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Transportation and Telecommunications Committee
February 09, 2015

[LB31 LB474 LB597]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Monday, February 9, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB474, LB597, and LB31. Senators present: Jim Smith, Chairperson; Lydia Brasch, Vice Chairperson; Al Davis; Curt Friesen; Tommy Garrett; Beau McCoy; John Murante; and Les Seiler. Senators absent: None.

SENATOR SMITH: Good afternoon. I am Jim Smith from Papillion. Welcome to the Transportation and Telecommunications Committee hearing. I'd like to start out today introducing my colleagues that are with me in the hearing. To my far left is Senator Tommy Garrett from Bellevue. Joining us shortly will be Senator Les Seiler from Hastings. And then next to Senator Seiler's seat is Senator Beau McCoy from Omaha. To the far right, we have Senator Curt Friesen from Henderson, Nebraska. Next to Senator Friesen is Senator Al Davis from Hyannis. And then Senator John Murante from Gretna. And Vice Chair of the committee is Senator Lydia Brasch from Bancroft. Committee staff with me today, on my immediate right is Mike Hybl, legal counsel to the committee. And on my left is Paul Henderson, committee clerk. With us today, it looks like we have Kelli Bowlin from Cody, Nebraska. Kelli is a junior at UNL. I'm not certain if we're going to have J.T. Beck with us today. J.T. is from Centreville, Virginia, and is a senior at UNL. We will be hearing the bills in the order listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify in order...in order to keep the hearing moving. If you are testifying, please complete the sign-in sheet so it's ready to hand in to one of our pages when you approach the testifier table. And for the record, at the beginning of your testimony, please state and spell your name. Please keep your testimony concise and try not to repeat what has already been covered. Looks like we have a full agenda today and a full room and so we will use the light system. We will ask you to keep your remarks and your testimony to five minutes. There will be a...the lights will show green for the first four minutes; then it will turn amber for the last minute. And when it turns red, we ask that you try to wrap up your testimony. If you do not wish to testify, but want to voice your support or opposition to a bill, you can indicate so on the sheet that's provided at the table as you came into the room. This will be part of the official record of the hearing. If you do not choose to testify, you may submit comments in writing and have them read into the official record. I ask that you silence your cell phones. And also we are an electronics-equipped committee and information is provided both electronically, as well as in paper form to the committee members. Therefore, you may see the committee members referencing information on their electronic devices. Please have no concern with that. Your presence here today and your testimony are very important to us and is critical to our state government to hear from you. With that we do have three hearings, three bills to be heard today. And our first bill is LB474. And we invite Senator Chambers to open. Senator Chambers, welcome to the Transportation and Telecommunications

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Committee.

SENATOR CHAMBERS: (Exhibit 1) (Sounds of a roar.) Oh, excuse me. I have such an affinity for the animals now that I had to make sure they were represented here also. (Laughter) I'm Ernie Chambers, I represent the 11th Legislative District and all creatures great and small. This is a bill dealing with the subject matter that is very familiar to all of you. It would create a mountain lion protection license plate. Down through the years, I opposed anything on the license plate other than the identifying number. I lost that battle some time ago. So now I'm going to be like the person who used to want travel to be according to the rules of the Amish where you have a cart and horses, but if there...the only means of moving are superhighways or four-lane freeways, then you have to update the way you travel. So this bill is designed to do what many entities and individuals have had done for them. It creates a license plate for the protection of mountain lions. There's one element in this bill that you might want to look at. It allows a maximum of five figures, maybe more, but that's not anything I'll push right now. To get right to the point, it would create...let me give the exact name, a fund and a program and it would be the Game and Parks Commission Educational Fund. That fund would be created and the purpose would be to provide instruction or programs for young people relative to conservation. The money would come from the sale of these plates. There are two types, as you all are very familiar with, one the alpha numeric which could take the place of your regular plate. That would require an additional \$5 fee for the initial issuance and any renewal. That \$5 would go into this fund. If there would be one of these message or prestige plates, the cost of the initial issue and the renewal would be \$40; 25 percent would go to the Department of Motor Vehicles, the rest of it to this education fund. If a point is reached where the cost of manufacturing the plates is greater than the amount that comes in, then instead of sending any money to the education fund, it will first go to this highway trust fund. Then after that matter was settled, if any money remained, it would then go to the education fund. It is up to the department to design the plates. And if they had any interest in talking to me about that, I would be happy to do that. But there are other states who have done similar things and they might get some ideas from there. I don't want to speak on the bill longer than is necessary, so if you have any questions, I will answer them. But there's one other thing I want to say: These lions are indigenous to this state. Because of the number of them that had been killed since the last session, 15 of 16, several of them females, these animals are on the verge of being exterminated once again in Nebraska. This state is known as a pass-through state. It's on the far edge of what would be considered the mountain lion range to the west. So these animals will be found or seen in places other than Pine Ridge that are somewhat removed from there. But they don't take up residency; they don't do anything except pass through. When a mother has kittens and they reach a certain age and size, males especially, they're told--get to stepping, and so they move. There have been no reported attacks since these animals were first spotted again in 1991 against any human being. Some people suspect that there may have been some taking of livestock, but their main diet would be deer. And when they

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eliminated these animals at the top of the food chain, elk and deer, virtually overran the state. And when you take a significant piece out of the chain of being that comprises that system, then things go haywire. But this bill has nothing to do with my attempt to take away from the Game and Parks Commission the authority to set a hunting season. This bill would put money into the coffers of Game and Parks to be used in the way stated. And I do think there would be a good market for these plates. If you have any questions, if I've neglected to touch the types of things that you all know should be in the record when you're asking for a plate, ask me the question and if I don't know the answer, I'll give Senator Murante the high sign like Billy Joel said--come on, Virginia, show me a sign; get me a message and I'll throw you a line. If I have to do that, I'm not too proud. That's all I have though, Mr. President...Mr. Chair. [LB474]

SENATOR SMITH: Thank you, Senator Chambers, for your opening on LB474. Do we have questions from the committee? Senator Chambers, the education fund is not necessarily limited to only mountain lion protection is it? [LB474]

SENATOR CHAMBERS: No, conservation. [LB474]

SENATOR SMITH: Conservation. [LB474]

SENATOR CHAMBERS: And the program could be developed by Game and Parks. I didn't want to put any strictures on them as far as that fund. [LB474]

SENATOR SMITH: Okay. Well, thank you very much for your opening. And we will now continue on the hearing with the... [LB474]

SENATOR CHAMBERS: Am I allowed to stay? [LB474]

SENATOR SMITH: ...are you going to remain for closing? [LB474]

SENATOR CHAMBERS: Am I allowed to do that? [LB474]

SENATOR SMITH: Please do. [LB474]

SENATOR CHAMBERS: I follow the protocol. Thank you. [LB474]

SENATOR SMITH: We now open the hearing to proponents, those wishing to testify in support of LB474. Proponents, supporters of LB474. Seeing...yes...support? Support of LB474? Yes, please join us and welcome. [LB474]

ANGELIKA BYORTH: (Exhibit 2) My name is Angelika, middle initial T as in turtle, middle initial L as in lady, Byorth, A-n-g-e-l-i-k-a T. L. B as in boy, y as in yes, o as in other, r as in round, t as in Tom, h as in house. I'm testifying on my own behalf as a

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concerned citizen. Do you need my address, phone number, and so on? [LB474]

SENATOR SMITH: No, that's not necessary. [LB474]

ANGELIKA BYORTH: Okay. I would like to have my name entered into the record for LB474. I'm grateful to Senator Ernie Chambers for introducing this bill. If it becomes law, it will help mountain lions who used to be native in Nebraska come back from the brink of extinction. I'm especially grateful that Senator Chambers chose to propose a positive and honest and ethical way to raise money to help this rare wildlife instead of advocating for the killing of firstborns within these families of nature so that the rest of the siblings may live. What I'm referring to is the way our Nebraska Game and Parks Commission is using the negative and dishonest and unethical means of killing by hunting a certain number of Nebraska's majestic big horn sheep and mountain lions. There are more creative and humane ways of generating funds for the protection of rare and beautiful wild animals such as our Nebraska mountain lions. And LB474 is proposing one of them. Thank you. Any questions? [LB474]

SENATOR SMITH: Just a moment, do we have questions from the committee? I see none, thank you, Ms. Byorth, appreciate your testimony. We continue...thank you. [LB474]

ANGELIKA BYORTH: Thanks. [LB474]

SENATOR SMITH: We continue with proponents, those wishing to testify in support of LB474. Seeing none, we now move to opponents, those wishing to testify in opposition to LB474. Welcome. [LB474]

TIMOTHY McCOY: Thank you, Senator Smith, members of the committee. My name is Timothy McCoy, T-i-m-o-t-h-y M-c-C-o-y. I'm the Deputy Director of the Nebraska Game and Parks Commission. As far as this bill is concerned, there's some points here that I think are very important that we agree with the senator on. And that is, funding of our wildlife education activities to date is one that we struggle with. It is one we're challenged by. We get a little bit of money that we use from our game fund that we use for this. We've been trying to expand our outdoor education efforts, especially in our park system. We spend some of our park cash on this. And so it is something that there is a need there. And there were previous bills, actually, I think as recently as 2007 that were introduced that we worked on with folks at the Legislature to try and address this actually through this same mechanism. Through a...through at that time the discussion was a wildlife conservation plate. And the reason it was discussed that way was to try and have...really, really looking for something that had a very broad acceptance with the public. Because if we're going to make an effort to do something with the plate, we would, ideally, want that to be viewed as something positive by a wide range of Nebraskans, be very acceptable to build the funds that would bring that. Our concern

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with this bill is that it's very narrowly construed on mountain lion protection. And we're not sure how acceptable that would be to the broad public in the state of Nebraska which would probably result in, in our estimation, it would not result in any type of funding that we'd like to see for those education activities. The other concern we have is specifically with the word "protection." Our mission is to conserve wildlife for the benefit of all the citizens of the state and that wildlife. And that conservation is why it's used. Part of the founding principles our agency has worked on and works with is the North American Model of Wildlife Conservation where the funding for work done on game animals comes from, typically, the hunters and the conservationists that support those activities. And when populations...when we see there is potential there, there's a balance in that population, a habitat or a surplus of animals where there's opportunity, that's part of how we manage wildlife. It's been part of the successes of bringing species as elk, geese, ducks, deer in Nebraska, wild turkeys in Nebraska, it's a model that we've had a lot of success with. Part of our charge in that is to do the scientific work to make sure that those populations can handle that and to annually revisit that. And most of you probably are aware, we did revisit that with mountain lions this last year and there will be no season this year. And we continue to do the work to look at those populations. Because our goal is not extermination, our goal is to have mountain lions be in a balanced proportion as part of the...you know, a wild population in the state. But we have to manage that within the bounds of the acceptance of people and thinking about the interactions with mountain lions and with livestock. And so we try to take that all into consideration. So that use of that word "protection" does cause us concern. We would prefer to see a conservation-based plate that had some lighter acceptance there. [LB474]

SENATOR SMITH: Thank you, Mr. McCoy. Do we have questions? Senator Seiler. [LB474]

SENATOR SEILER: I had some question on why would you be opposed to this to raise money? [LB474]

TIMOTHY McCOY: We've discussed this previously in the past. If this bill comes and raises money, we will be glad to have it. But we would... [LB474]

SENATOR SEILER: How will you know until you actually do it? If you don't do the plate, you aren't going to raise the money. That's why I'm confused. [LB474]

TIMOTHY McCOY: The work we've done in the past, our...my concern is that we do it this way and it's impossible to get to a broader plate that is more widely acceptable. That's based on our history of looking at this issue. [LB474]

SENATOR SEILER: How many hunters do you have in this state? [LB474]

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TIMOTHY McCOY: We probably have...we have close to a hundred thousand hunters in the state. [LB474]

SENATOR SEILER: You got half of those, you'd be in business. [LB474]

TIMOTHY McCOY: We would. The conversations we've had from hunters are that they are not...they didn't appear to be very interested in what was a mountain lion protection plate. [LB474]

SENATOR SEILER: Which hunters were those that you talked to? [LB474]

TIMOTHY McCOY: Those were the groups that were...that we heard from through the Nebraska Sportsmen Foundation. [LB474]

SENATOR SEILER: Okay. [LB474]

SENATOR SMITH: Senator Brasch. [LB474]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Deputy Director McCoy, for your testimony. If the Section 9(1) on page 9, it says: the department shall...oh, just above it, excuse me, line 30, if that word was amended to say "conservation plates" then would you still be in opposition? [LB474]

TIMOTHY McCOY: I think it would be more acceptable to us to attempt a mountain lion conservation plate. [LB474]

SENATOR BRASCH: And so as I read at the very start of the bill, it does talk about conservation and it isn't until you get to page 9 that it starts changing into protection. [LB474]

TIMOTHY McCOY: Yes. [LB474]

SENATOR BRASCH: So you would be willing to reconsider perhaps... [LB474]

TIMOTHY McCOY: We would be willing to reconsider. That's not a decision that I make on my own. I would go back and have conversation with our staff and our director. [LB474]

SENATOR BRASCH: Very good. I have no other questions, thank you. [LB474]

SENATOR SMITH: Thank you, Senator Brasch. Senator Davis. [LB474]

SENATOR DAVIS: I guess kind of following up on what Senator Seiler said, Mr. McCoy.

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Thank you, Senator Smith. Recognizing that your hunters maybe are not supportive of this, but you would be opening up, essentially, a new funding source maybe from people who are environmentalists, isn't that a good thing? And if you're taking funding away from some of the park service needs now to fund some (inaudible) education programs, won't this help you to steer that park funding back to where it should be? [LB474]

TIMOTHY McCOY: Obviously, every little bit helps, but part of our concern is the ability to come back and having worked on legislation like this before and been unable to get wildlife...a broad wildlife conservation plate accepted by the body and passed, it's just a concern that it's going to be narrow and it will remain a very minimal amount of funding for the problem at hand. [LB474]

SENATOR DAVIS: You know, in recognizing that Senator Chambers has been opposed to any kind of...we'll call them vanity plates, for a long time, this is quite a departure for Senator Chambers to introduce this. And if you, probably, recall Senator Janssen made this proposal sort of at the end of the session last year, but it sort of seems to me that we're getting to a point where we're fragmented and we could have thousands of different plates, but as long as people are willing to pay for those, is there harm to that? [LB474]

TIMOTHY McCOY: I can't tell you the answer to that because the ability to open that up, in my short history of working with the Legislature, is getting that...getting an additional one may be quite difficult. I don't know. [LB474]

SENATOR DAVIS: We'd all have to twist Senator Chambers' arm on that one, I'm sure. Thank you, Mr. McCoy. [LB474]

SENATOR SMITH: Senator Friesen. [LB474]

SENATOR FRIESEN: Thank you, Chairman. Mr. McCoy, I guess I have the same questioning a little bit, I mean, since it's very well spelled out in there that this money is strictly to be used for any of your conservation programs that it looks to me like any dollars added just helps you out. Yes, its title reads--protection act, but that is Game and Parks kind of...what they do. They protect our wildlife in a way. You do it through hunting and fishing and you regulate its use in that fashion. So I still find it very interesting how you really don't need this money or want this money because of the title. Because it is spelled out to be able to use it anywhere in conservation efforts. [LB474]

TIMOTHY McCOY: We would like any money we can get for wildlife education conservation efforts. But we would also be remiss not to try and, I think, look at an opportunity for that to be a broader funding source. That's what it really comes down to. And hopefully I've answered your question. [LB474]

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SENATOR FRIESEN: Okay, thank you. [LB474]

SENATOR SMITH: Senator Seiler. [LB474]

SENATOR SEILER: Just following up on that, have you submitted any bills this session to widen that fund raising for your conservation? [LB474]

TIMOTHY McCOY: We've...we have bills in the Appropriations to request additional funds for...in our cash funds. Not that are, I guess, specific to outdoor education, but that's where a lot of our funding comes from, from our parks cash and our game cash. It's part of our, I guess I'd say, our normal operation. [LB474]

SENATOR SEILER: But general funds don't necessarily go in the same slot that special funds do. Right? [LB474]

TIMOTHY McCOY: Yeah, yeah. [LB474]

SENATOR SEILER: Okay. [LB474]

TIMOTHY McCOY: Most of our funding for these is done through cash funds. [LB474]

SENATOR SEILER: Thank you. [LB474]

SENATOR SMITH: Mr. McCoy, so you're interested in broadening the means by which we fund the Game and Parks Commission Educational Fund. So you'd be agreeable to that. And you would be agreeable to the broadening if it came through the license plate fees, right? [LB474]

TIMOTHY McCOY: Yes. [LB474]

SENATOR SMITH: So how would you propose to broaden the license plates in order to accommodate what you're trying to get at? [LB474]

TIMOTHY McCOY: Previous efforts had looked at a wildlife conservation plate with the titling of "wildlife conservation." There are about 40 programs around the country from state agencies that do this either on a parks or a wildlife side and those have had very broad acceptance in most of those states. I believe in 2007, when we looked at this with a wildlife conservation plate, the estimate was that that might bring in \$120,000 a year. And that was done broadly working with several other groups and broadly with the other environmental groups in the state. [LB474]

SENATOR SMITH: What other types of wildlife would you include in that? [LB474]

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TIMOTHY McCOY: You would still tie it to the outdoor education. But the design of the plate then is, you know, more flexible and you try to look at species, maybe. In Nebraska, we have...you know, we have the world's largest congregation every year of Sandhill Cranes, it's the largest concentration of cranes anywhere in the world. It's a world-class spectacle. I can see some interest in something like that. We could have interest from people in terms of, you know, species like pheasants that have a lot of tie to Nebraska to sort of our culture. But I think you would have...you know, broaden that opportunity to have a design that might be attractive to a wider range of people. [LB474]

SENATOR SMITH: All right. So again, I'm hearing the two primary points of opposition is that you believe it's too narrowly focused which, to me, that probably...that would not put you in opposition to the mountain lion, necessarily, it's just that you would like to see expanded beyond that. And then the other piece of your opposition is the term "protection" and I can see where protection may mean something different to you than it would, maybe, to someone else. Population protection takes on many forms. You don't want to eradicate the population, but rather protect that population. [LB474]

TIMOTHY McCOY: Yeah. [LB474]

SENATOR SMITH: So there's...so those are your two primary points of opposition. [LB474]

TIMOTHY McCOY: Yes, sir. [LB474]

