, we'll call each other and help each other get crops in, whatever we do. He doesn't even need to call me when there's a branch down. He's got implied consent. We're friends, we're neighbors, that's the way we do it. So the question is, what about the other group? And that's...in committee we called them the Hatfields and the McCoys. If you have two people, two families on either side of a fence that don't get along, that's what we're legislating today. What do we do with those folks? Okay? What do we do with those folks? And the question, in the bill as originally drafted, AM223 takes the language out, but as originally drafted it would say even though Harms and I don't get along, Harms can come onto my property without a court order or my permission. Now let me tell you, when we were in committee we listened to some people bring pictures in and start talking about this, and I can tell you that we're settling some disputes out there. (Laugh) We're settling some disputes. One guy comes in. He's like, you know, I think that guy's stuff is a little too close to my fence. Well, now he's going to...we're giving somebody permission to go on somebody else's property and alter it, and I just think, as a matter of policy, that they ought to either agree with the neighbor that that needs to be done or they ought to go to court and get an order that says it should be done. But let's not give somebody the permission, the legal authority to go onto another person's property and start using the chain saw on another guy's trees. That's what we'd do. That's what we would do. And you can shake your head, but I will tell you that that's exactly what the bill does. And I think the better policy is good neighbors, you know, they can work it out. But if the people don't agree, what's to stop--literally, look at the bill without AM223 in there--what's to stop...if Harms is my neighbor and he wants to come over on my side to start cutting down some of the trees that are close to the fence, what's to stop him from driving a pickup truck on my side? Who said all he's got to...this doesn't say all he can do is step two feet onto my property. He could take a pickup truck over there. What if he's driving through my corn while he's doing it? Listen, this is about two people that don't get along. They're hypothetical. They're hypothetical. Maybe you in the rural part of the country know exactly who I'm talking about. I don't. They're hypothetical to me. But it seems to me we're talking about something very, very, very, very fundamental--stay off my property; I don't want you on my land. And we're going to enshrine in a statute, well, there's an exception to that. Now the neighbor you don't get along with can come onto your property, and I think that's bad policy and that's why I

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support AM223. Thanks. [LB108]

SENATOR LANGEMEIER: Thank you, Senator Lathrop. Senator Carlson, you're recognized. [LB108]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I appreciate the discussion that we're having on this bill. I appreciate Senator Lathrop and Senator Harr both being on the Ag Committee. And when Senator Heidemann was asking Lathrop...Senator Lathrop questions this morning, he looked over at me like look what you got me into. But I appreciate that he's there. Now case law is hard to find that deals with whether or not this could be applied in an urban setting. There is one case that our research analyst, Mr. Leonard, found in Minnesota that it was interpreted this is geared toward rural settings, and I think that's the way that it is. So you get inside and you have city ordinances and so forth, except perhaps in villages, that take care of these things. But out in the country, this is what we're trying to deal with. And I agree with Senator Lathrop that one of the testifiers seemed to convey the attitude that this is going to allow me to jump over there and do what I need to do, and I think that's problematic. And Senator Heidemann's amendment, I'm not opposed to that. You still have a decision to make whether something is a tree or if it's woody. When does it go from woody to something else? Well, I don't know, but I'm okay with AM308 and I think that AM223 is appropriate. I don't mind Senator Larson opposing that because he opposed it in the committee, so he's simply expressing what he expressed in committee. But I am asking for your support on AM308, AM223, and the underlying bill. Thank you. [LB108]

SENATOR LANGEMEIER: Thank you, Senator Carlson. Senator Heidemann, you're recognized. Senator Heidemann, you're recognized. [LB108]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. I was having a delightful conversation with Senator Loudon about fences, lo and behold. Senator Lathrop, would he yield to some conversation again? [LB108]

SENATOR LANGEMEIER: Senator Lathrop, would you yield? [LB108]

SENATOR LATHROP: Yes. [LB108]

SENATOR HEIDEMANN: The last time we was on the mike we talked about would LB108 give a landowner the opportunity to take another landowner to court and say...to remove your trees and you had kind of indicated at that time that that wasn't the case. But as I read Section 1, it almost appears that it would, wouldn't it? [LB108]

SENATOR LATHROP: It would what? [LB108]

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SENATOR HEIDEMANN: It would allow a landowner, a neighbor, to take another landowner, his neighbor, adjacent landowner to court and say, you must remove your trees, because it says every person is liable to contribute--I think there should be an "is" in there--is liable to contribute to the construction, maintenance, and then it goes on to say, or necessary removal or trimming of vegetative growth within and encroaching upon the fence line. So if he doesn't do that and if he's liable to, couldn't you take your neighbor--and now, once again, I'm not a lawyer--but couldn't you take your neighbor to court and say this section, this statute says that you must do that? [LB108]

SENATOR LATHROP: Yeah. I think that's probably true. Now I got to say this, that Senator Sullivan apparently had a bill last year that addressed division fences and I think we may be looking at one section of an area of the law that's addressed in several sections of statute. This seems to already presume that the person is liable for a division fence and so it makes me think that somewhere else it addresses what your duty is and that this just is a statute or a bill that addresses a liability that's found somewhere else. [LB108]

SENATOR HEIDEMANN: The way I understand... [LB108]

SENATOR LATHROP: Yeah, Senator Sullivan is shaking her head and telling me I'm right. So it may be that if I looked at the section we're amending, 34-112.01, maybe 34-110 addresses what the actual liability is. I'm not sure. [LB108]

SENATOR HEIDEMANN: The way I understand it for Senator Sullivan's, if you didn't have cattle, if I remember right, before your bill, you couldn't be forced to actually have a boundary fence. Is that correct? Okay, she's shaking her head yes. We've got a conversation going here. The problem I have with LB108, now we've got people down in where I live that after LB108 they didn't have cattle but then they were forced to build a fence. They built a fence, a brand new fence, right next to a hedge row that was on the property line, so they put it right next, right in the hedge row. They built a brand new fence. We've got two neighbors. The neighbor forced him to do it, took him to court after you passed your bill, took him to court, said now you have to build a fence. They're not getting along. So he builds a brand new fence and all of a sudden we're going to pass LB108 and the neighbors aren't getting along and now this other neighbor, because he's trying to annoy the guy that just built the fence, is going to say, now I want you to remove your trees. Now you will have to take your new fence out. You will have to remove your trees and then you will put your fence back, because that's what we're telling you to do. And that's the problem that I have. I will probably talk a little bit more. I ask you just to think about where we're headed with this. [LB108]

