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Agriculture Committee  
January 19, 2016

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[LB730 LB798]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 19, 2016, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB798 and LB730. Senators present: Jerry Johnson, Chairperson; Mark Kolterman, Vice Chairperson; Dave Bloomfield; Burke Harr; Merv Riepe; and Ken Schilz. Senators absent: Ernie Chambers and Tyson Larson.

SENATOR JOHNSON: It is 1:30. We still hopefully will have some more senators on the committee that will be attending, but to go through some rules before that. I think a lot of familiar faces, so I'm sure we won't have to go through all of these. But just as a reminder, it's been a while since we've had the hearings, turn off your cell phones; at least turn them to vibrate while you're in the hearing room. We also remind members of the audience to refrain from stating opposition or support of the comments given by the introducer or members of the committee. A green sign-in sheet is in the back of the room. If you're going to testify, we ask that you fill one of those out. And when you come forward to testify, put it in the box there or give it to our page. If you're testifying on more than one bill, you can submit...need to submit a form for each one of the bills. The agenda is posted on the wall. We will be doing LB798, as far as hearing first; that's the Pure Food Act. And second will be LB730 dealing with grain storage license. I've been advised that...well, we have new technology. It's been tested a few times in different hearings throughout the summer and in different meetings, so I think we're going to be okay. But I've been notified by people that have been involved in this and the transcribers, these mikes, the new ones are very, very sensitive. In this room, voices have been picked up from people that are sitting in the audience in the front row, picked up on these mikes. I advise committee members that conversations between you and the senator beside you could get picked up as far as transcript. So we've got to be cautious of that. It might not disrupt the discussion, but it does disrupt when they're trying to transcribe and complete the testimony for the hearing. I'll introduce my staff, and there's a couple new members. First of all, not a new member but Rick Leonard to my right, research analyst; to my left is Christina Estrada and she's new to my committee. She's been committee clerk for several other committees in the Legislature. And she came over this year, this summer. We welcome her to the office and to my committee. Our page is Brianne Hellstrom from California, attending the University of Nebraska and studying political science. She has an interest in agriculture. And I believe she does have some family members in Nebraska, so that's kind of what helped you decide to come to Nebraska and the cold weather. So with that, hopefully we'll have another senator here when we actually start the hearing. But we will proceed. To my far left is Senator Dave Bloomfield from Hoskins; Merv Riepe from Ralston next to him; the two that are missing over there are Senator Chambers and Senator Burke Harr; to my right seated is Senator Ken Schilz from Ogallala; missing on that side is Tyson Larson from O'Neill; and Mark Kolterman from Seward. Mark is testifying in another hearing today introducing a bill. And so he will be coming in here later. It is possible that

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senators will be coming in and out as we go through the process, as they might be called out because they're having a bill introduced in another committee. So please excuse them. I think, as a courtesy, the senators will let me know ahead of time if they know they're going to be called out so we kind of know what to expect from here. So with that, we have a trainee to this, or to the technology at least. Okay. And your name?

KATIE QUINTERO: Katie Quintero.

SENATOR JOHNSON: Katie Quintero. Okay, welcome. I think she'll be a good teacher. Okay. With that, the two bills we have today are agency bills and brought to the Ag Committee by the agency. And as Chair of the committee, I will ask research analyst Rick Leonard to do the introduction of it. That allows me to be here since Mark is not in his chair and will be in a position so I could ask questions. And Rick has copies to hand out. I didn't mention that before. If you are testifying, please have copies available of your testimony. If you have a handout, 12 of them is the right number. But if you don't have that many we will make copies. So with that, now we have a quorum. Burke Harr is entering the room. No fanfare or anything. (Laugh) With that, Rick, would you start, present LB798. Give your name and spell it. Thank you.

RICK LEONARD: (Exhibit 1) Certainly. Thank you, Senator Johnson, members of the Committee. Rick Leonard, as the senator mentioned, I'm research analyst for the Agriculture Committee. That's Rick Leonard, L-e-o-n-a-r-d. LB798 is brought to us, as the senator mentioned, at the request of the Department of Agriculture to update provisions of the Nebraska Pure Food Act to incorporate provisions and concepts as contained in the 2013 Food Code. Currently the Nebraska Pure Food Act is current with the 2009 Food Code. The Nebraska Pure Food Act is the primary body of state law regulating retail food establishments--groceries, restaurants, institutional food providers--as well as food manufacturers where food is prepared and/or delivered to a final consumer. The Pure Food Act establishes standards for sanitation, preparation, storage, and accurate presentation of food items. Nebraska is among the majority of states that incorporate the model provisions of the Food Code, a publication of the U.S. Public Health Service Food and Drug Administration. Food Code isn't federal law or regulation. However, it does provide a uniform system of regulation to ensure that food at retail is safe and properly protected and presented. Its adoption by states and localities also helps ensure consistency across state lines. The Food Code is updated periodically to incorporate regulatory experience and advancements in understanding of risk factors to food-borne illness and their mitigation. While most provisions of the Food Code are incorporated by reference directly, some provisions are adopted in modified form and set forth in sections of the Nebraska Pure Food Act and some provisions may be omitted. Incorporation of the most recent version of the Food Code and related documents is accomplished under 81-2,239. Those specific provisions omitted are listed in 81-2,244 revised by Section 3 of the bill. I've referred you to a handout that I've had distributed that discusses specific sections of the Food Code whose incorporation is affected by

