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Transportation and Telecommunications Committee  
February 26, 2013

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[LB154 LB258 LB500 LB649]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 26, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB258, LB500, LB154 and LB649. Senators present: Annette Dubas, Chairperson; Lydia Brasch; Galen Hadley; Charlie Janssen; Beau McCoy; Scott Price; and Dan Watermeier. Senators absent: Jim Smith, Vice Chairperson.

SENATOR DUBAS: Good afternoon. I will call the hearing to order, and welcome to the Transportation and Telecommunications Committee hearing this afternoon. My name is Senator Annette Dubas. I'm the Chair of the committee. Today we will be hearing bills, LB258, LB500, LB154, and LB649. Just a few housekeeping duties before we get started. First, I'd like to take an opportunity, we have a group of students here today from Omaha Northwest High School. They've been in the building today. They did some legislative mock-hearing work this morning, talking about texting bill, and then they're here to watch the committee this afternoon. So, we would like to welcome you for joining us this afternoon. I'll go ahead and introduce committee members. Starting to my far left, Senator Lydia Brasch from Bancroft; Senator Beau McCoy from Omaha; Senator Galen Hadley from Kearney. To my immediate left is Anne Hajek. She's the committee clerk, so she's the one that's going to want to make sure you get your paperwork done, and she keeps accurate recordings of everything that we do at our hearing. To my immediate right is Joselyn Luedtke. She is the legal counsel for the committee. We'll be joined a little bit later by Senator Jim Smith from Papillion; he is the vice chair of the Transportation and Telecommunications Committee; Senator Scott Price from Bellevue; and then we'll be joined at a later time by Senator Dan Watermeier from Syracuse and Senator Charlie Janssen from Fremont. Senators will be coming and going throughout the course of the afternoon. They have bills to introduce in other committees, so we have a lot of work to do in a 90-day time frame so there's a lot of comings and goings, especially during committees. So those senators will be coming in, and others will probably be getting up to leave. We are assisted in our committee by two pages. We're very fortunate to have university and college students who help us up on the floor of the Legislature as well as in our committee setting. So if you need any assistance, they're here to help you out. If you have copies, you don't have enough for the committee--we like you to have around 15 copies--if you need additional copies made, get that to one of the pages, and they'll get those copies made for you. When you come up to testify, they'll take your sign-in sheet. Anything else you need, just let us know, and they will be here to help you. So our pages are Kaitlyn Evanko-Douglas from Montrose, Colorado. She's a senior at UNL, majoring in political science and global studies. And David Postier from York, Nebraska, who is a sophomore at UNL majoring in secondary education. When you come up to testify, back on the table, back there by the door, there are some of these green sheets. If you will fill those out with all the appropriate information and have that ready to hand in before you testify, again the

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page will take that from you. That helps us in our recordkeeping and transcribing business. If you're here, and you want to be as part of the record, but you don't want to come up to the table and speak, the pink sheet back on the table gives you a place to put your name and other information and whether you support or oppose the legislation. So if you want to fill that out, that will be picked up at the end of the hearing. When you come up to the table, first we ask you not to mess around with the microphone. I know that's our first inclination is to grab the microphone, but they're very sensitive. They're used more for recording than they are for actual amplification, but they are very sensitive, and so if you're wrestling a lot of papers or tapping, it will pick that noise up, and that makes it a little difficult for our transcribers when they're doing their business. So, again, try not to fiddle around with the microphone too much; we appreciate that. Ask that you state and spell your name, and even if it's a very simple name, spelling it for the record, again, assists our transcribers as they work to make the record very accurate. I don't always use the lights. There are a set of lights there on the table, and I'll probably take a count as to how many people are here to testify on the given bills. If there appears to be quite a few people, we will go to the light system. I'll give you five minutes for your testimony. At the end of four minutes...the green light will come on at the start of your five minutes. At the four minute mark, the yellow light will come on, and then at the end of five minutes, the red light will come on. Please don't feel you have to stop mid-sentence or mid-thought. Go ahead and finish what you have to say, and then the committee, of course, will have the opportunity to ask questions or follow-up on something maybe that they know you wanted to say but didn't get the opportunity to say. I ask that you please silence your cell phones or any other electronic devices. Again, out of respect for those who are testifying and the recording equipment is pretty sensitive and will pick those up. So I think we've taken care of all of the housekeeping, and we are ready to start with our first hearing, that's LB258. Senator Sullivan, welcome.

SENATOR SULLIVAN: Senator Dubas and members of the Transportation and Telecommunications Committee. I'm Senator Kate Sullivan. That's K-a-t-e S-u-l-l-i-v-a-n. I'm here today to introduce LB258. LB258 prohibits the operator of a school bus from using any interactive wireless communication device while the vehicle is in motion. In order to capture the different types of buses used to transport students, the language also applies to any school bus which transports pupils by direct contract with the pupils or their parents and not owned by or under contract with the school district or nonpublic school. The prohibition does not apply to a dispatch communication device. This issue was actually brought to me by a constituent last February. She was at the end of her rural driveway when a local school bus went by. The bus driver's attention was not on the road, and both hands were not on the steering wheel because the driver was holding something in his left hand and looking down on it. My constituent was within 20 feet of the bus on the driver's side. She could clearly see that the driver was not looking at the road. He did not make eye contact with her or gave away any indication that he had seen her at the end of the driveway. She was concerned because

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it appeared that the driver was not looking...was looking at his cell phone, so she called the school district. When the superintendent called her back, she was told that school district policy allows bus drivers to use cell phones in an emergency and also a stopwatch to check their times on their routes. When she called the Department of Education, she was told that rule 91 provides guidance to school districts. Rule 91 was revised last fall to prohibit texting. Rule 91 also says if the use of a handheld, wireless communication device is necessary, the driver shall pull onto the shoulder of the road or parking lots before using his device. It does not preclude the use of a two-way communication device. Ultimately, a federal regulation prompted my constituent to contact my office. A used Department of Transportation regulation went into effect January 3 of 2012 which prohibits commercial drivers from using handheld mobile phones while operating commercial trucks or buses. Serious penalties for CDL holders that violate the restrictions include: federal civil penalties of up to \$2,750 for each offense, disqualification from operating a commercial motor vehicle for multiple offenses, mandatory suspension of a CDL after two or more serious traffic violations, and commercial truck and bus companies that allow drivers to use handheld cell phones while driving face a maximum penalty of \$11,000. Approximately four million commercial drivers are affected by this regulation. My constituent wanted to know why Nebraska allows drivers of school buses, which quite frankly are transporting our most precious cargo, our children, to use cell phones. The plain answer is, it's our policy. We don't prohibit the use of handheld cell phones by school bus drivers. Perhaps we think common sense will prevail. The American School Bus Council states that while cell phones and other communication devices can play a crucial role in emergency situations, they should be used only when the school bus is stopped and in a secure location, except in extreme cases of emergency. The National Transportation Safety Board recommends restricting the use of cell phones by school bus drivers and commercial bus drivers while operating buses carrying students. Nineteen other states and the District of Columbia banned the use of cell phones by school bus drivers. I think we probably...I've not been a school bus driver, but I'm just assuming that it can be a very stressful job. Passengers can be noisy; they can be distracting. The last thing a school bus driver needs to do...needs to be doing is dialing, talking, or answering a cell phone while their school bus is in motion. Now, I'm not going to flood you with statistics. I know you received plenty of data from safety groups on all aspects of driving. However, there are a few things to remember. According to the National Safety Council, so far this year in the United States there have been estimated 200,000 crashes involving drivers while using cell phones and texting, approximately one every 24 seconds. School buses are the biggest type of mass transit in the United States and provide nearly nine million student trips every year. Nineteen states, and as I said, nineteen states and the District of Columbia already ban cell phone use by school bus drivers. While school buses are relatively safe, statistically speaking, school bus crashes account for less than 1 percent of fatal crashes each year. Their size and their weight pose a threat to other cars and, of course, to the bus passengers. A school bus accident doesn't need to cause a fatality to be traumatic for those young passengers.