SENATOR SMITH: All right. Okay. Thank you very much for your testimony. We continue with opposition, those wishing to speak in opposition to LB474. Opposition. Okay. Anyone wishing to testify in the neutral capacity? Seeing none, Senator Chambers, you're welcome to close. [LB474]

SENATOR CHAMBERS: Mr. Chairman, members of the committee, Game and Parks is an agency, and like all agencies there are bureaucrats. We, on the other hand, are policy makers. This license plate would appeal to a constituency larger than that comprising hunters. It's not designed to aim just at hunters or any particular group. I think there would be a very broad appeal. Game and Parks cannot issue a plate that's going to have much of a broad appeal because right now I'm reading articles to the editor from hunters and other people dissatisfied with the way Game and Parks operates. They have stated that the commissioners are not responsive and they feel that the commissioners ought to be elected, which may be a valid issue. So not everything with Game and Parks is occurring and progressing in the way that it should. But the focus on these plates...if Mr. McCoy, not Senator McCoy, had felt that any other kind of plate would be of value, Game and Parks could have done that. This is a plate which I still believe ought to be issued and made available. I believe it will bring in

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enough money to pay for the cost of the manufacture and also have money to go into that fund. When Mr. McCoy says that he's going to ask the Appropriations Committee for money, even if the Appropriations Committee should put some money into a bill for Game and Parks, that doesn't mean they're going to get it. We operate in a political setting. I am a politician. I make that crystal clear. And I will use the means at my disposal under the rules of the Legislature to achieve my ends. This license plate proposal has merit on its own. Mr. McCoy feels that Game and Parks represents hunters. It does not. Part of the problem is that Game and Parks has not reached out to the populace as a whole, and not even to all hunters. There's a man, he has ducks or something...or some form of ducks or turkeys on his license plate and he said I could mention that because they are very offended at the kind of so-called hunts that Game and Parks has allowed, and one of mountain lions, one is the use of dogs. Secondly, they had stated that when two females are taken, the season is over. Well more than two females had been killed one way or the other and they did not do what they said they would do. So, frankly, I do not have a lot of...let me put it like this, I don't place a lot of credence in what is represented to the Legislature by certain employees of Game and Parks. If Mr. Douglas had come here, who is the director, it would be a different matter. Mr. McCoy goes where they tell him to go, says what they tell him to say. I don't know what this committee will do. But I think you should give me the opportunity to persuade the Legislature as a whole, if I'm able to do that, that this is a viable methodology for raising money for that fund. And I make no bones about the fact that I'm trying to rescue these mountain lions from extermination and I would do everything in my power. Now the killing of this bill will in no way impact what I intend to do. But it might impact on what I will do with reference to Game and Parks. They had a bill that would benefit them, Senator Schilz brought the bill, and he thanked me after the bill moved forward, these invasive species, for not only not opposing the bill but voting for it. I don't have anything against Game and Parks per se. But when I see them moving a native species toward extermination, then I am very concerned. I'm going to be frank, the reason I believe they had for not scheduling a hunting season in 2015 is because I'm still in the Legislature. Now I cannot cut down every tree in the forest, but I can cut down enough of them for Game and Parks to be concerned. They figure, I think, that by saying now they're going to have four-year study, that that will mollify me. But it does not say they will not have these hunting seasons in the mean time or they might hope against hope that I will not survive this term of my career and run and be elected again for four more years. But there are things that will give an old fella...I won't speak for the ladies, a fellow will acknowledge how old he is, a reason for being. And Game and Parks has given me one. I'm not going to prolong my closing. If you have any questions, I will answer them. But I want the record to be clear based on what I've said, that's what my position is so Mr. Douglas cannot say he was blindsided; Mr. McCoy can take the message back, if he wants to. But I can't think of any stone I've left unturned that I should have turned over. So if you have any questions, I will gladly answer them.

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SENATOR SMITH: Thank you, Senator Chambers. Do we have any questions?
Senator Brasch. [LB474]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Senator Chambers, for your details in testimony. And during Deputy Director McCoy's testimony and questions, I had asked the question about striking the word "protection" and using the word "conservation." He thought that "protection" was problematic perhaps. He was not prepared to move forward. [LB474]

SENATOR CHAMBERS: So it would say--mountain lion conservation plate? [LB474]

SENATOR BRASCH: Um-hum. [LB474]

SENATOR CHAMBERS: But the mountain lion would be mentioned? [LB474]

SENATOR BRASCH: Yep, wherever... [LB474]

SENATOR CHAMBERS: Well, that's all right with me. [LB474]

SENATOR BRASCH: And each paragraph...each place the word "protection" would be substituted with "conservation" because... [LB474]

SENATOR CHAMBERS: I'm very agreeable. [LB474]

SENATOR BRASCH: You are agreeable to that? [LB474]

SENATOR CHAMBERS: Yes. [LB474]

SENATOR BRASCH: Okay, I have no other questions. Thank you. [LB474]

SENATOR CHAMBERS: Okay. Is that it? [LB474]

SENATOR SMITH: Senator Davis. [LB474]

SENATOR DAVIS: So as you heard me say, Senator Chambers, this is quite a departure for you from your initial opposition to vanity plates. So how would you feel if we had a whooping crane bill or a Sandhill Crane plate? Would you be amenable to supporting that? [LB474]

SENATOR CHAMBERS: You mean in place of this one? [LB474]

SENATOR DAVIS: No. In addition to those. [LB474]

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SENATOR CHAMBERS: Oh, oh, well, once I capitulate, they can put anything on the license plates that they want, seriously. If there's a constituency wanting something on the plates...since that's what they're doing now, let the public have that opportunity to make its case. And since whooping cranes are known to be in Nebraska, maybe that would be a good plate. But the thing is, Game and Parks doesn't offer anything themselves, they say--no, no, no. But I would not oppose that. If they wanted to put the black-tailed prairie dog on a plate, I wouldn't be opposed to that. [LB474]

SENATOR DAVIS: You know, very few bills show up that produce revenue; almost all bills take revenue, so you're producing some revenue. I appreciate that. Thank you. [LB474]

SENATOR CHAMBERS: Okay. [LB474]

SENATOR SMITH: I do have a question for you, Senator Chambers. [LB474]

SENATOR CHAMBERS: Yes. [LB474]

SENATOR SMITH: So I liked your exchange with Senator Brasch on the use of the term "conservation" instead of "protection," possibly. What does conservation mean to you? [LB474]

SENATOR CHAMBERS: It means in the context of an agency like Game and Parks, which is supposed to manage the wildlife in accord with scientific principles that whatever steps are necessary to maintain the balance in this ecosystem. The predators and the prey would be done, not on the basis of what hunters may want in terms of obtaining trophies, but the population of predators necessary to manage those animals that the predators have as their primary diet. Mountain lions, like any other predator will go where there is sufficient territory and prey to survive. If something happens, human being caused or otherwise, so that there was an imbalance, that's where the word "management" comes in. And I know people say that the Nebraska Constitution has a provision that the preferred method of management is hunting. It doesn't say it's the only method. And there are people trained in biology, they could be called scientists, who work for Game and Parks, but they have not had the acceptance of their findings that should be the case. I'm not mentioning names or anything like that, but there are people who know how to manage. And when you have a small a population of mountain lions as there is in Nebraska by however means you reckoned that size of that population. It is so small that if Game and Parks cannot manage this small amount of animals, I will bring a bill to abolish Game and Parks every year that I remain in the Legislature, and I mean it. [LB474]

SENATOR SMITH: Senator Brasch. [LB474]

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SENATOR BRASCH: Thank you, Chairman Smith. And thank you once more, Senator Chambers. The title of those who work in Game and Parks are called conservation officers. [LB474]

SENATOR CHAMBERS: Yes. [LB474]

SENATOR BRASCH: So I am hoping that Deputy Director McCoy does go back, and I think their jobs are in alignment with conservation. I have spent hours with some of the conser...those officers...conservation officers going throughout our district and looking at what they have done to protect the wildlife that is in our district. So with that said, if you are willing and they are, perhaps, that this bill will move over without very much objection. And thank you for bringing it forward. [LB474]

SENATOR CHAMBERS: And I appreciate your having made the suggestion of switching words. So now that all of us are thankful, I see that Mr. McCoy's namesake sitting there as a senator has a very stern, solemn look....oh, he smiled, okay, so I'm okay now. [LB474]

SENATOR SMITH: Well, thank you, Senator Chambers. [LB474]

SENATOR CHAMBERS: Thank you for having me here. [LB474]

SENATOR SMITH: And that closes our hearing on LB474. We now open on LB597 and we invite Senator Davis to open. Welcome. [LB474]

SENATOR DAVIS: Good afternoon, Senator Smith and members of the Transportation Committee. I am Senator Al Davis, D-a-v-i-s, and I represent Legislative District 43. I am appearing here before you today to introduce LB597, the Contract Carrier Safety Act. One of the first issues I heard from employees of the BNSF, when I was running for office, was the concern about the status of the contract carriers. Rail employees who operate trains spend a great deal of time being transported to and from work via contract carriers. This is partly due to the strict limits on the amount of time a trainman is permitted to operate a motor, and the inevitable problems which often develop due to congestion on the line. Trainmen are frequently moved via common carriers to a location to pick up a train whose operators have timed out or where a motor was left behind for some reason. Although the rail employees have other concerns about the contract carriers and the drivers, one of their primary concerns relates to the amount of uninsured/underinsured insurance which the carriers retain in the event they are hit by someone fitting that category. LB597 establishes minimum standards of insurance coverage for contract carriers of railroad employees. This would apply to a contract carrier who transports operating railroad employees on a state road or highway in a motor vehicle that holds up to 15 passengers. The bill requires that a contract carrier maintain an insurance policy of \$500,000 per person in cases of bodily injury or death,

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up to a maximum of \$5 million for each vehicle. LB597 also requires a contract carrier to maintain uninsured and underinsured motorist coverage of \$500,000 for each passenger in each of its vehicles. The Public Service Commission will enforce this act, and each violation of the act will be subject to a civil penalty of up to \$2,000. BNSF and Union Pacific do currently have uninsured and underinsured policies. However, without standards specified in statute, these policies, which are negotiated between the railroads and contract carrier companies, are subject to change. LB597 ensures more stability in the form of a minimum standard set in statute and enforced by the Public Service Commission. I first introduced this bill during the 2013 Session but withdrew it later that year because I had been advised that the issue would be better handled at the Public Service Commission. The rail unions then took their concerns to the PSC, which has taken an interest in addressing the need. However, BNSF has indicated recently that it does not believe that the issue of insurance for the common carrier should be addressed there but rather should be handled by the Legislature. Before the session began, we were advised that the Public Service Commission had requested an Opinion from the Attorney General about whether the PSC had the authority to consider this issue. In conversations with the AG's Office, I learned that the PSC had not yet requested that Opinion and that the AG would be unable to render an Opinion on this issue before bill introduction had ended. Therefore, I drafted the bill and had it introduced. Since that time, the Public Service Commission has requested an Attorney General's Opinion on whether or not this is an issue within their jurisdiction, but that Opinion has not come down yet. If the Attorney General does determine that this is a Public Service Commission issue, I would consider withdrawing LB597. Until then, I intend to continue addressing what I consider a lack of oversight and to ensure that railroad employees are adequately insured in these cases. Since rail employees are actually at work when they are riding in the contract carrier, one would assume that they would be covered by FELA, the insurance mandated by the federal government for railroad employees. This is only partially true in the case of an accident between the contract carrier and an uninsured or underinsured driver, since a railroad employee must prove negligence on the part of the railroad to be compensated by them for injury. Others following me will give you a detailed understanding of the recourse railroad employees have if they are injured on the job. I would be happy to answer any questions you have but would suggest that you listen to others' testimony and I will be available at closing. Thank you. [LB597]

SENATOR SMITH: Thank you, Senator Davis. Do we have questions from the committee? Senator Seiler. [LB597]

SENATOR SEILER: I just have one. When was that Opinion requested from the AG? [LB597]

SENATOR DAVIS: The Public Service Commission requested that and I'm going to guess it was maybe around the eighth or ninth day of bill introduction. [LB597]

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SENATOR SEILER: Okay. Thank you. [LB597]

SENATOR SMITH: Senator Davis, I assume you're going to hang around for closing. We may have some questions. [LB597]

SENATOR DAVIS: Yes, I am going to do that. [LB597]

SENATOR SMITH: Okay. Thank you. We now move to proponents, those wishing to testify in support of LB597. Welcome. [LB597]

BOB BORGESON: (Exhibits 1, 2, 3, 4, and 5) Hello, Senators. Thank you for having me here. My name is Bob Borgeson. I'm the state legislative director and lobbyist for the Sheet Metal, Air, Rail, and Transportation Union. We represent railroad workers from McCook to South Sioux and Scottsbluff to Omaha. We have approximately 2,400 active members in the state of Nebraska. Our guys and gals ride in these vans every day, hundreds, hundreds of miles, thousands of miles probably every day. And what we're looking for is just a baseline of protection like has been established in other states. In my handout, there's a few other states have established some minimum standards: \$2,500 (sic--\$250,000) in Illinois, who is attempting to raise theirs to a million dollars. It's been introduced in Utah. It just passed out of their legislative committee. It's been introduced in Washington. There's a million dollars required in Minnesota, I believe in North Dakota; \$500,000 in Louisiana. The Federal Employers...it's kind of an odd situation that we have here. Our folks are not covered under workmen's comp. We're covered under the Federal Employers Liability Act that Senator Davis was referring to, and it's a fault-based law. We have a designated legal counsel, Richard Dinsmore, that's going to follow and he can explain the delicacies of the law better, way better than I can. So the problem is right...the existing state requirements right now, it's \$25,000 per person and \$50,000 per accident, which we had three hearings at the PSC last year in 2014: one in February, one in September, one in December. After the February meeting, two days afterwards in Lincoln, Nebraska, we had a wreck just outside on the south end of Lincoln that I think one of our members is maybe just getting back to work now. It can be, you know, as any car accident can be, it can be pretty devastating. And these folks are just doing their job. That's their job for the day. They don't have a choice. It's...that's their job that day is to deadhead in this van to McCook, to North Platte, from North Platte to Omaha, whatever it might be. Let's see, I guess I would answer...I don't want to just read my statement. If anyone has any questions, I'd be more than happy to try to answer that for them. [LB597]

SENATOR SMITH: Thank you, Mr. Borgeson. Do we have questions of Mr. Borgeson? Senator Friesen. [LB597]

SENATOR FRIESEN: Thank you, Chairman Smith. Just a question of if an employee, a

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railroad employee, is riding in a contract carrier van... [LB597]

BOB BORGESON: Yes, sir. [LB597]

SENATOR FRIESEN: ...and it crashes through no fault of anyone else, just driver falls asleep, what kind of coverage is available for that employee from different...? [LB597]

BOB BORGESON: If the van itself, the driver falls asleep and it crashes? Well, I think Mr. Dinsmore would, as an attorney, would be better to answer that, but my opinion would be that they're an agent of the railroad and, thus, the railroad would be responsible for that. [LB597]

SENATOR FRIESEN: And how much coverage would that be then at that time? [LB597]

BOB BORGESON: Well, then it would fall under FELA as a working condition, I think. [LB597]

SENATOR FRIESEN: Okay. Thank you. [LB597]

SENATOR SMITH: Senator Garrett. [LB597]

SENATOR GARRETT: Thank you, Mr. Chairman. The contract carrier is required already to have insurance for uninsured motorists. Do you know what the... [LB597]

BOB BORGESON: Twenty-five thousand per person and fifty thousand, that's the minimum. It's just like you and I for our own vehicles, I believe. [LB597]

SENATOR GARRETT: Okay. Isn't the...wouldn't the railroad still be liable even above and beyond those damages? [LB597]

BOB BORGESON: Has to be fault. It's a fault-based system, the Federal Employers Liability Act. [LB597]

SENATOR GARRETT: Okay. [LB597]

BOB BORGESON: And therein lies the rub. [LB597]

SENATOR GARRETT: Okay. Thank you. [LB597]

SENATOR SMITH: Further questions for Mr. Borgeson? Seeing none, thank you. [LB597]

BOB BORGESON: Thank you very much for your time. [LB597]

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SENATOR SMITH: We continue with proponents, those wishing to testify in support of LB597. Welcome. [LB597]

RICHARD DINSMORE: Thank you. Good afternoon, Senators. My name is Richard Dinsmore, D-i-n-s-m-o-r-e. I'm an attorney. I've practiced law in the state of Nebraska here for a long time, well over 40 years, and probably over half of that time has been almost exclusively representing working men and women on the railroad. This particular, what was formerly the United Transportation Union, but there are others, they alone have 2,400 members who are affected by this bill. Now, they are primarily the breadwinners. So when we think about if they are injured and their money is taken away, we're probably talking about, just from this union, just from this class of workers, 5,000 to 10,000 people, if you include their spouses and their children. There's also the engineers who work on the trains. Here's the point. Here's where the void exists. Our people are not covered by workmen's compensation. There's probably 1 or 2 percent of all working people here in the United States that are not covered by workmen's compensation. Workmen's compensation is a nonfault-based system. Simply says that if you're at work and you are injured at work and as long as you didn't do it on purpose or drunk, those are the two defenses, then you will be covered by workmen's compensation. There's no need to prove that anybody did anything wrong. It is not a fault-based system. It is available to everyone. As opposed to that, the Federal Employers Liability Act for railroad workers are not covered by workmen's compensation. This goes back over 100 years. The Federal Employers Liability Act was passed as a safety statute. It was passed as a safety statute, not a compensation statute. Congress determined that the railroad was not a safe place to work and that the railroads were not providing a safe place to work. So as an incentive to provide a safe place to work, they took them out of the workmen's compensation, which is very limited coverage, and said if you do not provide a safe place to work for your employees, then you will have additional exposure over and above workmen's compensation. But they put a limitation on it and the limitation was the employee has to show some form of fault, however slight. And if the employee cannot show some form of fault associated with the railroad, then he or she is not going to recover anything no matter how severe the injury. Herein lies the rub. Herein lies the void. The railroads require all of the employees to be in these contracted vans and take them all over the state, because they can't get from point A to point B. They're traveling at all times of the day and night. They're traveling in all kinds of weather, 3:00 in the morning. The railroad operates 24/7 and they will have their vans, in this case Railway (sic--RailCrew) Xpress is one of the van companies that they negotiate with, to come and pick these people up. This situation arises only in the sense when a uninsured or underinsured motorist impacts the van and causes injury. No fault of the van driver, no fault of the railroad, but the typical, let's say, drunk driver blows the stop sign and we have anywhere from five to eight or two to eight people in the van, in addition to the driver, who may be injured. We cannot look to the railroad for compensation. We only look, in that situation, to the individual who struck our van full of