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LB798. The handout corresponds to the deletions and inclusions as listed on page 2, lines 17-26 of the bill. The handout also lists changes in standards from the 2009 Food Code sections that are currently incorporated under the Nebraska Pure Food Act and will continue to be incorporated from the 2013 Food Code. LB798 will continue a trend of having fewer Nebraska Food Act variances from the standards provided in the Food Code. As you can see from the handout, there are five additional sections and two partial sections of the code that will now be included in the Nebraska Pure Food Act that were previously excluded and either replaced with the Nebraska variants. I won't...the department will go into more detail regarding specifics, but I have provided the section-by-section summary that's in your books and refer you to the briefing items in your books. And with that, I will take any questions. [LB798]

SENATOR JOHNSON: Any questions of Mr. Leonard? Yes, Senator Harr. [LB798]

SENATOR HARR: Thank you. What is sous vide? It's on...I'm looking at the analysis with Section 3. It says: modified the definition of reduced oxygen packaging to clarify and define the sous vide process. Is that vacuum packed or...? [LB798]

RICK LEONARD: Sous...I'm going to have to plead ignorance but I know the person with the Department of Ag will have that answer. [LB798]

SENATOR JOHNSON: I think they can answer, they probably can. [LB798]

SENATOR HARR: They can? Okay. Sorry. Thank you. [LB798]

SENATOR JOHNSON: Yeah. Any other questions? Seeing none, thank you, Rick. First testifier, probably the Department of Ag. Welcome. [LB798]

BOBBIE KRIZ-WICKHAM: (Exhibit 2) Good afternoon. All right. Senator Johnson and members of the Agriculture Committee, my name is Bobbie Kriz-Wickham; that's B-o-b-b-i-e K-r-i-z-W-i-c-k-h-a-m. I'm assistant director of the Nebraska Department of Agriculture and I'm here to testify in favor of LB798. I want to thank you, Senator, for agreeing to take the bill on behalf of the department. I have, I think maybe you're handing it out, additional written testimony that I would like to have placed into the record for this bill. With me today is Melva Ball. She is our program manager for the food program and she'll be available to answer any technical questions--maybe like the one you just had (laugh)--as we get through our testimony today. A little bit of what I'm going to say is a repeat of some of what Rick said, and then I'll have a few additional items. LB798 amends the Nebraska Pure Food Act by adopting the 2013 version of the recommendations of the United States Public Health Service Food and Drug

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Administration as the Food Code. The current Food Code is taken from the 2009 FDA recommendations. Updates to the recommendations are made every three to five years to incorporate the most current scientific information regarding food preparation and conditions relating to hot or cold holding of food. Certain sections of the 2013 FDA recommendations are modified to conform to the current practices in Nebraska's food industry. As many sections of the recommendations as possible are being adopted today or are proposed to be adopted in the Food Code so that Nebraska can be consistent with other states. However, some sections of the 2013 code are excluded from adoption and are replaced with modified provisions in the act. These modifications are discussed in more detail in the written testimony. We outline it with a section-by-section analysis. The bill also removes the Food Salvage Code and requires that food salvage operations follow the current good manufacturing practices in the manufacturing, packaging, or holding human food. This change is being made because the current Food Salvage Code is extremely outdated and is really no longer a viable code to use for enforcement purposes. The department, local health departments, and the Nebraska Food Industry Review Board spent many hours looking at this legislation with the goal towards protecting the food supply in Nebraska without overburdening the state's food industry. And I want to thank those organizations that were active on our Food Industry Review Board--the local health departments, the members of the organizations that are active in this area--for all their time and effort. It's my understanding that the Food Industry Review Board does support the adoption of the 2013 FDA recommendations and you'll hear from a couple of them, I believe, following my testimony, offering their support. And the written material that I gave you has a listing of those board members at the back, I believe, of the document that I gave you. The changes in the bill are important for what we believe are three primary reasons. Adoption of the 2013 FDA code updates the requirements to the latest in current scientific findings and technology gains in the area of food safety. Currently, Nebraska is following, as I said, the 2009 code. And updating to the 2013 code brings the act closer to the national standards. The board invested many hours in reviewing the 2013 code. They've thoroughly discussed that code and the requirements and the requested modifications to some of the requirements are requested to meet the needs of the food industry establishments in Nebraska. And again, those modified requirements are set forth in the bill and are delineated in the written testimony on a section-by-section analysis. So with that, I ask for your support in enacting LB798 this year. And I or Melva will be happy to answer any questions that you might have. [LB798]

SENATOR JOHNSON: Thank you. Any questions of...yes. [LB798]

SENATOR HARR: Thank you, Mr. Chairman. You have replaced in a number of places "potentially hazardous" with "time/temperature control for safety". [LB798]

BOBBIE KRIZ-WICKHAM: Right. My understanding is that's the new definition that's being used in the national standards. [LB798]

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SENATOR HARR: Okay. And where is that defined, or how do I know what is "time/temperature control for safety"? [LB798]

BOBBIE KRIZ-WICKHAM: There's a definition in the 2013 Model Food Code. [LB798]