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Bottom line, cell phone use distracts drivers, all drivers. Rather than a regulation recommending that a school bus driver pull over before using a cell phone, let's put it in statute to be clear. As nationwide distracted driving statistics increase due to texting and cell phone use, it's time for Nebraska to statutorily ban the use of cell phones by school bus drivers when their vehicle is in motion. Let LB258 do that. Our kids will be safer for it. Thank you for your time and interest. [LB258]

SENATOR DUBAS: Thank you, Senator Sullivan. Are there questions? Senator Price. [LB258]

SENATOR PRICE: Thank you, Chairperson Dubas. Senator Sullivan, thank you. Your bill brings two questions to mind for me. In reading through how this...rather tortuous how we say about, under contract to a school. I'm thinking in a Learning Community we have some children being transported by taxi all the way across two counties so they're acting as a school bus. Would it apply to that? [LB258]

SENATOR SULLIVAN: If they are under contract with the Learning Community, yes. [LB258]

SENATOR PRICE: Alright. Okay. Great. Second one is, when we talk about...you say, in motion, in the bill, and I submit that we should possibly tighten it up like they did in the rule, and if you're at a stoplight, you're not in motion. I would say that if you're in the process of transferring or transporting students, so if you're at a stoplight, it's just as important that you pay attention. That's not pulling over on the side of the road. See the...The stipulation and rule is you pull over on the side of the road. Many times we'll sit there at lights, and people won't be moving, or they're not paying attention, so we may want to consider...I didn't know if you had thought about that. [LB258]

SENATOR SULLIVAN: I hadn't really thought about that but that's a good point, and I'd certainly entertain that. [LB258]

SENATOR PRICE: Okay. Thank you very much. [LB258]

SENATOR DUBAS: Additional questions? Senator McCoy. [LB258]

SENATOR McCOY: Thank you, Chairwoman Dubas and thank you, Senator Sullivan, for bringing LB258 to us today. And obviously in your position as Chair of the Education Committee, you work closely with our school districts across the state, and I guess I would have a couple of questions for you. I believe it's already illegal to text while driving, correct, under the LB945 that we passed back in 2010? [LB258]

SENATOR SULLIVAN: Did you say illegal? [LB258]

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SENATOR McCOY: Texting. [LB258]

SENATOR SULLIVAN: Yes, yes. [LB258]

SENATOR McCOY: Yes, all right. Right. So I guess in the example that you noted in the beginning of your testimony, if that particular driver was texting, that would already be in statute, against the law, wouldn't it? [LB258]

SENATOR SULLIVAN: True. [LB258]

SENATOR McCOY: My, my...another concern that I would have is that if you had a...and I just happen to know this because as the owner of a construction company direct-connect, two-way radios, that's been a part of the construction industry for a long, long time. All of that, to large degree, is now being phased out because of the technology with smart phones and what not. I know because I'm going through this right now in our own business. I think it's going to be very hard anymore to have a direct-connect device that also is not a cell phone at the same time. So I think the exemption that you're listing in the statute might have to be corrected a little bit differently, potentially, provided you're not actually talking about a...some sort of a radio system, which I don't know if very many school districts employ anymore. I think it would be very difficult to find a direct-connect device in today's technology that is not also a cell phone. Is that something that you took into consideration as you were drafting this legislation? [LB258]

SENATOR SULLIVAN: Well, I think the bottom line is, sometimes it's hard to stay ahead of technology. And so, I think what you're raising are some of the details that admittedly whether we've...I've taken them...adequately taken them into consideration or not, I think these are some of the details and issues that need to be brought up before we...as we fine tune any legislation like this. So, your point is well-taken. [LB258]

SENATOR McCOY: A further question I would have and legal counsel has been kind to provide us some of the information...I do remember this now that a former colleague of all of ours, Senator Pahls had similar legislation in 2010 that was IPPed by the committee due to concerns over older drivers, I presume, probably in more rural areas of our state, for dispatch purposes maybe under some of the same concerns that I just raised. Has...Is that something that you kind of explored as you're putting in this legislation, the fate of that legislation three years ago and... [LB258]

SENATOR SULLIVAN: No, I hadn't. [LB258]

SENATOR McCOY: ...why that might have...how that all went down and if that would...the same situation would apply here? [LB258]

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SENATOR SULLIVAN: As I said, you know, I was initially in response to a concern that the constituent brought forward, and that's really my main intention. But then, the more I thought of it, that there's really not a clarification in statute to direct us in this regard. So in this whole process of deciding what's the appropriate way to go, you know, I think we need to reflect back on that conversation and decide how we can craft something that's going to work. [LB258]

SENATOR McCOY: I would agree with that. My last question would be, if I may, is obviously again in your position as Chair of the Education Committee where you deal with all of our school districts across the state, and literally, probably on a daily basis, I think how it currently is, is that the school districts would implement rules for their drivers along these lines in accordance also with some of the federal rules that you talked about at one time. Do you think that's the appropriate place for that? Or...Do you...I presume, perhaps not, because we're talking about this legislation, but, I mean, would it from a philosophical approach, I guess, Senator, would it...doesn't it make sense to allow our local school districts to...our locally-elected school board members to determine this for what's best for their district? Or...I guess I have a little bit of uneasiness along those lines. Maybe you'd care to elaborate along those lines. [LB258]

SENATOR SULLIVAN: Well, first of all, they are already governing by Rule 91 by the State Department of Education, but currently it says they prohibit texting. [LB258]

SENATOR McCOY: Is that a recommendation though or is that a requirement because I think in your testimony, I think you said they recommend drivers, unless I misheard. I don't believe that they required. [LB258]

SENATOR SULLIVAN: I'll have to clarify this, but Rule 91 was revised last fall to prohibit texting. [LB258]

SENATOR McCOY: Okay. All right. Well, I would love some clarification on that, too... [LB258]

SENATOR SULLIVAN: Okay, we'll get that. [LB258]

SENATOR McCOY: ...because it's my understanding that maybe it's being interpreted by some districts that that is a recommendation: if possible, get over to the shoulder. I don't...maybe I'm wrong on that, but it's my understanding that might be more of a... [LB258]

SENATOR SULLIVAN: You know, I have the rule with me. I'll look at that as we hear from the other testifiers, and maybe in my closing I'll clarify that and if not, we'll get some additional information to you. [LB258]

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SENATOR McCOY: I would appreciate that. Thank you, Senator. [LB258]

SENATOR DUBAS: Senator Price. [LB258]

SENATOR PRICE: Thank you, Chairperson Dubas. One final question. Would this be a primary offense? [LB258]

SENATOR SULLIVAN: I don't know. [LB258]

SENATOR PRICE: Because just in the conversations, what you said strikes me. If a law enforcement person sees this going on, is it a primary or secondary, in this case? And I don't know if that way...I know when we talk about, with CDLs that they have some different rules that apply, it's a primary. So I'm not sure where that blend is. If we can research that would be great. Thanks. [LB258]

SENATOR SULLIVAN: Sure. Be glad to. [LB258]

SENATOR DUBAS: Additional questions? Senator Brasch. [LB258]

SENATOR BRASCH: Thank you, Madam Chairman, and thank you for bringing this bill, Senator Sullivan. I do believe it's important drivers, especially school bus drivers, not text while in motion. There is talk to text. You know...I don't know, a hands-free method of texting, but again, I'm not very comfortable with even that when it comes to a school bus driver. Senator McCoy did bring up a very valid point on two-way communication devices of...we've run into that with our farm operations where, if there's no one fixing it, no one to, you know, buy it from, but cell phones are replacing a lot of that technology. There is hands-free cell phones...devices. I'm very curious. Do you know if school buses are required, even with the cell phone, that they should have the hands-free device? Radio Shack sells them now, where you don't necessarily have to have it coming through your visor, but I would highly encourage that along this line when we're talking about school bus safety. [LB258]

SENATOR SULLIVAN: I don't know, Senator Brasch, and I would suspect that the very few school districts have that capability in their buses, but I don't know, and we can find that out. I will remind all of you though that, you know, as I mentioned earlier about the precious cargo that's being carried by these school buses, and these are children, and we also know that distracted driving does cause accidents. And I think that's probably something important to keep in mind when we're weighing whether or not this is a good idea. It's very specific to school bus drivers and the reasons behind it. [LB258]

