

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

Transportation and Telecommunications Committee  
January 29, 2013

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[LB164 LB165 CONFIRMATION]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, January 29, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments, LB164, and LB165. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch; Galen Hadley; Charlie Janssen; Beau McCoy; Scott Price; and Dan Watermeier. Senators absent: None.

SENATOR DUBAS: Welcome today to the Transportation and Telecommunications Committee. We'll be having several confirmation hearings before we begin with a couple of bill introductions. I'll take this time now to introduce committee members. I'll start to my far left; we have Senator Lydia Brasch from Bancroft; Senator Beau McCoy from Omaha; Senator Galen Hadley from Kearney. Anne Hajek is the committee clerk; she's the one that keeps a record of everything that's going on here today, so when you do your paperwork and when you come up to visit with us, we'll ask that you speak into the mike. The mikes aren't necessarily for loudness or amplification; they're more for recording, so we ask you not to fiddle around a lot with the mikes. They do pick up a lot of the extra noise around it. So try to avoid making more problems for the transcribers. So when you come up, if you'll state and spell your name for the record, that will help our transcribers. My name is Senator Annette Dubas. To my immediate right is Joselyn Luedtke, she is the legal counsel for the committee. Then we have Senator Jim Smith who is the Vice Chair of the Transportation Committee, and he is from Papillion. Next to Senator Smith is Senator Scott Price from Bellevue. Dan Watermeier from Syracuse will probably be joining us. And then that's another point, if senators get up and come and go throughout the course of the afternoon, it's not that they don't want to be here for what you have to say, it's that they're introducing bills in other committees and have other things going on. So there is a lot of coming and going in the committee. And then last, but not least, we have Senator Charlie Janssen from Fremont. So those are the members of the committee. We have two pages who are with us today. They are there to help you; you can give them your green sheet when you come up to the table. If you have any handouts that you'd like for the committee to have, if you could have 15 copies of those and give them to the pages, they'll hand them out. If you don't have enough copies, if you want to get their attention a little bit ahead of time, they can get some copies made for you. So we have Kaitlyn Evanko-Douglas; she's from Montrose, Colorado, a senior at the University of Nebraska in Lincoln, majoring in political science and global studies. And David Postier from York, Nebraska; he's a sophomore at the University of Nebraska in Lincoln, majoring in secondary education. We really appreciate having the pages with us. They very much assist us in keeping the process moving right along and thank them for the time they spend with us. The order today, as I said, we'll have the confirmation hearings, and we'll go in alphabetical order with those. And then, after that, we'll have anyone who wants to come forward and speak either in support or in opposition or in the neutral capacity on the confirmations or the bills. For

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those of you who will be coming forward to testify today, if you have picked up a green sheet back there on the table by the door we ask that you have that filled out. And again, give that to the page, and they will hand it into our clerk. If you're here today and want to be in the record and either in support or opposition to the bill or the confirmation, whatever, if you just want to fill in your name and the rest of the information, that will be picked up by the clerk after the hearing and go into the record. You know, we have the light system, but based on the hearings and what we have going on today, we won't be using those. I ask that you please silence your cell phones or any other electronic equipment you may have with you. And I think that's the end of our housekeeping duties, so we will begin with our confirmation hearings. As I said, we'll go in alphabetical order, and we will start first with Mr. Paul Gerber. If you'd like to come forward, please. Welcome, we thank you for taking the time to come and visit with us today.

PAUL GERBER: Good afternoon, Senators. Thank you. [CONFIRMATION]

SENATOR DUBAS: You just want to tell us a little about yourself. Let's see, I'm trying to think if you're...are you a reappointment? [CONFIRMATION]

PAUL GERBER: Yes, I am a reappointment. [CONFIRMATION]

SENATOR DUBAS: So a little bit about your experience on the board; anything you'd like to share with us. [CONFIRMATION]

PAUL GERBER: Absolutely, I grew up in the car business; my father was, basically, the first person that ever did in-house financing back in the late '40s. I've got over 40 years of experience. I'm full time for 36 years. Seen a lot of changes in the car business over that time. The people that are reputable are still in it; the ones that aren't are no longer members of our industry. You know, what we're out there for is to make sure that people are doing things right. Offenders we try to make sure are off the streets.  
[CONFIRMATION]

SENATOR DUBAS: How long is your term for? How long do you serve for?  
[CONFIRMATION]

PAUL GERBER: This would be my second term, and there is about 2.5 years left.  
[CONFIRMATION]

SENATOR DUBAS: Okay. Any questions for Mr. Gerber from the committee? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Madam Chair. Mr. Gerber, thank you for your willingness to serve on this board. Tell me a little bit about any particular issues or challenges that you see in the industry that you feel your presence on this board will

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help to address. [CONFIRMATION]

PAUL GERBER: Well, there's a lot of individuals that want to be car dealers without licenses. That is unacceptable. When I am personally driving, and I notice cars for sale at certain places, I immediately call down and report it, because we don't want those people representing our industry, period. You know, it's a very negative to represent yourself as something you're not. You know, we're all licensed here, and we have to follow the rules. Those people do not. They pass themselves off sometimes as dealers because you'll see two or three cars on a corner, you know, over a weekend, and then all of a sudden, they disappear by Monday because they know there's no investigators around. So I take note, I take pictures, and I turn them in. [CONFIRMATION]

SENATOR SMITH: Thank you. [CONFIRMATION]

SENATOR DUBAS: Other questions? What are some...what are the main duties of the board that you serve on? [CONFIRMATION]

PAUL GERBER: We govern the rest of our industry, so that means if someone has done something fraudulent, misrepresented themselves or a vehicle, we're there to make a decision as to what is the proper procedure to right the wrong and make the consumer whole again. [CONFIRMATION]

SENATOR DUBAS: So, do you handle a lot of complaints from...or concerns or questions from people who are in... [CONFIRMATION]

PAUL GERBER: I don't personally, that's up to Mr. Jackson to make that decision, and then if he doesn't resolve it, then it comes in front of the board. [CONFIRMATION]

SENATOR DUBAS: Okay. Is it pretty easy to get a motor vehicle...or a...a license is what I'm talking about. [CONFIRMATION]

PAUL GERBER: No, it's not simple. You have to be bonded. [CONFIRMATION]

SENATOR DUBAS: Okay. [CONFIRMATION]

PAUL GERBER: You have to have a place of business, you have to post your hours, you have to have mechanics on staff, and you have to seriously want to be doing what we do. [CONFIRMATION]

SENATOR DUBAS: So you bring a level of stability and some confidence, hopefully, for the consumer to know that if this particular business is licensed, that they have to meet some criteria. [CONFIRMATION]

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PAUL GERBER: Indeed I try. [CONFIRMATION]

SENATOR DUBAS: Other questions? Senator Janssen. [CONFIRMATION]

SENATOR JANSSEN: Thank you, Chairman Dubas. Thanks, Mr. Gerber, for being here. The question I have that came up when you were talking about it: How is the change with the on-line dealerships? And how does that work? Or, maybe that's something I'm asking everybody when they come up here for their different perspectives and... [CONFIRMATION]

PAUL GERBER: Well, on-line means that basically we're really not dealing with a person on an individual basis. So, you know, they can view your product, and you have to make sure what you said is what you indeed have and that you have not misrepresented it. You know, anything I post on-line is something that I own, number one, because you have to have it on your property. It has to be what you say. If it isn't, then that consumer does have an issue. [CONFIRMATION]

SENATOR JANSSEN: Thank you. [CONFIRMATION]

PAUL GERBER: You're welcome. [CONFIRMATION]

SENATOR DUBAS: Other questions? Well, again, we do thank you for your willingness to serve. I mean, it's obvious that you care about your industry and you want your industry to have a good name and create that level of trust with consumers, so I appreciate that. And I appreciate your willingness to serve and taking the time to come visit with us today; it really is...it means a lot to the committee, even if we haven't asked you a lot of questions, we just appreciate the opportunity to get to see you face to face and thank you for your service. [CONFIRMATION]

PAUL GERBER: Thank you, Senators. [CONFIRMATION]