SENATOR HARR: Is it defined in the statute though? [LB798]

BOBBIE KRIZ-WICKHAM: We're adopting that as part of this. [LB798]

SENATOR HARR: But where is the definition? [LB798]

BOBBIE KRIZ-WICKHAM: Do you want to give him the specific page number? [LB798]

SENATOR JOHNSON: While she's looking that up, maybe when she comes up she... [LB798]

BOBBIE KRIZ-WICKHAM: Why don't you come on up, Melva. [LB798]

SENATOR HARR: Okay. [LB798]

SENATOR JOHNSON: Yeah. Please introduce yourself and then you'll begin your testimony by answering a question if you want to start that way. [LB798]

MELVA BALL: I'm Melva Ball, M-e-l-v-a B-a-l-l. I'm the program manager for the dairies and foods of the Food Safety and Consumer Protection focus area of the Nebraska Department of Agriculture. So to answer your question, we used to call "potentially hazardous" foods, those were foods that would support bacterial growth very rapidly. And I think the industry was kind of upset that they would...people would think, well, they had potentially hazardous foods. And so they were...also some things started growing bacteria that we never thought would grow bacteria again, such as lettuce. So they changed it over to "time/temperature control for safety" foods. So by adopting the FDA 2013, it is defined specifically as "time/temperature control for safety" food in here. In the current 2009 code they used the old words: "potentially hazardous foods" slash "time/temperature control for safety." But they're really trying to eliminate those words: "potentially hazards foods." Does that help? [LB798]

SENATOR HARR: So what is the definition? [LB798]

MELVA BALL: Would you like me to read it or just...? [LB798]

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SENATOR HARR: Yeah, if you could, for the record, so I know. [LB798]

MELVA BALL: Okay. Time/temperature control for safety food means a food that requires time/temperature control for safety to eliminate pathogenic microorganism growth or toxin formation. Time/temperature control for safety food includes...want me to go on and on and on? [LB798]

SENATOR HARR: Okay. [LB798]

MELVA BALL: ...an animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut leafy greens, cut tomatoes or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation; and except as specified in Subparagraph (3)(d) of this section, a food that because of the interaction of its water activity and pH value is designated as Product Assessment Required in tables A and B of this definition. So then they have tables that define whatever the pH of the food is and the water activity, if that would classify then as a time/temperature control for safety food. [LB798]

SENATOR HARR: So how do you deal with foods that you want microorganisms in your food to cause changes? [LB798]

MELVA BALL: Are you maybe referring to...I'm not sure. [LB798]

SENATOR HARR: Yogurts. [LB798]

MELVA BALL: Yogurts or cheese? Those would not be considered a hazard because that's not a pathogen that's going to be creating a disease. It's just a culture. It's just a bacteria that's helping ferment or form that product. So it's not...it would not be in that definition of a time/temperature control for safety food in the sense of for their preparation of it. For the holding of it, like for a cold holding--things that you want to hold cold, hold hot--those would fall in that time/temperature control for safety food definition. [LB798]

SENATOR HARR: Okay. Thank you. [LB798]

SENATOR JOHNSON: You may begin your testimony. Or are you here more to answer questions? [LB798]

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BOBBIE KRIZ-WICKHAM: She was just more... [LB798]

SENATOR JOHNSON: Okay. [LB798]

BOBBIE KRIZ-WICKHAM: And obviously she knows what she's talking about. (Laugh)  
[LB798]

SENATOR JOHNSON: Okay. We're tag-teaming now the question-and-answer period. So anybody have any other questions of either of our representatives? [LB798]

MELVA BALL: I'm not sure if I heard an answer for that sous vide question that you had. It is something that the chefs are using a whole lot nowadays for the quality of the food. It's where you package the food, vacuum pack it, and then you submerge it in water and you cook it very slow at a controlled temperature, so then the food doesn't dry out so much. And they can partially cook it and then they can open it and prepare it for order. And so it's...that's that term that you asked about, that sous vide. [LB798]

SENATOR HARR: Sous...I was just looking to see if it was (inaudible). [LB798]

SENATOR JOHNSON: (Exhibit 3) We have a couple letters of support, but I'll read from one of them from the city of Lincoln. And they specifically talk about the importance of adoption of the reduced oxygen packaging regulations, so, very supportive of that. I'll read those into the file later. But it's out there. Food salvage operations, how are they regulated, or can you explain a little bit more to me about the food salvage operations? [LB798]

MELVA BALL: In Nebraska, currently we have four establishments that have a primary facility code or primary permit for being a food salvage. One example is up in Norfolk there's Affiliated Foods, their reclamation center. So the damaged food from their grocery centers come to that center. And at that reclamation center they sort it out. There's canned goods that maybe they could save and send to a food bank or if there's food that they could send to animals or like honey that they could send to bees. So it's the food that's been damaged, so that they can change it around. We've...the current code is very, very old, that salvage code. And they fit right in with our GMP regulations, which is what we use for all of our warehouses and all our processors. So by just deleting that food salvage code we would just be using the same regulations and guidelines that we follow for other warehouses and processors. [LB798]

SENATOR JOHNSON: So it goes back to a supplier of the foods to the retail market and they bring them back? [LB798]