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people. And no matter how badly they are injured, then they have no recourse against the railroads. Now our dear friends at Union Pacific, I know this, carry \$2 million worth of coverage for uninsured and underinsured motorist coverage. On the other hand, the people at Burlington Northern have decided that they only require \$25,000 or \$50,000 worth of coverage. The man that Mr. Borgeson told you about, where the person blew the stop sign, hit the van, this person who's been out of work first looks to the person that caused the injury. The law is first you look at the person who caused the injury in terms of insurance. If that person carried the minimums, it would be \$25,000/\$50,000. Then you look to the coverage that's on the van, the van in which you are operating. If it's a Burlington Northern van, the total amount of coverage is \$25,000 or \$50,000 for the entire van for as many people who are in the van, no matter how badly they're injured. It's....that's where the void exists. I see my time is running out. I'll be happy to take any questions. It's a little bit complicated, but there is this void that exists. Oh, you may hear after me that someone will say, well, the unions have negotiated what's called an offtrack agreement. If somebody is injured offtrack, there is an offtrack agreement where the railroads will pay them a certain amount of money that's like a small disability policy or disability policy, and in fact that's true. It could be, I think, \$1,000 a week, up to a certain amount. So they will tell you, this is our way of taking care of that, that we don't need to raise the rates, only Burlington Northern. What they won't tell you or what they haven't said in the past is any money that they advance, they will claim subrogation against any lawsuit that you have. So once again, in the situation where we have this man from Lincoln, if there was only \$25,000 worth of coverage and he had hundreds of thousands of dollars, and they paid money under the offtrack agreement, they will file a lien in the lawsuit and ask for their money back. So they're not paying anything to this person in the offtrack agreement. Same thing with the medical insurance that we help pay for with our premiums, the medical people, while the medical bills are paid, they also have the right of subrogation. So they will step into that lawsuit and ask for their money back also. So there's really a net sum nongain in those situations. And it doesn't arise all that frequently and it's cheap insurance. We're talking about two companies that reported over a billion dollars in profit every 90 days. Union Pacific can do it. And my time is up. I'm sorry. [LB597]

SENATOR SMITH: Thank you, Mr.... [LB597]

RICHARD DINSMORE: Questions? [LB597]

SENATOR SMITH: Thank you, Mr. Dinsmore. I assume there may be a question or two here if...Senator Garrett. [LB597]

SENATOR GARRETT: Thank you, Mr. Chairman. Can you size the magnitude of this, of this problem? How many times has this occurred with Burlington Northern? And if this has happened with an uninsured motorist hitting a contract carrier, did the injured employee subsequently bring litigation against the railroad? [LB597]

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RICHARD DINSMORE: No. No, if the situation is one where the driver is absolutely faultless, the drunk driver, let's say, blows the stop sign, there's nothing that the railroad did wrong, okay--and there's cases on it that have gone to the Nebraska Supreme Court--then the railroader has no recourse except against the person who blew the stop sign. And if that coverage isn't sufficient, that person is only carrying \$25,000 or \$50,000 and it's a Burlington Northern employee, then everybody in that van has a total of \$50,000 if, you know. I can tell you of two more individuals in North Platte, Nebraska, that we're representing, both of whom lost their jobs as a result, okay? Thankfully...there wasn't enough coverage. There was only \$100,000 per person. Sounds like a lot, but these are people who have had several operations. They have children. One man had a special-needs child. There was only \$100,000 coverage for him. But thankfully in that case, it was with the Union Pacific and there's \$2 million of uninsured motorist coverage. Now I hope our friends at Union Pacific don't reduce their amount because this only calls for \$500,000, okay? But the problem is they could reduce theirs tomorrow also. Okay? There's no mandatory, okay? There's this gap. Did I answer your question, Senator Garrett? [LB597]

SENATOR GARRETT: Yes. And how frequently has this occurred, these kind of situations? [LB597]

RICHARD DINSMORE: Well, thankfully, it doesn't happen all that often, but it happens with a great enough frequency that we know the more we put people...the more they put people on the roads at all times of the day or night, that increases the risk. I can tell you of the two lawsuits that happened in North Platte, okay, the two instances that I just told you about with both men who have lost their jobs; the one other client that we represent here in the state of Nebraska. Now there's three instances that involved hundreds of thousands of dollars worth of lost wages that have occurred in the last two years that I know of that our firm has contact with. And here's the other point. Here's the other point. It's not expensive. Usually it's a retrospective premium, so if it doesn't happen that often the railroads aren't going to be charged that much, okay? It's... [LB597]

SENATOR GARRETT: I find it intriguing that Union Pacific has a \$2 million policy though. How did you or whoever come up with a \$500,000 number? [LB597]

RICHARD DINSMORE: Sure. The two men that we represent out of North Platte that had the very bad accident, okay, we brought a claim and asked the Union Pacific to identify how much they had. And they answered interrogatories under oath, and I have those with me, where they said they have \$2 million. The only...and when we had the individual in Lincoln here last year, we called the claims person for...that handles the insurance and they indicated to us that for every state the Burlington Northern is in, they always carry the minimum, which in Nebraska is \$25,000, is \$25,000/\$50,000. [LB597]

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SENATOR GARRETT: Thank you, Mr. Dinsmore. [LB597]

RICHARD DINSMORE: Oh, and by the way, Senator, they both use the same contract carrier. They both use RailCar (sic--RailCrew) Xpress, but one negotiates with them to carry \$2 million and the other negotiates with the same company to provide \$25,000/\$50,000. And the difference is just, in relation to making a billion dollars every 90 days, the cost is just insignificant, I suspect. [LB597]

SENATOR GARRETT: Thank you. Thank you, Mr. Dinsmore. [LB597]

SENATOR SMITH: Mr. Dinsmore, I have a real quick question for you here. [LB597]

RICHARD DINSMORE: Yes, sir, Senator. [LB597]

SENATOR SMITH: So you were mentioning the offtrack compensation,... [LB597]

RICHARD DINSMORE: Yes, sir. [LB597]

SENATOR SMITH: ...and the offsetting provision you were talking about was a lien that the railroad would file against the underinsured/uninsured, right? [LB597]

RICHARD DINSMORE: Yes, sir. [LB597]

SENATOR SMITH: And so are you proposing...what you're getting at, are you looking to replace, get rid of, the off track in lieu of what you're trying to do with this? [LB597]

RICHARD DINSMORE: No. They have...that's negotiated and they have their right of subrogation. Okay? They have their right to come back and say, yes, we'll pay you up-front, but if you recover money against...from somebody else, we want our money back. [LB597]

SENATOR SMITH: All right. [LB597]

RICHARD DINSMORE: If it's only \$25,000/\$50,000,... [LB597]

SENATOR SMITH: I got you. [LB597]

RICHARD DINSMORE: ...and they've paid out \$50,000, this person goes home penniless again. [LB597]

SENATOR SMITH: Thank you. [LB597]

RICHARD DINSMORE: It reduces litigation, in fact. If you have \$2 million worth of

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coverage, we're not going to be suing the railroad trying to come up with some concept, okay? They should be in favor of this. [LB597]

SENATOR SMITH: All right. Thank you. [LB597]

RICHARD DINSMORE: You're welcome. [LB597]

SENATOR SMITH: We now continue with proponents. [LB597]

RICHARD DINSMORE: Thank you, Senator. [LB597]

SENATOR SMITH: Thank you very much, sir. Proponents, those wishing to testify in support of LB597. [LB597]

PAT PFEIFER: Mr. Chairman. [LB597]

SENATOR SMITH: Welcome. [LB597]

PAT PFEIFER: (Exhibit 6) Senators, my name is Pat Pfeifer. I'm with the Brotherhood of Locomotive Engineers and Trainmen, and I represent the engineers in the state. [LB597]

SENATOR SMITH: And please spell your name for us. [LB597]

PAT PFEIFER: P-f-e-i-f-e-r. And I'm also a full-time engineer with Union Pacific and I'm grateful they do have the coverage. And short of repeating everything everybody else has said here, the one part that people are missing is there's a driver that's not covered... [LB597]

SENATOR SMITH: Come forward so we can make sure we pick up your comments. [LB597]

PAT PFEIFER: Okay. There is a driver that's not covered under the Union Pacific policy or the Burlington Northern lack of policy, so...and they don't have the benefits of the offtrack vehicle agreement. [LB597]

SENATOR SEILER: Excuse me a second. Clerk, Clerk, you have the red light on. [LB597]

PAT PFEIFER: Okay, I'll go. (Laughter) [LB597]

SENATOR SEILER: You're back on now. [LB597]

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PAT PFEIFER: All right. We got it. I'll cede a few minutes to you. So outside of that, you know, I've done some research on this. The Federal Motor Carrier Safety Association has been looking at the same thing and there's some facts in your handout there from the Volpe Center, which states that the insurance costs are not keeping up with the medical cost. So keeping \$25,000/\$50,000, and this has been an issue that's been trying to be addressed ever since I've been an employee, for 25 years, couldn't even afford to get an appendectomy with that. Looking at the Blue Cross Blue Shield and the CIH (sic), you know, dispute they've got going, they've actually advertised what some of the procedures are. So it's almost like living in a million-dollar house and only covering it for \$25,000. The insurance should be following the needs and the procedures and the costs, so. And in my own policy, it's less than 1 percent underinsured/uninsured, and I have higher coverage than Burlington Northern and I haven't quite made the Fortune 500 yet, so. If I can afford it, I'm pretty sure they could. But again, one of the main points is there is a driver of these vehicles that's not covered to the same benefit that I am. [LB597]

SENATOR SMITH: Thank you, Mr. Pfeifer. Do we have questions, questions from the committee? Senator Seiler. [LB597]

SENATOR SEILER: Just one question. Does your union represent both the UP and the Burlington? [LB597]

PAT PFEIFER: Yes, we do. [LB597]

SENATOR SEILER: Quite a big discrepancy in your contracts. [LB597]

PAT PFEIFER: I work for the Union Pacific. I personally think we have better people to negotiate with. [LB597]

SENATOR SEILER: (Laugh) [LB597]

PAT PFEIFER: I said that because I know there's some of them in here. [LB597]

SENATOR SEILER: Oh, okay. [LB597]

SENATOR SMITH: Thank you again. We continue now with proponents, those wishing to testify in support of LB597, supporters of LB597. Seeing none, we now move to opponents, those wishing to testify in opposition to LB597, those wishing to testify in opposition. Welcome. [LB597]

BRYAN TAYLOR: Good afternoon. Thanks for allowing me to come and speak today on LB597. My name is Bryan Taylor, B-r-y-a-n T-a-y-l-o-r. I'm the director of risk management for RailCrew Xpress. Brown's Crew Car is a Nebraska contract carrier

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engaged in transportation of railroad personnel. Brown's employs approximately 230 people throughout the state of Nebraska in 19 locations, operating 95 vans. To the extent any legislation endeavors to make crew hauling safer, Brown's would be in favor and support such legislation. Brown's is committed to safety of its drivers and passengers and maintains a rigorous safety program. Section (2) of LB597 merely increases costs to the transportation providers without providing any additional benefits to our passengers. The proposed legislation identifies carriers of railroad crews and requires them to maintain higher limits of uninsured and underinsured motorist coverage. The legislation is tailored so narrowly, it's unfair. The Uninsured and Underinsured Motorist Insurance Coverage Act requires uninsured and underinsured insurance coverage in the amounts of \$25,000 per person and \$50,000 per accident. LB597 is a significant disparity, narrowly tailored to carriers providing transportation services to railroad crews. Brown's would additionally seek clarification on why this level of coverage is proposed. What data or objective evidence in the Legislature requiring or relying...or is the Legislature relying on to support the current proposed level of coverage? If the data or evidence suggests railroad crew members have a need to be protected from uninsured and underinsured motorists, shouldn't this benefit be extended to all commercial passengers? Additionally, if there is a compelling need to protect commercial passengers from uninsured or underinsured motorists, this benefit should be extended to all Nebraska automobile passengers. Requiring uninsured and underinsured coverage will not benefit railroad passengers as this coverage is duplicative of other benefits available to railroad crews. The service agreements that transportation providers, such as RailCrew, have with railroads require providers, such as myself, to indemnify the railroad for damages crew members incur while a passenger is in the vehicle regardless of fault and independent as to whether the collision is with a driver who is uninsured or underinsured. The service agreements between the railroads and the transportation service providers clearly detail safety, insurance, and indemnity obligations of the transportation providers and currently provide an adequate remedy for railroad passengers should an accident occur. The cost of this additional coverage would be a burden on existing carriers and a barrier from prohibiting other carriers from entering into the crew hauling transportation. The significant increase in insurance coverage will increase the cost carriers incur when providing transportation services. The increased insurance requirements may make it cost prohibitive for other qualified, efficient, and capable carriers to fairly compete for business. Brown's is committed to the safe and efficient transportation of our customers. We have a safety and insurance program in place to proactively protect our drivers and passengers. The proposed legislation is unnecessary, ineffectual, and arbitrary. It will only result in additional costs to railroad crew member...railroad crew transportation providers. Brown's is not in favor of the legislation due to the increased cost, it's arbitrary and not supported by any objective evidence, the duplicative nature of the benefits, and the unfairness of the proposed rule. Thank you very much. [LB597]

SENATOR SMITH: Thank you, Mr. Taylor. Do we have questions from the committee?

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Senator Garrett. [LB597]

SENATOR GARRETT: Thank you, Mr. Chairman. I've heard several times now the reference between the cost of the current insurance with the \$25,000 deductible versus the \$500,000. Can you give us an idea what that price differential is? [LB597]

BRYAN TAYLOR: No, I can't today. However, I can...I can...one of the other individuals that spoke was talking about the cost. For commercial providers, we are rated kind of retrospectively. So after losses are incurred and paid, then when we renewal, that's what our premium is based on. So if we add additional coverage and these additional payments occur, then our insurance is going to go up and up and up based upon these losses. [LB597]

SENATOR GARRETT: And the policy is based on the company itself and not the individual drivers and their driving histories? [LB597]

BRYAN TAYLOR: Yes, the company itself, not the drivers. [LB597]

SENATOR GARRETT: Okay. Okay. Thank you. [LB597]

SENATOR SMITH: Mr. Taylor, you provide...your company provides services to both BNSF and UP? [LB597]

BRYAN TAYLOR: Yes. [LB597]

SENATOR SMITH: Okay. All right. Senator Seiler. [LB597]

SENATOR SEILER: Does your company require your drivers to carry a separate policy covering your vehicle? [LB597]

BRYAN TAYLOR: No. [LB597]

SENATOR SMITH: I see no further questions. Thank you. [LB597]

BRYAN TAYLOR: You're welcome. [LB597]

SENATOR SMITH: We continue with opposition, those wishing to testify in opposition to LB597. Welcome. [LB597]

STEVE KESSLER: (Exhibit 7) Thank you. Good afternoon, Senators. My name is Steve Kessler, that's K-e-s-s-l-e-r. I'm here this afternoon to testify on behalf of Union Pacific Railroad, where I serve as general director of strategic sourcing in the railroad's supply department. My duties at Union Pacific include the procurement of van transportation

services for our train crews. Reliable and safe crew transportation is critical to keeping our railroad running. Under the federal Hours of Service law, train crews are permitted to work a limited number of hours per day. It's critical that our railroad be able to furnish fresh, rested train crews to replace crews whose hours of service time is destined to expire. We use van services to meet this requirement. The railroad also uses contracted van service to transport crews to and from their job locations. Employees may ride the van from site to site or train to train during the day. Much of this travel occurs in rail yards or on private service roads, not on public roads. Efficient van service is, again, the only way to meet this operational need. Unfortunately, LB597 has the potential to disrupt our efficient rail service by imposing a new regulatory burden on our van service providers. On its face, LB597 seeks to increase uninsured/underinsured automobile policy limits but only with respect to railroad crew van operators. However, in the real world, the impact could be much greater. It's impossible to purchase uninsured/underinsured insurance coverage applicable only to rail employees. So to comply with LB597, van companies will be forced to purchase coverage for all passengers, even if a single railroad employee is carried during the policy period. Insurance policies are highly complex, as we all know, but it must be understood that uninsured/underinsured coverage cannot be accessed until all other sources are exhausted. Union Pacific employees already have significant other sources in the event of an automobile accident, regardless of fault, through Union Pacific's contractual requirements for companies transporting our employees. For instance, van company liability insurance, which Mr. Taylor just talked about, pursuant to our contract with van companies that it hires, the van companies are required to carry a minimum of \$5 million in liability per incident, \$10 million aggregate, that would provide coverage for circumstances in which the van company is found liable. The following statutory and contractual benefits also apply. We've discussed today FELA, the Federal Employer's Liability Act. Railroad workers who claim to have been injured in the course and scope of their employment are exempt from state workers' compensation and, instead, are covered under FELA. Where the employee is able to demonstrate that his or her injury was caused by the railroad's negligence, even 1 percent, the recoverable damages are not subject to a cap. We also talked about on-track (sic) vehicle benefits. And pursuant to labor agreements, railroads provide offtrack vehicle benefits for their employees who are injured in riding in offtrack vehicles. Crew vans are one of those vehicles. OTV benefits are not fault-based so, for example, members of the SMART-TD Union have OTV benefits that provide up to \$300,000 in coverage, depending on the injury. In addition, OTV benefits provide compensation for wage loss due to a covered injury. Also, health insurance we've discussed. Pursuant to national collective bargaining agreements, Union Pacific and other railroads provide or substantially subsidize health insurance for their employees. This covers healthcare expenses from injuries, including those experienced as a result of an accident while riding in a crew van. United States Retirement...Railroad Retirement Board benefits: Railroad employees are also eligible to receive benefits from the Railroad Retirement Board, including Railroad Unemployment Insurance Act benefits, which provide benefits for up to 90 days

following an accident. Again, all these sources of funds need to be exhausted before uninsured/underinsured insurance comes into play. It is safe to say that railroad employees already have a level of coverage which is much better than the typical Nebraskan who is employed in a nonrail industry. This raises an important question: Why is the rail industry being singled out by this legislation? As I stated above, it is impossible to purchase uninsured/underinsured coverage applicable solely to railroad employees. Such coverage just isn't available in the marketplace. LB597 could have a direct impact on rail service during periods when there is a spike in demand or special operating conditions. Using secondary crew transportation suppliers, that's one method that we use to prevent UP from violating federal Hours of Service laws and to keep the railroad operating. Other options are deadheading crews by freight train or Amtrak or using our own nonagreement employees to deliver and pickup crews. If we have operational issues, such as grade crossing accidents, weather delays, causing our daily demand for crew transportation to spike, then our primary suppliers are asked to use secondary suppliers to make up the difference. Because these alternate suppliers are not everyday railroad crew haulers, some would likely not meet the requirements of LB597. There will be no easy way to enforce the requirement on these alternate suppliers. If a supplier states that its coverage complies, UP could still be subject to fine even if the supplier was incorrect in its understanding of its own insurance coverage. The practical effect of this could be to reduce the availability of crew hauling companies. This, in turn, could increase the time crews have to wait on trains and after long periods on trains. So for all these reasons, I urge you to vote against LB597. I thank you for allowing me to testify today and look forward to answering any questions. I also have David Pincock from Union Pacific here with me today. David is a senior insurance officer for Union Pacific and is prepared to answer any questions directly related to insurance that I cannot answer. Thank you. [LB597]