SENATOR DUBAS: Thank you. So do we have anyone who would like to come up and speak in support of this confirmation? Anyone in opposition? Do we have anyone in the neutral capacity? Seeing none, we'll close the hearing for Mr. Gerber and move on to our next one. Do I have it in alphabetical order here? Where's my list? Thank you. Okay, Mr. Pearson. Welcome. Thank you for joining us today. As previously, if you would just like to share just a little bit about your background, you know, where you come from, your business, anything you'd like to share with the committee in relationship to this confirmation. [CONFIRMATION]

RICK PEARSON: Sure. Thank you, Senators, for letting me come in front of this committee. I'm Rick Pearson. I'm the owner and president of Pearson Motor Company. I have a small dealership in Hartington, Nebraska; I've been in the automotive industry for

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about 30 years; worked for a lot of smaller dealers in my local town, and worked my way up through the ranks from fixed operations to the sales end of it, so I know the business inside and out. I think what I can bring to this board is a voice for the small rural micro-dealers. There are a few of us left out there, and there's a lot of things coming at us. And for us to survive, we need the support of everyone around us.  
[CONFIRMATION]

SENATOR DUBAS: Very good. Questions? Senator Janssen. [CONFIRMATION]

SENATOR JANSSEN: Thank you, Chairman Dubas. Can you explain some...you mentioned some of the challenges, something...a question I've always had in smaller town. In my district...Dodge, Nebraska, has a very small...it's Gene Steffy, (inaudible) but it's a small dealership, and I went to college in Wayne, and Arnie's up there, so what are the challenges now that you're seeing for these small-town dealerships?  
[CONFIRMATION]

RICK PEARSON: We see a lot of pressure from the franchises to build a Taj Mahal for a facility which doesn't make sense in some of the smaller markets. Through our Nebraska New Car Association, it's pretty strong, and it's a good organization for car dealers to be associated with. They support a lot of things that we need to do to work with the franchises. We want to work with the franchises, but there is something that they definitely want to just run over us with it. [CONFIRMATION]

SENATOR JANSSEN: You find...is there a lot of challenges when it comes to your own staff and finding people, sales people, and mechanics or...? [CONFIRMATION]

RICK PEARSON: No, at times there can be, but I've got a full staff. And Northeast Community College is really good at educating our technicians and our future technicians there. And we've got a lot of new technology coming through into our stores, and we're going to need those young minds to work on these vehicles, and it's important that that community college is there for us to pull our workforce from. [CONFIRMATION]

SENATOR JANSSEN: Thank you. [CONFIRMATION]

RICK PEARSON: You bet. [CONFIRMATION]

SENATOR DUBAS: Other questions? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Madam Chair. Mr. Pearson, thank you for your willingness to serve on this board. You mentioned developing the workforce, and you're working with a local community college, it sounds like, to develop that. Do you find that you're getting enough young people interested in the mechanics trade to fill those needs? [CONFIRMATION]

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RICK PEARSON: Yes, it's been stronger in that area; it has. There's a lot of...a lot more kids in that area that are going into the trades instead of the four-year colleges that traditionally has been happening for the last, probably 10 or 15 years. But we're seeing more and more of, at least the high school grads around there going to community college and picking up a trade, which is good because we need those people. For a while there, it was short and hard to find technicians, but it's getting better, at least in our area, I think. [CONFIRMATION]

SENATOR SMITH: That's great, thank you. [CONFIRMATION]

SENATOR DUBAS: Senator Price. [CONFIRMATION]

SENATOR PRICE: Thank you, Senator Dubas. Thank you, again. Echoing whatever you said, I think Senator Janssen hit on it, but I didn't know if you wanted to have an opportunity to talk more about the issue with the franchises and the dealerships and the pressure from the automakers. We've heard bills here before where warranty work and getting reimbursed and the time frame for it, how that transpires, the negative impact some of the behavior has been. Is that any better? Or is there something...is that still taking the lion's share of your time to deal with for your membership, for dealers? [CONFIRMATION]

RICK PEARSON: As far as I know, it has not improved. It hasn't improved. It's still an issue. [CONFIRMATION]

SENATOR PRICE: Great. Thank you. [CONFIRMATION]

SENATOR DUBAS: Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you, Madam Chairman. And I also want to thank you, Mr. Pearson, for your willingness to serve. I'm from a small rural area, and some concerns we have are called...like, border bleed where people will want to go over...you're a distance from Omaha and Lincoln, and what is your greatest competition, do you think, in selling, other than pressure from franchises...or, do people go to the big towns or are they pretty loyal in the small towns? [CONFIRMATION]

RICK PEARSON: We have a combination of both. I mean, there is some loyalty there. If your business is established and does a good job for the customer, you know, they're not going to leave you high and dry for a few dollars. But if you treat them right, they're there. But the competition around us is also good because it keeps prices in line. So we need that. And so I think the dealers that are in the right places and the right areas should be there to keep the competition, you know, fair; or pricing fair, I should say. My competition is some of the bigger towns, but I still take care of those customers. And

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they usually end up coming back to me. [CONFIRMATION]

SENATOR BRASCH: Very good. That's a sign of great service. [CONFIRMATION]

RICK PEARSON: Yes. [CONFIRMATION]

SENATOR BRASCH: And we do appreciate our dealerships in the smaller communities so we don't have to drive distance. [CONFIRMATION]

RICK PEARSON: That's the key for a small...is the service end of it. And I think that's where, sometimes, the franchiser or the other...some people forget that because it's hard to drag that car two, three hundred miles to get it fixed. [CONFIRMATION]

SENATOR BRASCH: And as you're in business for 40-plus years, do you see a next generation coming in, or are you concerned about... [CONFIRMATION]

RICK PEARSON: I am concerned about that; it's getting tougher and tougher in the smaller markets just because of the working capital that's required, and there's just...there's a lot to it. So that's getting a little tougher. You know, you almost have to...it has to go down the family, so to speak, if somebody wants to stay and work in that smaller community. [CONFIRMATION]

SENATOR BRASCH: Very good. Thank you, again, for your willingness to serve. I appreciate your being here today. [CONFIRMATION]

RICK PEARSON: Thank you. [CONFIRMATION]

SENATOR DUBAS: Other questions? I would have a couple for you. Are you a new appointment or are you being reappointed? [CONFIRMATION]

RICK PEARSON: New appointment. [CONFIRMATION]

SENATOR DUBAS: That's what I thought, the way I read this. So what has sparked your interest in serving on this board? [CONFIRMATION]

RICK PEARSON: I've been involved in NADA and involved with, like I said, the car business all my life, so when I had the opportunity to serve on this board, I definitely, with open arms, would love to because I think I can bring the vision...not the vision, but at least opinions and my experience from a rural, small community. [CONFIRMATION]

SENATOR DUBAS: So have you felt, in the past, that this board has really represented you and your interests and... [CONFIRMATION]

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RICK PEARSON: Yes. [CONFIRMATION]

SENATOR DUBAS: And so overall, I mean, none of us like regulations, and we all get frustrated with, sometimes, the amount of laws that we think are passed, but from what I'm hearing from you and the previous testifier, your understanding that, you know, the amount of regulation that you may need to comply with is important for your... [CONFIRMATION]

RICK PEARSON: It's important for us, but it's also most important for the customer. The customer always has to be whole, no matter what it is. And I think there needs to be regulations there, because usually somebody that gets hurt is going to be the end customer, if you don't have rules and regulations in place. Someone is going to take advantage somewhere. [CONFIRMATION]

SENATOR DUBAS: Very good, very good. So I see you started last July and then will serve a three-year term, is that correct? [CONFIRMATION]

RICK PEARSON: Correct. [CONFIRMATION]

SENATOR DUBAS: All right, any other questions? Again, most of the committee has said thank you so much for coming in today; we appreciate the opportunity to meet you, and appreciate your service, and thank you for what you do. [CONFIRMATION]

RICK PEARSON: Thank you. [CONFIRMATION]

SENATOR DUBAS: Do we have anyone in support of this confirmation? Any opposition? Anyone in the neutral capacity? Seeing none, that will close the hearing on Mr. Pearson. And we'll open the next hearing on Angela Quinn. Welcome. [CONFIRMATION]