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MELVA BALL: That's one example, um-hum. [LB798]

SENATOR JOHNSON: Yeah, all four of them are that way? [LB798]

MELVA BALL: I'm pretty positive, um-hum. [LB798]

SENATOR JOHNSON: Okay. Any other? A question that came up, a good practice in manufacturing, is that described in the food safety code? What are determined as good practices? Is that another whole subject? [LB798]

MELVA BALL: It's 21 Code of Federal Regulations, part 110. And that's mainly used for your warehouses and processors where...this is another set of guidelines and regulations that we've adopted and by...within here, we say that we adopt the most recent version of those. [LB798]

SENATOR JOHNSON: Okay. Senator Riepe. [LB798]

SENATOR RIEPE: Thank you, Senator Johnson. My question would be is, why now? Is this due to new technology or simply a matter of getting around to it? [LB798]

MELVA BALL: I'm not sure why now. [LB798]

SENATOR RIEPE: This particular piece of legislation to kind of clarify and get this...bring it up to what I understand to be the new standard. [LB798]

MELVA BALL: Correct, to 2013. [LB798]

SENATOR RIEPE: Yeah. [LB798]

MELVA BALL: FDA uses a lot of science and research. And they update the Food Code every four years. They have a supplement in between. So we're currently in the 2009. So with the 2013 there's just a lot of clarification. And it makes it consistent from state to state. If every state is following the same...or near the same so that if they have a product it can easily go from state to state. So that's one good reason. [LB798]

SENATOR RIEPE: I know it's not good to see the 2013 on your document whereas it's now 2016. [LB798]

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MELVA BALL: They won't be coming out with a new Food Code until 2017. [LB798]

SENATOR RIEPE: But we were here last year. Why, you know...did this not come forward last year for some reason? [LB798]

MELVA BALL: I can't answer that question. Sorry. [LB798]

BOBBIE KRIZ-WICKHAM: It takes a little while for these regulations to get out and in print and then for our industry group to take a look at it and make the analysis of what needs to be done to move forward in Nebraska. So the next time this new code comes out we will again begin that process, reset that process and continue to update the code for recommendations that they have at the national level. [LB798]

SENATOR RIEPE: That's the normal cycle, is it now? [LB798]

BOBBIE KRIZ-WICKHAM: It's the normal cycle. Yes, sir. [LB798]

SENATOR RIEPE: Thank you. Thank you. [LB798]

SENATOR JOHNSON: Okay. Going back to the oxygen reduced, what's the regulation now, and how is it going to be improved by us updating this? What's the Nebraska statute or how do we currently handle it in our food codes today? By putting this in, what will make it better? [LB798]

MELVA BALL: It's a lengthy section that we have so I'm not sure if I can answer all the specifics for it. But as far as making the change, it makes it consistent. We're really not making...going to require anything really extra from anyone. It's just making it more clear and so that we don't have any variances in ours that aren't consistent with the rest of the states. [LB798]

SENATOR JOHNSON: Okay. Clarification is the main thing. [LB798]

MELVA BALL: Um-hum, um-hum. [LB798]

SENATOR JOHNSON: Okay. Any other questions? If not, thank you for coming forward. Other testifiers, proponents. [LB798]

KATHY SIEFKEN: Good afternoon. [LB798]

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SENATOR JOHNSON: Thank you, Kathy. [LB798]

KATHY SIEFKEN: Chairman Johnson and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and registered lobbyist for the Nebraska Grocery Industry Association. I have served on the Department of Agriculture's Food Advisory Board for over 20 years. The Food Code is something that...I believe the FDA Food Code is almost a living document. When the Food Code first came out in 2005, we took a look at it and it took us here in Nebraska three years to come to the consensus that we did on what we wanted to change in Nebraska so that it did promote food safety, because a Food Code is all about food safety, but yet at the same time not be overly burdensome to our members or people within the food industry. And as we have moved forward through the various food codes, I believe our job as members of that Food Advisory Board is to make sure that everyone that will be impacted by the changes in the law are at the table. So when we go through the Food Code line by line, if we get to a section where that representative of the food industry is not in the room, we table that, find the answers, and then come back. So we are very conscious of what the Food Code does and how it will impact the businesses that come under these regulations. Now the 2013 Food Code is a food code that we started reviewing, I want to say, early spring. And it has taken us most of the year to get through the very few changes that were made. A lot of them are language changes. The definitions themselves don't change. It makes the Nebraska Pure Food Act more in line with FDA so that those stores that we have that cross state lines, it's less confusing for them because it's the same language from state to state in many instances. There are some things in the Nebraska...in the FDA Food Code that we as an industry do not support. And an example of that in the past is temperature controls. And we as a state held it to what we had been doing all along. And then FDA, I like to say, caught up with us because a lot times we are very conscientious about food safety. We want to make sure that the food that is prepared in this state is safe for our customers. And sometimes we're ahead of the curve and that is an industry practice more, I would like to say, than regulation. It's not the government coming in and forcing us to do things. It's simply the right way to do it. And so when you come to the reduced oxygen packaging section of this bill, there are some changes there. And those changes basically would require the people in Nebraska to use more of a HACCP plan and there are more steps in it. But this isn't really much of a change compared to what the Department of Ag or our inspectors could actually request us to do anyway. So if you have any questions I would be happy to answer them. We do support the bill. And we would hope that you would pass it out of committee. We would also hope...this is a work, a piece of work that has been negotiated, talked about, discussed by industry and by regulators. We would hope that there would be no amendments to the bill because what you have here is something that we that are being impacted by this legislation have already agreed to. So any amendments may put that agreement in jeopardy. So if you could pass it as presented to the floor of the Legislature we would greatly appreciate that. [LB798]