SENATOR DUBAS: Senator Hadley. [LB258]

SENATOR HADLEY: Chairman Dubas, thank you. Senator Sullivan, to me, when I

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looked at this bill, one of the key...there were two key points. One is, whenever the vehicle is in motion. [LB258]

SENATOR SULLIVAN: Right. [LB258]

SENATOR HADLEY: I think, you know, that obviously we want the driver focusing on the task at hand, and if they have an emergency they can certainly pull over. It may be difficult, but they can do that. And the second it...it's any type of interactive...so those districts that... [LB258]

SENATOR SULLIVAN: Exactly. [LB258]

SENATOR HADLEY: ...are using a cell phone as their primary device, that fits into here. [LB258]

SENATOR SULLIVAN: Uh-huh. It does. [LB258]

SENATOR HADLEY: And also our texting ban is a secondary ban, so if a patrolman...if it does apply, if a patrolman sees a school bus driver texting, they cannot pull them over, if they fall into the same rules that are rules of the road because it's a secondary offense. Thank you, Senator Sullivan. [LB258]

SENATOR SULLIVAN: Thank you. [LB258]

SENATOR DUBAS: Additional questions? Seeing none, thank you. [LB258]

SENATOR SULLIVAN: Thank you. [LB258]

SENATOR DUBAS: Could I have a show of hands how many are here to testify in support of LB258? Let's see, one. How many opposition? No opposition. Neutral? Okay, this is going to go pretty quickly. I'll invite proponent...And just because you didn't raise your hand doesn't mean you can't come up if something catches your ear, and you want to address through a testimony, but...Welcome. [LB258]

JASON HAYES: (Exhibit 1) Hi. Good afternoon, Senator Dubas and members of the committee. For the record, my name is Jason Hayes, spelled J-a-s-o-n H-a-y-e-s, and I represent the 20,000 members of the Nebraska State Education Association. NSEA supports LB258. We believe this is a no-nonsense solution to help ensure the safety of our children while they're being transported to and from school. We appreciate that Senator Sullivan introduced the bill and urge you to support and advance the safety proposal contained in LB258. Thank you for your time. [LB258]

SENATOR DUBAS: Thank you, Mr. Hayes. Are there questions? Senator Hadley.



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[LB258]

SENATOR HADLEY: Chairman Dubas. Mr. Hayes, thank you for coming in. And you may not know it, but...is there a way you can find out? How many children every day are transported by school buses in the state of Nebraska? Maybe you can...you don't have to know it. [LB258]

JASON HAYES: I think that would probably be a better question for the school districts, but I can certainly find out for the committee and get back to you. [LB258]

SENATOR HADLEY: Okay. Okay. Thank you. [LB258]

SENATOR DUBAS: Additional questions? Seeing none, thank you for your testimony. [LB258]

JASON HAYES: Thank you. [LB258]

SENATOR DUBAS: Further proponents for LB258? Do we have opponents to LB258? Anyone in the neutral? Senator Sullivan, would you like to close? [LB258]

SENATOR SULLIVAN: Still trying to collect my thoughts. (Laugh) [LB258]

SENATOR DUBAS: Didn't even give you a chance to gather your thoughts. [LB258]

SENATOR SULLIVAN: I'm not sure that I have any additional information other than to say that, okay, we've got Rule 91 that indicates use of a handheld wireless communication device and identifies that drivers shall not use this type of communication. But this is not in the law, and that's what I'm bringing forth for you today. It's in Rule 91. I would like to give it the strength of law...and hope you will consider that. [LB258]

SENATOR DUBAS: Very good. Senator McCoy. [LB258]

SENATOR McCOY: Thank you, Chairman Dubas. Thank you, Senator. And now just so I understand, is that Rule 91 and where does that come from again? Just so I have this straight. [LB258]

SENATOR SULLIVAN: The State Department of Education. [LB258]

SENATOR McCOY: Okay. Thank you. [LB258]

SENATOR DUBAS: Additional questions? Seeing none, thank you very much. [LB258]

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SENATOR SULLIVAN: Thank you very much. [LB258]

SENATOR DUBAS: That will close the hearing on LB258. Next we will move to LB500, Senator Brasch. Welcome, Senator Brasch. [LB258]

SENATOR BRASCH: Thank you, Chairman Dubas, and good afternoon, members of the Transportation and Telecommunications Committee. I am Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. I am here today to introduce LB500 which I have brought at the request of the Nebraska Association of School Boards and Lincoln Public Schools to provide an exception to a provision contained in LB1039 that I introduced last year. LB1039 allowed a school bus to stop to load or unload students if a sign is displayed indicating a school bus stop is ahead. This change took into account bus stops where there is no opportunity to provide for 400 feet of visibility as in current law, because a bus stop cannot be relocated such as a designated bus stop for a young child who cannot walk greater distances. This provision was intended to protect school children loading and unloading on state highways and country roads in a rural setting. A school district...as school districts have moved towards implementation of this requirement, some have discovered that this would place an erroneous requirement on bus stops made within the city or a village. For example, Lincoln Public Schools would be required to place over 400 signs, custom stops, largely in residential areas. My understanding is that these stops are largely made for students with special needs. LB500 provides an exemption for school districts from the sign requirement for school buses making a stop 400 feet of clear vision in either direction. The exemption is limited to school buses stopping to load or unload pupils inside the corporate limits of any city or village, except on any part of the state highway system within the limits of a city or village. The safety of our school children has been my number one priority in shaping policy surrounding school bus stops. It is my belief that school bus stops made in town and largely in residential areas have been traditionally very safe. Placement of signs seems unnecessary and ineffective, particularly when stops are made within relatively of short distances of one and another. With the passage of LB500, the original intent of the signage provision contained within LB1039 remains intact. As I conclude, I want to thank you for your time. I believe that John Bonaiuto, or possibly I saw Brian behind me, of the Nebraska Association of School Boards, would be happy to answer any of your questions from the association's perspective after testimony has been shared with the committee. Again, thank you for your time, and I would be happy to answer your questions. [LB500]

SENATOR DUBAS: Very good. Thank you, Senator Brasch. Are there questions? Seeing none, thank you. Doesn't look like we have too many people in the room so I probably won't be doing any count, and we probably won't be using the lights, so...Proponents for LB500. [LB500]

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BRIAN HALE: (Exhibit 2) Senator Dubas, members of the committee, my name is Brian Hale. I represent the Nebraska Association of School Boards. We are here today to support LB500. This bill is intended to maintain the ability of school districts to provide convenient pick up and delivery of school children who ride the bus to school. This issue was created, as Senator Brasch said, last year through LB1039. This provision that required signage at every bus stop unless you have 400 feet of clear view. Certainly, in situations where traffic is moving at highway speeds, this seems reasonable, but, as often happens when we put the provisions of this bill to the local level, and the reality of the matter is there are school districts all over the state that provide transportation for preschool children, for special ed kids, and often do that even curbside or somewhere that's very convenient so as to avoid having those students have to transport themselves five, six, eight blocks to their homes. So, many more districts also provide pickup and drop-off services in residential areas where speed limits are much lower. Four hundred feet is nearly a city block and, at 20 or 25 miles an hour then in a residential zone, that's a long ways. And as those special ed and preschool students move on, the locations of their residences change from year to year. So you have to post a sign here this year, and then next year the preschooler is around the corner, and so you have to pull up a sign and plant another sign. The prospect of erecting a sign at each of those bus stop locations in residential areas has really created some budgetary nervousness with school districts throughout the state, and city and municipal entities who might be charged with erecting those signs. This bill provides the exemption for school districts and will allow schools to continue to serve the entire bus-riding clientele without imposing additional budget burdens statewide. And so in that regard, we urge you to advance this bill to General File. [LB500]

SENATOR DUBAS: Thank you, Mr. Hale. Could I ask you to spell your name, please? [LB500]

BRIAN HALE: Oh, yes. B-r-i-a-n H-a-l-e. [LB500]