SENATOR SMITH: Thank you, Mr. Kessler, for your testimony. Do we have questions for Mr. Kessler? Seeing none, thank you. [LB597]

STEVE KESSLER: Thank you. [LB597]

SENATOR SMITH: We continue with opponents, those wishing to testify in opposition to LB597. Welcome. [LB597]

DAVID PINCOCK: Thank you. Good afternoon. My name is David Pincock, last name is spelled P-i-n-c-o-c-k, and as Mr. Kessler indicated, I'm the senior insurance officer for Union Pacific Railroad and here primarily to respond to any questions you may have regarding insurance specifically. I may make one clarification. As I was listening to the prior comments that were made as it relates to Union Pacific's auto policy, to clarify the limits that we carry, Union Pacific does have an commercial auto liability policy with limits of \$2 million. However, I should clarify that the uninsured and underinsured motorist coverage is provided by endorsement, and the limits that Union Pacific carries

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are consistent with the state minimums required by the state of Nebraska, which are consistent with the \$25,000 per individual and \$50,000 per accident. So I wanted to make sure that that's clear. Otherwise, if you have questions, I'd be happy to respond to those. [LB597]

SENATOR SMITH: Thank you. Senator Brasch. [LB597]

SENATOR BRASCH: Thank you, Mr. Chairman. And thank you for your testimony today, Mr. Pincock. And is the amount of insurance coverage the same from state to state for Union Pacific? Is there a different amount that you would pay in Nebraska versus Iowa or Missouri or...? [LB597]

DAVID PINCOCK: If the question is are the limits required for us to carry varies by state, that's correct, it varies by state. Some states don't require uninsured or underinsured motorist coverage at all, and in some states it is required. In some cases that coverage would be available for bodily injury and property damage. As in the case of Nebraska, it's bodily injury only. And it does vary by state. [LB597]

SENATOR BRASCH: And thank you. If a van...is a van available always? Is it exclusively a van or is there ever a cab or is there... [LB597]

DAVID PINCOCK: That's probably a better question directed to Mr. Kessler, because... [LB597]

SENATOR BRASCH: Okay. [LB597]

DAVID PINCOCK: ...he has direct responsibility for procuring those services for Union Pacific. But as he indicated, we use a variety of means to meet those requirements. Primarily, we have contracted services with various van carriers. In peak demand, we authorize them to use other carriers to assist them in meeting that demand. [LB597]

SENATOR BRASCH: Is there other coverage or protection for the injured employee other than what the...you offer at this point, I guess? [LB597]

DAVID PINCOCK: Well, I think Mr. Kessler explained several different alternatives that are available for coverage for making railroad employees whole if they're injured. I think he outlined FELA coverage potentially. They've got the offtrack coverage. I think it would be good and important to clarify, as it relates to uninsured and underinsured motorist coverage, I think in the state of Nebraska all citizens are required to carry the minimum \$25,000/\$50,000 limits that are talked about. And if our railroad employees are complying with the law, they also would have that coverage. And under the terms of their policy, that would also provide coverage for them in any van that they may be riding in as well. [LB597]

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SENATOR BRASCH: Great. I have no other questions. Thank you. [LB597]

SENATOR SMITH: Thank you, Mr. Pincock. [LB597]

SENATOR SEILER: I do. [LB597]

SENATOR SMITH: Oh, Senator Seiler. [LB597]

SENATOR SEILER: I'm a little bit curious about your right of subrogation on your health insurance. Does it have a right of subrogation against any FELA recovery? [LB597]

DAVID PINCOCK: Insurers, I guess from an insurance perspective, any insuring company, once they pay out a claim, have the right to subrogate against the party that they feel is responsible. [LB597]

SENATOR SEILER: That would include your liability policy also? [LB597]

DAVID PINCOCK: And that would include potentially Union Pacific's assets, if they chose to pursue Union Pacific for coverage of a claim that they paid. [LB597]

SENATOR SEILER: So any kind of a coverage at the lower level, if there is a FELA recovery, would have subrogation rights against your employee. [LB597]

DAVID PINCOCK: I'm not sure I understand your question. [LB597]

SENATOR SEILER: Well, it's pretty simple. If you've...the employee files an FELA claim, collects, does the liability insurance for you, that paid out under your coverage, does that have right of subrogation against the FELA recovery, the recovery part of it? [LB597]

DAVID PINCOCK: Union Pacific...I guess, one, to clarify, FELA is not insurance coverage, obviously. That's a... [LB597]

SENATOR SEILER: Well, it is. It's the substitute federal government. [LB597]

DAVID PINCOCK: That's federal law. It's federal law that constitutes how employees who work for railroads may be compensated in the event that they're injured while they're on the job. Okay? [LB597]

SENATOR SEILER: It's the work...substitute for the workmen's comp. Yeah, it is. [LB597]

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DAVID PINCOCK: Well, it's the means that the federal government has put in place to provide coverage for railroad employees who are injured. Big differences between workers' comp and FELA coverage, and I think that's important to distinguish. Because in the one case, as has already been described, under FELA negligence or liability has to be proved to be able to access that. Workers' comp is a no-fault-based system. So to the degree that you would distinguish between those two things, I think that's important. Now if Union Pacific were required to pay out a FELA claim to one of its employees, most of those are paid directly out of our own assets. Union Pacific... [LB597]

SENATOR SEILER: You don't carry insurance for that coverage? [LB597]

DAVID PINCOCK: We do in large... [LB597]

SENATOR SEILER: Twenty-five million? [LB597]

DAVID PINCOCK: ...we have a large self-insured retention, like many major corporations. The majority of all of our claims are paid out of our own assets. If, in fact, we had a claim that exceeded those large self-insured retentions, we do have excess coverage that potentially could be responsive to a FELA claim. [LB597]

SENATOR SEILER: Okay. [LB597]

DAVID PINCOCK: And in that case, if the insurance company ultimately paid a claim in our behalf, we would transfer to them that right of subrogation. [LB597]

SENATOR SEILER: I'd like to go back to the question I asked the union rep. How come there's so much disparity between the Union Pacific and the Burlington Northern in their coverage? [LB597]

DAVID PINCOCK: Well, I guess I...that was, in part, why I made my introductory remark, was to address that issue, because as it relates to unemployed and under...excuse me, uninsured and underinsured motorist coverage, the limits that Union Pacific carries are the state minimums required by the state of Nebraska. Again, that's \$25,000 per individual, \$50,000 per accident. [LB597]

SENATOR SEILER: Okay. But that would be required by Burlington Northern also. [LB597]

DAVID PINCOCK: It's required by the state of Nebraska. [LB597]

SENATOR SEILER: Right. Right. So it wouldn't be a differential between those two. [LB597]

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DAVID PINCOCK: Correct. [LB597]

SENATOR SEILER: Okay. Thank you. [LB597]

SENATOR SMITH: Thank you, Mr. Pincock. Further questions? I see none. Thank you. [LB597]

DAVID PINCOCK: Thank you. [LB597]

SENATOR SMITH: We continue with opponents, those wishing to testify in opposition to LB597. Welcome. [LB597]

JEFF DAVIS: Welcome, Mr. Chairman. I'm Jeff Davis, executive director of government affairs for BNSF Railway, here to testify against LB597. First of all, just to clear up, here's what BNSF covers. We require by contract these crew van carriers to carry \$1 million per person, \$2 million in the aggregate CGL coverage. Plus, if they are a primary supplier of automobiles, which these crew van companies are, they have to have \$5 million worth of liability coverage for bodily injury and property damage. So we don't really have an issue with the first part of the bill in terms of providing the \$5 million worth of insurance for bodily injury, because we already do that. And then we go over and above that. We have a third-party crew transportation management company that carries an umbrella policy that bridges the gap between the supplier's insurance levels and our \$25 million self-insured limits. You know, obviously it's already been said here, but, you know, this act would not only deny the benefits to everyone else that rides in vans, taxis, but it would even deny it to other railroad employees who are not, quote, operating. It would make it impossible for us to use a taxicab or any other form. We're not going to use Uber or Lyft. I mean we make sure that they have \$1 million and \$2 million requirements and that's even if we use a taxicab company. But, you know, we physically at times run out of our primary carriers and have to use secondaries. So under this bill, I'm not sure what would happen, but I would guess people would have to sit for possibly an extended period of time. This would be the second highest "UIUIM" requirement for contract carriers in the country, behind Minnesota. And here's...here is why we require the state minimum, whatever that is. It's because if the accident is our fault, then we are going to pay for it and we've got a lot of coverage there. And in most cases, or in a lot of cases, you're going to see there's going to be fault alleged on behalf of the railroad. You know, in these FELA cases, as you know, Mr. Borgeson pointed out, you know, if the driver falls asleep, we're going to be liable. I believe it was Senator Garrett asked the question--how prevalent are these cases? I believe systemwide we have 45,000-46,000 employees approximately. We operate approximately 1,600 trains a day. I think last year as a whole on our, you know, roughly 31,000 miles of track, we had approximately 44 cases total involving these claims. So it's approximately one-tenth of 1 percent. You know, going back to respond to some of the things that have been said here, these employees get \$1,000 a week, they get all of their medical bills paid.

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That's pursuant to the offtrack vehicle insurance. If they sue the railroad and don't get a judgment, they don't have to pay any money, any of that money back. If they get a FELA verdict then we do have subrogation rights that we have agreed to. Now what's happening here is if they create this other additional pot of money, we won't get subrogation rights. And so this will be another pot of money for them. So, in essence, they'll be able to sue the railroad, recover on top of their \$1,000 a week. They're getting all of their medical bills paid. And so, if anything, it's a double dip is what it really is. There's also other coverage available. In many cases, if you have an uninsured or an underinsured motorist policy, you're riding in that crew van, your coverage will pick up in addition too. And once again, that can't come into the FELA case because we are considered primary. We cannot join anyone else in this action. We cannot plead anyone else or anything. It's merely us against them. I'll leave it at that and be happy to answer your questions, Mr. Chairman. [LB597]

SENATOR SMITH: Thank you, Mr. Davis. Do we have questions for Mr. Davis from the committee? I have just a clarification. And I know you said it in your introduction. Step through with me again, what are the steps for coverage that an employee would receive for compensation, they would receive, in a case of an uninsured/underinsured motorist, involving an accident with one. [LB597]

JEFF DAVIS: Okay. First thing, offtrack vehicle, that pays up to \$1,000 a week and they are supposed to get all of their medical bills, assuming they turned them into us and everything, we are supposed to pay those directly. On top of that, they get to bring a FELA claim against the railroad. That is, you know, that is their right. And to say that, you know, if the third party is absolutely at fault, I mean that is correct, they will not get any recovery against us. But what happens out there is, you know, in a jury-tried case where it's us against them and they only have to prove some negligence by someone working on behalf, as an agent, of the railroad or whatever, what actually happens is they get a verdict against the railroad. Now you will also have the "UIUM" coverage of the crew van. You will have the "UIUM" coverage of the railroad employee. Assuming they own a Nebraska vehicle, they will have some coverage. Then you get to the coverage of the person driving the other vehicle as well as the vehicle itself, if it's owned by a different person than the person that was driving it. So there are multiple opportunities for recovery out there and many, and particularly with some of the last ones I, you know, it's all a collateral source, which basically means, you know, we can't bring that into the litigation unless they open the door for it. [LB597]

SENATOR SMITH: Okay. And so if there is insurance pay out at the "UIUM" level, that can result in a lien back against the off track? Is that...did I understand it? [LB597]

JEFF DAVIS: No. [LB597]

SENATOR SMITH: It could not. [LB597]

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JEFF DAVIS: I mean I think it's an open legal question, but, you know, certainly it is not well-settled law as to...I don't believe there would be an offset because how else would we...how else would we get it into...I believe it would be collateral source. So we wouldn't be able to get that into the FELA case so we wouldn't get an offset. [LB597]

SENATOR SMITH: Okay. Very good. Any further questions for Mr. Davis? Seeing none, thank you very much. [LB597]

JEFF DAVIS: Thank you. [LB597]

SENATOR SMITH: Appreciate your testimony. We continue with opponents, those wishing to testify in opposition to LB597, opponents. Seeing none, we now move to neutral testimony on LB597. Welcome, Commissioner. [LB597]

GERALD VAP: (Exhibit 8) Thank you, Senator. Mr. Chairman, good afternoon, and members of the Transportation and Telecommunications Committee. I am Commissioner Jerry Vap, that's spelled J-e-r-r-y V-a-p. I'm chairman of the Public Service Commission, representing the 5th District. I'm here today to testify regarding LB597. LB597 requires that contract carriers who transport railroad employees maintain insurance of \$500,000 per person for bodily injury or death, up to a maximum of \$5 million, and insured/underinsured coverage of \$500,000 per passenger. Commission rules and regulations do not currently require any uninsured or underinsured coverage. The coverage mandated by LB597 would be in addition to the general liability insurance required... [LB597]

SENATOR SMITH: Commissioner. [LB597]

GERALD VAP: ...of certified carriers. [LB597]

SENATOR SMITH: Commissioner, you're rubbing on the mike there. [LB597]

GERALD VAP: I'm sorry. Currently, all open-class carriers must maintain a minimum of \$1.5 million per incident for bodily injury or death. No statute governing the commission specifically addresses uninsured or underinsured coverage. However, Section 75-307 generally provides the commission with the authority to determine a reasonable amount of insurance required for regulated passenger carriers. Although the commission is testifying in a neutral capacity, we are supportive of the effort to provide a clear direction regarding insurance requirements for contract carriers. The issue of minimum insurance requirements related to the transportation of railroad employees arose during the update to the commission's transportation rules and regulations. Comments were received from multiple interested parties, and the commission surveyed the approaches taken by other states. As a result, the Transportation Department's proposed rule

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regarding uninsured/underinsured coverage is varied throughout this process. The commission believes the establishment of a clear insurance requirement is needed. Throughout the rule and regulation process, interested parties have testified regarding the adequacy of the insurance coverage. Additionally, questions were raised as to whether the commission has the statutory authority under Section 75-307 to require, through rules and regulations, uninsured/underinsured insurance coverage over that set forth in Section 44-6408(2) which states, "At the written request of the named insured, the insurer shall provide higher limits of uninsured and underinsured motorist coverages in accordance with its rating plan and rules, except that in no event shall the insurer be required to provide limits higher than \$100,000 per person and \$300,000 per accident." As a result of the comments received, the commission has submitted a request for a formal Attorney General's Opinion regarding the commission's authority to establish minimum uninsured/underinsured motor carrier insurance under Nebraska Revised Statute Section 75-307 in light of Section 44-6408(2). That request is still pending. I might add, I talked to the Attorney General's Office this morning and they are approximately a week away from getting to that request, which we submitted on January 21. In light of differing statutory interpretations, actions by the Legislature on the issue would provide much needed direction and clarity. The commission would be happy to work with the committee in establishing a reasonable requirement. I'd be happy to answer any questions. [LB597]

SENATOR SMITH: Thank you, Commissioner Vap. Do we have questions? Senator Brasch. [LB597]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you, Commissioner Vap, for your testimony today. [LB597]

GERALD VAP: Thank you. [LB597]

SENATOR BRASCH: I'm curious if the railroads do file their contract agreements with you or do you... [LB597]

GERALD VAP: No, they do not. [LB597]

SENATOR BRASCH: They do not. So you are currently unaware of what they are practicing or...okay. [LB597]

GERALD VAP: They are providing what our current rules require. [LB597]

SENATOR BRASCH: Uh-huh. [LB597]

GERALD VAP: But they don't require...they're don't...they're not required to disclose their contracts with...between the railroad and the... [LB597]

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SENATOR BRASCH: For insurance or the carriers then. [LB597]

GERALD VAP: Right. [LB597]

SENATOR BRASCH: Would that be helpful? [LB597]

GERALD VAP: I don't know that would necessarily be helpful as far as the insurance coverage is concerned since we don't know whether we can require it or not at this time. [LB597]

SENATOR BRASCH: Okay. Very good. I have no other questions. Thank you. [LB597]

SENATOR SMITH: Senator Friesen. [LB597]

SENATOR FRIESEN: Mr. Vap, I was curious. The Public Service Commission regulates public transportation, like taxicabs. [LB597]

GERALD VAP: Yes. Correct. [LB597]

SENATOR FRIESEN: What kind of liability coverage is expected of them? [LB597]

GERALD VAP: They, I believe, is a million dollars in liability for the passenger of service providers. [LB597]

SENATOR FRIESEN: Per passenger or...? [LB597]

GERALD VAP: I believe it's in total. [LB597]

SENATOR FRIESEN: Okay. So these transportation companies that are working for the railroad, are they public carriers, would you consider them? Or the contract carriers, are they regulated at all by the Public Service Commission? [LB597]

GERALD VAP: They are regulated in that we grant them their authority to operate. The only service they provide is for railroad crews. And most cab services, in fact all cabs and van services, because they are granted health and human services authority, are generally forbidden from carrying railroad crews and their baggage. [LB597]

SENATOR FRIESEN: Okay. So in the end, though, could the Public Service Commission require coverage to a greater extent than it has from these companies that haul rail crews? [LB597]

GERALD VAP: Probably for the general liability coverage, but not for

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uninsured/underinsured at this point in time. [LB597]

SENATOR FRIESEN: So, do cabs have coverage for underinsured motorist? [LB597]

GERALD VAP: They have whatever the state minimum is. [LB597]

SENATOR FRIESEN: Twenty-five/fifty? [LB597]

GERALD VAP: Yeah. [LB597]

SENATOR FRIESEN: Okay. Thank you. [LB597]

SENATOR SMITH: Further questions from the committee? See none. Thank you, Commissioner Vap, for your testimony. [LB597]

GERALD VAP: Thank you. [LB597]

SENATOR SMITH: We continue in hearing testimony in the neutral capacity on LB597. I see no additional testimony. Yes, Senator Davis, you're welcome to close. [LB597]

SENATOR DAVIS: Thank you, Chairman Smith, members of the committee. I appreciate your attention to the issue. As you can see, it's a fairly complicated and difficult issue to sort out because of the various layers of insurance that are offered. I do think it's an issue that this committee ought to address if the Public Service Commission is not given the instruction that they have the authority to do so by the Attorney General's Office in a week to ten days. So I would ask you to hold the bill, you know, for the time being and see where we go. I think you heard Commissioner Vap say that there does need to be some attention to the issues, and I do feel strongly that someday there will probably be an accident where a drunk driver runs into one of these vans and we'll have to settle the whole issue in court unless we deal with it appropriately here. That said, any questions? [LB597]

SENATOR SMITH: Thank you, Senator Davis. Do we have further questions for Senator Davis? I see none. Thank you. [LB597]

SENATOR DAVIS: Thank you. [LB597]

SENATOR SMITH: And that closes our hearing on LB597. I know there's a little bit of transition taking place here, but we will begin hearing on LB31, and I see Senator Bloomfield has arrived. Welcome, Senator Bloomfield. [LB597]

SENATOR BLOOMFIELD: Tell me when you're ready.