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SENATOR JOHNSON: Thank you, Kathy. Thank you for giving us an update on the process because we don't discuss this every year. And so it was a great explanation of where we're at. Any questions? Senator Harr. [LB798]

SENATOR HARR: Thank you, Senator Johnson. So I'm looking at LB558 which would appear to be Kolowski's bill that's up later today, would appear to be an amendment to LB798 in that it changes the definition for preparatory. Oh, that's...sorry, LB558, Kolowski's bill from last year would seem to conflict with LB798. Did you guys come in for or against that bill, do you recall, last year? [LB798]

KATHY SIEFKEN: We came in strongly opposed... [LB798]

SENATOR HARR: Okay. [LB798]

KATHY SIEFKEN: ...because we promote food safety and that's what LB798 is all about. It's about keeping food safe for the citizens in the state of Nebraska. And we believe that the language in last year's bill would have compromised food safety because those foods would not have been prepared in an inspected kitchen. And we believe that that is a very unsafe thing to allow to happen in our state. [LB798]

SENATOR HARR: Okay. Thank you. [LB798]

SENATOR JOHNSON: Senator Bloomfield. [LB798]

SENATOR BLOOMFIELD: Thank you, Chairman. Kathy, we have small stores or packing plants, whatever you want to call them, throughout the state now that do some vacuum seal packing. Are they going to be required under this to get new equipment or just...? [LB798]

KATHY SIEFKEN: No. They will be required...they will not be required to obtain new equipment. They will be required to have a HACCP plan in place. And frankly, in this day and age, that is a reasonable thing to request because again, I go back to, this is about food safety. And if there is a misstep in the process of preparing those foods, a food-borne illness could arise and that's not...no one is going to win that fight. Everybody loses. [LB798]

SENATOR BLOOMFIELD: But the equipment that is in place should be adequate to meet any guidelines that are... [LB798]

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KATHY SIEFKEN: Yes, yes. The HACCP plan is simply guidelines, paperwork, checking your temperatures. It is a written system that you would have to follow to make sure that you have temperature controls in place, timing in place so that food isn't out of temperature for too long or that things are not done correctly. [LB798]

SENATOR BLOOMFIELD: Okay. Thank you. [LB798]

KATHY SIEFKEN: We do have a gentleman here from...that is with the...a member of the meat processors. And he...if you have more questions about reduced oxygen packaging, he could answer more than you would be able to comprehend. (Laughter) [LB798]

SENATOR JOHNSON: Okay. Thank you. [LB798]

KATHY SIEFKEN: So if you would like to talk to him, he would be more than willing to come up. [LB798]

SENATOR JOHNSON: Any other questions? This maybe needed to be directed as much to the department as you, but this is a 2013 document that we're working from and we're updating it. I don't anticipate this having any problem, but how...is it mandatory that we update in order to stay in code? Or what's the risk of us not doing something? [LB798]

KATHY SIEFKEN: If you do nothing, no one is going to die. No one is going to go out of business. We will continue to do business as is. What I would tell you is that many individuals came together and we met at the Department of Ag, we met at our office. There are many man-hours put into this document. And if you don't pass this bill it just means we're going to have to go back and do it all over again and we would just as soon not. This is a document that we have all agreed needs...would be good legislation to pass. [LB798]

SENATOR JOHNSON: All right. Okay. Thank you. Any other questions? Senator Bloomfield. [LB798]

SENATOR BLOOMFIELD: Thank you again. As you're painfully aware, this is a short session and without priorities things probably aren't going to move. Are you asking for a priority on this or do you have a senator in mind to give it a priority or are you looking at coming back next year if we don't get anything done on it? [LB798]

KATHY SIEFKEN: I was hoping that you would pass it out of committee today and it would get to the front of the pack and just go. (Laughter) [LB798]

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SENATOR BLOOMFIELD: I don't think that's probably going to happen. [LB798]

KATHY SIEFKEN: (Laugh) That may not. [LB798]

SENATOR JOHNSON: Well, to answer it from a perspective, if there's no opposition and there's no fiscal note and that, it's possible consent. [LB798]

SENATOR BLOOMFIELD: Consent calendar. [LB798]

SENATOR JOHNSON: Or when we get all of the bills that we're going to be hearing at least, then we could look at it as a committee priority. [LB798]

KATHY SIEFKEN: And again, the only roadblock that we have been able to identify would be if there is an amendment to the language in this bill. [LB798]

SENATOR JOHNSON: Right. Yeah, it's got to come out pretty clean. [LB798]

KATHY SIEFKEN: Yes, and... [LB798]

SENATOR JOHNSON: And you want it clean, not just because of the process. [LB798]