SENATOR DUBAS: Thank you. Are there questions for Mr. Hale? Senator Hadley. [LB500]

SENATOR HADLEY: Senator Dubas, thank you. Mr. Hale, thank you. How do the students find out where the bus stop is, if there's no marking on a bus stop? [LB500]

BRIAN HALE: Well, I think when they enroll in school there's information, and following me will be somebody who actually does that job for Lincoln Public Schools... [LB500]

SENATOR HADLEY: Okay. [LB500]

BRIAN HALE: ...but each of the students get information that it's at the corner of 6th and Jackson, or whatever the case may be, or there's a map that shows them, here's where

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the pickup spots are. And that is more for the general purpose. In many cases, special ed kids have an IEP, and they're wheeling their chair out to the curb, and they pick them up right outside their house. And so those arrangements are made as, again, as the student enrolls and discusses transportation options with the district. [LB500]

SENATOR HADLEY: Okay. Thank you. [LB500]

SENATOR DUBAS: Other questions for Mr. Hale? Seeing none, thank you. [LB500]

BRIAN HALE: Thank you. [LB500]

SENATOR DUBAS: Next proponent for LB500. [LB500]

BILL McCOY: (Exhibit 3) Chairperson Dubas, Senator Brasch, and other distinguished senators and members of the Transportation and Telecommunications Committee, thank you for allowing me to come this afternoon and speak before you regarding LB500. My name is Bill McCoy, B-i-l-l M-c-C-o-y, and I'm the director of custodial services and transportation for Lincoln Public Schools here in Lincoln, Nebraska. And I'd like to speak to you today in support of LB500. As you're aware, LB500 adds a provision that an exemption for school districts from the sign requirement for school buses making a stop without the 400 feet of clear vision in either direction, and the exemption is limited to school buses stopping to load or unload pupils inside of corporate limits of any city or village except on any part of the state highway system within the city limits. I believe I'm not only speaking for myself at LPS but also for some of my other colleagues in other school districts across the state in that this proposed change makes sense on several levels. Firstly, LPS makes every effort to locate bus stops in the safest and most reasonable locations possible. If for some reason the school bus driver believes the stop, after being established by our office, is located in an unsafe location, they're trained to bring it to management's attention, and staff will then assess the situation to evaluate the concern and, if necessary, make adjustments in that location. As a little bit of background for you, LPS presently transports about 2,445 students to and from school in LPS school buses. We have approximately 2,883 active bus stops throughout the city of Lincoln that we provide service to our students for. The majority of transportation service provided to LPS students is essentially curb to curb. Our major groups being served are special education students, Head Start and Early Child in Special Education. And in all of these instances, excluding perhaps some of our regular education students, we typically pick up and drop-off the child or children at their home residence. Of particular concern, although not a single factor, are children in wheelchairs or smaller children needing special assistance to and from the bus. In these instances, moving the bus stop to an alternative location away from the residence because the stop does not meet the 400 foot criteria, would not only be very difficult on the part of the child but presents some undue hardships for families as well. As stated previously, we have about 2,883 stops within the city currently. However, it's not

possible to quantify exactly how many of these stops might be less than the 400-foot clear vision. For illustration purposes, I have included in my handout that I provided today an example. It's one example, but I think it's reflective of a number of scenarios that perhaps could exist within the city or other communities. This particular route is a special education route which is curb to curb servicing an area in northwest Lincoln. The two documents that are attached, the first copy represents the route path and stops for a particular special education route that we provide service for this current school year. The second is a map from the city of Lincoln detailing two separate locations at which special education students are picked up and dropped off. And in both examples, I believe it provides a good visual illustration of the problem with the 400-foot wording. And as you can see, hopefully in the map, in both scenarios, residential, the stops are located on curb streets with vision of less than 200 feet in either direction. As to how many again of these scenarios exist within our current operation, I'm not sure that we can completely calculate, but I can tell you that we have a total of 450 individual bus runs in the city. And so I think it's safe to say that we have this situation repeat itself in a number of locations. One particular area of the city where it might be more rampant than another would be in an area where we do not have the traditional grid system, but rather it's many curved roadways which you find a lot in many of the newer residential areas. These are safe locations to pick up and drop-off students, but again in our mind, they don't meet the 400-foot criteria as indicated currently in legislation. So, of course, if the proposed language is not approved, where does that leave school districts? Well, firstly, I think we need to look at it from a couple of different perspectives. First of all, looking at the 400 feet. And when you consider the 400-foot provision, that's essentially the length of a...one and a third football fields, and when considering the distance from the perspective of human reaction time and the necessary stopping distance required for a passenger vehicle, I thought you would find the following statistics relevant. At 70 miles per hour the required stopping distance, and I'm presuming these statistics are based on dry pavement, would be 464 feet. At 60 miles per hour the required stopping distance would be 359 feet; at 50 miles per hour, 268 feet; at 40, 189; at 30 miles per hour, 123 feet; and at 20 miles per hour, 69 feet. And the point here is that, for most of our residential service that we're providing in an urban or city area, most of our vehicles would be traveling in that 20 to 25 miles per hour range. So, given the aforementioned variables, it would suggest that the average stopping distance required for city driving would be very conducive to the proposed legislation that you're looking at today. Other factors that districts have to deal with in the city-urban setting, if the change is not adopted, would be, one, what would this really mean in a court of law? If an accident occurs, and a lack of vision was a contributing factor, would a school district's selection of the location for loading and unloading if less than 400 feet without the proper signage, would that be asserted to be a breach of duty supporting a negligent claim? In my opinion, this places school districts in a very awkward position. Secondly, who is responsible for the sign? The sign would need to be placed on land under the control of the Department of Roads or the city or the county, so their approval would be required at a minimum. It's anticipated that the cost of the signage would be imposed on the

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school district. However, I do not know what the cost might be. However, I think it's probably safe to say, based on the number of potential locations that could come into play, that the cost could be fairly significant. So, for the above, aforementioned reasons, I would strongly encourage you to support and move forward LB500. So, thank you very much, and I'd certainly try to answer any questions. [LB500]

SENATOR DUBAS: Very good. Thank you, Mr. McCoy, for all of the information. It's very helpful. Are there questions for Mr. McCoy? Senator McCoy. [LB500]

SENATOR McCOY: Thank you, Chairman Dubas. Thank you, Mr. McCoy, for being here today. Just want to make sure I understand a point to your testimony, that I'm understanding this correctly. So, LPS transports about, essentially 2,500 students and I'm trying to understand...yet you also say in the next sentence, we have approximately almost 2,900 active bus stops. [LB500]

BILL McCOY: That's correct. [LB500]

SENATOR McCOY: Do you mind elaborating on that? I'm trying to understand how you have more bus stops than the number of students, but. [LB500]

BILL McCOY: We have students with multiple bus stops, meaning that they could have one stop that's services them in the morning, but they could have alternative stops or more than two stops, perhaps, that are provided service to in the afternoon. Meaning that during the course of the day, we may be bringing them to school, taking them to another location and then from there, another location after that. So, that's why there are more stops than actually students that are being serviced. [LB500]

SENATOR McCOY: So, under the previous legislation Senator Brasch had, the reason we're talking about LB500, then you would be required to post signage at all of those stops. So even all of the multiple stops, even if it's one student that maybe has two or three active stops, the signage would have to be posted at every one of those stops. Whether they were used on a frequent or infrequent basis wouldn't matter. [LB500]

BILL McCOY: If they, in fact, did not meet the 400 foot of clear vision, under the way the law is currently written now, yes, we would have to, or we should. [LB500]

SENATOR McCOY: Okay. Thank you. [LB500]

SENATOR DUBAS: Senator Price. [LB500]

SENATOR PRICE: Thank you, Chairperson Dubas. Then, that would also complicate things because of the mobile and changing demographics. So you would have one student in the house, and if they picked up and moved, you'd no longer have it there, so

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you'd have to deconstruct the sign perhaps. Someone could move in three houses farther down, and you'd have to redo another sign. So we're really dealing also with that transit nature of student turnover. [LB500]

BILL McCOY: Yes, we do. With some of these particular student groups, there is...they are moving throughout the year. So that presents a unique challenge in itself, and that the signs could constantly be moving as well to keep up with where the population is moving to. [LB500]

SENATOR PRICE: Thank you. [LB500]

SENATOR DUBAS: Other questions? Seeing none, thank you again, Mr. McCoy. [LB500]

BILL McCOY: Thank you very much. [LB500]

SENATOR DUBAS: Additional proponents for LB500? Are there any opponents? Anyone in the neutral? Seeing none, Senator Brasch, would you like to close? Senator Brasch waives closing. Very good. That will close our hearing on LB500, and we move on to LB154. Senator Dubas. [LB500]

SENATOR HADLEY: Senator Dubas, welcome to the Transportation and Telecommunications Committee.