SENATOR LANGEMEIER: One minute. [LB108]

SENATOR HEIDEMANN: Senator Carlson said he would like to have a little time. I will

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so graciously give him that. [LB108]

SENATOR CARLSON: Thank you. [LB108]

SENATOR LANGEMEIER: Senator Carlson, 50 seconds. [LB108]

SENATOR CARLSON: Okay. Thank you, Senator Heidemann. The thing that this bill does not address, and unfortunately, but I'll just talk to Senator Heidemann, if you and I have a fence line between us and that tree is right in the fence line, we both own the tree, and what we're doing here does not address that. And so I think that this is a good bill. I think it needs to go forward. Those neighbors who get along, it's not any problem, not a problem at all. But those that have disputes and that business of the tree right in the fence line, this isn't addressing that. So...but I still think that we need to proceed the way we've started and try and handle as many of these disputes...an orderly process for these disputes. Thank you. [LB108]

SENATOR LANGEMEIER: Time. [LB108]

SENATOR CARLSON: Thank you. [LB108]

SENATOR LANGEMEIER: Thank you, Senator Carlson and Senator Heidemann. Senator Louden, you're recognized. [LB108]

SENATOR LOUDEN: Thank you, Mr. President and members. First off, I would mention to Senator Carlson, when you have that tree in that fence line, as you get into surveying, you have to be careful that it wasn't a survey tree, because if it's a survey tree you can't...you can't remove it. And there is such a thing in some parts of the state is what they call survey trees and that's where your survey of certain areas or townships went off of that tree once upon a time. So that's a whole new ball game in there. What I was going to address was back to this LB108 and the amendment to it. And as we look down here where we're going to strike the language and put in...put that language back in, the reason that's so important down there and it says an owner of land may enter upon adjacent land to repair it and that sort of thing without their permission, then it goes on to say it doesn't...by doing that, doesn't give you any authority to tear out trees, buildings, or something like that. Now where that is...works quite well is out in the western part of Nebraska where we have our fences, our division fences. I think on our ranch there we've got over 180 miles of division fence that has to be fixed. If we're out there someplace and we find something that's broke down and you can't get to it because of the way the hill lays or something, there's never been a problem. You go over on your neighbor's so you can get to that fence and fix it. And that's what that addresses there, so that's important to have that in there. And also the part that, although you can go over there, that doesn't give you permission to go over there and start removing material or something like that without his permission. If you can't get his

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permission, then that's a whole new ball game. As far as the other part on your division fences and stuff, wherever your property line is, you actually own it from there clear to the sky or however high you want to go. If a tree is hanging over on your property, then you have every right to trim that straight up from your property, now not very far beyond that but pretty much on the property line, because that's not at all uncommon to have someone plant trees in a town along a road and when you have these trucks pulling in, why, they'll start running into those trees. So those trees are usually trimmed straight up from the property line. That happens in many of these small towns, so that isn't anything that's out of the ordinary. And again, as the thing is written and stuff, I would support that. The vegetative part of the bill, I think, needs to stay in there rather than the trees and the woody growth. With that, Senator Carlson, would you wish to have any time? If Senator Carlson wishes for the rest of my time, I'll give it to him. [LB108]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Senator Carlson, 2 minutes and 10 seconds. [LB108]

SENATOR CARLSON: Okay. Thank you. Again, we are simply clarifying existing law with this bill. Existing law says that where there is a fence and there's a desire on either party to have one, it's going to be a shared responsibility, fifty-fifty, in the cost of constructing, repairing, and maintaining that fence. And where vegetation can become a problem, the purpose of LB108 is to clarify that if that needs to be handled, removed or whatever, and not done by one of the neighbors, it creates a nuisance and that nuisance can be addressed. And I think that is a good law and a good way to proceed, and so I'd continue to ask for your support on these issues. Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Carlson. The Chair recognizes Senator Larson. [LB108]

SENATOR LARSON: Thank you, Mr. President, members of the body. I stand again in opposition to AM223. LB108, as is, striking that section does not give the authority to cut down property on the other side of the fence, and it definitely doesn't give the authority for somebody to drive their pickup across your neighbor's land, because neither of those are necessary to reasonably maintain the fence, and that is what we have to continue to look at--what is reasonable to maintain the fence. Would Senator Lathrop yield to a question? [LB108]

SENATOR GLOOR: Will you yield? [LB108]

SENATOR LATHROP: Yes. [LB108]

SENATOR LARSON: Senator Lathrop, I guess we obviously disagree on the amendment. Why is the first part, the...an owner of land may enter upon adjacent land

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owned by another person to construct, maintain, or repair a division fence pursuant to those sections, but such access shall be allowed only to the extent reasonably necessary to construct or maintain or repair the division fence, why is that so insufficient that you feel that you have to have the second part of that section? [LB108]

SENATOR LATHROP: Because if the neighbors get along, we don't worry about any of this. The only reason the statute is here is to take care of the neighbors that don't get along. And if they don't get along, my view is we shouldn't enshrine in statute an exception to the trespass law that gives somebody I don't want on my land permission to come over there for any reason. [LB108]

SENATOR LARSON: All right. And here's my next question. So the two neighbors that don't get along, fine, I have to go get permission to fix the fence. But all of a sudden my cattle are on your land. Do you want me to come get permission to get the cattle off your land first or are you going to sue me because my cattle are on your land because my fence is down and I can't go get them off? And then I can't fix the fence again because I still don't have your permission. [LB108]

SENATOR LATHROP: Well, you just asked me if I wanted to sue you, Senator Larson, and the answer is, no, I don't want to sue you, and that's not what I do here. This statute is part of a group of statutes on division fences. Chapter 34, I was just looking after Senator Carlson spoke, Chapter 34 is a whole chapter that deals with division fences, not loose cattle, okay? So this isn't about the loose cattle at all. It may be a consequence of not getting the fence fixed, but this isn't giving or withholding permission for somebody to go retrieve their cattle. And I don't know the answer to that without researching what the law is in Nebraska on fetching your cattle from the neighbors and whether you need their permission or you can just go do it. [LB108]