ANGELA QUINN: Good afternoon. My name is Angie Quinn, and I'm from Omaha, Nebraska. I was two years as a banker and the last 20 years in the car business. And both my brother and I started working for my father, and in 2008 my brother and I took over the family business and have seemed to keep the focus running and enjoy a business, as well as, believe it or not, working with my brother. So, I understand the importance of this board. I've served on several other manufacturing boards, and most of the time it comes down to communication and the...whether big or small, I think all the issues are important and need to be, so...addressed. [CONFIRMATION]

SENATOR DUBAS: Do we have any questions? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Madam Chair. Ms. Quinn, thank you for being here today and for your willingness to serve on this board. And as a new appointee, what



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sparked your interest in serving on this board? [CONFIRMATION]

ANGELA QUINN: You know, I got tired of dodging Loy Todd's calls, so...  
[CONFIRMATION]

SENATOR SMITH: There you go. [CONFIRMATION]

ANGELA QUINN: No, you know as I said, everything takes time. Your positions and so forth, I was on multiple manufacture boards, and it just resonated how important it is to, you know, reach out to your fellow dealers and find out, what are the issues, because my issues certainly aren't the same as Mr. Pearson's. And it's just important to have a...folks in that capacity that are willing to take the time and effort to find out the issues and bring them to the forefront. [CONFIRMATION]

SENATOR SMITH: Thank you. [CONFIRMATION]

ANGELA QUINN: Um-hum. [CONFIRMATION]

SENATOR DUBAS: Other questions? Are you filling a vacancy? Or...because I noticed your term ends in 2014, where it seemed the other ones were expiring in 2015.  
[CONFIRMATION]

ANGELA QUINN: It's...it was a three-year term. [CONFIRMATION]

BILL JACKSON: You're filling an unexpired term. [CONFIRMATION]

SENATOR DUBAS: We'll let him come up if he wants to. [CONFIRMATION]

ANGELA QUINN: Okay. [CONFIRMATION]

SENATOR DUBAS: So you are filling...okay, that was the question that I had, so I appreciate that. Are there any other questions? Well, again, as we've said to everyone else, we do appreciate you taking the time out of the middle of your day. And, you know, we aren't asking you a lot of questions, but as far as the committee goes, we do appreciate the opportunity...that you've shown the interest, and you are committed to your industry, and that's what makes Nebraska such a great place to work and live, so thank you for your service. We really do appreciate it. [CONFIRMATION]

ANGELA QUINN: Well, thank you and I'm very happy to do it. [CONFIRMATION]

SENATOR DUBAS: We have anyone in support of this confirmation? Anyone in opposition? Anyone in the neutral? Seeing none, that will close the hearing for Ms. Quinn, and we will open the hearing for Jeff Scherer. Welcome. [CONFIRMATION]

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JEFFREY SCHERER: Thank you. My name is Jeffrey Max Scherer, S-c-h-e-r-e-r. I'm the chief financial officer of Smeal Fire Apparatus in Snyder and Neligh, Nebraska. I live in Senator Brasch's district and work in Senator Janssen's district. [CONFIRMATION]

SENATOR DUBAS: All right, does anybody have any questions for Mr. Scherer? Senator Janssen. [CONFIRMATION]

SENATOR JANSSEN: Yes. This one I might have an issue with. (Laughter) Graduate of Leadership Nebraska, 2007; chairman of the board, Northeast Nebraska Economic Development District, which you and I served together on; board of directors, Chamber of Commerce; board of directors, Nebraska Diplomats; board of directors, West Point Chamber of Commerce...this goes on for a while. Sure you have time to continue doing all this stuff... [CONFIRMATION]

JEFFREY SCHERER: That's an old one, Senator. [CONFIRMATION]

SENATOR JANSSEN: ...is what I'm questioning right here. But...I'm kidding. The one question I do have though is...we talked a little bit about...in the rural areas, getting people, and this is more specific, probably, to Smeal Manufacturing and talking about getting employees up there. And I know that you're involved with Dream!t Do!t. and to give us an update on that, how that's impacting the state. It sounds like it's doing well in Hartington, at least, at getting some mechanics up in that area. [CONFIRMATION]

JEFFREY SCHERER: I'm glad you brought that up, Senator Janssen. I listened to Senator Smith's question, and that is something I'm very interested in, as we all should be, the future workforce of the state of Nebraska. And I've been involved with that Dream!t Do!t program since it came to Nebraska. Nebraska was the first state in the country to do a statewide campaign for that. This program was started by the National Association of Manufacturers. And I believe in Nebraska we started in 2006. I believe we are seeing an increase in the enrollment in the community colleges across the state. And the purpose of the program is not to take anything away from the universities or any students that have the desire and the wherewithal to go on and obtain a four-year or advanced degree. The idea of the program is try to identify those students who are maybe better suited to look at learning a trade in the community college system and being able to enter the workforce without a mountain of student loan debt, and also to keep them right there in our local communities. You mentioned a lot of the boards I have served on, and I do have a pretty lengthy list. I'm not going to let any grass grow under my feet. I spent the first 15 years of my...that Lori and I were together going to basketball games. When my son, Jared, graduated and went off, we had time on our hands, and I decided I was going to spend my time giving back to northeast Nebraska and to the state. And so I have been involved with a number of things. I've served as the chairman of the State Chamber in 2011; the president of the Diplomats in 2012. And like

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a lot of organizations, you put in your time, you do the best you can, you offer what you can to bring to these, and then you step aside or phase yourself out to let other people in and do the same. And I think that's kind of been my approach. Where I'm still on quite a few boards, including the Northeast Community College Foundation Board, I think it's important to try to do what I can. So this is my way of giving back. And in terms of the Motor Vehicle (Industry) Licensing Board, when I was approached to see if I had any interest in being on this board a little over three years ago, I wasn't really sure. I filled out all the forms for our company to obtain the proper licenses across the states so we do business, which is nearly all 50 states. And it's a cumbersome process. I fill out the forms to renew our manufacturer's license with the state of Nebraska. And I will say that that's not the easiest form I fill out, but it's certainly one of the better ones, where Texas, for example, is probably the worst. They give you lengthy instructions on how to fill their forms out, but inevitably, they very seldom allow a form to go through on the first run. They always seem to find something that, maybe, we didn't address or didn't answer correctly. Whether or not it was included in the instructions really doesn't seem to make any difference. But from that perspective, from the business perspective, I thought maybe I could bring something to this board. I will admit that the majority of what I've heard and what I've learned has dealt with automobile dealers. And I understand that's a primary importance of this board. But nonetheless, I have enjoyed the three years that I have spent; I think I've learned a lot and am willing to serve another 2.5 years, if I'm so confirmed. [CONFIRMATION]

SENATOR JANSSEN: I appreciate that answer, and you hit on a good point right at the end about government getting in the way of business. And if there is any efficiencies that you see, or anybody sees out there, I'd certainly love to hear about it. I talk to our friends in the construction industry, and they talk about a day when government inspectors would show up and try to help them through the process. And now it's more of the "gotcha" moment that you're talking about in Texas. And I certainly would appreciate your perspectives on that. So, thanks for being here. [CONFIRMATION]

JEFFREY SCHERER: Thank you, Senator. [CONFIRMATION]

SENATOR JANSSEN: And I think I'll find my way to vote for you on this one. [CONFIRMATION]

JEFFREY SCHERER: Thank you. [CONFIRMATION]

SENATOR DUBAS: Other questions? Senator Brasch. [CONFIRMATION]

SENATOR BRASCH: Thank you, Madam Chairman. And thank you as well, Mr. Scherer, for your willingness to serve on this board. And I'm not certain if I should wait and sit out there and become a proponent at this point, but I am very familiar with your many achievements in contributing to the community and...several communities and

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several households. I'm looking at your summary, your resume here, and I think the one thing that...all the strengths are right on; you've got them, but you're also a builder of opportunities. And I would like to see that added to your list because you've provided many opportunities. On this board when you are going to look for ways to make it better, comparing to other states, is there one action item that stands out that you would love to take off your list, your bucket list of... [CONFIRMATION]

JEFFREY SCHERER: Honestly, Senator, I've found that...I believe Mr. Jackson does a fantastic job of doing the heavy lifting... [CONFIRMATION]

SENATOR BRASCH: Sure. [CONFIRMATION]