SENATOR DUBAS: Well, thank you. It's a pleasure to be here.

SENATOR HADLEY: We're very easy on people, so we'll let you start and tell us all about LB154.

SENATOR DUBAS: Very good. Thank you, Senator Hadley. 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. I represent Legislative District 34. In 2009, Senator Gwen Howard introduced and successfully passed legislation that required by law for people to move to the outside lane when passing authorized emergency vehicles or road assistance vehicles. Those assistance vehicles include those operated by the Department of Roads, Nebraska State Patrol motorist assistance vehicles, Department of Transportation registered towing or roadside assistance vehicles. And now you will see signs along our roadways reminding people that they are required to move over when they see emergency or road assistance vehicles. Last fall, the Rural Electric Association approached me and asked if I would consider amending the law to include utility vehicles. And that is simply what LB154 intends to do, add utility service vehicles operated by a utility company to the statute. There will be testimony following me that will elaborate on their request a little bit more, but quite often they're, you know,

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responding to storm situations or downed power lines or gas lines or what have you, and they are along roadsides in very similar situations to these other vehicles, and so they have requested to be included into the statutes. So with that, I'd be happy to try to answer any questions you may have. [LB154]

SENATOR HADLEY: Are there questions for Senator Dubas? Senator McCoy. [LB154]

SENATOR McCOY: Thanks, Senator Hadley and thank you, Senator Dubas. But a quick question I would have, and committee legal counsel noted that, perhaps down the road, any vehicle that uses flashing lights might want to be included in the statute. I'm sitting here trying to think what other...we've talked about traffic assistance and, obviously, law enforcement and talked about utility. I was trying to think, what other...what other entities out there or anyone out there would have flashing lights that would also might need to be in the statute? Is that...or am I not thinking of something or what...? [LB154]

SENATOR DUBAS: Well, I mean we've dealt with other requests from people who want to have flashing lights. We've dealt with storm spotters and those types of things. We just had one dealing with community crime stoppers who, you know, want to have those types of lights on there. I mean, certainly anytime you start to add to a list, you're opening a door, but I think as long as we are justifying what it is that's requiring you to be on the list, to me having those people come forward maybe there would be a little less justification to adding to that list. But again, that's something that, you know, always has to be taken into consideration. [LB154]

SENATOR McCOY: I would agree. Thank you, Senator. [LB154]

SENATOR HADLEY: Other questions? Senator Dubas, I...more of a statement. I, for whatever reason, going through the Internet I ran across a chat room where the people across the country were quite upset with this particular provision across the country because they felt that the law enforcement officers were punishing people by using this. And in some states, the fines are three to four hundred dollars to do it. So this is causing some concern across the states, the usage. And I have no idea how Nebraska...and it might be interesting sometime to hear how this is working from the State Patrol standpoint. [LB154]

SENATOR DUBAS: I think our statutes say that these have to be legitimate stops. There's actually things that...they can't be setting up a trap, so to speak, where they can catch people to see if they're going to move over, but I know where that concern is coming from. [LB154]

SENATOR HADLEY: Yeah, okay. Thank you. Are there proponents? Please come forward. [LB154]



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TROY BREDENKAMP: (Exhibit 4) Senator Hadley, members of the committee, Chairperson Dubas, my name is Troy Bredenkamp, T-r-o-y B-r-e-d-e-n-k-a-m-p. I'm the general manager of the Nebraska Rural Electric Association. So, on behalf of our 34 member systems who provide power to about 275,000 Nebraskans over 95,000 miles of distribution lines, that I come before you today. I'm also here on behalf of the Nebraska Power Association. We want to thank Senator Dubas and Senator Howard for their sponsorship of this provision. It is just as simple as she said. It really does add utility vehicle, utility service vehicle operated by a utility company to the existing move-over statutes. This certainly is a safety issue for our linemen and our crews. They operate within the same right of way as the emergency vehicles would. Typically, they are responding to a power outage or some kind of a repair situation, so this is somewhat of an emergency situation on most occurrences. And for us, it would just be a level of safety that we do not enjoy today, by adding utility vehicles to the move-over statute. So with that, we are certainly lending our support to LB154 and would urge its passage and continuation. [LB154]

SENATOR HADLEY: Are there questions for Mr. Bredenkamp? This is your maiden voyage in front of the Transportation Committee. [LB154]

TROY BREDENKAMP: You know this is. Well, yeah, I was here 12 years ago in another capacity. Maybe not in front of Transportation, but this is my maiden voyage since my return, so... [LB154]

SENATOR HADLEY: Good. [LB154]

TROY BREDENKAMP: ...I appreciate you all going easy on me, Senator Brasch. [LB154]

SENATOR HADLEY: Senator Brasch. [LB154]

SENATOR BRASCH: I do have a question. Thank you, Senator Hadley and thank you. Will these vehicles also start moving at high speeds? I have yet to see, you know, in my rearview mirror a utility truck, or should they be? [LB154]

TROY BREDENKAMP: This would be stationary, them doing work on the side, in the easement on the side of the road with their lights running. [LB154]

SENATOR BRASCH: It's not for... [LB154]

TROY BREDENKAMP: They would have to have their lights running. [LB154]

SENATOR BRASCH: Okay. It's not in movement, they're not trying to be like an

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ambulance or a fire truck or, it's just at work stations. [LB154]

TROY BREDENKAMP: Correct. Yeah. [LB154]

SENATOR BRASCH: And currently don't they have like cones and different things in place already? [LB154]

TROY BREDENKAMP: They will typically try and set up some kind of a zone of safety. But again, there is no requirement for them. In a situation where you have a controlled access highway, where you have more than two lanes, there is no requirement for that passing vehicle to move over to that far lane. And this would allow for that. [LB154]

SENATOR BRASCH: Okay. Okay. I have no other questions. Thank you. [LB154]

SENATOR HADLEY: Any other questions? I have one, Mr. Bredenkamp. You know, it's a very easy addition. A utility service vehicle, utility company, is the...are those commonly used terminology so there wouldn't be a question of what a utility service vehicle is, or a utility company? [LB154]

TROY BREDENKAMP: I believe it is. I don't know whether we have that actually defined in statute, but to get to Senator McCoy's question whether people keep coming back asking for more and more, this certainly, I think, would not only qualify for our vehicles in terms of electrical distribution power type companies. But I believe the Telecom folks which would be operating as a utility in the right of way using yellow flashing lights would also be afforded some protection with this. So I don't exactly know, Senator, where that line would end, but certainly I think all the utilities...the concept is to include all of those utilities that do that work for the public good within that right of way. [LB154]

SENATOR HADLEY: Okay. Thank you. Seeing no other questions, thank you, Mr. Bredenkamp. [LB154]

TROY BREDENKAMP: Thank you. [LB154]

SENATOR HADLEY: Appreciate it. Further proponents. Opponents? Neutral? Senator Dubas, are you waiving closing? Now that I screwed it up, you can come back. [LB154]

SENATOR DUBAS: We'll move on to the next bill as soon as Senator Karpisek gets here. Okay, we're going to have a little pause in the action here. Apparently, Senator Karpisek is a busy man today, and he's introducing another bill, so we'll get things coordinated here, so we'll take a little break.

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SENATOR DUBAS: Welcome, Senator Karpisek.