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SENATOR SMITH: Okay. I know there's just a little bit more transition taking place, so once everyone settles down we'll get started. All right. We're going to proceed now with a hearing on LB31 and we've invited Senator Bloomfield to open on his bill. Welcome, Senator. [LB31]

SENATOR BLOOMFIELD: Good afternoon, Chairman Smith and colleagues. For the record, my name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d, and I represent the 17th Legislative District. I'm proud to be here today to present LB31 to the committee for your consideration. If you pass this bill to the full body of the Legislature, it is once again my intention to make this my priority bill for the session. Under current Nebraska law, as you know, all motorcycle operators and passengers are required to wear protective helmets on state highways. LB31 would repeal the helmet law giving motorcycle operators and passengers the choice on whether or not to wear the helmet while operating a motorcycle. Today, you'll hear testimony from Nebraskans and others who merely want their freedom to choose returned to them. You will hear from Nebraskans who are professionals that take their motorcycles on long trips through other states, all the while spending thousands of dollars in doing so while taking every opportunity to avoid Nebraska. You will also hear testimony about the amount of insurance many of these riders already carry. The benefit that would not...that would be not only to riders but also to all persons in Nebraska who operate on our highways and interstates. Finally, you will hear from ordinary folks about how repealing the helmet law would affect them. I appreciate the committee's attention to these issues. I am well aware there are folks here who oppose this repeal and I look forward to hearing their testimony. I would ask as you listen to the grim statistics on what could or might happen that you would keep in mind that no state surrounding Nebraska, with the exception of Missouri, requires that helmets be worn by adults. Some of those states at one time had requirements but have repealed them. None of the states around us that have repealed these laws have found it necessary to reinstate them. I have two main goals in the introduction of LB31. First, would be to open our borders to hundreds and thousands of people who for one primary reason choose to avoid our beautiful state and take their millions of dollars elsewhere. That reason being because they wish to have the right to ride without a helmet, not that they, necessarily, would ride helmetless. Many of them just do not like the idea that they are forced by penalty of law to give up that choice. My second and possibly as important goal is to uphold our citizens' belief in their right to make choices in matters that affect themselves. We as a state and as lawmakers in the state I think have a duty and an obligation to protect and not infringe on the principles of liberty and the pursuit of happiness. Whatever the committee's decision, I hope you'll keep these goals in mind. These are good people behind me on both sides of this issue that are probably better equipped to answer your questions, however, I'm willing to attempt to respond if you would like. [LB31]

SENATOR SMITH: Thank you, Senator Bloomfield. Questions from the committee?
Senator Bloomfield, which state did you mention, regional state, that also has a helmet

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law? [LB31]

SENATOR BLOOMFIELD: Missouri still has one. It has passed...the repeal has passed through, I believe, the senate several times and the house has not followed through. It's one or the other, I'm not sure whether...one house has passed it, the other has not. [LB31]

SENATOR SMITH: So what is the recent history of the other nearby states? You said there have been no attempt to reinstate the helmet law. [LB31]

SENATOR BLOOMFIELD: To my knowledge, no other state has attempted to reinstate the law as it stands now. [LB31]

SENATOR SMITH: Do you know off the top of your head how long it's been since those laws were repealed? [LB31]

SENATOR BLOOMFIELD: It goes back quite a number of years and I don't have that date here. I will get that information and share it with the committee because that is readily available. [LB31]

SENATOR SMITH: Okay. That's fine. [LB31]

SENATOR BLOOMFIELD: In Iowa there is no helmet law. No one has to have it. In South Dakota, it's 18 and under are required to wear it. [LB31]

SENATOR SMITH: All right. Oh, Senator Garrett has a question for you. [LB31]

SENATOR GARRETT: Thank you, Speaker (sic). Senator Bloomfield, do you know off the top of your head how many states require helmets and how many... [LB31]

SENATOR BLOOMFIELD: I do not off the top of my head but, again, I will get that information for you. [LB31]

SENATOR GARRETT: Okay. Thank you. [LB31]

SENATOR SMITH: Further questions from the committee? Seeing none, thank you for your opening, Senator Bloomfield. [LB31]

SENATOR BLOOMFIELD: Thank you. And I probably will be around to close. [LB31]

SENATOR SMITH: Okay. Very good. We now move to proponents, those wishing to testify in support of LB31. Supporters of LB31. And please be prepared to just move on forward. I'm certain we have quite a few people in the audience and a number of you

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are going to want to testify. So just in order for us to move through the testimony we'd appreciate you be ready to come forward. [LB31]

ROBERT AILOR: Good afternoon, Senators. [LB31]

SENATOR SMITH: Welcome. [LB31]

ROBERT AILOR: (Exhibit 1) Thank you. My name is Robert Ailor, A-i-l-o-r. I'm from York, Nebraska. I'm here today to speak in support of LB31, not because I oppose helmets, but because I oppose being mandated to use them. I've been involved with this issue since about the time...before current law was enacted. And what we'll hear now is a probably a lot of what we heard then. The issue is mainly one of concern of high medical costs that impact the state, impact the taxpayers, impact our insurance rates. I have learned that our insurance companies do not base their rates upon whether a state has mandatory helmet law or not. If you live in Iowa, have the same kind of car and you move to Nebraska, your rate is not going to change. I have looked up a study done by the Kaiser Family Foundation on cost per person per capita in the states of Nebraska and those that surround us without a mandatory helmet law. South Dakota and Wyoming have about the same costs that we do, but Colorado, Kansas, and Iowa all have lower healthcare costs than what Nebraska does. You're going to hear a lot of facts and figures I'm sure today. There's a couple of things that I'd like to bring up. Since 2005, according to the National Highway Traffic Safety Administration, motorcycle fatality rates have dropped by about 20 percent. In 2013, motorcycle fatalities nationally fell more than any other vehicle. In 2014, states in Minnesota and Wisconsin, both states that do not have a helmet law, saw sharp decreases in fatalities while here in Nebraska we saw a very sharp increase. During this same time period, there were another two states that decided that they did not need to require motorcyclist in their states to wear a helmet at all times. Excuse me, I've got to refer to my notes. I oppose the existing law because of its discriminatory nature. According to the Centers for Disease Control, motorcycle accidents make up a very small percentage of head trauma that comes into ERs. Since motorcyclists are such a small percentage, I don't know why we are having laws enacting us to do things while no action is taken against others. You may very well hear today about people that have been involved in an accident and the tragedies and the hardships that they've encountered, and I sympathize with that. But I also sympathize with people who have an accident in a car, on a bicycle, whatever the case may be. An accident can be very tragic and can be very hard. Alcohol, tobacco, obesity, they all add far more to the healthcare costs in this state than motorcycle accidents do. I'm not in favor of passing laws that prohibit the use of those, but I'm just saying why are motorcycles identified as being something that needs to be addressed while others don't have any action taken with them. I understand if you look at a motorcycle it's apparent that you don't have the things around you that you do in a car, that you're more exposed, you're out in the elements. But that's one of the things I love about riding. I love being out in the elements and I know the risks that are

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involved with that. I am a son. I'm a husband. I'm a father. I'm a proud grandpa. I love my life. I don't have any desire to meet my maker any sooner than when I have to. I'd like to be able to ride without a helmet because on days when it hits 90 degrees and above it gets pretty warm, it gets pretty uncomfortable. When I stop, the only thing that feels overheated is my head. I'll take the breaks, I'll drink water, and then I'll go back out and I'll ride again. But I wish I had the opportunity on those days to make that choice of whether to wear one or not. I wished I could choose whether I was going to ride (sic) one when I have to run down to the corner store, some errand in town. But, honestly, the reason why I'd like to make that choices is when I ride without a helmet I get a sense of freedom from it. And that may not make any sense to anybody in this room, and I don't think that I can explain it, but that is my honest answer. I'm out of time. I'll summarize very quickly. Motorcycle fatalities have dropped. Why have they dropped? It's not because there's more states with mandatory laws. There's other things. There's safety, there's education, there's programs that are ongoing. We need to work on more. We need to study why motorcycle fatalities are going down and make more efforts there. Thank you. [LB31]

SENATOR SMITH: Thank you, Mr. Ailor. Now are you representing yourself today?
[LB31]

ROBERT AILOR: I'm representing myself. I'm also a member of ABATE. [LB31]

SENATOR SMITH: Okay. Very good. Do we have questions from the committee?
Seeing none, thank you very much. [LB31]

ROBERT AILOR: Thank you. [LB31]

SENATOR SMITH: We continue with proponents, those wishing to testify in support of
LB31. Welcome. [LB31]

RONALD MURTAUGH: (Exhibit 2) Good afternoon, Mr. Chairman, members of the committee. My name is Ronald D. Murtaugh, M-u-r-t-a-u-g-h, and I am here as a citizen and a motorcycle rider. Mr. Chairman, members of the committee, thank you for allowing me to speak in support of LB31. As a motorcycle rider and a law enforcement professional for over 27 years, I have a complete understanding of both sides of this issue. If you look at chapter 60, it becomes clear that current laws that exist broadly breaks down into three areas--definitions, taxes/fees, and operation and/or use. If you look at the transportation laws, you'll see that there are over 140 motor vehicle laws on the books today that address the operation and/or use. These laws span from handicap stalls, which protects the rights and liberties of handicapped to ensure that they have adequate accommodations, to having a driver license, passing tests to measure the ability for one to operate a motor vehicle safely, as well as protecting others on the road, to texting while driving, an effort to restrict a significant distracted action that not only

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causes accidents but accidents that occur at a higher rate of speed. Of those laws, all of them but very few are written to protect the rights and safety of others, which should be the primary goal of laws is protecting the rights and safety of others. The other few are an example of government paternalism. Over the years, federal government has imposed many regulations and laws upon states and local entities. While I'm sure that these laws were drafted and implemented with good intentions, nonetheless state and local governments are finding themselves being told from the federal government what to do and how to do it. No matter how well-intentioned these laws are, the laws and regulations influence the liberty of the state to act in ways that the states feel are better for their state. Today, there is a consideration to repeal the helmet law. I share with you preserving the liberty of individual decisions have historically been evident in Nebraska. In 1974, the federal government enacted the National Maximum Speed Limit Law of 55 miles an hour. Nebraska was forced to comply with this law, dropping their speed limit from 75 miles an hour to 55 mile an hour. In 1987, the National Maximum Speed Limit Law was modified to 65 miles an hour. Nebraska immediately followed suit, raising their speed limits despite proof that 55-mile-an-hour speeds reduced accidents and fatalities. In 1995, the federal government lifted all federal speed limit controls, and Nebraska immediately followed suit by raising their speed limit to 75 miles an hour despite proof that the increase would result in more crashes and fatalities. These are limits, not mandated speeds which someone must travel, but merely limits. We educate people that regardless of the speed limit, drive within your abilities. Even today, there are discussions regarding cell phones while driving. There is no question that cell phone use is a distraction and the use increases the likelihood of an accident. However, we continue to be hesitant at imposing parental laws upon this action. Instead, monies and efforts have been focused on education and encouragement to use cell phones in a safe manner. I share with you that we can discuss other similar items, including obesity, which costs the state over \$700 million, or we can discuss the fact that 22 states have a mandatory helmet law for bicyclists but not in Nebraska. Why? Because Nebraska believes that bicycle riders should have a choice. However, across the United States, various state and local government entities agree that their people should be allowed to make individual decisions regardless of potential impact to society. In the matter of the helmet issue, we should distance ourselves from the federal government's policy model and follow our past which shows resistance to parental legislation, preserves individual liberty. By doing so, education will rise to the top where it should be rather than a mandate. This would be a similar approach currently being pursued by bicyclists. Therefore, I encourage each of you to vote to bring this bill out of committee, as well as advocate and use this opportunity to once again preserve the liberty of choice among our motorcycle riders. Thank you for your time. [LB31]

SENATOR SMITH: Thank you, Mr. Murtaugh, for your testimony. Do we have questions from the committee? Seeing none, thank you. [LB31]

RONALD MURTAUGH: Thank you, sir. [LB31]

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SENATOR SMITH: We continue with proponents of LB31. Proponents. Welcome.
[LB31]

GARY NEEMAN: Good afternoon, Senators, Chairman Smith. My name is Gary Neeman, N-e-e-m-a-n. I'm here as a member of ABATE, but foremost as a citizen of Nebraska. Even though I'm a member of ABATE I'm more here as a motorcycle enthusiast, as a lot of the people behind me. We gather here to try to regain the freedom that was taken away from us years ago. For some others today, it's going to be a bottom line deal, a regulatory deal, and a lot of concern of a whole lot of what-ifs and maybes. I'm not a coldhearted person. I understand completely. We can debate the statistics. I'm here as a bike rider only. There's a time for debate and the statistics. Today is not the day. I'm a 35-year professional truck driver over the roads, 3 million miles verifiable experience. You ask why does that come into play here. All the states I've travelled, the people I know, we get to talking about motorcycles and the first thing they say is, Gary, you're from a state that's got a helmet law. Yes, I am. They say, what can you do to get rid of that helmet law. I said we're working on it. They say, well, we'd love to come through your beautiful state. We do have a beautiful state, no question about it, but they choose to go around because of the helmet law. As you've already heard say, a lot of revenue lost. I, myself, with my wife and I, we plan a trip, a vacation. If it's a long enough weekend jaunt, we plan it out of the state. I don't hate my state, but out of the other states, other than the one in the lower, lower southeast corner, they have no helmet law. We choose to go that way because I have that right or have that choice. So as a motorcyclist and an avid motorcyclist, citizen of Nebraska, I ask to bring this bill out so we can have a full debate, a full-blown vote on it. So...and out of respect for your time, I will end here. I can try to answer any questions, but I will do with this I ask you here today not only to restore our right to choose but also instill the faith in Nebraskans that the process still works. [LB31]

SENATOR SMITH: Thank you, Mr. Neeman. Do we have questions from the committee? Senator Friesen. [LB31]

SENATOR FRIESEN: Thank you, Mr. Chairman. Just one questions out of curiosity. What kind of insurance coverage do you carry? [LB31]

GARY NEEMAN: I carry the maximum coverage plus another \$100,000. [LB31]

SENATOR FRIESEN: Okay. So far as...it's not the minimum. So you choose to carry a little bit more. [LB31]

GARY NEEMAN: Yes, I do. Yes, I do. [LB31]

SENATOR FRIESEN: Okay. Thank you. [LB31]

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GARY NEEMAN: You bet. [LB31]

SENATOR SMITH: Mr. Neeman, do you...you may not know this, but there was testimony before that the premiums is not any more expensive where there's a nonhelmet state than where there is a helmet state. Do you know that to be the case? [LB31]

GARY NEEMAN: Mine for the extra coverage is not, no. Mine is very comparable to several other friends, you know, that ride with them. [LB31]

SENATOR SMITH: All right. Thank you. [LB31]

GARY NEEMAN: What I chose to, as before as you've heard, you know, I'm a husband, I'm a father, I'm a grandfather. I love my grandkids to death. We just had a new little one not too long ago. So, but again family knows I ride. They know I love to ride, but the matter is it's just to have the freedom of choice, please. [LB31]

SENATOR SMITH: Very good. Thank you for your testimony. [LB31]

GARY NEEMAN: Thank you. [LB31]

SENATOR SMITH: We continue with proponents of LB31. Proponents. Welcome. [LB31]

SCOTT HOFFMAN: (Exhibit 3) That involves a map presentation I think to expand on Senator Bloomfield's...oh, by the way, my name is Scott Hoffman, H-o-f-f-m-a-n. And to answer Senator Garrett's question, I believe there's probably 30 states that are without a helmet law, the other 20 are...got either helmets, no helmets, some helmet restrictions. Please notice on all the major motorcycle rallies that I have marked on this map that it'll bring an estimated hundreds of thousands of dollars of motorcyclist each year to the state in millions of dollars of revenue. Notice Laconia, New Hampshire; Myrtle Beach, South Carolina; Daytona Beach, Florida, all these states are completely surrounded by states that require all rider helmet law. In other words, you cannot get to these rallies unless you go through a helmeted state. It's quite obvious that these states surround these helmet-free banded together to capture the fallout of these rallies and yet still enforce their helmet law without any economic fallout not to lose out to other states from the motorcyclist trying to go around another state and still catch the economic dollars. One good note is that these states are all along the East and West Coast and all have helmet laws and quite obviously they have very large populations and are metropolitan compared to Nebraska, and they definitely have a higher traffic congestion. Speaking of large populations densities, Nebraska is one of the least populated states in the nation coming in at 37, as of 2013, with only 1.8 million people.