JEFFREY SCHERER: ...regarding the Motor Vehicle Industry Licensing Board. Him and his staff do a great job of making sure the rules and regulations in the state are enforced. From my perspective, again, I really don't have a problem with the state of Nebraska and the requirements that they ask in obtaining a manufacturer's license. I think there are states that do make it difficult for us to do business in. [CONFIRMATION]

SENATOR BRASCH: Okay. [CONFIRMATION]

JEFFREY SCHERER: So I guess in answer to your question, Senator, I haven't seen anything that I felt really needed to be changed or really needed to be fixed. I think the system is working pretty well at present. What I'm a little unsure about, and this is probably more of a question for the Secretary of State's Office, maybe more so than this committee: I'm not sure what the licensing requirements are of other manufacturers doing business in the state of Nebraska. And I'm not quite sure if some of these states...I was hoping Senator Hadley could hear this, because Kearney just bought somebody else's fire truck. But the fact is, that whoever's truck they did buy, I don't know if that company is licensed as a manufacturer in the state of Nebraska or if they're licensed as a retail dealership in the state of Nebraska. So there is some things I still have to learn. But overall I think it is a pretty good system, and I think seems to be working pretty well. [CONFIRMATION]

SENATOR BRASCH: Thank you, again, for your willingness to serve. And I'm very confident that you will be an asset to this board and the board members serving. [CONFIRMATION]

JEFFREY SCHERER: I hope to be. [CONFIRMATION]

SENATOR BRASCH: Thank you. [CONFIRMATION]

JEFFREY SCHERER: Thank you. [CONFIRMATION]

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SENATOR DUBAS: Other questions? Senator Smith. [CONFIRMATION]

SENATOR SMITH: Thank you, Madam Chair. Mr. Scherer, I too want to say thank you to...for your willingness to serve on this board. And also, particularly, for your work in the area of education and developing an interest in the trades. I think that's a critical need we have in our state, so. [CONFIRMATION]

JEFFREY SCHERER: Thank you. [CONFIRMATION]

SENATOR SMITH: But also I wanted to say thank you to you and to Mr. Gerber and Mr. Pearson and Ms. Quinn, also for your work in the communities, as economic drivers in each of your communities. You create a lot of jobs in the private sector, and you bring a lot of value to this state. So thank you for continuing that expression of service on this board, but, particularly, thank you for what you've done in the private sector to create jobs. [CONFIRMATION]

JEFFREY SCHERER: Thank you. I spent a number of years being married to a human resource director and hearing about all the problems that my wife, Lori, had in trying to find skilled labor. So when I had the opportunity to become part of that Dream!t Dolt program, I thought anything that would reduce hearing that would be a good thing. So we are giving a good effort in that program. I could talk for hours about the Dream!t Dolt program, and I know you all have better things to do than to listen to me talk about that for that length of time. But the fact is, that it's a fantastic program. I would encourage all our senators across the state to try to do what they can to get behind that; encourage manufacturers in your district to become active in that program. I know we have a lot of activity in some areas of the state; in some areas we're still looking for some help. But this is...where it meets our own selfish needs as employers and manufacturers, what it does more so, it helps our communities keep our young people. And we see, especially up in northeast Nebraska, an aging population and a declining population; if we don't make some attempts to try to reverse that, it probably will not happen on its own. And so we do take a great deal of pride in the Dream!t Dolt program. And in fact, we have a human resource assistant, Lori's assistant, Danielle Ortmeier is down at Southeast Community College today talking with young folks that are just getting ready to graduate with a drafting certificate...or an associate degree in drafting, and we hope to pick some of those people up. So if we can teach our young folks and keep them here, the state will be a much better place for years to come. [CONFIRMATION]

SENATOR DUBAS: Senator Janssen. [CONFIRMATION]

SENATOR JANSSEN: Thank you, Chairman Dubas. Now, you...I wasn't listening real close; is there something you wanted to tell Senator Hadley about fire trucks in Kearney? (Laughter) I mean...run that by us again. [CONFIRMATION]

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JEFFREY SCHERER: Well, I thought I missed my opportunity, Senator, to give you a bad time about Kearney buying somebody else's fire truck. But the mayor of Kearney, Stan Clouse, is a good friend of mine. We went through the Leadership Nebraska program. And I told Mayor Clouse that, you know, we're not going to bat a thousand, but we're sure going to try, so. [CONFIRMATION]

SENATOR HADLEY: Thank you. [CONFIRMATION]

JEFFREY SCHERER: We'll be here on the next one. [CONFIRMATION]

SENATOR DUBAS: Other questions? I would just have one: You do come from a different perspective, a different background than our other confirmands have come from, how do you feel that helps you as an individual on the board, and the board as a whole? [CONFIRMATION]

JEFFREY SCHERER: Well, I'd like to think I can bring, maybe, a little bit of a lay person's perspective because I haven't grown up in the automobile business. I bought cars, but never sold them. I mean,...so, I think I can bring that perspective, but also, as a manufacturer, I tend to look at things in a strictly a businesslike manner, and sometimes that's good, and sometimes that's not so good. But I believe that, in doing that, I can bring a fair and unbiased perspective that may or may not exist with all the other members of the board, just because of the business that they're in versus the business that I'm in. [CONFIRMATION]

SENATOR DUBAS: Very good. Well, I would like to add my thanks, along with the rest of the committee's. You know, it's just obvious; if you want a job done, you ask a busy person because they know how to make things happen. And so we just appreciate all of your service in so many areas. And it's because of people like you and the rest of the people who are here today that, you know, Nebraska is a good place to live and work and raise our families, so we thank you for your contribution. [CONFIRMATION]

JEFFREY SCHERER: Thank you, Madam Chair. I think we live in the best state in the country. [CONFIRMATION]

SENATOR DUBAS: Won't disagree with you at all. [CONFIRMATION]

JEFFREY SCHERER: Thank you to all the senators, thank you. [CONFIRMATION]

SENATOR DUBAS: Thank you. Do we have anyone who would like to testify in support? [CONFIRMATION]

LOY TODD: Senator Dubas, members of the committee, my name is Loy Todd, L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck

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Dealers Association. For the sake of brevity, I didn't jump up and down on every one of these appointments. But with the indulgence of the Chair, I would like to, on behalf of the association, enter our strong support for all of these appointees. Mr. Gerber, I've been able to observe him for many years in the used car industry; he's got a very good reputation. And he has served on the board in the past. Two of my members, Mrs. Quinn and Mr. Pearson; also, I've worked very closely with Mr. Scherer on many projects, and I can tell you that they are truly fine representatives from the diversity of community. Our licensing board is made up of a diverse group. By law there are two new car dealers, there is a used car dealer, there is a member of the public, there is a manufacturers' representative. And today was somewhat heavily oriented on dealers, but there is a diverse representation. And through the years I've been able to observe it. They do a fine job, and we just wanted to be on record in support of all of the nominees. [CONFIRMATION]

SENATOR DUBAS: Very good. Any questions for Mr. Todd? Thank you for coming forward. [CONFIRMATION]

LOY TODD: Thank you. [CONFIRMATION]

SENATOR DUBAS: Any other proponents? Anyone in opposition? Anyone in the neutral? With that, that will close our final confirmation hearing for the day. And again, thank you to all of you who came and participated; we do appreciate it. Now we will move on to LB164, and I will turn over the reins of the committee to our Vice Chair, Senator Smith. [LB164]

SENATOR SMITH: Welcome, Senator Dubas. [LB164]

SENATOR DUBAS: Thank you very much. Good afternoon, members of the Transportation and Telecommunications Committee. My name is Senator Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s. Today I bring you LB164, which will allow licensed motor vehicle dealerships to move excess inventory to other licensed dealers only through an auction on his or her dealership location. They would be restricted to selling only their inventory consisting of motor vehicles, trailers, or manufactured homes. They may only sell to other licensed dealers in Nebraska and may not sell anything on consignment or sell anything directly to the public. This would allow dealers who are experiencing excess inventory on occasion to move that inventory without having to obtain an additional auction dealer's license. This is a private auction, not a public auction, which a public auction does require a different type of licensing. And it is also most likely to be used by our new car dealerships. There is a representative from the car dealers association who will follow to give you a little more understanding as to why this particular legislation is needed, and it's my understanding that maybe some of this has been done in the past, and there has been some questions as to whether it's stepping into the public auction arena. So with some clarification through the statute, maybe we'll