SENATOR LARSON: All right. Thank you, Senator Lathrop. I think we have to look at examples of, you know, the loose cattle and...because in western Nebraska that is something that we deal with every day, cattle getting out. And maybe...and I'm not sure on this section of whether I have the ability to just go fetch my cattle off the land or not, but assuming that I do have the authority just to go fetch my cattle, I still don't have the authority to build the fence so the cattle don't get out again. And I think therein lies the problem. I think section...or the first part of Section 2 is enough: An owner of a land may enter upon adjacent land owned by another person to construct, maintain, or repair a division fence, but such access shall be allowed only to the extent necessary to construct and maintain and repair that division fence. I do not think it would allow for somebody to go cut down a tree five feet away from that division fence, because that is not reasonably necessary. [LB108]

SENATOR GLOOR: One minute, Senator. [LB108]

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SENATOR LARSON: It does not allow for the ability for me to drive across his land to fix that fence, because that is not necessary. What is necessary is to fix the fence so we can...and again, I bring it back to the livestock, so we can keep our livestock and our livelihood functioning. And we have to look at all the examples when we look at fence law because fences are there, in essence, to keep the cattle. So I feel like we do have to look at all the examples. I feel that the first section is sufficient enough, reasonably necessary. It doesn't infringe on other people's property rights, and I have faith in our court system to work out the problems that might be faced by two landowners that don't get along. Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Larson. Senator Sullivan, you are recognized. [LB108]

SENATOR SULLIVAN: Thank you, Mr. President. Who would have ever thought that we'd spend this much time talking about fences? I got a flavor of that last year when we enacted my legislation that had to do with division fences. So in all fairness, Senator Larson, you weren't here at that point. And in follow up to what Senator Lathrop's comment was, that some of this discussion relates to another section of the law dealing with division fences...because we did put in statute last year, via the legislation that I introduced, that there is a process. When two landowners don't agree and the decision is made by one of the landowners to repair, construct, and possibly, with this legislation, deal with encroaching, possibly, trees and not just vegetation, there is a process to follow. That legislation outlined, basically, to not quote the exact statute but to explain it, that the landowner who wants to make those actions with respect to the division fences has to notify the other landowner if they...even if they aren't...if they aren't in agreement, you know, if there is no "gentlemen's agreement." The one landowner who wants to take those actions has to inform the other landowner in writing of his or her intentions to do this. There's a waiting period and if there is no response then the landowner who wants to take those actions can actually proceed. But there is a process to be followed. And I think also the legislation identifies that there's some mediation that needs to take place. And at the end of all of that process, if an agreement cannot be reached, then the landowner still has the right to take the individual to court to demand that they pay half the expenses in making those repairs that have been identified. So I think there is a process currently in statute that takes care of it and I think the remedies being identified in AM308 and also AM223 are suitable, so I stand in support of those two amendments and the underlying bill. Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Sullivan. Senators wishing to be recognized are Carlson, Karpisek, Smith, and Schumacher. Senator Carlson, you are recognized. Senator Carlson waives. Senator Carlson, that was your last time to speak. Senator Karpisek. [LB108]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. As a member

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of the Ag Committee, for five years now we've had a fence bill and I didn't think that it could get quite so complicated but it certainly does. So I've heard about it, it confuses me every time, and I think that's where we're at right now--what if this happens; what if that happens. I think that this is just another bill in the line that we have gone through every year we've passed them, try to make it better, try to appease an issue. Senator Carlson has done a very good job of trying to fit it all together. Every year, something new comes up. AM308 I think, as Senator Heidemann said, makes more sense in different parts of the state and we certainly don't want someone or I don't want someone to be able to go onto someone else's property, cut down their tree. I think the issue of getting your cattle or your animals is a completely different situation. But I will support AM308 and also the underlying bill. Thank you, Mr. President. [LB108]

SENATOR GLOOR: Thank you, Senator Karpisek. (Visitors introduced.) Continuing with the discussion, Senator Smith, you are recognized. [LB108]

SENATOR SMITH: Thank you, Mr. President. And I guess I rise to agree with my former neighbor, Senator Lathrop, and he was such a good neighbor we did not even have a fence between us, so we didn't have this particular problem. But in a previous life, working for a utility, I had responsibility for overseeing the trimming of trees in an urban area and I saw firsthand the anxieties and the conflicts that result from vegetation management between neighbors. And I can't really speak to the rural aspects of this bill but I do know in an urban area, in a very condensed area, that I would be very uncomfortable with LB108 as it stands. I would like to recommend AM223 to LB108. As far as AM308, I really do not have an opinion on that. And I will give the remaining time to Senator Lathrop, if he would like that time. [LB108]

SENATOR GLOOR: Three minutes forty-five seconds, Senator Lathrop. [LB108]

SENATOR LATHROP: Sure. And thank you, Senator Smith. A little known fact, maybe it's becoming better known, but we literally were next-door neighbors and he had this maple tree and I was waiting for that thing just to get just a couple more inches, I was going to go cut it, (laughter) start the feud. I want to address or go back to something Senator Sullivan said. Sometimes when we're passing bills through here, statutes, we're looking at just a little segment, and I think that's what's happening with LB108. If you go to the statutes, look in Chapter 34, which is one of the sections that we're amending, you'll see, as Senator Sullivan suggested, there's a whole dispute resolution system in there, including mediation, a county court proceeding. We used to have something called fence arbiters or something like that, I'm not sure what they were called, and they got rid of them and so they had to have...this isn't an uncommon fight to have. And so we do have a system in place to sort all this out and the question is, at the beginning of the dispute, do we want people crossing on one another's side of the fence or do we want them to stay on their own side and then engage the dispute resolution mechanism? And I think that's exactly what AM223 does. It answers the question.