Some of the other states in the nation have more people live in one city than we have in our entire state. But yet Nebraska comes in at number 17 as one of the largest square-mile states in the nation. What I'm trying to prove here and compare it to other states in the nation, we are probably the most observed state in the country that currently requires all riders to have a helmet law. We happen to be the only state in the complete Midwest, all the way to California/Nevada, south and north, besides Missouri, who happens to have a population of over 6 million people, which may be the reason why they have a helmet law. People that have all-rider helmet laws, most of all the complete helmet law states have populations over 3 million people, our smaller, congested states as seen it in the northeastern states. But yea to thee, we're the only state in the nation closest to the worlds largest motorcycle rally, Sturgis, South Dakota. Should we be concerned about that? Absolutely. Please, someone try to explain to me, including the opponents of this bill, why other states around us, to include Iowa, who has no helmet law at all. You could be 16 and ride without a helmet. Kansas, Colorado, Wyoming, and South Dakota have no complete helmet law. For decades, and that's how long it's been, it's been decades, have reaped off the economics of this motorcycle tourism and being the gateway to this rally when we have one of the most direct routes to this rally up through Highway 2 through the Sandhills. Nebraska is not blockading no one as they come make their way up I-29 through Iowa and bypass Nebraska completely. It has been happening for years. As an expert rider myself who has been endorsed for almost 35 years, I have ridden to Sturgis for the last 14 years straight leaving Lincoln, Nebraska, travelling to Grand Island, then straight up 281 into South Dakota. I will testify to you today, I hardly see more than 100 motorcycles as I go through Nebraska until I drop off 183 onto Interstate 90 in Presho, South Dakota. And then it's just a mass of RVs and thousands of motorcycles, and that would be a day before the rally officially starts. Speaking of RVs on Interstate 90, several years ago I was following an RV and a bunch of clothes popped out behind the RV and started spewing all over the interstate. I had to play chicken and I avoided the debris. But this is one more reasons we need to get the traffic off I-90 and make it more safer for riders to get to this rally by Nebraska's byways. RVs and motorcycles don't mix well. Motorcyclist will take the scenic route before they take the interstate. But if there's a helmet mandate they will go otherwise. As I have personally interviewed motorcyclists during the Sturgis motorcycle rally, they have come from as far as Alabama, Georgia, Florida, and the Carolinas, most have indicated they take I-29 and avoid the helmet mandate. Just a few weeks ago, an article in Lincoln's newspaper which I included in the submit on the Sturgis Motorcycle Rally brings in an estimated \$800 million a year, almost a billion dollar industry, if you can see with that insert. I can tell you that we are losing between \$15 (million) to \$25 million or more per year because of this rally. But after seeing the billion dollar revenue, my projection could be grossly underestimated. According to Brenda Vasknetz, who I talked directly, Sturgis motorcycle director, they're expecting 700,000 riders this year. It could be the largest ever and ironically it will be the 75th anniversary. What better way to celebrate it than with a helmet repeal. If we get at least 200,000 riders coming during the rally, spend \$50 on fuel just to get through the state

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without laying over, that's \$10 million right there. Sturgis is one day's ride from Lincoln, Grand Island, Kearney, Omaha, North Platte. If we get at least 50,000 hotel stays at an average conservative rate of \$79 a night, that's \$4 million. And I haven't included any restaurants, grocery stores, beverages, convenience stores. That's a whole different ball game and a huge amount of revenue. I'm running out of time here, but you know, senators, I rode up there. I've spend a huge amount of time, I spent about three months researching. I've talked to NHTSA. You know, when I talked to them I asked for the helmet list, helmeted fatalities from all over the states and I asked for the helmet drop test because helmets are only protected up to so many miles per hour. And then they e-mailed me back with a phone number that was disconnected. So I called during normal business hours and then they...I got an attorney from Washington, D.C., and they sent me to another gentleman. And I left a message on his phone and one of his aides called me back two weeks later. And then the information they gave me was incomplete. But this is what I've been dealing with for the last three months. So I've done quite a bit of research and I'm here to answer any questions if you have any. [LB31]

SENATOR SMITH: Thank you, Mr. Hoffman. I see you distributed something for us to take a look at as well. Do we have any questions from the committee? Senator Davis. [LB31]

SENATOR DAVIS: Thank you. Thank you, Mr. Hoffman and Chairman Smith. I'll just take issue with one thing you said. [LB31]

SCOTT HOFFMAN: Sure. [LB31]

SENATOR DAVIS: I live in Hyannis, Nebraska. We have a whole lot of people going through there on motorcycles going to Sturgis who might be, you know, at the local bar. Say at noon, there might be 25 motorcycles sitting there. I think that's a good thing. But the question I really have and I think you make some really good points about the sparsity of our population and the distances and the speed. So is there any documentation that deals with speed and the safety of a helmet as to saving lives? [LB31]

SCOTT HOFFMAN: Well, actually they have what they call monorail test. I've actually talked to some of the people from Snell Helmets, and they've indicated and we've discussed it, you know, up to 13.5 miles to a direct impact is all it's protected. So if you're going...and that was in my literature, if you're going 25, you know, 50-75 miles down the interstate, and I believe we're already into several fatalities this year. We're not even into riding season in January. You know, it's a false sense of security. Some people ask me why would you want to ride without a helmet. I said, well, have you ever been to an amusement park. I said, well, it's like getting on a roller coaster and riding down a roller coaster. My self-awareness is tenfold. But I've worn full-face helmets and I

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feel like I'm sitting in a car. But yet I'm inches away from the pavement. And like I said, if you want to dress us up like the Michelin man and have air bags deploy underneath our motorcycle, that's what it's going to take. But motorcycles are dangerous. They always have been, they always will. [LB31]

SENATOR DAVIS: But there's no real data out there that says, okay, at 75 miles an hour this helmet is not doing any good? [LB31]

SCOTT HOFFMAN: I think you're a very slim chance there, a very slim chance. [LB31]

SENATOR DAVIS: I mean, but do you know if there's any actual data that we can get our hands on that plays that case out? [LB31]

SCOTT HOFFMAN: You know, and this is why I called NHTSA. I mean, it's all spread out. Some of the data is quite old. You know, we have helmet drop test that...a study that I have in my possession from 2007 to 2008. But to go out there and actually get it, it takes a lot of surfing, a lot of research, and, you know, you only have so much time during the day to do that. But I'm sure it's out there. But I couldn't quote it to you right now. [LB31]

SENATOR DAVIS: I think that would be very helpful to this committee and your cause if you can produce something on that. [LB31]

SCOTT HOFFMAN: I will look into it. Thank you, Senator. [LB31]

SENATOR DAVIS: Thank you. [LB31]

SENATOR SMITH: Senator Garrett. [LB31]

SENATOR GARRETT: Thank you. Thank you, Chairman. Thank you, Mr. Neeman (sic--Hoffman) I'm a long-term motorcyclist as well and big race fan. Why do you think motorcycle racers of all types of racing wear helmets? [LB31]

SCOTT HOFFMAN: Well, for one thing, if you're talking about motor cross, and if you've seen some, and I enjoy watching those races too, but you can look at their suits. I mean, they're designed a certain way. I mean, we're not...the average motorcyclist isn't riding around with a motor cross outfit, plus their helmets are, you know, better tested than what you're going to be able to buy right out of the store. [LB31]

SENATOR GARRETT: Well, how about road racing, TT, flat track, those kinds of things, those kinds of motor racing? If helmets are ineffective and it's all about weight normally for a rider, why even wear a helmet? [LB31]

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SCOTT HOFFMAN: Well, this gets back into skilled riding too. I mean, you know, I've got 35 years under my belt and, you know, a lot of...people go out and they buy a motorcycle in this state and they don't have any experience and they get on a motorcycle, they go on down the road and they put a helmet on their head and that's something I said. I mean, if...it's a situation where, yes, you could die. I personally have a will. As soon as I bought my motorcycle, six months later I got a will. I mean, it's...I've been riding for all this time. But it's a false sense of security. And when I look at the revenue issue, I'm not here to talk to you about my rights or choice. I'm looking at the revenue. We're talking about shifting...I'm also a big-time landlord. I've got a considerable amount of rental properties. So you're talking about reducing property taxes and then shifting it to the personal income or maybe increasing the sales tax. Well, if you've got the sales tax you've got these additional people coming in here touring this state to get to Sturgis, South Dakota, you're going to bring in a huge amount of revenue. As like that article says, it's \$800 million, almost a billion dollar industry and it's sitting in our backyard and we have no tourism in this state at all, so. And that's been one of my issues about this. Hopefully I answered your question, Senator. [LB31]

SENATOR SMITH: Again, thank you, Mr. Hoffman, for your testimony and we appreciate it. We now continue with proponents of LB31, those wishing to testify in support of LB31. Welcome. [LB31]

TODD MILLER: (Exhibit 4) Good afternoon, Senators, Chairman Smith. I am Todd Miller, state coordinator for ABATE of Nebraska, T-o-d-d M-i-l-l-e-r. I am here in support of LB31 for many reasons. I have prepared a lengthy statement which I am actually having distributed to you right now which I possibly could not get done in five minutes. But it does cover quite a few of the points that we've talked about and you've heard from other people regarding what it will take or what the benefits to removing this law would be. But I'd like to indulge you for a minute. A lot of that, like I said, has already been said, highlighted for you, and talk to you a little bit about why we are here, why we are motorcyclists here if I can. Because it's been said many times before among motorcyclists, if I have to explain it to you, you will never understand if you've never ridden, if you've never been on a bike. You see, beyond the economic impact, beyond all the things we can give you, all the reasons we can say, all the counters we can come up with for opponents to the bill, those aren't the reasons we're here. They're all great reasons to advance the bill, but that's not why we are here. We are doctors, lawyers, professionals. Yes, some of us are business owners, like Mr. Hoffman. Some of us have money to be made or lost by this change in the law. But I'm talking about the riders, the ones that directly impacted by the effect of this bill every time we throw a leg over a motorcycle when we have to wear a helmet. We are told how to protect ourselves. We are a family. We are doctors...or excuse me, fathers, sons, mothers, daughters, brothers, sisters, family motorcyclists, and all citizens of Nebraska. But we are a diverse crowd. It is highly unlikely you will ever find two of us to agree on anything--type of motorcycle, color, brand, style, what kind of protective equipment to wear. We all enjoy

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our motorcycles. They become part of our lives, so much so that they are just as individual as we are. This law, this unjust law, takes away our choice to choice, our right to be individual, our right to figure out how to protect ourselves. That needs to be changed. The one thing that brings us together as motorcyclist, even with all our diversity, is this law. That is the one thing that brings us here every year time and time again. We can barely agree on anything else. Some of us would still ride with a helmet. They don't want to be told to. Some of us will ride with a helmet based on weather conditions or skill levels or whatever. Some will choose to put it in a closet and never see it again if this law changes. But that's who we are, individuals with rights to choose. I cannot put into words how much difference it makes to me to ride without a helmet. The sights, sounds, it's a whole different experience to ride a motorcycle without a helmet. Not everybody will agree that that's the best way to do it, but it is different. They've talked about how it is...gives you a false sense of security. That's very true. I think that's part of the reason we've had so many trouble with certain younger generation, full-face helmets going extremely fast down the highway. They don't feel the air. They don't feel the wind. They don't hear the noise. They may not even hear the car next to them that cuts them off. We as Nebraskans have lost the ability to take the slow, gentle ride through our small towns around us, especially me, Lincoln and given that up for a heated race to the border just to have a few hours of freedom riding without a helmet. That's not right. I have personally fought for this law or against this law for over 20 years. Since 1989, as a matter of fact, when this law was...current law was enacted, I have not taken a vacation within this state. Not one. And I'm not alone. As you've heard before, there's many people doing the same thing. Currently, 31 states allow freedom of choice. It's time for Nebraska to be part of that. With that, I quickly urge you to move this out of committee and also to vote for it on the floor. I'll answer any questions if you have any. [LB31]

SENATOR SMITH: Thank you, Mr. Miller. Do we have questions from the committee? I see none. Thank you. Oh, I'm sorry. Senator Davis. [LB31]

SENATOR DAVIS: On your last page you said I included a copy of preliminary 2009 fatality report, but I don't think that... [LB31]

TODD MILLER: I did not include the copy, no. I can get it to you though. [LB31]

SENATOR DAVIS: So if you could, that would be good. [LB31]

TODD MILLER: Sure. [LB31]

SENATOR DAVIS: Thank you. [LB31]

TODD MILLER: That's where all the data came from though. Most of this comes from NHTSA as well, so. [LB31]

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SENATOR DAVIS: Thank you. [LB31]

TODD MILLER: Same sources as our opponents. [LB31]

SENATOR SMITH: Sorry about that, Senator Davis. Thank you for your testimony. [LB31]

TODD MILLER: Thank you. [LB31]

SENATOR SMITH: We continue with proponents, those wishing to testify in support of LB31. Supporters of LB31. Seeing no further proponents, we now move to opponents. Those wishing to testify in opposition to LB31. Welcome. [LB31]

ROBERT WEIR: Hi. Good afternoon, Senator Smith and members of the Transportation and Telecommunications Committee. I'm Robert Weir, W-e-i-r, and I'm a fourth-year medical student at UNMC as well as a neuroscience researcher. Also as a side note, former motorcycle owner. I'm a member of UNMC student delegates, but I'm here representing myself today. As a healthcare professional and brain researcher, this topic is of great importance to me. The NHTSA estimates per mile travelled motorcycle deaths are approximately 30 times greater than those in cars. Furthermore, they estimate that unhelmeted motorcyclists are three times more likely to suffer traumatic brain injuries, or TBIs, than helmeted riders. And helmets reduce the likelihood of a crash fatality by a whopping 37 percent, and that's per NHTSA. There are other studies that echo that finding with fatality reductions reported even greater between 39 and 42 percent, and I can get those sources for you if you wish. Nebraska reported 20 crash-related fatalities in 2014. Given the above data, we would expect this number to near 51 if the current law were to be repealed. This is 31 more needless deaths in one year alone which could be easily prevented by maintaining our current universal helmet laws. In terms of healthcare costs, each of these fatalities is estimated to cost \$1.4 million via 2013 estimates from the National Safety Council and Nebraska Office of Highway Safety. These 31 deaths would represent a total annual cost increase of a staggering \$43.7 million for Nebraska. In terms of cost alone, this would barely be offset even if every single attendant of the Sturgis Motorcycle Rally spent at least \$100 in Nebraska every single year. And these figures do not even factor in the substantial cost of increased motorcycle injuries and property damage crashes. It is also important to note that studies show that just under half of all injured riders have no private insurance which translates to the government and taxpayers footing this financial burden. And this is hardly even speculation. Nebraska has been through this before. From 1977 to 1989, we repealed our universal motorcycle helmet safety law. A study published in 1992 by Nebraska physicians in the Annals of Emergency Medicine illustrated several very important points which we would do well to make note of today. First, in relation to my last argument, they show that when the universal helmet law was reinstated, acute

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medical hospital charges for motorcyclists declined an impressive 38 percent. They also reported the percentage of injured motorcyclists with serious brain injuries was approximately 5 percent in helmeted motorcyclists versus 14 percent in unhelmeted motorcyclists. Thus, they demonstrated both cost and general well-being were improved with such mandatory universal helmet laws. Finally, they even showed there was a 26 percent decrease in the recorded rate of motorcycle crashes entirely. This data suggests that the universal mandatory helmet law even encourages safer riding, practices, and reduces the number of crashes. Opponents of the mandatory universal helmet laws claim helmets increase the risk of neck injury and reduce peripheral vision. These arguments have been refuted by many studies and there's even data available on the Nebraska Department of Roads Web site showing some of these debunked myths. And to those who would claim that it is an issue of personal freedom, I share the following. In 1972, a Massachusetts federal court told a motorcyclists who objected to the law, quote, the public has an interest in minimizing the resources directly involved. From the moment of injury, society picks the person up off the highway, delivers him to a municipal hospital and municipal doctors, provides him with unemployment compensation if after recovery he cannot replace his lost job, and if the injury causes permanent disability may assume responsibility for his and his family's subsistence. We do not understand a state of mind that permits plaintiff to think that only he himself is concerned, end quote. U.S. Supreme Court affirmed this decision without hearing arguments in this case. Thank you for your time. Please do the right thing and maintain Nebraska's current mandatory universal helmet law by opposing LB31. I'm open for any questions. Thank you, Senator. [LB31]

SENATOR SMITH: Thank you, Mr. Weir, for your testimony. So you're a former motorcycle owner/rider. [LB31]

ROBERT WEIR: Yes, sir. [LB31]

SENATOR SMITH: And any particular reason you gave that up? [LB31]

ROBERT WEIR: Largely two reasons--a female and finances, so. (Laughter) They'll get you every time. [LB31]

SENATOR SMITH: We certainly understand. (Laughter) Thank you for your testimony. Any questions from the committee? Senator Friesen. [LB31]

SENATOR FRIESEN: Mr. Weir, you made the comment in your statement that over 50 percent of the motorcycle drivers were uninsured. [LB31]

ROBERT WEIR: Just under 50 percent. Those were national data. When we looked at the emergency medicine published article from 1992, they had about a third of all the riders in Nebraska at that time in the 40 percent they looked at that were in Douglas and

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Lancaster County, about a third of them, and I can quote that exact percentage, were uninsured. [LB31]

SENATOR FRIESEN: So since we require insurance they were breaking the law. [LB31]

ROBERT WEIR: I cannot speak to that, Senator. [LB31]

SENATOR FRIESEN: Thank you. [LB31]

SENATOR SMITH: Further questions from the committee? I see none. Thank you again for your testimony. We continue with opposition to LB31. Welcome. [LB31]

HEATHER TALBOTT: (Exhibit 5) Thank you. My name is Heather Talbott, H-e-a-t-h-e-r T-a-l-b-o-t-t. I am a registered nurse. I work at the trauma center here in Lincoln. I'm currently the trauma outreach and injury prevention coordinator at Bryan. But I also have 13 years under my belt as a professional nurse working with traumatic brain injury patients both in the intensive care unit as well as in acute rehab. At approximately 8:00 a.m. this morning, a motorcycle rider crashed here in Lincoln. We got...the trauma team got the page at 8:30. He was in the trauma center by 8:36. I wasn't able to bring the helmet today, but I did take pictures of the helmet, and the damage of the helmet is substantial. And he is in stable condition, I can tell you that. When I spoke to his mom this afternoon telling her I was coming here, if he wouldn't have been in the hospital she would have been here. My father has been riding a motorcycle for over 40 years. He lives in Alliance, Nebraska. He loves to go to Sturgis. He loves to take his helmet off. But I can tell you as a daughter I never want to be beside my dad in the intensive care unit where I've been several times because of motorcycle crashes and I never want to take his grandkids to see him in acute rehab when he's there for three months with a traumatic brain injury learning how to walk, talk, and be himself again. Thank you. [LB31]