SENATOR KARPISEK: (Exhibit 5) Thank you, Senator Dubas. I apologize. I was in another committee introducing another great piece of legislation. For the record, my name is Russ Karpisek, K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB649 would change the penalty for driving without an interlock system after being convicted of driving under the influence from a Class IV felony to a Class I misdemeanor. This would only apply if the driver had less than .02 blood alcohol content in their system. If they're over .02, the Class IV felony is still implemented. And I just remembered that I have an amendment here for you that really doesn't change too much of the bill, but is written better, maybe. My point on this is that a person who is driving sober, but without an interlock system, should not be made a felon. Even a second or third low DUI could get a Class W misdemeanor, but I think we will have a little bit of what-ifs that have happened behind me. But if I have an interlock in my vehicle, and it's not working maybe, and I hop in the other vehicle to go to work, stone sober, get pulled over, get in a wreck, I'm...could be a felon. I think that that is just too high of a cost. I'm not saying that the interlocks aren't a good thing. I think that they are. I think we should handle them just as we do, but for a DUI, your first offense being a Class W misdemeanor, and then driving without an interlock, making that a felony, to me just seems to be far too much of a jump. And I think that it, you know, once you're a felon, I mean that stays with you. That's going to influence you for the rest of your life. So again, there are some people behind me that are much more eloquent and familiar with the issue, but I'd be glad to try to take any questions now. [LB649]

SENATOR DUBAS: Are there questions for Senator Karpisek? Senator Price. [LB649]

SENATOR PRICE: Senator Karpisek, understanding the scenario you put forth, you said stone-cold sober, and I'm wondering what the difference between stone-cold sober and .02 percent is because, if...I could see if you had a complete absence of alcohol in your system...in your system, and you were pulled over, then you can begin the conversation of saying, hey, have we hamstrung you, did we cobble you? But when you say .02, particularly with judge's decree (inaudible), .02 is not stone-cold sober. So I'm wondering how you rationalize between those two statements and what I believe the legitimate challenge set forth. You know, if the car doesn't work, I had to get to work, I took another vehicle. [LB649]

SENATOR KARPISEK: I...and I, if we have to take the .02 out, that's fine. My thought is if you took some cold medicine, something like that, and you get pulled over, obviously, you've not been pounding down a shot of Jagermeister before you went to work, but maybe cold syrup, something like that. [LB649]

SENATOR PRICE: Okay. Thank you. [LB649]

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SENATOR KARPISEK: Thank you. [LB649]

SENATOR DUBAS: Other questions? Senator Hadley. [LB649]

SENATOR HADLEY: Senator Dubas. Thank you, Senator Karpisek. We have a letter from Director Lahm. Does that...is that...is your amendment... [LB649]

SENATOR KARPISEK: No, and I think...well, is it Director Lahm? You know, I don't have....I have Ram, R-a-m-g-e, is that...? [LB649]

SENATOR HADLEY: No, L-a-h-m. [LB649]

SENATOR KARPISEK: I do not have that letter. [LB649]

SENATOR HADLEY: Maybe we can get a copy. [LB649]

SENATOR KARPISEK: I have one from...oh, maybe I do. Sorry. Maybe that's my other bill. (Laugh) I may. I know there was something to do with if we would be in federal guidelines, is that it? [LB649]

SENATOR HADLEY: Well, it's something about a lesser...I haven't had a chance to really look at it closely, but maybe... [LB649]

SENATOR KARPISEK: All right. Well, I know there was a letter talking about if we would be, still be in federal compliance with this, and it said that we would be because we're still giving out a penalty but not the felony. [LB649]

SENATOR HADLEY: Okay. [LB649]

SENATOR DUBAS: Senator McCoy. [LB649]

SENATOR McCOY: Thank you, Chairman Dubas, and thank you, Senator Karpisek. A couple of questions and having...this sounds like you not having the benefit of not having read Director Lahm's letter, I guess I'll give you an opportunity at a later time to read that. But there definitely are some...I think probably some good points there brought up as to some concerns about this legislation. Like, I guess, I would go to another question and that would be...I'm trying to kind of scan through here since your amendment strikes the original sections. [LB649]

SENATOR KARPISEK: Yeah, and... [LB649]

SENATOR McCOY: Can you...can you kind of...I'm trying to quickly scan through here, what are the differences? I guess I'm having a hard time seeing what the difference is.

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[LB649]

SENATOR KARPISEK: There really isn't much difference in the amendment. [LB649]

SENATOR McCOY: What would be the "much"? [LB649]

SENATOR KARPISEK: It's just written, I think, in a way that's easier to read. [LB649]

SENATOR McCOY: Okay. [LB649]

SENATOR KARPISEK: We had quite a few people calling and asking what we were really trying to do, thought we were trying to make it so you wouldn't get a felony if you were driving the second time and intoxicated. Not what we were trying to do at all, so I think that the amendment is just drawn up easier to read. [LB649]

SENATOR McCOY: Well, that actually is one of the concerns I think or at least speaks to one of the concerns from Director Lahm which you just articulated. But I guess to the fiscal note, it would appear that Department of Corrections would interpret this that being...was this designed to somehow try to get at prison overcrowding or...? [LB649]

SENATOR KARPISEK: No, not at all. I didn't even think of that until I saw the fiscal note. [LB649]

SENATOR McCOY: Okay. So it's not designed to have those people somehow be released that are driving on a revoked license or something like that? [LB649]

SENATOR KARPISEK: No, no, honestly, one of the testifiers came to me with it who is a friend, and my attorney, and we looked at it. And hence, the first reading of the bill was my feeble attempt at bill writing. [LB649]

SENATOR McCOY: Okay. Thank you. [LB649]

SENATOR KARPISEK: Thank you. [LB649]

SENATOR DUBAS: Additional questions? Seeing none. [LB649]

SENATOR KARPISEK: Thank you. [LB649]

SENATOR DUBAS: Our first proponent for LB649? [LB649]

CHRISTOPHER LATHROP: Good afternoon, Senator Dubas, committee members. I appreciate your time here. I'll try and be very brief. When Senator Karpisek offered this bill--I'm speaking on behalf of the Nebraska Criminal Defense Attorneys Association--we

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read the bill and...in our group, and we... [LB649]

SENATOR DUBAS: Can I stop you for a minute and have you state and spell your name? [LB649]

CHRISTOPHER LATHROP: Oh, sure. I'm terribly sorry. My name is Christopher Lathrop, C-h-r-i-s-t-o-p-h-e-r, last name is L-a-t-h-r-o-p. [LB649]

SENATOR DUBAS: Thank you. [LB649]

CHRISTOPHER LATHROP: I tried to remember that too. [LB649]

SENATOR DUBAS: (Laugh) It's hard. [LB649]

CHRISTOPHER LATHROP: I...we sat and discussed all the bills that we thought would affect the criminal bar and whether or not we need to oppose or get involved in the bills, and this is one of the bills that we saw that is a very good idea. And we thought it needed some help with the language. The original language...I think there was a question from Senator McCoy about the original language, the difference. The original language made it a felony unless you were under the alcohol level of .02. And we thought by changing the language that it starts out as a Class I misdemeanor and then is increased to a felony when you are over .02 grams of alcohol per 210 liters of your breath was a more efficient way and easier to read and less confusing. So we proposed that language change to Senator Karpisek, and he was gracious enough to amend the bill to reflect that. And Senator Price asked a question about the .02 grams of alcohol per 210 liters of your breath or 100 milliliters of your blood. The reason we picked that number is the machines that we use to test these samples of the blood or the breath are not perfect. And they have a margin of error. And the margin of error takes into account that .02, plus there's other substances other than alcohol that can cause these devices to activate. And they have found, through the testing and over the years, that .02 is pretty much where it's alcohol versus some other substance. This is reflected in the baby DUI statute where if a minor has got more than .02 grams of alcohol per 100 milliliters of blood or 210 milliliters of breath, that that causes them to fall into this baby DUI statute area. The reason that we felt that this was an important bill and we needed to address this is, we have several instances around the state where young kids or people who don't quite understand the effect of driving with the permit are getting into trouble. And I have had a client who is 19 years old and got his first offense DUI so he was required by the Department of Motor Vehicles to install the device, and he did that. He was convicted of his DUI. He placed on probation of his DUI, and he had been working on a motorcycle for probably six months to a year trying to rebuild it. He finally got it done and just wanted to see if he got it done right. And he took it out and was on the Interstate and got pulled over. So for his first offense DUI, which he successfully completed probation even having gotten this ticket and being charged with a felony, his