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Everybody stay on their side of the property and then you can engage the dispute mechanism that we find in 34-112.02. It's that simple, I think. And on AM308, I guess the difference between vegetation and woody vegetation I guess is the difference between grass growing up and branches being on the fence. And Senator Heidemann would know more about that than me and, for that reason, I'd probably support AM308. Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Lathrop. Senator Schumacher, you are recognized. [LB108]

SENATOR SCHUMACHER: Thank you, Mr. President. Would Senator Lathrop yield to a question? [LB108]

SENATOR GLOOR: Senator Lathrop, would you yield? [LB108]

SENATOR LATHROP: Yes. [LB108]

SENATOR SCHUMACHER: Senator Lathrop, the new Section 1 provides that the occurrence of the vegetative growth is a private nuisance. Does that create a new cause of action then by one landlord against the other? [LB108]

SENATOR LATHROP: I think that's, as you know, it's a legal term. A nuisance is a legal term. And if the statute identifies something as a nuisance, I think it creates a cause of action. [LB108]

SENATOR SCHUMACHER: Then in such a cause of action, are there any provisions that you're aware of that would allow for the loser to have to pay attorney fees? [LB108]

SENATOR LATHROP: We do have...we do have rare instances where we make the loser pay in litigation. I think it's a bad idea. It's kind of what we call the English version of jurisprudence, and in the United States, with rare occasion, we don't make the loser pay. So, no, in a nuisance cause of action, as far as I know, each lawyer would go hire their own...or each litigant would go hire their own lawyer and they would do whatever battle they need to do and each would pay their own attorney fees. [LB108]

SENATOR SCHUMACHER: An incentive or disincentive to pay attorney fees generally acts as a way to sober people up over a senseless fight? [LB108]

SENATOR LATHROP: Well, I do think that...I do think that if you want to come in and fight over somebody taking a step on your property and the lawyer says, that's fine, we'll start the fight soon as you put \$2,000 into my trust account, it has a way of sorting out what we're going to fight over and what we're going to let go. [LB108]

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SENATOR SCHUMACHER: Thank you, Senator Lathrop. I have nothing further. [LB108]

SENATOR GLOOR: Thank you, Senator Schumacher. (Visitors introduced.) Seeing no senators wishing to speak, Senator Heidemann, you are recognized to close on your amendment to the committee amendments. [LB108]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. We've had a good discussion on LB108. We're taking up just a little part of it, just a little bit of what some people would call a tweak, AM308. AM308 just takes out "vegetative growth," and the reason I'm doing this, to me it makes it a little bit cleaner that you don't have one neighbor trying to push another neighbor just to annoy him further than what LB108 actually does. It just takes out "vegetative growth." It just gives...doesn't give them the ability to say, I don't like your weeds. If LB108 moves ahead, I can understand that because you're talking about trees, which actually then does disrupt fence repair operations. In my opinion, weeds do not. I would appreciate your understanding on that and I appreciate your support on AM308 to AM223. [LB108]

SENATOR GLOOR: Thank you, Senator Heidemann. The question before the body is, shall the amendment to the committee amendment to LB108 be adopted? All in favor vote aye; all opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB108]

ASSISTANT CLERK: 36 ayes, 3 nays on the adoption of the amendment to the committee amendments, Mr. President. [LB108]

SENATOR GLOOR: The amendment is adopted. We continue with discussion on AM223. Senator Heidemann, you are recognized. [LB108]

SENATOR HEIDEMANN: Thank you, Mr. President, fellow members of the body. My comments are probably going to go back to the base of LB108. I'm still making decisions on AM223. I've been listening to the arguments on both sides, Senator Larson and seems like everyone else. I would like to have a conversation with Senator Carlson, if he would be so amenable. [LB108]

SENATOR GLOOR: Senator Carlson, would you yield? [LB108]

SENATOR CARLSON: Yes, I will. [LB108]

SENATOR HEIDEMANN: After explaining sometimes how things are in southeast Nebraska, where we have a little bit more trees, and after Senator Sullivan's bill passed that then makes someone construct a fence that doesn't have cattle, and with the situation that I have down there where this neighbor did put the new fence in right next to the hedge row, which is huge, it would be quite an undertaking to take it out, but he

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constructed a brand new fence and now a year later, if LB108 passes, we have that neighbor threatening the neighbor that built the fence and said, now you're going to take your fence out, remove your trees, and build your fence again. Do you agree with that scenario and would you comment, my concerns then, if that is the case, what my concerns is with LB108? [LB108]

SENATOR CARLSON: Okay. And I'm going to...I'm sounding like I'm asking a question but I'm not going to ask it. I'm going to assume the answer. The fence that was built was on the individual's property, not on the fence line, and the trees, the hedge row, is in the fence line. And I don't think that neighbor can do anything about that fence that's been constructed because it's not on his property. And you have a genuine concern about where you have an entire row of trees that are right in a fence line and that would be a difficult situation to cause somebody to remove those trees. But it is a shared responsibility. I think I'd think twice before I'd make my neighbor try and remove those trees that are in the fence line because I've got responsibility for 50 percent of that cost. I don't think I'd do it. And regardless of what we do, when there are neighbors that want to be ornery to one another, we're not going to solve it with a law other than we create a situation that can be called nuisance. Then it opens up the opportunity to take that thing to court. I don't know if I've responded the way you wanted me to but, if not, ask me another question or clarify it. [LB108]

SENATOR HEIDEMANN: If...you talked about shared responsibility. There are times that when people 40 to 50 years ago planted these hedge rows, they would offset them on their property by a foot or two. The fence would be on the property line. That hedge row would be then on your property and it would be all of your responsibility. But it would be so close to the property line that you couldn't remove the hedge trees, which in itself would be thousands of dollars of cost, until you took out your brand new fence that you just built. Is that a correct way of thinking? [LB108]

SENATOR CARLSON: It may be. If those trees were planted 40 and 50 years ago...now you said a foot? I think it would have to be more than a foot because by now, 40 or 50 years ago, that tree has crossed the fence line. The main trunk of that tree has crossed the fence line. And so I think both are responsible. [LB108]

SENATOR GLOOR: One minute. [LB108]

SENATOR HEIDEMANN: I'd have to think usually a hedge tree will stop at about 18 inches, so I mean even if it encroaches just a little bit, the majority of that tree is on...we're getting awful detailed here, but I'm trying to point out that if you...if your part of the fence, and you just put a brand new fence in and you didn't remove the trees first, after LB108 passes it's my understanding that that neighbor, just to annoy the other neighbor, can make him take out that fence, take out the hedge row, and then put the fence back. [LB108]

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SENATOR CARLSON: He has to show damage. And with a new fence and it's on the fence line and the tree is not in the fence line, I think that he'd have difficulty making that stick in court. [LB108]

SENATOR HEIDEMANN: I, you know, once you get into a court of law, the definition of damage would be interesting to me, because a hedge row will suck out moisture for 40 foot from all directions, which means... [LB108]

SENATOR GLOOR: Time, Senator. [LB108]

SENATOR HEIDEMANN: Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Heidemann and Senator Carlson. Senator Nelson, you are recognized. [LB108]