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be able to get that cleared up and allow this practice to go on. So I would try to answer any questions you may have. But as I said, there will be people behind me who can give you more specific answers. [LB164]

SENATOR SMITH: Are there any questions for Senator Dubas? Senator Dubas, I do have one, and maybe Mr. Todd can answer this after you, but what takes place today? Do these vehicles have to be transferred to another lot where the private auction can take place? [LB164]

SENATOR DUBAS: I believe that's an option, but again, I'll let Mr. Todd be more specific about that... [LB164]

SENATOR SMITH: Okay. All right. [LB164]

SENATOR DUBAS: ...because there are different criteria that has to be met. [LB164]

SENATOR SMITH: All right, thank you. [LB164]

SENATOR DUBAS: All right, you bet. [LB164]

SENATOR SMITH: Thank you for your introduction of LB164. With that we will open up for supporters of this bill, and so we're looking for proponents to speak on behalf of LB164. Welcome. [LB164]

LOY TODD: Thank you, Senator Smith, members of the committee. For the record, my name is Loy Todd, that's L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. I want to thank Senator Dubas for introducing this legislation. Quite frankly, I was surprised when I found out that we needed this legislation in order to conduct some practices that were, apparently, already going on. There are...in Nebraska there are several types of licenses, and one is an auction dealer's license. And that license was designed more for a public auction and auctions where you're disposing of inventory to the public. And there may be businesses who decide they want to be a motor vehicle auction house as such. Other licenses such as the standard car dealer license did allow for a dealer to have up to two auctions at their business location, but it sort of incorporated an auction to the public. Well, as it turns out, one of the large used car dealers in the state, somewhat of a new rival, CarMax, contacted me and said, we have an issue; we'd like to dispose of our unwanted inventory through a private dealer auction. That is, as they trade for vehicles that they may not want to make available to the public, maybe some high mileage vehicles or vehicles with questionable looks or heritage or other issues, they might want to dispose of them to a used car dealer who carries that type of product and has that kind of constituency. So, and it turns out for them to do that, they wanted to do it on a monthly basis, and when they inquired to the licensing board, they found out they either



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had to get an auction dealer's license or limit it to two times a year. And they wanted to do it monthly. So what they were having to do was take their vehicles to other states in order to dispose of them. They could have just taken them to regular auction, but these aren't the kind of vehicles that you typically take to some of the regular auction houses because...just because they were a lot of high mileage items and other things. So I went to my board and said, they need a little help; we're in the Legislature all the time, what do you think about us supporting this kind of legislation? And to my great surprise, several of my board members said, oh, we do that all the time. We have these auctions at our dealership to get rid of some of them. Well...and not that I want to turn in any of my members, but technically they were in violation of the law also because they needed a separate license to do it. So I contacted the licensing board, Mr. Jackson, to see if there were any complications to it. I contacted the auction houses, the companies that do motor vehicle auctions to see if they had any heartburn about it and any other organization I could think of. And everybody sort of said, it's no big deal. But, we don't want to have public auctions; these are really going to be very private, only licensed dealers can attend, and we're not going to allow consignment vehicles to be brought in. It's not going to be this constant turnover, loading up inventory; it's going to be closed to the public, no sales to the public at the event. So it really is just a dispersal. And it only needs to be brought to you simply because there is a conflict between the two types of licenses. So we don't think it causes any harm for anyone. I think it helps the industry operate the way they would choose to do...makes these cars available to sellers who want to sell them. There is...and I want to thank committee counsel for catching this, but I want to make very clear on the record that the intent of this is for the dealer to be able to have as many of these auctions as they feel like having during the year to dispose of the inventory as is necessary. If you go to the bill, which I'm not asking you to do, but this...on page 4, line 8, it says: "dealer may conduct an auction of excess inventory." And there is no intention at all of limiting that to a single auction; it just...it would be a series of auctions, and I hope no amendment is necessary. This could come out of committee pretty clean. And I don't know if there is ever going to be a consent calendar again. But if there was such a thing--or a Christmas tree or something to that effect--not needing an amendment might be helpful. But want the strong legislative history that is to allow as many of these as necessary during a year and dealers not be limited to two in the future. And then also, Mr. Jackson asked me to emphasize that no consignment vehicles, whether they be motor homes, mobile homes, cars, trucks, whatever, be brought in on the sale. And that is consistent with our understanding of the legislation and the way it is drafted. With that I would answer any questions. [LB164]

SENATOR SMITH: All right, Senator Hadley. [LB164]

SENATOR HADLEY: Vice Chairman Smith, thank you. Mr. Todd, thank you. I was curious on...just on line 6, 13-16 on page 4; motor vehicles, does that...I assume that's a broad enough definition that it includes trucks, basically, any kind of vehicle that one of your dealers would be selling, is that correct? [LB164]

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LOY TODD: Yes. The term "motor vehicles" is all encompassing under our licensing law. [LB164]

SENATOR HADLEY: Under your licensing law. And the rest of it, about--only to sell motor vehicles to other motor vehicle dealers licensed, no consignment, and not directly to the public--is that the general rules for the other auctions that we see that are basically in the...like the Omaha or whatever it is that I see on I-80? Is that the kind of general rules that they follow? [LB164]

LOY TODD: That is the typical rule that they follow because of their licensing procedures. If you wanted to have an auction to the public, you would go for one of these auction dealer licenses instead. [LB164]

SENATOR HADLEY: Okay, okay. [LB164]

LOY TODD: It is consistent with the dispersal through Manheim and some of those names that you might know. [LB164]

SENATOR HADLEY: Well, this seems like a very straightforward bill to help the dealers, so I think it looks good to me. So thank you, Mr. Todd. [LB164]

LOY TODD: Thank you. [LB164]

SENATOR SMITH: I do have a question for you, Mr. Todd. Will this have any type of a negative impact on revenues for existing auction houses? [LB164]

LOY TODD: They're the first people I called, Senator, to find out if they felt that it would, and they were unconcerned with it. Their business is dramatically different from this. And, quite frankly, the vehicles that have been historically being sold at these kinds of events are...weren't going to find their way there anyhow. It pretty...this is pretty localized with the exception of this CarMax operation which...they were taking theirs out of state. [LB164]

SENATOR SMITH: And I did have one more question, then I see Senator Brasch has a question after me. Can you describe very, very basically what is a private auction? What does that look like? Is that by...is it computer based? Is it Internet? [LB164]

LOY TODD: I think we invented that term in this bill. I don't think it's defined anywhere in the law. What we had in mind is that it's closed to the public. That's our...that was our concept when we took this through bill drafting. [LB164]

SENATOR SMITH: So it could take on any form, just as long as it's not open to the

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public. [LB164]

LOY TODD: I believe so. [LB164]

SENATOR SMITH: Okay. Senator Brasch. [LB164]

SENATOR BRASCH: Thank you, Vice Chairman Smith. And thank you, Mr. Todd, also. As I read this, I'm just very curious on how this...is there a problem other than the licensing fee? Does the dealer get to a point where a vehicle becomes problematic and so, therefore, there's somebody 300 miles away that would drive...because this is for Nebraska, within Nebraska, correct? [LB164]

LOY TODD: Correct. [LB164]

SENATOR BRASCH: Where today, if I was looking for a vehicle as a private citizen, I sit down with my dealer and he says, well, we don't have one here, but he does a little search, and he says, well, I can get you one of these in Grand Island or...and so he brings the car in. So, apparently this vehicle is finding no buyers whatsoever, and so now it's dealership to dealership. And an auction, meaning there could be multiple dealerships on high bid? I'm just trying to figure out how this is designed. [LB164]

LOY TODD: The situation you described, Senator, would be basically not involved in this at all. If a dealer was looking for 1968 Yugo and looking for it around the state, they could contact any dealer and acquire that on an individual trade. This bill only contemplates an auction as you would envision one with an auctioneer standing there with a gavel and probably a megaphone and that kind of practice. The reason we need it is twofold: one is, you can do it already, but you're limited to two a year; and then the other is, if you exceed two, then you need an additional license that...in addition to the motor vehicle dealer license you already have, and that would be a duplication of expense. Also, when you apply for that license, one of requirements is you have signage and telephone and a lot. And we think, according to the licensing board, you'd have to duplicate that. So now you got two signs, one says, you know, Jones Ford, and another one that says, Jones Auction House. It just didn't work. We tried some shortcuts; we just couldn't find any. [LB164]