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probation officer successfully terminated him from probation. The county in which this happened is prosecuting him and will not reduce it from a felony to a misdemeanor, which they have the complete discretion to do by making it an attempted, but they refused to do that. We feel that the punishment, that actual felony conviction is probably the worst thing that could happen to the young man. We don't believe that the judge will be overly harsh as far as the sentencing. Probation is likely, given his record and the fact that he successfully completed probation, but the felony conviction will follow him around for the rest of his life. I just saw an article in the paper up in Omaha in the World-Herald that said that Nebraska, or in Omaha, had been the best city in the country to fair the adverse economic conditions we've been suffering for the last eight years, which has caused our unemployment rate to be very low, which makes it very difficult for a convicted felon to get employment. It reduces his employment options incredibly to mostly fast food and service-type work. It's impossible to get bonded to work in a bank or a grocery store around money, get a professional license, all these that are very important for someone to be successful and contributing members of society, which this young man has every opportunity to get. In order to commit this crime and become a convicted felon, all you have to do is be ordered to have the device put in your car and operate a car without the device. That...those simple acts alone will cause a conviction or cause you to be charged with this crime. So I could get a DUI, first offense, and lose my license for six months and have the device installed in my vehicle and be kind enough one morning to go out to the front yard or out into the driveway and start my wife's vehicle for her in the morning, so that it's warm and she can get to work in a warm vehicle, and by doing that, I've just committed a felony because her vehicle doesn't have an interlock device in it. I'm required to be in operation of vehicles only with interlock device in it. Now you may think that this is something that could be easily avoided, but there's a lot of people that just don't understand that. I have been practicing in the criminal defense area for 18 years, and I understand it, but a lot of the lay people out there just don't get it. And they don't understand how that simple act can cause them to be a convicted felon. Now, I understand that this is a very serious issue, and the goal here is, from what I can understand, from the reason that this law was passed in the first place, is to ensure that people continue to use these and honor the conditions of the interlock device as they're supposed to. I think that's a very admirable goal. I think the consequence here is too much. So what we're asking you to do is consider adopting this amendment. I believe that it is well-written. It calls for very drastic measures, if you have alcohol in your system which is really the primary thing that we're trying to avoid is to keep people from operating a motor vehicle without alcohol in their system. That's really the goal, as I understand this bill. With that, I'll answer any questions anybody might have. [LB649]

SENATOR DUBAS: Thank you very much, Mr. Lathrop. Are there questions? Senator McCoy. [LB649]

SENATOR McCOY: Thank you, Chairman Dubas, and thank you, Mr. Lathrop, for being

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here today. Have you had the opportunity to see Director Lahm's... [LB649]

CHRISTOPHER LATHROP: I have not, sir. [LB649]

SENATOR McCOY: ...letter on this legislation? [LB649]

CHRISTOPHER LATHROP: No, sir. I have not. But I will tell you that if there is a problem with the language of the statute or something that we need to do to comply with whatever federal regulation is to ensure that we have our highway funds, I would be more than happy to work with Senator Karpisek or the committee on redrafting that. [LB649]

SENATOR McCOY: I'd appreciate that. I don't believe that that's what the director is talking about in this letter, but I'll dispense with some questions I was going to ask if you haven't had the opportunity to look at it. But perhaps as a defense attorney, you could elaborate a little bit because the director talks about that you could possibly interpret LB649 to allow a person to drive a vehicle with a minimum amount of alcohol in his or her system, be subjected to a lower level offense, even if the motor vehicle doesn't have an ignition interlock device installed, which of course is going to allow them to avoid a felony level offense. And it talks about how this could also, obviously, allow a person to operate a motor vehicle subject to a lower penalty in violation of court order. How are we not really creating some challenges with this legislation? [LB649]

CHRISTOPHER LATHROP: Even as this bill is written now and exists in this form, if I don't get an interlock device, and I operate a motor vehicle, it's a lesser charge. It's a Class III misdemeanor; it's a driving under suspension. So those same arguments could be used in that respect. As far as the way we've amended it...at some point, one of the things that we have run into, or I have run into as a criminal defense attorney, is when a person is drinking and driving and gets into an accident or leaves the scene, and they go back to their home. The police officers at that point have to prove that he hasn't drank anything because if you drink something after you leave the scene and when you get home, and you quit driving, it makes it more difficult to prove that you were drinking and driving at the time that you did the hit and run. The reason I bring this up is it's very similar to the argument that Director Lahm is raising there. How do we know that people with minor amounts of alcohol in their system are not driving? Well, there's no way to be sure, but we most certainly don't want to put an innocent person who doesn't have alcohol in the system in jail. That's the same way we approach the DUIs where they go home and have a couple of drinks or a couple of beers before the police catch up to them. It's one of the reasons we increased the penalties for leaving a scene of a property damage accident and a personal injury accident is because of that reason. It's because we didn't want them leaving the scene. So, well, I hope that answered your question, and I know I kind of took the long way around the barn, but there's no way to guarantee that that person isn't drinking or isn't hung over from the night before if they're



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below a .02. But what we know is that it's for sure, there's no way to be positive that they are. [LB649]

SENATOR McCOY: Thank you. [LB649]

SENATOR DUBAS: Other questions? Senator Price. [LB649]

SENATOR PRICE: Thank you, Chairperson Dubas, Mr. Lathrop. So, let me just get to the point for me on this. We have a provision for interlock for more than just keeping them from being intoxicated when they drive, but this also is the portion that say a continuing sort of a punishment, for lack of a better word, you know. We could have people become an habitual, I was just out for this one drive, and they're constantly driving. We don't...there would be no way...I don't like to have laws on the books that are impossible to enforce for our law enforcement officers or force, and if we put a back door in here, even though we don't call it a back door, we're doing it for what seemed to be a problem. Someone sees this and think, I can go drive all the time without interlock and I'll just run the risk I'll get a smaller misdemeanor charge, you know what I'm saying? It's a true conundrum, if you would, here, about those who would abuse it. [LB649]

CHRISTOPHER LATHROP: Unfortunately as my law professor has often told me, there's always 10 percent out there that will try and get away with everything, and there's no way to stop them. One of the solutions for that, Senator Price, may be to add a second offense, making it a felony. I mean, language like that would give the person at least some notice that, hey, look, this isn't right, and if you do it, there's going to be a consequence. And you've done it once. You do it again, it's going to be a felony, and then you got notice. I mean, you have actually...these people understand completely. The statutes are full of examples of second offenses becoming Class IV felonies, mostly the theft and the fraud type charges are like this, where a second or subsequent offense is a felony versus being a misdemeanor on the first. So I think that would be a great way to address that particular issue. [LB649]

SENATOR PRICE: Thank you. [LB649]

CHRISTOPHER LATHROP: The other thing we could do... [LB649]

SENATOR PRICE: That's good. [LB649]

CHRISTOPHER LATHROP: Is that enough? Okay. [LB649]

SENATOR DUBAS: Other questions? Seeing none, thank you so much for your testimony. [LB649]

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CHRISTOPHER LATHROP: Thank you for your time, ma'am. Thank you. [LB649]

SENATOR DUBAS: Additional proponents? [LB649]