KATHY SIEFKEN: We want it clean, yes. Yes, yes. And again, this is about food safety. It's about protecting the citizens of the state of Nebraska. It's about being out there where we need to be without being overburdensome to the industry. [LB798]

SENATOR JOHNSON: Okay. Other questions? Seeing none, thank you, Kathy. [LB798]

KATHY SIEFKEN: Thank you. [LB798]

SENATOR JOHNSON: Any other proponents? Welcome. State your name and spell it, please. [LB798]

JIM PARTINGTON: (Exhibit 4) Senator Johnson and members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I'm the executive director of the Nebraska Restaurant Association and I thank you for the opportunity to testify in support of LB798. The legislation is the result of an extensive review as Kathy mentioned. It's a process conducted over many weeks

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by representatives from the regulatory agencies and food service agencies under the guidance of Melva Ball from the Department of Agriculture. This was a fair and inclusive process. Our industry concerns were considered and addressed. And we strongly support LB798. With that, I thank you for your time and I'd be pleased to answer any questions that you may have. [LB798]

SENATOR JOHNSON: Thank you. Any questions? Seeing none, thank you for your brief testimony... [LB798]

JIM PARTINGTON: Thank you. [LB798]

SENATOR JOHNSON: (Laugh)...to the point. Any other proponents? Rick just asked as far as the packaging, anybody want to make any comment on that? He said it'd probably be above our heads, but...well, the vacuum. [LB798]

BOB VOSS: I nominate myself. [LB798]

SENATOR JOHNSON: That would be you, okay. You can just give us the Reader's Digest 101. That would be great. [LB798]

BOB VOSS: My name is Bob Voss, B-o-b V-o-s-s. I represent B&R Stores, Incorporated; the Nebraska Association of Meat Processors; and I've been on the advisory board for 15, 20 years also. What I am is I'm the smokehouse coordinator for B&R Stores, so vacuum packaging is my life. The new law really doesn't say any more than the old law. The inspection could ask any questions they wanted. It's a nice perk to make things safe. No new equipment will be necessary. There will be a little more paperwork. There are a lot of different types of vacuum packaging. So I will say that the sous vide was addressed in the '13 code and it wasn't in any of our others because it's new. So it's a good thing. [LB798]

SENATOR JOHNSON: Okay. [LB798]

BOB VOSS: I support it wholeheartedly. The association, I sent out feelers to all of them. I found nobody that was negatory...negative towards it. We're all in support. Specific questions? [LB798]

SENATOR JOHNSON: Very good. Seeing none, thank you. That was 101 brief. Thank you. (Laugh) [LB798]

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BOB VOSS: Thank you. [LB798]

SENATOR JOHNSON: (Exhibits 3 and 5) Any other proponents? Seeing none, any opponents? Anyone testifying in a neutral position? Seeing none, we have two letters of support for LB798: the city of Lincoln; and also Douglas County Health Department. We will enter those two into the record. If there's nothing else, we will close the public hearing on LB798. We will now move to LB730. And again, I'll ask research analyst Rick Leonard to introduce. [LB798]

RICK LEONARD: Thank you again, Chairman Johnson and members of the committee. Again, I'm Rick Leonard, research analyst for the committee and my name is spelled R-i-c-k L-e-o-n-a-r-d. LB730 clarifies a provision of the Nebraska Grain Warehouse Act which allows persons who very recently sold grain in storage at the warehouse and have not received good payment for the grain the opportunity to be covered under the benefits of the Warehouse Act. The Grain Warehouse Act provides upon closure of a licensed grain warehouse, the PSC takes title to all grain in storage and trucks for distribution to valid owners and storers of grain. There is also additional bond coverage in any interest earned on accounts that hold revenues from the sale of grains seized by the PSC in the event that the value of grain assets alone is not adequate to cover all storage claimed. There are essentially three means by which a producer may establish themselves as owners and storers of grain in a failed warehouse: grain in storage, essentially, grain that's been physically deposited at the elevator and typically you have a scale ticket or other documentation of that nature; claim amounts qualifies an owner of grain by virtue of an in-store transfer of warehouse-owned grain and satisfaction of direct delivery obligation. The third one is what the bill concerns, is a qualified check holder rule, i.e., those holding a check issued not more than five business days prior to the PSC's closure of the warehouse for purchase of grain previously stored in the warehouse. As I mentioned, LB730 pertains to this qualified check holder rule. Under UCC, unless otherwise specified by the parties, title to grain would transfer to a buyer at the time of execution of the sales contract and the seller would no longer be a valid owner or storer of grain. The effect of 88-530 is to allow persons who recently sold grain to revert back to the position of a valid owner and storer of grain, essentially as if...in the same position they would be if the transfer hadn't occurred. It's apparent from legislative transcripts at the time this provision of the Warehouse Act was enacted...when this provision of the Warehouse Act was enacted, the Legislature intended that the five-day rule would indemnify persons who had only very recently sold grain at the elevator. The PSC has interpreted that 88-530...has interpreted 88-530 to mean that the check issued must be for grain sold within the previous five days. In a decision this fall regarding appeals of claims denied by the PSC arising from the failure of the Pierce grain elevator, the Supreme Court overturned the PSC's interpretation and pointed out that the plain language of the statute declares that the five-day window totals from the date the check was issued to the seller. The court further affirmed UCC rules that issuance, the key word "issuance," occurs at the point the payment instrument is physically...a check is physically transferred to the seller. Thus, the court found that the dispositive event was the date a