SENATOR NELSON: Thank you, Mr. President, members of the body. This is very interesting because I thought sooner or later we were going to be talking about hedge trees and hedge rows and it's a difficult question. And I think I have to probably agree with Senator Carlson here and also with Senator Heidemann, because years and years ago, when it was popular to plant these trees just as division lines and also for some protection from the winds, it would have been only one owner. I mean the owner of a parcel that...where there was a division fence would put those trees probably a foot away from the fence line or the property line. And just as has been said, those trees grow. But you generally don't see Osage orange get much thicker really than a foot and it's one of the hardest woods you're ever going to encounter when you try to cut it down or get rid of it. My perspective on this is that we're probably okay with the bill, that it reads the way it reads, because even though that tree may grow to the point where it pushes the fence a little bit and maybe that barbed wire is attached to the tree for that matter, it's not going to, in my estimation, damage the fence line there and the fence itself to the extent that it would be necessary to remove it. And I just, because it is on one side of the property, basically the tree line, I think it would be very difficult for someone to come in. They could maintain it or they could argue, but to be sustained in a court of law that that entire hedge row had to come out because some of the trees were pushing against the fence. That would be unreasonable, in my estimation. I don't think the argument here over whether we should restore the stricken material there makes that much difference, because I think the first part of 34-112.01 pretty well states that you can go onto another person's property in a reasonable manner, and that would be with a pickup or anything. I think the thing is that you wouldn't want to damage crops probably and I think most farmers would be cognizant of that. And you can't repair a fence necessarily or replace it by just standing on your own property. It's almost necessary to go onto somebody else's property if you're going to do it right. So I'm supportive of the amendments and also LB108. Thank you, Mr. President. [LB108]

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SENATOR GLOOR: Thank you, Senator Nelson. Senator Krist, you are recognized. Senator Krist waives. Senator Heidemann, you are recognized. [LB108]

SENATOR HEIDEMANN: Thank you, Mr. President and fellow members of the body. I would like to engage Senator Carlson just a little bit more in conversations, if he would, so... [LB108]

SENATOR GLOOR: Senator Carlson, will you yield? [LB108]

SENATOR CARLSON: Yes. [LB108]

SENATOR HEIDEMANN: One of the other things that I was worried about, as I was driving up here one day I was thinking about LB108 and on the way up Highway 50 from where I get on to it, just right by my farm, all the way up to Syracuse, there's trees on the highway right of way and quite a few of them grow over into the adjacent land and would cause trouble with not only fence but being able to drive along and other things. Under LB108, if I'm not getting along with the state of Nebraska very well or if I just want to make a point, can I say, okay, Department of Roads, LB108 now gives me the opportunity to say get rid of your trees? I ask that question. [LB108]

SENATOR CARLSON: Okay. I think the Department of Roads is not liable for any of this. That doesn't prevent someone from trying to take action against the Department of Roads. [LB108]

SENATOR HEIDEMANN: Sure. [LB108]

SENATOR CARLSON: Now you used the example that there are trees in the right of way and they apparently, in turn, have caused other trees to grow onto the private property? I think you said that. [LB108]

SENATOR HEIDEMANN: I'm saying if there is a cedar tree or a tree on Department of Roads' right of way and they grow...it's a huge tree and it grows ten foot through the fence and across on the other side, does LB108 give that landowner the right to go to the Department of Roads and say get rid of it? [LB108]

SENATOR CARLSON: I don't think it does. And the Agriculture Committee, from time to time, has consulted the Department of Roads concerning any impact or considered changes to fence law and the department consistently maintains that the state of Nebraska or any individual state agency is not subject to the duties of landowners under fence law, citing a Supreme Court precedence. So that would be my answer to that. I don't think that they're liable. [LB108]

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SENATOR HEIDEMANN: So you're saying that if you own land along a highway and there's trees growing up, you couldn't do anything to the Department of Roads. [LB108]

SENATOR CARLSON: I don't believe so, by what we have investigated and found. [LB108]

SENATOR HEIDEMANN: That... [LB108]

SENATOR CARLSON: That doesn't mean I couldn't try. [LB108]

SENATOR HEIDEMANN: Do you have the right to remove those trees? [LB108]

SENATOR CARLSON: The trees that are on my property I do. But do I have the right to remove a tree on the right of way? I don't think I have the right to remove the tree on the right of way. If the tree falls over on my fence and knocks it down, it's created damage, I think I have the right to remove that tree and get it out of there and repair my fence. In many cases, the state Department of Roads has given the material to build the fence in the first place and then it's my fence. And even though their tree falling on it caused damage, I would probably just take care of it. I could try to make them responsible but I don't think it would work. [LB108]

SENATOR HEIDEMANN: So it says, Section 1, every person liable to contribute to the construction and maintenance of a fence, so they constructed the fence and give it to them but this word says "contribute to the construction and maintenance." So you're saying then that they're not part of "every person," because right there it says that they contributed to the construction part of it, because that's what you stated. [LB108]

SENATOR CARLSON: I was giving an example where they have given me the material to build a fence and I built it. [LB108]

SENATOR GLOOR: One minute. [LB108]

SENATOR HEIDEMANN: Did they contribute then to the construction of? [LB108]

SENATOR CARLSON: I don't know how to respond to that. But there again, I think precedence will show that if I try and make them responsible, they're probably going to end up not being responsible. Department of Roads and a state agency I believe is treated differently. [LB108]

SENATOR HEIDEMANN: So a state agency doesn't have to be responsible, is what you're saying. [LB108]

SENATOR CARLSON: I don't believe so. [LB108]

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SENATOR HEIDEMANN: Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Heidemann. Senator Hansen, you're recognized. [LB108]

SENATOR HANSEN: Thank you, Mr. President. Would Senator Carlson yield? [LB108]

SENATOR GLOOR: Senator Carlson, will you yield? [LB108]

SENATOR CARLSON: Yes. [LB108]

SENATOR HANSEN: Senator Carlson, let's start out. We need to get this to a vote, I think. The committee amendment, AM223, will strike Sections 2 and 3. Is that correct? [LB108]

SENATOR CARLSON: Well, that, yes, but in striking it doesn't mean it disappears. It really strikes...the words that are crossed out, it removes that striking. Now we have the entire section back in law with AM223. [LB108]

SENATOR HANSEN: Will the entire section be back,... [LB108]

SENATOR CARLSON: Yes. Yes. [LB108]

SENATOR HANSEN: ...because there's some that's not stricken. [LB108]

SENATOR CARLSON: No, it...the entire section remains in law with AM223. [LB108]

SENATOR HANSEN: AM223 though says strike Sections 1 and 2, the entire sections. [LB108]