SCOTT GROPP: Good afternoon, Senator Dubas and committee. I appreciate you allowing me to speak today. My name is Scott Gropp, spelled S-c-o-t-t G-r-o-p-p. I'm an attorney with Kalwarf & Smith law offices. I primarily practice in southeast Nebraska, mostly in rural areas. And I came to Senator Karpisek with some situations that I had had clients placed in that were making them...basically, they were going to become felons for something that could just as easily have been a misdemeanor. And while I don't want to do a lot of anecdotal references to my practice, I will tell you that, if you're not familiar with the fact that once you have an interlock device installed in your vehicle, if you misuse it in that you don't use it for a permissible purpose, then that becomes a Class III misdemeanor. So to just start off, if I have an interlock device, and I choose to take my daughter at eight o'clock at night down to get ice cream, and that device is in my vehicle, and I blow to start it, and I go ahead and go. If an officer comes there and sees me at the ice cream shop, that's a Class III misdemeanor. If I go to start that very same car that I have the interlock device in it, it won't start, and then I choose to drive my wife's car to take my daughter down there, and it does not have the interlock device, I now am a Class IV felon. And it's the simple thing that you look at in the rural areas where if someone does have a device malfunction in their vehicle, and it does happen, they have to make a choice about how to get to work or to school, or if it's an allowed purpose under the particular violation that they're under, how to allow to care for their dependents. And so, while I certainly echo Senator...or excuse me, Mr. Lathrop that there are people who are going to violate this no matter what you do, and perhaps a subsequent penalty is the solution as amended. I think that classifying people felons for that little distinction of taking a different vehicle, or not being able to get your vehicle to start to go to work because you have a device malfunction, and I know there's been studies on device malfunctions, and I'd like to address that as well. Some of the major companies that talk about, well, it's not prevalent, device malfunctions in our vehicles, so people who say, I was driving, but it wasn't because of...you know, I had no choice. I would note that two of the major suppliers of interlock devices, Drager indicates that all ignition interlock devices are electronic devices that can fail. And they make no qualms about that they do fail from time to time. And Smart Start, another ignition interlock provider, indicates that...they talk about on one of their items that...if I could refer to that, that sugar and active yeast can combine. So if you had a cinnamon roll, they actually say this on their Web site, that sugar and active yeast can combine to create a low-level alcohol fail on their monitor systems. So, those are the things that I'd like the panel to consider, that people sometimes in rural areas can't call a cab to get to work. They can't call a cab or a bus to take care of their dependents. And when they have a choice to make, whether they drive to get that done in a vehicle that doesn't have the ignition interlock device...Classifying them as a felon, when you consider your traditional felony classifications, seems to be a disparate impact on what they're trying to do. And with

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this legislation, it doesn't forgive anyone. You still could be guilty of a Class I misdemeanor, and you could be punished up to a year in jail. But in this circumstance, if you're drinking, you're still a felon. That's fine. That's what it's intended to do is discourage people from driving. But it also allows for judges to take a look at what the circumstances were because if you believe that prosecutorial discretion will allow people in certain circumstances that we've talked about today to not be convicted of a felony, I would tell you that that's not entirely accurate. And some prosecutors I've talked to say, our office has a policy that we absolutely will not back down from this, and it's a felony. So, I think from what the original law was trying to prevent, in order to have people be guilty of driving and avoiding it while they have alcohol in their system, I think a felony is appropriate, but for the rest of the people who have different circumstances, I think a misdemeanor is an appropriate punishment. And with that, I'd take any questions. [LB649]

SENATOR DUBAS: Thank you. Questions? Senator Price. [LB649]

SENATOR PRICE: I do have one. Thanks, Senator Dubas. You sparked a programmatic question for me, and I don't expect you to have the answer, but perhaps you can get it. From the two vendors, what's...can you find out what the meantime between critical failure rate is on that equipment? They should have that available for you. [LB649]

SCOTT GROPP: I could try. I did make a phone call to Affordable Ignition Interlock, which is the primary one that I have clients go to here in Nebraska. I was unable to find...they weren't forthcoming with that information. [LB649]

SENATOR PRICE: Okay. Thank you. [LB649]

SCOTT GROPP: And I did not call the other two that... [LB649]

SENATOR PRICE: And for the record, I'll say why. If you say your mean uptime, ratio (inaudible) something 98 percent, well, 98 percent of what? If you're going 24 hours a day, seven days a week, and if a nuclear facility, 2 percent failure rate is unacceptable because that leaves a lot of minutes of time. And so, if we're talking about a critical failure rate of 15 percent, we have a serious problem on our hand with the electronic equipment then. So, thank you very much. [LB649]

SENATOR DUBAS: Other questions? Seeing none, thank you very much for your testimony. [LB649]

SCOTT GROPP: Thank you. [LB649]

SENATOR DUBAS: Further testimony in support of LB649? Opposition? Anyone in the

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neutral? [LB649]

SARA DRAPER: (Exhibit 6) Thank you. I'm actually in opposition. Just a little slow to get up. I've been sitting there for a while. (Laugh) [LB649]

SENATOR DUBAS: Oh, okay. [LB649]

SARA DRAPER: My name is Sara Draper, S-a-r-a D-r-a-p-e-r, and I'm here representing Mothers Against Drunk Driving. Thank you so much, Senator Dubas and members of this committee, for allowing MADD the opportunity to testify regarding LB649. MADD supports the use of ignition interlocks for convicted drunk drivers as these devices are one of the most effective measures available in stopping drunk driving. Since 2008, Nebraska lawmakers have taken significant action to improve our state's ignition interlock law. In 2011, lawmakers allowed DUI offenders to waive their administrative license hearings if they go on interlock and anytime on the interlock accounts for their overall time ordered on interlock sentencing. MADD uses this component of Nebraska's interlock law as a model for other states to follow, as the quicker an offender is on the interlock, the better it is for the public, and the more likely an offender can be taught to drive sober, and the less likely an offender is to reoffend. Another key aspect of having strong ignition interlock law is having a consequence for those who are ordered to use an interlock but instead choose to drive illegally without the interlock. That is why MADD is here today. We believe that offenders who violate an interlock order by driving another vehicle equipped without an interlock should be held accountable for their actions. In addition, anyone thinking of trying to use another vehicle not equipped with an interlock should know there are serious consequences. Violating an interlock order by driving a vehicle not equipped with an interlock should be punishable by a felony as this carries an important deterrence message to anyone trying to violate the interlock law. This deterrence message helps save lives as offenders are less likely to drive noninterlocked vehicles, and as a result, less likely to drive drunk. In conclusion, Mothers Against Drunk Driving urges this committee to oppose LB649. I have also included more information on ignition interlocks in general in the packet for you. Thank you so much. [LB649]

SENATOR DUBAS: (Exhibit 7) Thank you, Ms. Draper. Questions? Seeing none, thank you. Is there any other opposition? Anyone in the neutral? I do have a letter from Director Rhonda Lahm with the Department of Motor Vehicles in the neutral for LB649. Senator Karpisek. [LB649]

SENATOR KARPISEK: Thank you, Senator Dubas and the committee. And, you know, if that .02 is a problem, you know we can sure talk about removing that. Again, I'm a little concerned about someone taking some medicine and having that in there. I agree part of the way with MADD, and I voted for that bill, and I think it's a good bill, and I think that the interlock system is great, but we do have issues where they don't work.

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Manufacturing jobs where some of these people do work out in the rural, if they get there late once or twice, they're probably fired. So, you take your risks. And I know that we can say, well, they shouldn't have been driving drunk in the first place, the very first time. Agreed. Everybody makes mistakes. These things happen. But for someone to end up with a felony because of driving a vehicle unintoxicated, to me just seems to be too much. And I, again, Senator Price, I see what you're saying. It might give someone a kind of a way around. If we can work somehow to nip that, I agree. This bill is not brought in anyway to lessen DUIs or subsequent DUIs or anything like that, but I just think a felony on someone's record is a very big thing. We were...I meant to have some other felonies to Class IVs to talk about. Some of you, I'm sure, know what a Class IV felony is. I can't give you any specifics right now, but there's some pretty nasty things that you do to get a Class IV felony rather...other than drive a vehicle when you're not intoxicated. But I'd be glad to try to answer any more questions. [LB649]

SENATOR DUBAS: Are there any questions for Senator Karpisek? Seeing none, thank you very much. [LB649]

SENATOR KARPISEK: Thank you for your time. [LB649]

SENATOR DUBAS: (SEE ALSO EXHIBIT 8) And that will close the hearing today on LB649 and the hearings in general. [LB649]