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check had actually been handed to a seller, not the date it had been written or the date the sales transaction occurred. The court's literal interpretation of the qualified check holder rule presents some challenges. As 88-530 is written and now interpreted, potentially a person selling grain for storage could indefinitely preserve recourse through the warehouse protection simply by delaying receipt of a check. On the other end of the spectrum, in some cases producers could be denied coverage they would otherwise be entitled to if the elevator was not prompt in issuing payment. In October, Senator Johnson met with ag and grain industry groups to discuss implications of the court ruling. I believe Senator Kolterman and Senator Riepe were at that meeting. It was agreed that the totaling of the five-day period should be decoupled from when the check was issued and restore legislative intent to tie it to the date the transfer of title occurred. LB730 is introduced for that purpose. Essentially, the bill would provide that if a person who sold grain held in storage at the elevator no more than five days prior to the closure of the elevator and had not been paid would revert to the position of a valid storer or owner of grain in the warehouse and thus would be eligible to share in the disposition of proceeds from the sale of grain assets in the warehouse bond. That's the explanation of the bill, if you have any questions. [LB730]

SENATOR JOHNSON: Any questions? Otherwise we'll get into the technical side of it when the Public Service comes up. No questions. Thank you, Rick. Testimony. Mr. Vap, probably the spokesman today. [LB730]

JERRY VAP: (Exhibit 1) Good afternoon, Chairman Johnson, members of the Agriculture Committee. I'm commissioner Jerry Vap; that's spelled J-e-r-r-y V-a-p. I'm with the Nebraska Public Service Commission. I represent the 5th District consisting of 47 counties from Grand Island west. I'm here today in support of LB730. LB730 makes changes to the Grain Warehouse Act that regulates individuals and companies that store grain that is owned by others. Licensed warehouses are required to maintain a security, usually in the form of a bond, in an amount determined by the volume of the grain they store. The security is to protect the owners of the stored grain in the event of a warehouse failure. In September, the Nebraska Supreme Court issued a decision on a number of appeals of the commission's decisions on claims following the failure of the Pierce Elevator in March of 2014. LB730 was introduced to address one of those issues involved in the Pierce appeal, specifically the issue of the five-day grace period built into the Warehouse Act by the Legislature. The act included a small window of five days immediately preceding a warehouse failure whereby a producer that sold grain during those five days but had received no money would still be considered an owner of grain in the failed warehouse. The intent is to protect producers that unfortunately tried to sell just before the closing from being out of their money. However, the courts found that under the current language, those producers eligible to benefit from the grace period of five days is determined not by when the sale occurred but when a check was issued. "When a negotiable instrument is determined to be issued" is a legal term and requires delivery of the check. So a producer could

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sell his or her stored grain long before closure but still have recourse to the warehouse proceeds and bond by simply delaying receipt of their check until in the five-day period before closure of the warehouse. It appears from the legislative history that the grace period was intended to be extremely limited and not cover sales that occurred before the five-day window. The intent of LB730 is to restore what we believe to be the original intent of the grace period, and we think there are strong policy reasons to do so. First, if the sale occurred during the five days immediately preceding the closure, there is a high likelihood that the grain is still in the warehouse and available to be sold to cover any losses. The longer the period between the sale of grain and the closure of the warehouse, the higher the likelihood that the grain is no longer physically in the warehouse. Second, the grain language is inconsistent with the policy of not indemnifying risky business decisions. A producer that sells grain and then doesn't seek timely payment should not be allowed to recover from grain owned by others. Such a result would penalize those who do exercise prudence by diluting the pool of resources available to recover their losses. Third, having the grace period key off of the issuance of a check would encourage individuals to try and circumvent the law for preferred customers when a closure is imminent. Issuing checks right before closure to allow certain producers to gain access to security coverage is clearly contrary to the purpose of the grace period. And finally, as demonstrated in Pierce, claims of some similarly situated producers were treated differently based on whether the checks had been physically delivered. A producer who sold grain over a month prior to closure was deemed to be an owner because he received his check three days before closure, while others who sold grain only nine days prior to closure were denied that privilege. Their checks were still in the warehouse at closure and had not been delivered or issued. This is a policy determination for the Legislature. The Legislature originally created the five-day grace period. They must ultimately decide if the grace period should continue to exist and how it should operate. We believe that LB730 would clarify the law. I thank you for your attention this afternoon and urge you to support LB730. Be happy to answer any questions. [LB730]

SENATOR JOHNSON: Any questions? I know one of the discussions last year was checks written but kept in the vault or something like that type of thing. Does this pertain to a price later or not? Wouldn't be a price later contract...yeah, price later where the title changes hands, but there's a signed contract in place. [LB730]

JERRY VAP: Yeah, that's generally done on the grain dealer side of the equation. But an owner of grain in the warehouse who says, I don't want to continue paying storage, I want to sell that grain but I don't want my money right yet,... [LB730]

SENATOR JOHNSON: Right. [LB730]