SENATOR BRASCH: Is it for, say, a dealership was closing their dealership, there was no second generation that, so this dealership would be, basically, turning over complete inventory to another dealership? [LB164]

LOY TODD: They could do that under this practice if it was dealers only. [LB164]

SENATOR BRASCH: Okay. [LB164]

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LOY TODD: If they wanted to have a dispersal to the public, they could do that once under existing license, they couldn't do it three times. [LB164]

SENATOR BRASCH: Okay. I see. [LB164]

LOY TODD: That's why we think this is necessary. [LB164]

SENATOR BRASCH: Okay. [LB164]

SENATOR SMITH: Senator Price has a question. [LB164]

SENATOR PRICE: Thank you, Senator Smith. Thank you, Mr. Todd. Why do you suspect that whenever the law that currently is in place that they limit it to two? We've heard a lot of reasons of what we want to do, but why did we limit it? I mean, are we missing some...have the dynamics of business changed significantly from when this was enacted to now? Could you offer us a reason why we need to change now, we didn't do it before? [LB164]

LOY TODD: No, Senator; I wondered that myself. How...I think it was simply because they did want to distinguish between your average dealer occasionally conducting an auction versus a business that was in that specific business for that specific purpose. Why they made the distinction, I just...it's before my time, I don't know. [LB164]

SENATOR PRICE: Thank you. [LB164]

SENATOR SMITH: Any further questions for Mr. Todd? Seeing none, thank you for your testimony. [LB164]

LOY TODD: Thank you. [LB164]

SENATOR SMITH: We now move to opponents of LB164. Seeing none, we move to those in a neutral capacity. Seeing none, we move to closing. Senator Dubas waives closing. That concludes the hearing on LB164. We now move to LB165. Welcome. [LB164]

SENATOR DUBAS: Good afternoon, members of the committee. My name is Senator Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s, and I represent Legislative District 34. LB165 deals with the section of statute that covers manufacturer warranty service. Major vehicle manufacturers have some very specific criteria that their dealers must comply with in order to represent their product. Statutes clearly state the responsibilities of each party when it comes to warranty work. In order to establish fair compensation for such work, things such as diagnostics, as well as repair service, parts, and labor are taken into consideration. Reasonable consideration also includes prevailing wage rates by

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dealers in the community. The cost of doing routine maintenance work cannot be used. This bill states that tire repair or replacement, along with oil and fluid changes cannot be used to help establish those rates. Using these types of job figures is creating an inequity in the reimbursements that manufacturers are paying dealers for warranty work. Again, we'll have a representative from the New Car and Truck Dealers who will follow who can give a little bit more history on this. But we visited this issue a couple of years ago. That's when we included oil changes and other fluid changes, and now there appears to have been some issues with trying to include tire repairs and whatnot in figuring that warranty reimbursement rate. Those appear to be rather routine rather than specific warranty work and, therefore, we're kind of pulling down those rates that were being paid to the dealers. So...just coming back to make the statutes even more clear if that's possible. So with that, I would attempt to answer any questions you may have.  
[LB165]

SENATOR SMITH: Are there any questions for Senator Dubas? I see none. Thank you for your introduction of LB165. We now move to proponents of LB165. Welcome.  
[LB165]

LOY TODD: Thank you. Senator Smith, members of the committee, again for the record my name is Loy Todd, L-o-y T-o-d-d, president and legal counsel for the Nebraska New Car and Truck Dealers Association. I will try to be brief on this legislation. I can tell the committee that I thought we had this worked out a couple of years ago. It still should be worked out, but it's simply not. And so, unfortunately, we have asked Senator Dubas to introduce this legislation for us, and we greatly appreciate her willingness to do so. Very briefly, the history of our industry is such that, when you are a franchise dealer, you are subject to great pressures and controls from the motor vehicle manufacturers. All 50 states have passed franchise laws that try to level the playing field between dealers and manufacturers. Nebraska is no exception. Nebraska's laws are pretty similar to almost everywhere else, simply because we all learn from each other and deal with identical problems across the nation. No dealer in America is strong enough for the factory to worry about whether they shut them down or not or whether they survive or not. We have no bargaining power. Our bargaining power is through collective work and through state legislatures. One of the areas of concern for dealers, historically, is warranty work and service. It is certainly very important to the public. We have very stringent laws establishing the obligation of a manufacturer to honor its warranties. And, through them, we have obligations for the dealer to do their part in that regard. Now, when a manufacturer offers a warranty, the dealer has no control over that. The manufacturer says what it's going to be and how it's going to be delivered, whether it's five years, 50,000 miles, or six months, and until you get off the parking lot. Whatever it is, it is. And then the dealer is required to take care of that obligation. Virtually every state has a law that requires the manufacturer to compensate the dealer at a fair price, at a fair rate. Nebraska is very typical in its longtime requirement that the manufacturer reimburse the dealer at the dealer's own market rates, that is, the retail charges that the dealer

charges to nonwarranty customers. If you would come in and you didn't have a warranty, you just got your engine replaced or repaired or whatever, the dealer would charge you his labor rate. And that would be usually posted, and it would be so much an hour. According to our law, and many, many others, the manufacturer was supposed to match that rate. So if the dealer was charging \$50 an hour for mechanical work and a 40 percent markup on parts, the manufacturer was supposed to reimburse the dealer at the same rate because...and the theory is, that's what his market will bear. If that's what he's charging other people, it's fair to charge the manufacturer the same amount. I can tell you in Nebraska virtually no manufacturer obeys that law. But that's not unusual. There are probably only a couple of states in the Union where they do, and that's because they've been sued by individual dealers who had the courage to file that lawsuit. It hasn't happened in Nebraska. Okay? So...but typically, you know, they sort of work these things out. Well, we've been, for years, trying to find a solution to that dilemma. How do you prove it? How do you establish it? So we copied other states' laws. And a couple of years ago there was legislation passed by this committee and by the state of Nebraska that said that we're going to have a method of determining that, and here's what it's going to be. A dealer can apply to the manufacturer, no more than two times a year, to have their labor rate adjusted. And to prove what that local fair compensation will be, you will submit 100 consecutive repair orders that are for nonwarranty work, that is, for what the public is paying. And the manufacturer can...and you ask for your labor rate and say, here's a hundred repair orders, here's a hundred things we fixed for the public in our area, and here's what we charged them per hour, and here's what we marked up our parts. And then the manufacturer would look at that and say, okay, we think your labor rate is appropriate for your community, and here is how much it is, and here is how much we're going to reimburse you. In that formula, you...we...by statute, we remove things...and it says such as routine maintenance, such as oil changes, that kind of thing. We thought that was extremely clear. In fact, the manufacturers agreed to this legislation. We worked it out. We thought, you know, we were going to copy what other states did, that was going to be all fine. The reason you distinguish things like that is you don't have to be much of a mechanic to change oil or to do other routine maintenance. A lot of people can do that themselves. There was probably a time when I could have changed the oil in the car. I don't even know where the plug is now, but...and you can hire people to do different things. Some dealerships even have separate service lanes for that kind of stuff. And we have a differentiated labor rate for that kind of thing, which is why in the statute we pulled those things out; such as routine maintenance, such as oil changes. We thought it was all going great. Unfortunately, I was contacted by one of my members, not too long ago, and one particular manufacturer has decided that tire changes and tire repair and replacement is not routine maintenance. They're calling that mechanical. Now...the reason...there's a good reason they're doing that from their perspective. I don't think it's reasonable. We don't think it is right. But in that arena, the tire repair/replacement competition is tremendous, and you don't have to be tremendously skilled to do tire replacement/repair. But there's almost no markup in it. There are so many competitors