SENATOR SMITH: Thank you, Ms. Talbott. Do we have questions from the committee? Thank you for sharing. Appreciate the photos that you brought us. Let me ask real quickly, how many further of those wanting to testify in opposition do we have here with us today? Okay. And how many in the neutral capacity? All right. Thank you. Welcome. [LB31]

NICHOLAS WORRELL: (Exhibit 6) Good afternoon, Chairman Smith and members of the committee. I'm Nicholas Worrell with the National Transportation Safety Board, N-i-c-h-o-l-a-s W-o-r-r-e-l-l. Thank you for inviting me to speak on behalf of the National Transportation Safety Board on LB31, a bill to repeal Nebraska's universal helmet wear law. As a motorcyclist myself, a representative of the National Transportation Safety Board, and an eight-year veteran of the United States Marine Corps, I believe in

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protecting myself and others. Nebraska's present helmet law saves lives and prevents injuries. That is why I oppose its repeal. My agency, the National Transportation Safety Board, investigate accidents, studies transportation issues, and make fact-based safety recommendations. In 2007, we issued recommendations urging several states to adopt universal helmet laws. Nebraska was not one of them because Nebraska already protected its riders with such a law. Today, we are counting on you to continue to protect your motorcyclists and so are your constituents. Four out of five Nebraskans favor keeping Nebraska's present law according to a 2013 survey. Helmet laws work. According to the National Highway Traffic Safety Administration, 86 percent of riders wear helmets in states with a universal helmet law, while only 55 percent do in states without such laws. In 2012 nationwide, nearly 5,000 motorcyclists died in crashes and 93,000 were injured. Ten times as many died not wearing a helmet in states without a universal helmet law than in states with such a law like Nebraska. My fellow riders will tell you that it's always the guy in the car who caused the crash, and I appreciate drivers who share the road. But this isn't about who caused the crash. It's about what happened in the crash. Let me give you an example. Jim Lumley, a rider in his 50s, was riding on to work on the morning of April 13, 2012. He rode with his lights on, not so that he could see the road but that others could see him. Nevertheless, a car abruptly came into his path. Jim was thrown over his bike and onto the car's hood. His head crashed into the windshield. National Highway Traffic Safety Administration found that the single most effective means to enhance motorcycle safety by a wide margin is requiring that every rider be protected by a helmet that meets the DOT FMVSS 218 standard. These helmets protect the head adequately for 90 percent of motorcycle crash impact. They can be effective in both low and high-speed crashes because crash speed is not directly related to head impact speed. The 2003 independent Cochrane Review of published studies found that helmet reduced both fatal and nonfatal injuries and found no evidence that helmet use increased risk of any other injury. It's not surprising what happened when such laws are repealed--death and injuries increase. There are also economic costs that you have heard. For example, Arkansas repealed its universal helmet law; 18 months later, helmet use dropped from 97 to 30 percent. Twice as many riders died per accident, twice as many than helmeted survivors were hospitalized. There was a substantial increase in nonreimbursed charges for initial treatment. My written statements summarizes studies of repeals in Texas, Kentucky, Louisiana, Florida, Michigan, and Pennsylvania. All of these repeals resulted in additional death and injuries. Those that track long-term rehabilitation and care saw those increase as well. Remember Jim Lumley, the rider who crashed his head through a car windshield? He crashed the day, the very day that his law, his state repealed the helmet law. But Jim was wearing his helmet anyway. The helmet was destroyed. Jim survived. Since then, he has gotten married and become the stepfather of three children. Unfortunately, not everyone has Jim's good sense. And when helmet laws are repealed, we all pay the price. Bottom line is, Chairman, members of the committee, universal helmet laws save lives, reduce injuries, and avoid unnecessary costs. You have such a law here in Nebraska and I'm urging you not to throw it away. The NTSB is asking that this

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committee table LB31. Thank you, Chairman and members of the committee. I'm happy to answer any of your questions. [LB31]

SENATOR SMITH: Thank you, Mr. Worrell. Do we have questions from the committee? Mr. Worrell, so are you representing the National Transportation Safety Board in your testimony? [LB31]

NICHOLAS WORRELL: Yes, sir. [LB31]

SENATOR SMITH: What position do you hold there? [LB31]

NICHOLAS WORRELL: I'm a transportation safety specialist. [LB31]

SENATOR SMITH: Okay. Very good. Thank you. [LB31]

NICHOLAS WORRELL: Thank you. [LB31]

SENATOR SMITH: We continue with opponents to LB31. Welcome. [LB31]

JAMES TRENHAILE: (Exhibit 7) Thank you. Senator Smith and members of the Transportation and Telecommunications Committee, thank you for allowing me the opportunity to speak today. My name is James Trenhaile, T-r-e-n-h-a-i-l-e, and I am a second-year medical student at UNMC. As a student, I have had the opportunity to see healthcare from various perspectives and we're constantly learning about the value of prevention and healthcare. I believe that it would be a burden on the citizens of the state of Nebraska if LB31 were to pass and for several reasons I believe you should oppose LB31. According to the CDC, in 2010, motorcyclists accounted for fewer than 1 percent of all vehicle miles traveled in the United States. But for this less than 1 percent of miles traveled, they accounted for 14 percent of all vehicle-related fatalities. In states with partial bans on helmets, five times as many people were fatally injured when they were not wearing helmets, and universal helmet laws saved the taxpayers an estimated \$725 per motorcycle registered on average. That's a United States average. It's not based on Nebraska data. Helmet usage saved \$3 billion in economic costs in 2010, and it's estimated that an additional \$1.4 billion could have been saved nationally if everybody was required to wear a helmet. We're fortunate to live in Nebraska because of our universal helmet law. When this law was reenacted in 1989, emergency room physicians from UNMC published a study that Rob mentioned earlier in the Annals of Emergency Medicine. This reviewed the health and economic savings in Nebraska. According to this study, motorcycle crashes declined 26 percent. And they ran the data and it showed that this was a direct result of the law; a 22 percent decline in serious head injuries, steep declines in reported injuries and deaths. It's calculated the medical costs, just the acute care costs due to motorcycle injuries this year decreased by more than \$1 million. In 1989, if you use an inflationary of 97 percent, that's almost \$2 million of

today. It should also be noted that for this year, the percentage of admitted patients requiring long-term rehab was similar. However, no motorcyclist known to be wearing a helmet required the rehab care. I realize that it's unlikely that people wearing helmets never require this type of care because injuries are always unpredictable. But I would have to assume that the number is significantly less than people wearing helmets. Long-term rehab would account for a long-term burden on the taxpayers of the state as well. My interest in the helmet law comes from the experience I have in the emergency room and visiting family in states where they don't have such laws. I had the opportunity to see a motorcycle crash victim on one of my first days in the emergency department on a rural medicine rotation last summer. This man was doing everything correctly. He was wearing a helmet. He had protective clothing. He was following traffic laws, etcetera. However, he fell victim to a gust of wind as he was going over a bridge and lost control over his motorcycle. His helmet was badly damaged. The road had worn so much of it away you could see the padding on the inside. He had several abrasions over his body as the concrete ground through his clothes, and his foot hung at a 90 degree angle to his body because it was broken in half. Had he not been wearing a helmet, the damage sustained by his helmet would have been transferred to his scalp and I am nearly certain he would not have survived, at least without a traumatic brain injury. I want to thank you for all hearing my testimony today and thank you for the service you do for the citizens of the state. Please continue to help prevent injury, protect the health of our citizens, and be good stewards of our tax dollars. Thank you. [LB31]

SENATOR SMITH: Thank you, Mr. Trenhaile. Questions? Senator Davis. [LB31]

SENATOR DAVIS: Just one question. In your second paragraph you talk about states with a partial ban. Can you elaborate? Do you know what that means? [LB31]

JAMES TRENHAILE: A partial helmet law? [LB31]

SENATOR DAVIS: Yes. [LB31]

JAMES TRENHAILE: So for an example, South Dakota would be considered having a partial helmet law. They have an age restriction that's 18. If you're under 18, you have to wear a helmet. Iowa has no helmet law, so anybody can ride on the road without wearing a helmet. [LB31]

SENATOR DAVIS: So partial ban means age groups. [LB31]

JAMES TRENHAILE: Yes. [LB31]

SENATOR DAVIS: It doesn't mean seasonal? [LB31]

JAMES TRENHAILE: It can be either or. [LB31]

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SENATOR DAVIS: Are there any seasonal partial bans? [LB31]

JAMES TRENHAILE: I have data, but I don't have it with me right now. [LB31]

SENATOR DAVIS: If you were able to provide that, I'd like to have that. [LB31]

JAMES TRENHAILE: Okay. [LB31]

SENATOR DAVIS: Thank you. [LB31]

SENATOR SMITH: Senator Murante. [LB31]

SENATOR MURANTE: Thank you for coming down today. You use a...or cited a statistic but I'm hoping for explanation. You said that following the reenactment of the universal helmet law in 1989 that we saw a 26 percent decline in motorcycle crashes. How would wearing motorcycle helmets decrease the incidence of crashes? [LB31]

JAMES TRENHAILE: According to this report, they basically ran the data and tried...they've looked at it and saw if it was just like a freak incident and because other, like, fatalities and crashes vary year by year. And according to the data that they collected they found that it was like a statistically significant number of crashes were prevented in Nebraska due to the law. It just had to do with the numbers. And I have a copy of it with me. I can... [LB31]

SENATOR MURANTE: Well, I believe your statistic and I find it thoroughly believable about the decline in head injuries and fatalities and things like that. What I'm not seeing is the relationship between wearing a helmet and getting into an accident, not so much the severity of the injury, but what's the relationship between wearing a helmet and getting into a motorcycle accident. [LB31]

JAMES TRENHAILE: Yeah, and it kind of took me like a little bit to think about that same idea because I was like is this just somebody like blew up the numbers to make something look like it...something it's not. And they attribute it to people possibly riding...like adopting safer riding practices because of having to wear a helmet. [LB31]

SENATOR MURANTE: Okay. Thank you. [LB31]

SENATOR SMITH: Further questions from the committee? Seeing none, thank you, Mr. Trenhaile, for your testimony. [LB31]

JAMES TRENHAILE: Thank you. [LB31]

SENATOR SMITH: And thank you for choosing the medical industry as a profession. [LB31]

JAMES TRENHAILE: You know, it's a blast. [LB31]

SENATOR SMITH: Welcome. [LB31]

JOSEPH STOTHERT: (Exhibits 8 and 9) Chairman Smith and Senators, my name is Dr. Joseph C. Stothert, S-t-o-t-h-e-r-t. I'm a physician and surgeon at the only Level I trauma center in the state of Nebraska. What I've chosen to do this year, as I have for the last 20 years, is to come down and give you the 20-year history of what we have cared for at the University of Nebraska Medical Center. So I've collected data from the University of Nebraska Medical Center trauma registry since 1995 with the vast majority of patients in this registry coming from Nebraska and Iowa as you might expect. Interestingly when given this option, it appears that motorcyclists involved in motorcycle accidents in Nebraska, about 78 percent were wearing helmets and when it was in Iowa, about 38 percent were wearing helmets. This most telling statistic of course also impacts on mortality. Of the 527 injured motorcyclists cared for at the University of Nebraska wearing helmets, the mortality was 4 percent. Over the same 20-year period, those not wearing helmets, it was 8 percent--an additional 23 deaths whose primary cause was not wearing a protective helmet. Looking at our total of 819 motorcyclists who we cared for over this 20-year period, there is a slight increase in the length of stay in the intensive care unit for nonhelmeted riders as compared to motorcyclists wearing helmets. A similar question to what you had, why would that be? Dead people don't occupy intensive care units. There is a trend also more towards the injured spine and brain in unhelmeted riders. This includes an increase incidence of vertebral fracture of the cervical, thoracic, and lumbar spines. There was also a slight increase in the incidence of intoxication in unhelmeted motorcyclists. In the past you had, you have a list of these things. It is the opinion of the physicians who care for trauma at the University of Nebraska Medical Center and the Nebraska Medical Association that our senators should be strongly supportive of continuing the health...helmet law and not passing the new repeal of the helmet law. In the opinion of this group, a helmet is a safety device similar to seat belts, stop signs, traffic lights. All Nebraskan senators should be aware that this is not an economic argument nor is it a personnel freedom issue. It's simply an issue of protection for people who have chosen to utilize, as was indicated in a previous proponent, a mechanism of transportation that is inherently dangerous. The other things that all Nebraska senators should be aware of is that if you pass this bill forward and it does become successful, it will increase the risk to our young adopting this similar type behavior. When people have the choice of wearing a helmet or not wearing a helmet, they choose not to do so, as was very well presented by our proponents. Therefore, what we're doing here is for the future of our young. Please do not move this bill forward to the Nebraska Legislature so that we can have a safe state for motorcyclists. Thank you. [LB31]

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SENATOR SMITH: Thank you, Dr. Stothert, for your testimony. Do we have questions for Dr. Stothert? Seeing none, thank you. Continuing with opposition to LB31. Welcome. [LB31]

PATRICK LANGE: Senator Smith, members of the committee, my name is Patrick Lange, L-a-n-g-e. I come before you as a father, a husband, and a survivor of a motorcycle accident. I spent 44 days in ICU and even longer in a state of coma. I was on my home with my new wife from our honeymoon when the unthinkable happened. We had brand new tires on the motorcycle. One of the tires was faulty and blew out going down the interstate. My wife was killed. Took them five-and-a-half hours to stabilize me enough to ambulance me out from the site of the accident. I am now legally disabled with severe traumatic brain injury. I have short-term memory problems and I have stamina and energy problems. I have weakness of the right side of my body. I have four children from a previous marriage that had to crawl up on my hospital bed when I was in a coma and hold me and cry, ask daddy to wake up. I have over 20 years of riding experience. I still ride. I was not wearing a helmet at the time as my wife and I were on our honeymoon up in the Black Hills in South Dakota. Every day for the rest of my life I will live with my disabilities that I have sustained from choosing not to wear a helmet. I asked my children the other day, I told them I was coming up here to talk to the committee, so would it be okay with you kids if they do get rid of the helmet law here in Nebraska and make it so we don't have to wear a helmet. Would it be okay if I didn't wear one? I'm remarried now. I have seven kids total in all. Well, the six oldest that were old enough to understand, all six of them told me that I had better wear a helmet if I knew what was good for me or they were going to tell grandma. (Laughter) So, ma'am, I will wear a helmet. You know, a lot of people, well, it should be my choice. I have a stepson that won't talk to me anymore because his mom was killed in that accident. We have people testified how much money Nebraska is losing out on. My stepson lost something money can never, ever replace because his stepdad and his mommy made a decision on their own not to put a helmet on. And there's no guarantee that a helmet would have saved us that day, but it's a high possibility it might have. If you asked my stepson what would you give for five more minutes with your mom, he would say I'd give anything. My accident, total costs add up to \$1.7 million. I had good insurance at the time through a severance package from my job that I was let go from because they closed our plant. It had no cap on it. Not everyone has that. Plus the time that my parents and my friends missed from work coming up to see me, the trauma that my children had to go through going to their stepmother's funeral and wondering for days and days and days, is my daddy going to open his eyes. So I come to you as a father, a husband, and someday a grandfather. We don't always make the brightest decisions. We're supposed to wear a seat belt in the car and we have a frame around us to protect us. We have nothing between us and the ground on a motorcycle to protect us. Sometimes we just make stupid decisions. But with this law in place it's going to give us just that incentive to, well, maybe I better put this on. I'll answer any

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questions I can. I'm not very super smart but I'll do my best. [LB31]

SENATOR SMITH: Thank you, Mr. Lange. You're doing a fine job, and sorry for your loss and I know it's very difficult for you to be here today and testify. Very much appreciate you coming forward. Do we have any questions from the committee for Mr. Lange? I see no questions. Thank you again. [LB31]

PATRICK LANGE: Thank you. [LB31]

SENATOR SMITH: We continue with opposition to LB31. Welcome. [LB31]

MICHAEL VISENIO: Good afternoon. Thank you, Chairman Smith and the members of the Transportation and Telecommunications Committee. My name is Michael Visenio, V-i-s-e-n-i-o. I'm a first-year medical student at the University of Nebraska Medical Center, but I'm here representing myself today. As a fellow Nebraskan, I oppose LB31 because repealing the state's universal helmet laws would cause unnecessary harm to both individuals and society. Being a healthcare professional, I view that repealing the state's universal helmet law would present a public health issue to the state and cost the state in both financial and human capital. Under Nebraska's current laws and with data gathered from NHTSA, there were 13 deaths due to motorcycle accidents in 2007. As a comparison, Iowa, a state with voluntary helmet use, saw 54 deaths in that same year. This translates to rate of 1.74 deaths per 100,000 people in Iowa, yet only .696 deaths per 100,000 people in Nebraska. Furthermore, in Nebraska, 31 percent of those who died were not wearing a helmet while 91 percent of those who died in Iowa weren't wearing one. While Iowa then (inaudible) that rate reached zero, helmet laws do show positive effects while voluntary laws, at least as Iowa has shown, voluntary laws do not show high rates of voluntary helmet use. In financial capital, helmet use shows cost savings both to the citizens and to the state taxpayers. According to NHTSA in 2010, cost saved through lives or injuries...or injuries saved by helmet use were \$1.2 million per fatality, \$172,000 per serious injury, and about \$8,000 per minor injury. And these savings came from avoiding medical and emergency service costs, work productivity losses, and property damage. To prevent these deaths would put less strain on our state's first responders, hospitals, insurance policyholders, and taxpayers. While not wearing a helmet is a personal choice, accidents that happen often involve more than just the driver. In 2007, it's reported that 50 percent of all fatal motorcycle accidents, that was 2,641 deaths, involved another vehicle and, therefore, another person. Not only does that represent financial cost to both parties affected but also the emotional cost of those involved and those lost to fatal motorcycle accidents. Being a medical student, one of the most painful things that I witness volunteering and shadowing in a trauma center is seeing a preventable death that could have been prevented due to simple measures, simple safety measures. And in conclusion, I believe that LB31 would be detrimental to public health and, therefore, I oppose this bill. [LB31]