SENATOR CARLSON: I recognize that. I guess...I hope you trust me in what it means. It means that the striking material is taken out and Section 2 remains in law in entirety. [LB108]

SENATOR HANSEN: Then do we need Section 1? (Laugh) [LB108]

SENATOR CARLSON: Yes, Section 1 is new. [LB108]

SENATOR HANSEN: Thank you. Senator, I saw something on the gadget over at Senator Utter's desk here a little bit ago where his daughter got to ring the bell to open the stock market this morning and how hard it is to unring a bell. And I think we're about there. Thank you, Mr. President. [LB108]

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SENATOR CARLSON: Okay. [LB108]

SENATOR GLOOR: Thank you, Senator Hansen. Speaker Flood, you are recognized. [LB108]

SPEAKER FLOOD: Thank you, Mr. President. Good morning, members. Thank you for all the work this week, for the hours that you put in. We are going to continue with General File worksheet order on Monday. If you have a bill that's on Select File, you need to be getting that in order. Later in the week next week I anticipate taking up not only Select File but Final Reading. So again, if you have a bill that's been advanced to Select File, please give it some attention if it needs the attention and be ready for something next week. With that, we'll continue our debate on LB108. Thank you, Mr. President.

SENATOR GLOOR: Thank you, Speaker Flood. Seeing no further members in the queue, Senator Carlson, you are recognized to close on the committee amendments. [LB108]

SENATOR CARLSON: Thank you, Mr. President. And thank you for your discussion, your questions on LB108. Thank you for the vote thus far on AM308. And with all this discussion, I would ask that you support AM223 and then the underlying bill. Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Carlson. The question before the body is, shall the committee amendments to LB108 be adopted? All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB108]

ASSISTANT CLERK: 29 ayes, 2 nays on the adoption of committee amendments, Mr. President. [LB108]

SENATOR GLOOR: The amendment is adopted. Seeing no further senators wishing to speak, Senator Carlson, you are recognized to close on LB108. [LB108]

SENATOR CARLSON: Thank you, Mr. President. Again, thank you for the discussion concerning LB108. I think this is a portion of law that is good legislation and it's good to have debate on it, but I'm glad that the amendments have been passed and now I would ask for your support on LB108. Thank you. [LB108]

SENATOR GLOOR: Thank you, Senator Carlson. The question is the advancement of LB108 to E&R Initial. All those in favor vote aye; all those opposed vote nay. Have you all voted? Record, Mr. Clerk. [LB108]

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ASSISTANT CLERK: 38 ayes, 1 nay on the motion to advance the bill. [LB108]

SENATOR GLOOR: The bill advances. Items for the record, Mr. Clerk? [LB108]

ASSISTANT CLERK: Mr. President, I do thank you. Your Committee on Urban Affairs reports LB471 and LB159 to General File; Judiciary reports LB191 and LB66 to General File, and LB128 as indefinitely postponed; Natural Resources reports LB27, LB32 to General File, and LB31 to General File with amendments. New resolution, LR73, by Speaker Flood pertains to various honorees for the Nebraskalander Award. Amendment to be printed to LB61 from Senator Ashford. And a report on registered lobbyists for the current week. That's all that I have. (Legislative Journal pages 517-523.) [LB471 LB159 LB191 LB66 LB128 LB27 LB32 LB31 LR73 LB61]

Next bill, Mr. President, is LB114, introduced by Senator Dubas. [LB114]

SENATOR GLOOR: Senator Dubas. [LB114]

ASSISTANT CLERK: (Read title.) Bill was read for the first time on January 6, referred to the Committee on Agriculture. That committee placed the bill on General File with committee amendments. (AM199, Legislative Journal page 436.) [LB114]

SENATOR GLOOR: Senator Dubas, you're recognized to open on LB114. [LB114]

SENATOR DUBAS: Thank you very much, Mr. President, and good morning, colleagues. I'm pleased to introduce to you LB114. This was one of those bills in a recent newspaper column that made that list of "so just how important is this bill," and I hope that I can prove to you this morning why it is. Several years ago, I was approached by a honey producer from my district who told me that we need to have some kind of definition for honey placed in statute and began to educate me about the honey industry in our state, the way he operates his business. So just as a little side note, I thought I'd let you know that Nebraska's bees produce over 2 million pounds of honey annually. They are our state insect and the honey that they produce has a value of \$3.8 million. So they do contribute to the economy of our state. It was my hope, after talking with Mr. Nielson, that we would be able to accomplish what they were seeking through an administrative procedure; that we could just work with the Department of Ag, direct them to come up with this definition. So after quite a few phone calls and visits with various people at the Department of Ag, additional research on my part and the part of my staff, it was determined that it would take some legislative action to have this standard adopted. So for our producers and consumers, this bill would create a legal basis for recovering damages, economic or otherwise, from products which are falsely posing as pure honey. I introduced an interim study resolution. We had it last summer. In fact, it was held on the opening day of the State Fair in Grand Island so it was a great inauguration for that. States have been pushing or I should say bee...honey producers,

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excuse me, have been pushing for the federal Food and Drug Administration to adopt a uniform standard. Unfortunately, to date this has not happened. The American Beekeeping Federation, American Honey Producers, National Honey Packers and Dealers, Sioux corporation, and Western Honey Packers and Dealers are working to have this standard adopted nationally, but since this has not happened the push is for states to take actions into their own hand. How would the standard work? By adopting the revised Codex Standard, the honey industry will gain their constitutional right of access to the courts. It gives producers civil recourse. This would put the burden of proof with the plaintiff. Several years ago, one of the largest honey packers in Michigan was sued for adulterating their honey. The case was lost by the producers because the court said there was no definition for what honey really is. I'd like to just touch a little bit on what I've referred to as the Codex Standard or the Codex Alimentarius. This is an international agency that establishes uniform food standards for consumer protection. Their main focus is to assist developing countries with infrastructure to develop domestic standards for food safety and health. So why is it necessary that we go through this process? Currently, there's confusion with consumer groups as to what honey really is. It seems like a no-brainer, but there is some confusion. Forty-two percent of those surveyed believe that pure honey contains additives and seventeen percent believe it contains some kind of syrup. The Honey Board feels that the meaning of honey is eroding, and with no standard definition of honey, pure honey is competing with lower quality, cheaper products that contain corn syrup, cane sugar, artificial sweeteners, and even antibiotics. Some products titled as honey do not even contain honey. Honey producers feel a sense of urgency to help their consumers understand what honey really is. They feel their best recourse to reclaim their product is to gain standing through the civil courts. There is, again, also the hope that as more states adopt these standards, the FDA will step in and make it a national standard. But without a uniform honey standard, producers have little recourse to defend their product. So while the honey industry in our state may not compare to our grain and livestock production, it is still a very viable business and is proving to be quite popular as a niche market at farmers' markets. The movement to adopt a uniform definition for honey is gaining momentum. Florida, California, and Wisconsin have already adopted such a standard and there are at least 14 other states who are looking at some type of action. The directive of this bill gives the Department of Agriculture the authority to craft a definition for honey consistent with the Codex Standard. The intent of this bill is to use only that part of the Codex which establishes the uniform definition. And I did hand out to you that part of the Codex that we would be directing the department to look at. The Codex is actually quite a few pages long, very technical, goes into the testing and measuring of different things. That's not what we're directing the department to look at or do. We're strictly that part that I have kind of highlighted on that sheet is what we're directing the department to look at. This isn't uncommon with other directives that we've given to agencies to come up with some type of a definition. So the bottom line is that this honey standard would serve two specific purposes. As more states adopt a uniform standard for honey, it will encourage the FDA to create a national standard which could