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JERRY VAP: ...could have a price later contract. And in that case, the minute they sign that piece of paper, they no longer own that grain. It's the property of the warehouse and generally when a warehouseman or a grain dealer buys grain, that same day they sell it. They don't...unless they have real deep pockets, they're not going to hang on to it. They're going to sell it and move it on. So if somebody did that with a price later, there would be no grain there and they'd own no more grain. And they would just become an unsecured creditor of the warehouse. [LB730]

SENATOR JOHNSON: If the signed contract said I want my money deferred, do they actually have to write out a check if they want it deferred until January of next year? [LB730]

JERRY VAP: That would probably be entirely up to the warehouseman and the seller. The PSC has no say over any of those contracts whatsoever. That's a marketing tool that is available to the producer. [LB730]

SENATOR JOHNSON: Right. [LB730]

JERRY VAP: And if they want to avail themselves of those price later contracts or delayed delivery, delayed payment, whatever, that's their prerogative. Oftentimes, a producer will sell grain, say, in October, November. And because they want to avoid some income taxes, they'll wait until after the first of the year to get their payments. And if they sell on a contract, they are not even covered under a bond when they do that unless they ask for their money within 15 days of the last delivery on that contract. So, many times they're actually gambling very seriously with a lot of money. [LB730]

SENATOR JOHNSON: Yeah. I guess for the record that's what I wanted to...they are at risk. [LB730]

JERRY VAP: They're definitely at risk. [LB730]

SENATOR JOHNSON: Right. [LB730]

JERRY VAP: In the Alvo elevator failure, we had two individuals who had sold their...a lot of their grain on a contract, delivered the grain, it was gone, and they didn't ask for their money within, at that time, a 30-day period. And both of them became unsecured creditors to the tune of \$400,000 apiece. And they got zero out of the proceeds of the bond. [LB730]

SENATOR JOHNSON: Thank you. Senator Kolterman. [LB730]

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SENATOR KOLTERMAN: Thank you, Senator. Mr. Vap, this is just a point of clarification, are you speaking...is it just the representative of the 5th District or are you speaking as a representative of the entire Public Service Commission? [LB730]

JERRY VAP: The Public Service Commission. [LB730]

SENATOR KOLTERMAN: Thank you. [LB730]

SENATOR JOHNSON: Okay. Any other questions for Mr. Vap? Seeing none, thank you, Jerry. [LB730]

JERRY VAP: Thank you for your time. [LB730]

SENATOR JOHNSON: You bet. Other testifiers, proponents, supporting LB730? Seeing none, opponents? Again, seeing none, any neutral? Welcome. [LB730]

JAY REMPE: (Exhibit 2) Good afternoon, Senator Johnson, members of the Ag Committee. My name is Jay Rempe, J-a-y R-e-m-p-e. I'm here on behalf of Nebraska Farm Bureau testifying today in a neutral capacity on this bill. And I'll also mention I have a letter on behalf of the Soybean Association in a neutral capacity on this as well that they wanted me to submit and have on the record as well. Thank you for the opportunity to testify today. I come up in a neutral capacity because we want to commend the Public Service Commission and what they're trying to do in trying to clarify things. We agree the Supreme Court decision kind of cast some confusion over the issue. And we share the goal of trying to protect stored grain and the owners of that stored grain through the Grain Warehouse Act. We do have some questions though about the language in the bill and how it's drafted and what the consequences of it might be. And so those questions were enough that we didn't feel comfortable that we could come up and offer our complete support for the bill. And I apologize. I tried a couple times to get ahold of John Fecht at the Public Service Commission's office to have a conversation with him. But I forgot yesterday was a holiday, a state holiday, and wasn't able to get help. So for the record, we wanted to come up today. A lot of our questions concern around the language, the new language in the bill that says that the coverage of the bond shall not include grain sold by signed contract or priced scale ticket. And our question revolves around, I as a producer have grain stored in the elevator. I have it stored, I'm waiting for the price. I determine at some point in time that I'm ready to sell it. I call up my elevator and say I want to sell this grain today at this price. My understanding of the common practice is they send out a contract to you, you sign that contract, and then you're free and good on that case. The way I read this, and I might be wrong in further discussions, but because that, it says signed contract there, even if you're...if you did it within that five-day window of what you're...that you're providing there, you would not be covered under the bond if

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you didn't receive payment because it is a signed contract. And so that's the question we have there too. The other question a little bit on the notion of a check that is not good or a dishonored check, you've got to draw a line somewhere, but the idea of the five day because in theory if you sold the grain on the six days prior and you got a check but it was dishonored, you wouldn't be covered under this. So I just raise that question, too, as well as with the new interpretation maybe the five-day window might be something to look at in terms of timing as well. So with those questions, I wanted to try to catch the representatives from PSC prior to getting up here, but I didn't get a chance to. But I just wanted to share those questions with the committee and we're going to try to talk with PSC and see if I'm misunderstanding something, which is a good chance, or if there's other ways to attack this problem. So with that, I'll be happy to answer any questions. [LB730]

SENATOR JOHNSON: (Exhibit 3) Any questions? Seeing none, thank you, Jay. Any other neutral? We do have a letter of support from Nebraska Corn Growers Association supporting LB730. With that, we will close our hearing today. Appreciate everyone attending. It is 2:25. Thank you. [LB730]