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out there who charge a flat rate or a very low labor rate to do that kind of stuff. And so we think that belongs in the category of routine maintenance and repair, the same as an oil change. We still believe that. And unfortunately, the manufacturer has found out that they can...if they insist on that being in the formula, it can make over a 10 percent variance in the labor rate. In the particular instance I'm talking about, it made over a \$10 an hour difference in how much the manufacturer would reimburse the dealer. I had hoped to not have to come here. I had hoped we could work it out. I discussed this with various manufacturers and their representative said...you know, basically, I'm asking them to give up and say, you're right; this doesn't make sense. Unfortunately, we haven't been successful. My dealer is left with one option. And the standard one we get with the manufacturers that's: "take it" or "leave it." Nowhere to go except courts. And nobody is going to sue anybody or jeopardize their franchise or their relationship with the manufacturer long term over something like this. Now the one group that the manufacturers will listen to are their lawyers. It's the only way I've found to really get a decision that we think is, well, we think...if their lawyers say, yes, the law clearly says that. And when I went through these discussions with the manufacturers and their representatives, I said, look at it; this is clear. Well, they're just saying, no, it's not. And so that's where we are. And I'm asking this committee to take a look at this and say, yeah, that's the kind of thing we're talking about because, quite frankly, it is differentiated. I'm somewhat surprised the manufacturers haven't realized that they would be better off if they did this, because they do reimburse it at a differentiated labor rate on some tire repairs and that kind of thing. When there's a recall or anything like that, we get a bulletin from them saying, on these tires we're going to pay you \$20 flat rate. Well, if they're truly mechanical, how can they do that? You know, they ought to like it the other way, but they don't. And so we're here to clarify and to make certain that tires and tire repair, which are really a low markup and low-skilled process, are not counted in...on the things that it takes a true mechanic to do, a certified mechanic, a skilled professional to accomplish. And as much as I apologize to you for bringing you these kinds of things, that's our industry, and that's what we're saddled with. So...now I know you'll hear from the manufacturers that they worked this out. Okay. They worked it out. And they did. They kind of came to a compromise, but they used this as a leverage to get to the compromise that they reached, and the issue doesn't go away. You can reapply for the new labor rate every...twice a year, and different communities are different. But...so this is not going away as an issue. Granted, they did resolve it, and they do have an hourly rate agreed to, but the issue is not gone. So with that, I would answer any questions. [LB165]

SENATOR SMITH: All right. Thank you, Mr. Todd. Are there any questions for Mr. Todd? I see none. Thank you for your testimony. [LB165]

LOY TODD: Thank you. [LB165]

SENATOR SMITH: Are there any other proponents of LB165? Seeing none, are there

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any opponents of LB165? Welcome. [LB165]

JOHN LINDSAY: Thank you. Senator Smith, members of the committee, for the record, my name is John Lindsay appearing as a registered lobbyist on behalf of the Alliance of Automobile Manufacturers. I think the manufacturers don't believe this bill is quite as black and white as maybe it appears to be. In the first issue...picking up with, I guess, the last comment. First thing is that this bill had its genesis in one dispute between one manufacturer and one dealer, and it got resolved. So in response, we need to change the field for all manufacturers and all dealers. Don't think that's quite the place for where we should be resolving contractual disputes. Dealers, I would suggest, are more sophisticated business than we might...business people than we might think. I think they're very good business people. And so you have sophisticated business person, a sophisticated business person working it out and the key is, they did work it out in this particular dispute. So we get to the question of the policy. And that policy is the...with respect to determining that retail labor rate...calculating that retail labor rate. The effect of taking things out of those labor rates, defining more things as routine labor is taking out the lower levels of what's being paid for, thus driving that average up. The intent was to get it across the board...look at what...what dealers raise for it, to try to arrive at that market rate. And we believe that the statute does that. We agree. Oil is done every 3,000 miles or 5,000 miles, depending on what's recommended. Yeah, that's routine maintenance. Tires, it starts to get a little more blurry. Are we talking about just for tires that are rotated, is that what we're looking at? Or are we talking about a replacement of a tire when somebody hits a curb and blows out a tire, which sounds like not that much of a difference? But if they hit a pole with part of the car, that would clearly be covered under...I mean it would not be considered routine maintenance. But when they damage a tire, it would be considered routine maintenance. So it's not quite as black and white, we don't think, as just saying all tire work is routine maintenance. It was stated that the competition in the area of tires and tire maintenance is...it has tremendous competition. And we agree; I'm sure it is. I think that's the goal, is to design...is to bring in market pressures to make sure that those rates are reasonable and that those rates are fair. I think when...finally, I think something that we have to take into consideration, is remember exactly what we're negotiating over. Remember what those issues are. And that is for warranty work; work that is going to be driven to the dealer. Work that the dealer does not have to advertise to get. It's work that is going to be performed there. So some of the other things that drive that market rate may not be present. So on behalf of the Alliance of Automobile Manufacturers, I'd be happy to answer any questions. We would urge this bill be indefinitely postponed. [LB165]

SENATOR SMITH: All right, I see Senator Price and then Senator Hadley. [LB165]

SENATOR PRICE: Thanks, Senator Smith. Thank you for coming to testify and showing the other side of the coin. But I am concerned and troubled when we talk about this concept of reimbursement. We don't have separate mechanics and staff hired only to do



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warranty work. We use the same labor pool. And each year we seem to have a bill that comes up that tries to level the playing field between the two agents in conflict here. But even further down is the fundamental concept of there being an equitable reimbursement to whatever dealership is servicing a vehicle that the manufacturer made that is under the warranty. And we constantly see an effort to pay less. And the manufacturers don't live in our communities. Manufacturers don't put food on those people's tables and...dual standard. And what all the people are looking for is an opportunity to make an equitable arrangement, and it seems that the battle wages on: we want to pay as little as possible, irrespective of your community and your people and your business practices. So in looking at that, do you feel that it's the agenda or the purpose for manufacturers to tell the individual businesses that provide warranty work to hire two different workforces? [LB165]

JOHN LINDSAY: No, and I think the first thing that has to be addressed is I think that while manufacturers certainly would like to pay less, my guess is that dealers would like to be paid more. And that's, I think, the way the world operates. [LB165]

SENATOR PRICE: Sure. [LB164]

JOHN LINDSAY: Nobody is...I don't think people are out there saying, pay me less. And I don't think people out there saying, I want to pay more. So...I think that is the whole tension, and I think you identify what the whole tension is. I think the goal of the manufacturers and the dealers, ultimately, is to arrive at an equitable payment that reflects market rates in the area in which that work is being done. The problem is, I don't think that both sides, because of their perspectives, are necessarily going to see that equitable number being the same. And that's why these things get negotiated out. And I know you've seen legislation before, and that's kind of what happens when contracts are, in effect, negotiated in legislation, that you're going to have sticking points. So you're going to have another line in here and there, when there is a dispute. I don't think manufacturers...manufacturers need dealers to survive. Dealers need manufacturers to survive. They are very much integrated. If the manufacturers aren't healthy, dealers can't sell cars. If the dealers aren't healthy, our cars aren't going to get sold. So I think it is very much a synergistic relationship that just has a particular dispute for a small item in a much broader relationship. [LB164]

SENATOR SMITH: Senator Hadley. [LB165]

SENATOR HADLEY: Thank you, Vice Chairman Smith. Mr. Lindsay, being just a poor person, I haven't bought a lot of new cars, but it seems to me that I always got a slip that said that the tire warranty was by Firestone or Goodyear or somebody like that. So how does the manufacturer of the Chevrolet I buy get involved with warranty work on the tires? [LB165]

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JOHN LINDSAY: I don't believe that they get involved in the warranty work on the tires. But I will confirm that with you. What we're talking about is determining what is that labor force that is being used by the dealer, what is the market rate for the items that they do. Tires are a part of what they do, as is body work, as is mechanical work, as are everything else. And different levels of skill are required to do any of that work, so how do you get to an average of what that number is for payment of warranty work? I don't believe we're talking about the warranty on the tires themselves. We're talking about those parts of the warranty that are covered by the manufacturers' warranty. But I'm going...we'll confirm that and get back to you. [LB165]

SENATOR HADLEY: Okay, okay, because I guess I'm a little confused. I guess I thought when they were pulling a hundred invoices, or whatever they use for the sample, these would be the type of work that would be done under warranty by a manufacturer. You know, I'm thinking of a...if they include the body shop, I'm trying to figure out how a manufacturer would get...I suppose they could get involved in some body work that was done. I was just curious, because I know that most tires have separate warranties by the manufacturers, I guess. So, yeah. [LB165]