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avoid any potential interstate commerce concerns. And second, it will give honey producers standing in court to take civil action and preserve the integrity of their honey industry. I want to stress the bill does not require the Department of Ag to get involved in any testing or enforcement actions. It simply asks them, through an administrative process, to create a uniform standard of defining honey. No fiscal impact accompanies this bill and it is absolutely not a labeling law. As I stated briefly before, the language in this bill mirrors many other statutes that direct departments to develop rules and regs or definitions to comply with universally recognized qualification. Some of those examples may be egg grading rules, which are tied to the USDA; emission fee calculations and payment schedules, which are based on federal Clean Air Act. Our Commercial Feed Act allows the department to utilize product identity standards developed by the American Association of Feed Control Officials. By not actually placing this definition in statute, it gives our departments a little more flexibility to change those definitions and accommodate things as they change, whereas if it's actually in statute it takes legislative action to make those needed changes as things change and evolve over the years. It's been brought to my attention, and I have visited with many of you already on the floor this morning, that there are some concerns which may be causing some confusion and misunderstanding about the use of the Codex in this bill. I feel pretty confident that we can easily address this with an amendment that will get everybody's questions and concerns cleared up, but I would like to ask you to advance the bill to Select File. This would give me the opportunity to bring my beekeepers in to make sure I'm still going to follow through with their intent and purpose for asking for the introduction of this bill, as well as alleviate some of the other concerns and get those questions answers that have been brought to my attention since the bill was introduced and had the hearing. Think if you look on your committee statement, you'll see that the Nebraska Beekeepers Association came in, in support of this. I've heard from several honey producers around the state who are appreciative of these efforts and really hope that we will be able to find something to give honey producers the support that they seem to be needing and asking for. So with that, I would close my introduction. [LB114]

SENATOR GLOOR: Thank you, Senator Dubas. As the Clerk stated, there are amendments from the Agriculture Committee. Senator Carlson, as Chairman of that committee, you are recognized to open on the committee amendments. [LB114]

SENATOR CARLSON: Thank you, Mr. President. Members of the Legislature, as you heard in Senator Dubas' opening, LB114 provides for a cause of action for persons damaged by a misleading of a product as honey that does not comply with an identity standard for honey promulgated by the department. The bill as introduced provides a cause of action for persons so damaged to recover actual damages or statutory damages of \$1,000. The committee amendment strikes this portion of the bill, original subsection (3), and substitute text declaring that a violation of the labeling prohibition shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practice Act and shall be subject to remedies available under that act. Section 87-303 of the

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Deceptive Trade Practice Act provides that a person likely to be damaged by a deceptive trade practice of another may bring an action for and the court may grant an injunction under the principles of equity against the person committing the deceptive trade practice. Additionally, the court may order such additional equitable relief as it deems necessary to protect the public from further violations, including temporary and permanent injunctive relief. Although the Deceptive Trade Practice Act does not provide for compensatory relief as the original bill, the committee was in consensus that the ability to seek enjoinder was a more meaningful and attainable remedy than that proposed by the bill as introduced and that the Deceptive Trade Practices Act was the more appropriate statutory context in which to address the underlying purposes of the bill. The bill's provision for developing an identity standard dovetails into other provisions of the deceptive trade practices. Section 82-302 of the Deceptive Trade Practice Act includes within the definition of a deceptive trade practice representation that goods or services are of a particular standard, quality or grade. One of the concerns of the committee with the bill as introduced was that competitive alteration of honey by methods the introducer has mentioned would commonly damage all producers, thus potentially leading to multiple lawsuits. Additionally, the ability to prove actual damages would be difficult and that the threat of paying individual damage claims may be of little deterrent value to a determined violator. The equitable remedies available under the Deceptive Trade Practices Act do not require proof of monetary damage, loss of profits or intent to deceive. Access to injunctive relief answers the issues of the committee and more appropriately serves the purpose of the bill. The committee amendment inserts a statement of intent that reinforce the underlying purposes of the bill to aid consumer information and ability to rely on that products labeled as honey meet expectations that the product is pure honey and not a blending of honey with other sweeteners and flavorings. The committee statement indicates that there were two opponents to the bill, Kellie Haszard and her son Spenser, who are small, independent producers who sell primarily and directly to consumers. Their concern was that the bill would require producers to undergo expensive testing to prove that their product met the standard before they could label honey. Honey that is exclusively the product of bees is not adulterated will, by definition, comply with the standard. Additionally, the burden would be on those who would question the purity of the honey to undertake the analysis to show that the product does not meet characteristics only pure honey would meet. Committee heard the bill on January 25. The bill was supported by the Nebraska Honey Producers and Farmers Union, which has advocated adoption of a federal standard for honey to protect domestic producers from cheap imports that are deceptively labeled as honey. Thank you for listening and I would urge the adoption of the committee amendments. Thank you, Mr. President. [LB114]

SENATOR GLOOR: Thank you, Senator Carlson. We now move to the debate section. Senators wishing to be heard are Fulton, Bloomfield, Loudon, Wightman, and Christensen. Senator Fulton, you are recognized. [LB114]