JOHN LINDSAY: And I can...I would, frankly, defer to Mr. Todd's description of how the day-to-day process of how that works. I think he deals with that on a more day-to-day process, and I'm not going to take issue with what he has said. [LB165]

SENATOR HADLEY: Thank you, Mr. Lindsay, that's fine. [LB165]

SENATOR SMITH: All right. Senator Brasch, followed by Senator Janssen. [LB165]

SENATOR BRASCH: Thank you, Vice Chairman Smith. And thank you, as well, Mr. Lindsay, for your testimony. I'm looking here, and the purpose is to bring uniform conformity to warranty offers made by vehicle manufacturers for proper payment, for warranty parts and labor. And I also see that currently, 47 other states have included tire repair and replacement in their formula. What are the other...besides Nebraska, what are the other two states that do not? Are you... [LB165]

JOHN LINDSAY: I don't know. And, frankly, I appreciate hearing that. I didn't know how many states actually included in there, I knew it was a number, a significant number. I don't know. I will find out and get those states and what they use and get that to you. [LB165]

SENATOR BRASCH: Very good. Thank you. [LB165]

SENATOR SMITH: Senator Janssen. [LB165]

SENATOR JANSSEN: Thank you, Vice Chair Smith, and thank you, Mr. Lindsay. It's

probably statements and questions that are for you, but I'm sure I'll follow up with Mr. Todd as well as I learn more about this. But one thing you said is that this warranty work is something that--and I'll ask these all at once. I think you're a pretty intelligent guy, so you'll keep track of them--don't advertise for it. That was one question I have, because I bought a brand new truck at Diers Ford, and I don't have to take it back to them. It's my understanding I don't have to take it back to Diers Ford. Of course, as Senator Price said, they're big in our community, help out a lot, so I do; and out of a convenience factor as well. But I could take it there. So there is, I think, some value in the advertisement of what the dealerships are doing to maybe drive that warranty work there. Something that...I was...also had a question about, and it was talk to lower skill levels to change oil, tires. I know people that do this that are not certified mechanics, and is that a contention that...from the manufacturers that we're paying \$50 an hour for a noncertified mechanic to change your tires or rotate your tires or in some cases repair a blown out tire? And then, I tend to agree with you--maybe Mr. Todd will probably talk to me not to agree with you afterwards--but I think I would consider warranty work as rotating tires, balancing tires, and tire usage as a truck or car was designed for. And I appreciated your point about blowing out a tire. That wouldn't be considered routine maintenance, and is that where the rub is? Because I do think this is...I think this is too vague: tire repair or replacement, because that could be an accident, it could be an act of God. You pick up a rock or a nail on the way home, I take a lot of country roads on the way home. Where are we at with that? I mean, is there a middle ground here? Or is there...was there...obviously, the agreement is not working; that's why we're here. But...I asked a lot I just kind of was looking for the information back. [LB165]

JOHN LINDSAY: I think all legitimate points. I would say I don't know if there's a middle ground; I think we're happy to seek it. And I would tell you, I don't testify on behalf of the auto alliance very often here because, generally, things do get worked out. I think the manufacturers in Nebraska, the auto or the dealers association in Nebraska and the auto manufacturers have generally been able to work things out. In other states you see some huge fights. And I think that's...that may just be the Nebraska way that we do things here, but we'd be happy to visit and will visit with Mr. Todd to see if there is a middle ground. [LB165]

SENATOR JANSSEN: Maybe you can't answer this, but is there...is it the manufacturers' intent behind this that are saying that...like I said, that you're not paying a certified mechanic? I know we deal with this in other scopes of practice; I don't think there is such a thing. If I take it...there's a lot of times it's a high school kid working after school that's changing the oil or changing the tires around, is that part of the issue that they have, or is that not part of it? Is that just...because I've always had an issue with the fact that, hey, I'm paying X amount and, you know, this kid is 17 years old and yes, my tire is changed, but I feel like I'm almost overpaying him for it. [LB165]

JOHN LINDSAY: Yeah. And I think the question comes down to what accurately reflects

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what the workforce is doing and what is the wage rate for that work. While I think some of their mechanics, maybe they do do some tire work, and that's...they're overskilled for that, but they're not always working at the highest level of what they're skilled to do. [LB165]

SENATOR JANSSEN: Right. [LB165]

JOHN LINDSAY: I mean they're going to do a range of things. [LB165]

SENATOR JANSSEN: Sure. [LB165]

JOHN LINDSAY: Because cars have all sorts of different things that can get damaged or...and they will work on things that, I would guess, a lot of...as skilled as some of the mechanics are, a lot of what they do is below their top skill level. So the question is, again, how do you arrive at a rate that is fair to both the manufacturer and the dealer and... [LB165]

SENATOR JANSSEN: And perhaps it's worked in as overall low skill/high skill, maybe that's worked in; I don't know. That's just always a question I had. [LB165]

JOHN LINDSAY: And I think that's where the rub becomes is, how much of the lesser skilled items do you take out of the equation in trying to determine what the prevailing rate should be? [LB165]

SENATOR JANSSEN: Thank you. [LB165]

SENATOR SMITH: Senator Brasch. [LB165]

SENATOR BRASCH: Thank you. I just have one more question just looking here. Now, as I read this, it's brought by the new car dealers. And the warranty work that I would think would be in question is the regular...you know, you have a new car, you drive it off the lot. A lot of the diagnostics are now electronic. My phone will tell me it's time for an oil change, time to rotate. I get messages from OnStar, and then from the dealership that it's...especially in routine maintenance that they're wondering about, you know, this is a service that there's some agreement. Apparently, maybe when I go in there I might see another new vehicle or I'll...by the way you need this fixed and that fixed, that bring a person back to the dealership, can bring more continued business or revenue. And is it that little bit of revenue in there from the tires that, you know, I guess what is your concern here? [LB165]

JOHN LINDSAY: Well, the issue is that if...I think, as Mr. Todd mentioned, if you don't charge as much for a tire repair, the time of the mechanic, if you don't charge as much there, then the effective hourly rate is going to be smaller. Whereas, if you can charge

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for those more complex mechanical repairs... [LB165]

SENATOR BRASCH: Okay. [LB165]

JOHN LINDSAY: ...that they...that it's going to be at higher hourly rate. And the concern is, you're going to try to get a number of these work orders and try to determine what the average or the fair rate is from those orders. If we take out a bunch of the lower-paying rates, then we're just working off higher-paying rates, and the effect could be a higher hourly rate, which is a higher cost to the manufacturer. By the same way, if we took out some of the higher hourly rates, it would be a lower cost to the manufacturers. And so, ultimately, we're just trying to get to what is a fair rate, how do we determine what that is? And the question is, what else are they doing and what are they charging the public for all those jobs? [LB165]

SENATOR BRASCH: I see. Okay. No other questions. [LB165]

SENATOR SMITH: Senator Hadley. [LB165]

SENATOR HADLEY: Just one real quick question, and maybe Mr. Todd can answer this after the hearing. It says...in our little summary, it says 47 other states have included the tire repair and replacement in their formula. I guess I'm asking: are they including it to find the rate, or are they excluding it in 47 other states? [LB165]

JOHN LINDSAY: I don't know that. [LB165]

SENATOR HADLEY: Okay. I figured you didn't, Mr. Lindsay. So I was just asking that for the record, to clear it. [LB165]

SENATOR SMITH: Are there any additional questions for Mr. Lindsay? Mr. Lindsay, would you state and spell your name please? [LB165]

JOHN LINDSAY: John Lindsay, L-i-n-d-s-a-y. And I should know better, I should have spelled it to start. [LB165]

SENATOR SMITH: And I should have caught that. Sorry. All right. Thank you very much for your testimony. [LB165]

JOHN LINDSAY: Thank you. [LB165]

SENATOR SMITH: Are there any additional opponents to LB165? Seeing none, anyone testifying in a neutral capacity? I see none, Senator Dubas would you like to close? [LB165]

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SENATOR DUBAS: I'll waive. [LB165]

SENATOR SMITH: Senator Dubas waives closing. And that concludes the hearing on LB165. Thank you. [LB165]