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SENATOR FULTON: Thank you, Mr. President, members of the body. There is another side to this bill which I'm going to speak on here now, but I will say that I have talked with Senator Dubas about the bill and I'm willing to move the bill forward to Select File with the understanding that the concerns that I'm going to raise here after will be addressed. Now just in listening to the opening and in the committee statement it seems evident that we need to have some remedy in the law such that producers who are competing against...producers of honey who are forced to compete against those who are putting forward a product which is not honey need some means of remedy. And so it seems to me that we ought to be able to put forward that remedy by requiring a definition of honey to be put forward. Now I would propose that we do that in the statute. If indeed that's not appropriate, then we could allow that to occur via the rules and regulations of the Department of Agriculture. But here is where my concern comes in. In the bill itself, we make direct reference to this Codex Alimentarius, the commission of the food and agriculture organization, and the World Health Organization of the United Nations, and we would be directing the department to come up with a standard based on this Codex. My concern isn't with the definition of the Codex, which Senator Dubas has handed out here Section 2.1 of that Codex, it's in what occurs throughout the remainder of that Codex. And if the department is to develop a standard, standard is another word for rule, based on the Codex, that could well go beyond simply the definition of honey and that's what I would be concerned about, particularly in that regard but also in a more general sense that we would be putting something in our statute that's really controlled by this Codex, the World Health Organization, and the United Nations. And you know how I feel about that. So again, I have spoken with Senator Dubas and we're going to work on something for Select File which I think will be able to address this, so I'm going to support this, the AM199 as well as LB114, and on Select File hopefully the body will be able to see an amendment which I'm quite sure will be able to address all of our concerns. Thank you, Mr. President. [LB114]

SENATOR GLOOR: Thank you, Senator Fulton. Senator Bloomfield, you are recognized. [LB114]

SENATOR BLOOMFIELD: Thank you, Mr. President. Who would have thought that the first time I come to the mike it would have to do with the birds and the bees or at least the bees or their by-products? I rise not in support of the bill nor in opposition of it. I simply want to explain why I didn't vote to bring it out of committee and it pretty well coincides with Senator Fulton's issues. There is, in my mind and probably nowhere else, an issue when it comes to the Codex Standard that we're tying this to. There is in the Codex Standard a description of honey that is consistent to what we generally believe it to be--basically, secretion from bees, etcetera, etcetera. However, buried a little deeper in the Codex description there's a further description as to what type of honey it may be. Is it clover honey, is it blossom honey, or any other kind of honey, depending on where the bee may have traveled? I just want to make sure we're not reaching too far in an attempt to protect our bee producers or our honey producers from charlatans that would

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cut the quality honey by adding corn syrup or anything like that; that we're not reaching out so far that our small producers will have to track their bees. I, too, spoke to Senator Dubas and she assured me we would address this as we go along and I'm more than willing to take her at her word. Thank you. [LB114]

SENATOR GLOOR: Thank you, Senator Bloomfield. Senator Louden, you're recognized. [LB114]

SENATOR LOUDEN: Thank you, Mr. President and members of the body. As I look at this bill and I can see what Senator Dubas is trying to do and I applaud her for that because we do have to have some regulations in place for honey because it will be starting to be imported from other countries. And when you go into a grocery store, you can look and tell the honey there, that some of it has been brought in from some place, because when it's real dark, why, it's probably been older honey or come in from different areas of the country. And what we have to be careful of is they start bringing it in from overseas and they have different...just because it's called honey doesn't mean it all came from blossoms. It can come from different trees, could have come...and as you look on this Codex Standard, that's a problem I have with the bill is they're using those standards. So I...Senator Dubas has said she would work something out and I will probably give her the benefit of the doubt on that, but I think we have to be very careful because I don't know if any of you have looked up what this Codex 12 is and they have the methods of testing it. You got to have the amount of fructose in it and different sweetness and how many grams. And what happens when you do that, the small area producers don't have the equipment to do that, and this allows the big-time importers and exporters and honey producers that buy huge amounts of it to be able to blend it and mix it and probably bring in a product that isn't superior or that's quite a lot lower grade than what we raise in this country. Most of the honey that's grown in Nebraska is top quality honey. As we have Sandhill honey out there, some of the lightest honey that ever shows up, and you can tell that by the color of it. They do have to be careful that they're not taking honey from wax that's...from combs that have had brood raised in them because that gets in your darker colored honey. So with the amendments and that, I would have liked to have seen a little bit more done to this bill before it was brought here onto General File, because I have a problem with a Codex that comes from...actually from the United Nations is where that comes from. Eventually, we'll have to have standards for honey, but I have a lot of faith in our Department of Agriculture in Nebraska that they can write those standards for what honey has to be and what the testing needs to be done with it and without going into these international testing facilities that they're asking for. Sometime some of you get on your Google machine and pull up that Codex Standard 12-1981 and it comes right up on there with the pages of the things that have to be done and it's called a method of sampling. And some of it is you got to determine the sugar content, you have to find out what chemicals are in it and, of course, that isn't that bad, but there's also the...how much acid is in it per 1,000 grams. All of this is very technical testing that has to be done and some of the different

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methods that there is to use and the chemicals that are in there. Also, they have to have electrical conductivity and it depends on whether it's a honey dew or a chestnut honey and different blends. And so these are all things where they come from a strawberry tree, a eucalyptus tree, or a jelly bush or a tea tree. There's all kinds of trees that honey comes from and this is what we need to do in Nebraska so we know whether or not it's... [LB114]

SENATOR GLOOR: One minute. [LB114]

SENATOR LOUDEN: ...something in a product that is...would even come comparably close to what we grow in Nebraska. With that, I think I'll listen to the testimony. I still haven't decided how I want to work on this bill. But if Senator Dubas is willing to do something about this United Nations Codex in there and take some of those regulations out of there and leave something for our state Department of Agriculture over here to take care of, I would probably be willing to advance the bill. Thank you, Mr. President. [LB114]

SENATOR GLOOR: Thank you, Senator Louden. Mr. Clerk, items for the record? [LB114]

ASSISTANT CLERK: Mr. President, two name adds: Senator Nelson to LB401, Senator Pahls to LB84. (Legislative Journal page 523.) [LB401 LB84]

I do have a priority motion. Speaker Flood would move to adjourn until Monday, February 14, 2011, at 10:00 a.m.

SENATOR GLOOR: You have heard the motion to adjourn until 10:00 a.m. Monday. All those in favor say aye. All those opposed, nay. We are adjourned.