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SENATOR SMITH: Thank you for your testimony. Questions from the committee? Seeing none, thank you again. It looks like we've had a great group of medical students here today, bright, young medical students. I think they're going to give Dr. Stothert a real run for his money. (Laughter) Welcome. [LB31]

GARY HAUSMANN: (Exhibit 10) How you doing? I'm not a medical student. Can I still speak? Gary Hausmann, H-a-u-s-m-a-n-n. As I prepared for this meeting, I realized that I have been testifying before this committee for nearly eight years regarding the motorcycle helmet law in our state. I have been here because in September 2006, I was involved in a motorcycle accident that was not my fault just six miles from my home on a two-lane highway. I was not expected to survive my injuries. I traveled this road almost every day and often on my motorcycle. I was wearing a very good quality helmet without which I surely would not be concerned about this hearing today and probably would not even be alive. Ladies and gentlemen, in the past eight years I have heard hours of testimony from both sides of this argument. However, during this time, not one person has mentioned the cost and inconvenience of wearing automobile seat belts and utilizing child restraint seats. Don't they infringe upon our rights? These items probably cost the individual consumer several times more than the best quality motorcycle helmet available. And speaking of cost, in 2006, the year of my accident, a motorcycle accident that did involve head injuries, incurred \$1.41 million in medical bills. How many people that ride motorcycles do you think have that kind of personal wealth or medical insurance to pay such expenses? And the costs have probably not decreased since 2006 but almost certainly have increased. Incidentally, my recovery happened to be such that my medical bills were only \$383,000 of which I did in fact have insurance to pay those expenses. I know of two men that have had their lives drastically changed forever by motorcycle accidents in 2014. One wished he would have had a better quality helmet on; the other can't believe that he was riding in Arkansas without one, a state that does not have a helmet law. I can't imagine that any of us would start our day and think, I certainly hope that I can survive my motorcycle accident today. We are all careful to prevent tragedy, but no one can prevent the chance of accidents totally. Webster Dictionary says an accident is an unexpected, undesirable event. Unless we can find a way to eliminate the chance of all accidents, why would the state of Nebraska even consider eliminating the requirement for one of the most proven and effective safety devices that we have for motorcycle riders--the requirement to wear a motorcycle helmet? Thank you. [LB31]

SENATOR SMITH: Thank you, Mr. Hausmann, for your testimony. Any questions for Mr. Hausmann? Senator Brasch. [LB31]

SENATOR BRASCH: Thank you, Mr. Chairman and Mr. Hausmann. [LB31]

GARY HAUSMANN: How are you doing? [LB31]

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SENATOR BRASCH: Good. It's good to see you back. Thank you for coming here. [LB31]

GARY HAUSMANN: Sure. [LB31]

SENATOR BRASCH: You're a constituent, I believe, in Blair. [LB31]

GARY HAUSMANN: Sure, sure. [LB31]

SENATOR BRASCH: And we've had conversations, and last year or the last time it was introduced, because the bill had an amendment to keep children off the back, it had gained, I guess pulled on my heartstrings a little bit. [LB31]

GARY HAUSMANN: Sure. [LB31]

SENATOR BRASCH: This time seeing that there's no dialogue of that whatsoever and listening to all the testimony and heartache and not so much economic development, which I do support. You know, I do have concerns and I'm wondering, too, on your testimony, you know, it affected your family. [LB31]

GARY HAUSMANN: Oh, yeah. [LB31]

SENATOR BRASCH: And you had... [LB31]

GARY HAUSMANN: Them more than me. [LB31]

SENATOR BRASCH: Exactly. So is there anything that you believe could make this a better bill or is it just say no? [LB31]

GARY HAUSMANN: Well, it would be better if you kept the law. However, I can't imagine passing a law without putting the age limit on it. And I'll tell you something that we tried three or four years ago was requiring a million dollar rider, which still wouldn't cover the average cost. But we dropped that part that year because most insurance companies wouldn't do that. So my...I've gotten to the point where I say, hey, if they don't want to wear helmets, don't wear them but pay your own bills. And how are they going to do it? [LB31]

SENATOR BRASCH: Very good. I appreciate your coming here and your diligence and I've only been here four years and it seems to me... [LB31]

GARY HAUSMANN: Sure. Well, we've talked about it before, you know, so... [LB31]

SENATOR BRASCH: We have and I... [LB31]

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GARY HAUSMANN: And we've had good conversation about it. [LB31]

SENATOR BRASCH: Yeah, very good. Thank you. Good to see you again. [LB31]

GARY HAUSMANN: Sure. Good to see you. [LB31]

SENATOR SMITH: Thank you, Mr. Hausmann. Thank you for your testimony. [LB31]

GARY HAUSMANN: Thank you. [LB31]

SENATOR SMITH: We continue with opposition to LB31. Welcome. [LB31]

COLEEN NIELSEN: (Exhibits 11 and 12) Good afternoon, Chairman Smith and members of the Transportation and Telecommunication Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for State Farm Insurance Companies and the Nebraska Insurance Information Service. I'll cut this...I'll cut to the chase here with my testimony. Just to tell you that Michigan in 2012 repealed their law, and some studies were done by the Highway Loss Data Institute. And the significant information that came out of that study was that they were able to look at the riding seasons of Michigan from 2010 to '11 compared to the 2012 riding season after the repeal of the helmet law, and they discovered that the severity of claims was 36 percent higher and the overall losses were 51 percent higher. There was a claims frequency that was 10 percent higher, but that was not statistically significant. I have heard the testimony prior to this about how the insurance premiums were not much different from Iowa to Nebraska, and I just want to clarify a little bit about the insurance because when we talk about that we often don't talk about the different kinds of insurance in your policy. Liability insurance is what is the premium that you pay so that if you hit somebody it will pay them. I think what we want to talk about here is the medical payments coverage in the policies. And I will tell you I looked around amongst the insurance companies and that medical payments coverage is very limited in scope. I'm not sure that you'd be able to purchase more than \$5,000 here in Nebraska. And so that limits their exposure. What then the person's health insurance company would have to pick up the rest. So I think that might help explain why the differences in premium are not that great. The scope is just limited to medical payments coverage. So I'd be happy to answer any questions. [LB31]

SENATOR SMITH: Thank you, Ms. Nielsen. Do we have questions from the committee? See none, thank you. [LB31]

COLEEN NIELSEN: Thank you. [LB31]

SENATOR SMITH: Continue with opposition to LB31. Welcome. [LB31]

LORI TERRYBERRY-SPOHR: (Exhibit 13) Thank you. Good afternoon. My name is Dr. Lori Terryberry-Spohr, T-e-r-r-y-b-e-r-r-y hyphen, S-p-o-h-r, and I'm a clinical neuropsychologist and the brain injury program manager at Madonna Rehabilitation Hospital. I'm here today on behalf of Madonna, as well as on my own accord to strongly urge you to vote no on LB31. In the approximately 20 years that I have worked with patients with brain injury, I have been acutely aware of the catastrophic impact of that injury on patients and their families. At Madonna, we see over 600 patients with brain injury each year, many who were injured on motorcycles. Of those with severe brain injury, almost all will suffer lifelong ramification of their injury including changes in the ability to communicate, think, and function independently. Nationally, only about 30 percent of those patients ever return to productive employment and most are uninsured or underinsured so will require Medicaid for their lifelong care. The estimated lifelong cost of a severe brain injury, as you heard earlier, is \$4.4 million and there is no way to put a cost to the angst and frustration that we've heard about today and these families go through that in the often two-year period of recovery and eventual acceptance of the lifelong ramifications of these injuries. After helping hundreds of families myself come to terms with the changes it will mean in terms of loss of income, changes in roles, and becoming a lifelong caregiver, you realize there's no price that would make it worth it. Helmet laws help reduce the number of people that suffer these injuries. You've heard most of these statistics, so I'm going to skip ahead and just leave them in my testimony. But the helmet law has not deterred riders in our state as licensed motorcycle drivers and motorcycle registrations have been steadily increasing since 1986. In 1988, prior to the reinstatement of the helmet law, the rate of injury was 19.1 per 1,000 riders. In 2013, the rate was 5.3 per 1,000 riders in our state. With over 97,000 currently registered motorcyclists in our state, if we returned to those previous levels, prior to reinstatement of the helmet law, that would equate to the additional cost of 1,339 injuries per year. If we extrapolate based on the average cost of a motorcycle accident in 2013, that equates to over \$105 million per year in costs. Even if only 5 percent of these are severe injuries, 67 additional people per year will have lifelong effects as the result of a motorcycle injury. In addition, I must point out that our state does not have a brain injury trust or resource facilitation as those states around us do who have rescinded their helmet laws. They have plans in place to care for those individuals; we do not. Finally, I'd just like to point out how inconsistent repealing the helmet law is with other work recently passed in the Legislature. In 2012, we implemented the Concussion Awareness Act in our state and we recently revised it, added a return to learn component because we recognize how even minor head injuries can affect individuals as they try to go back to school and back to those environments. Some of the points that contribute to the passage of the concussion awareness law were the long-term economic costs of brain injury and the need to prevent the pain and suffering that occurs. Why, then, would we want to pass a law that we know without a doubt will increase the number of brain injuries in our state? If it is supposed to be because we believe that these are adults who can make their own decisions, then logically, as has

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already been mentioned, we should appeal (sic) seat belt laws and other laws meant to protect adults. If it is because of economics, then we need to look at the real cost associated with brain injuries. There's lots of information out there that tells us what this is going to cost us. The figures are staggering and it will put increased demands on our Medicaid system at a time when we're trying to figure out how to contain healthcare costs. If it is because the other states around us have done it, then we're going to have to consider how we're going to care for these injuries because we have to put something in place to do something about it. Besides, I really believe we need to consider what is right based on the facts, both ethical and financial. We already know the answers. We made this mistake once before. Why would we want to repeat it again? Thank you, ladies and gentlemen, for your time. I urge you to say no to LB31. [LB31]

SENATOR SMITH: Thank you for your testimony. Do we have questions for the doctor? Seeing none, thank you again for your testimony. Continuing with opposition to LB31. Welcome. [LB31]

ROSE WHITE: (Exhibits 14, 15, 16, and 17) Chairman, thank you, and members of the committee, thank you very much. My name is Rose White, R-o-s-e W-h-i-t-e, and I am here today representing AAA, the auto club group. I want to first piggyback on something that Coleen had mentioned earlier about insurance. Our counterpart in Michigan, within the first six months after the repeal of the law, they had experienced three \$1-plus million claims for motorcycle helmet injuries, I should say without the helmet. And that typically for that time period they would have seen one, but they had seen three within the six months following the bill. We have to keep in mind too that insurance in Michigan is a no-fault state and then plus there is no cap on medical coverage. And so basically it's a burden that's passed onto the insurance carriers. Unlike here in Nebraska where insurance policies, as you had heard earlier from the earlier bill introduced, many people have policy limits here in our state of \$25,000, \$50,000 for liability limits if they're responsible for the crash and \$5,000 for medical pay coverage. So certainly a big difference, and as you can imagine, that burden will be passed onto the state. And for that reason we do feel that it is probably improper to even consider this bill without some fiscal note to be attached to it because there will be a financial burden to the state. We did commission the study earlier and I will give those results to you later on by mail. I don't have the ability to pass them on to you today. But in our commission study it indicated that we can expect to receive probably in excess of \$12 million in extra medical costs if we repeal this law. And it did take into consideration many aspects, including our short riding season here in Nebraska because of the weather conditions, basically based it on a six-month period. It did not include lost wages and other costs but basically just healthcare costs alone. And again I will send that information to you by mail. But here what I'm basically to cover today is the aspects concerning travel. AAA is probably more passionate about travel than any other single organization in the state, and so for that reason we're deciding to present information on

its travel impact if we should repeal the law. In the information I sent to you, there should be a map that shows you the U.S., the states that have helmet laws, the states that do not. It also shows you several dozen cities on there, and if you had used MapQuest or any other kind of mapping system and request a route from that city to Sturgis, it would bypass Nebraska not because we have a helmet law but because it's the shortest route and best route to reach Sturgis. And as you can see, there's just a small window covering the states of Kansas, Oklahoma, and Texas where it would recommend that you pass through that state. Now if you look at the total numbers for the Sturgis rally, just this last year they had an attendance of 420,000, and that was recorded by the Sturgis rally organizers, and they also estimate on the low side that about 50 percent of the people now trailer their bikes. Now that number was provided by a representative of the Sturgis rally and was reported by the Chicago Tribune. However, a number that we received just last week from the city of Sturgis they estimate that percentage to be closer to 70 percent. And so if you deduct that number, you're down to 210,000 minus from that 420,000. And then also if you deduct the percentage of people who already wear helmets regardless of if their state has a law or not, you can deduct another 105,000. And if you'd look at the map then and deduct those other regions where they would have no need to pass through the state of Nebraska, you could deduct another 94,000 which would bring that number down to fewer than 10,500. And then if you subtract from that the number of Nebraskans who are required to wear helmets anyway, you can bring that down several thousand more. And so as you can see, the numbers dropped significantly, based on that data, and that data is very accurate. It's not scientific study but does take into consideration all of the various factors that must be considered by our legislator leaders in order to make an educated and informed decision. Now keep in mind that travel time and distance from the southern border of Nebraska to the northern border is approximately three and a half hours or about 220 miles, from the south of McCook to north of Valentine, and that hotel room availability along the north-south routes in rural Nebraska, it's very limited during the peak summer months. And as you can expect, many properties are already at or full capacity at that time of year. So due to this issue, opportunity for additional travel revenue from food, lodging is limited and must be based on availability. And so many motorcycles are equipped with fuel tanks that have three and a half gallon to six gallon capacity, and many Harley's have a 50-mile-per gallon rating on average, and so a motorcyclist filling their four-gallon tank in Nebraska will contribute about a dollar and six in gasoline taxes. And so that is based on solid data. And so I'd also like to indicate to you that as we note Patrick Lange's experience, we have incidents that occur over a million dollars. We know that. We know we can anticipate about \$12 million extra cost associate with Nebraska and we know that a big portion of that, because of our insurance laws, will be passed on to taxpayers. We also know that because of a recent study that was conducted by the state highway organization that Nebraska was rated one of the worst states in the country for having effective traffic safety laws. So the combination makes for a very dangerous situation. So if you have any questions, I'd be happy to try to answer your questions. [LB31]

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SENATOR SMITH: Thank you, Ms. White. Senator Davis. [LB31]

SENATOR DAVIS: A couple of questions. You got a lot of information here. Really good, thank you. [LB31]

ROSE WHITE: Thank you, Senator. [LB31]

SENATOR DAVIS: So first question is the one I asked earlier, is there any data out there to...that correlates with speed and fatality with a helmet or without a helmet? [LB31]

ROSE WHITE: I'd be happy to get that information to you, Senator. There is some published information. And as I believe Senator Garrett asked a question earlier, you know, why would motorcycle riders, different safety events, you know, require helmets? It's because they've been proven to be effective. You know, are they ineffective at very high speeds of impact? I'm sure that they are, just like any kind of device, you know, might be rendered ineffective. But, you know, we have to look at, you know, how effective are they and will it matter, and we truly believe that it will make a matter. Also I want to add too in regards to travel issues. Out of the ten top rallies in the country, five of them are held in states where they're required to wear helmets, you know, including the big motorcycle rally in Washington, D.C., that attracts 500,000 people. We have another one in Hollister, California, which has a rider helmet law. It's the city that manufacturers Harley Davidson's. And so there are many different states around the country that hold huge rallies in spite of having a helmet law. [LB31]

SENATOR DAVIS: And then I've one other question. In just looking through this, I noticed that some of the data you have for Nebraska talks about most of those people were wearing helmets that were in these accidents. [LB31]

ROSE WHITE: Correct. [LB31]

SENATOR DAVIS: How much alcohol...how much is alcohol related to these accidents? [LB31]

ROSE WHITE: Actually, Senator, if you turn to the page like that shows the 2014 fatalities, it actually will show you at the bottom of the page how many of those fatalities involved alcohol. And I believe the percentages were quite high. And so the summary is provided the very bottom of that chart that shows you all of the fatalities for 2014. [LB31]

SENATOR DAVIS: Okay. Thank you very much. [LB31]

ROSE WHITE: We did want to provide those summaries to you so you can get a

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detailed explanation on what types of fatalities occur here in Nebraska and some of the reasons behind them. [LB31]

SENATOR DAVIS: And if you can get that information for me I'd sure appreciate it. [LB31]

ROSE WHITE: On the helmets, I'd be happy to, Senator Davis. Thank you. [LB31]

SENATOR SMITH: Additional questions for Ms. White? Seeing none, thank you. [LB31]

ROSE WHITE: Thank you, Chairman. Thank you, Senators. [LB31]

SENATOR SMITH: Continuing with opponents, opponents to LB31. Welcome. [LB31]

WILLIAM MULHERIN: (Exhibit 18) Good afternoon, Senator Smith, members of the committee. My name is Bill Mulherin, B-i-l-l M-u-l-h-e-r-i-n, and I'm addressing you today not as a member of any group but just on my own behalf as a motorcycle rider, a teacher, motorcycle safety, citizen of Nebraska, father. I brought two of my kids with me. They wanted to see the legislative process. I think they might stay awake through it. In the interest of full disclosure, I did spend a number of years working for what is now the National Safety Council of Nebraska. But I'm no longer affiliated with that group and have not been in contact with them. I'm not an accident survivor nor has any member of my family suffered. So what is my motivation to come down here and oppose this bill? The reality of it is, as I've studied the data extensively from both sides, and it seems that it boils down to a libertarianism versus paternalism for the nanny state argument. In fact, when the proponents were up here, all five proponents mentioned either choice or paternalism or being against the mandate for use. And, you know, that's a compelling argument. I'm a rider. I get it. I really, really get it. I would love to ride without my helmet. And I tell you what, when I get on the bike and I...I live in Omaha, I go about 20 miles and I get to that Iowa border and I leave the thing on. Because as much as I'd like to ride free, and there is a difference, as much as I'd like to ride free I recognize for myself the decision must be to err on the side of safety. Everything I am is up here and if I don't protect this, why bother. You know, we heard some testimony earlier about helmets not providing protection at highway speeds and you know what? You may be right. The helmet drop test is about 15 mile an hour because that's about how fast your head is moving vertically when you fall off a motorcycle and hit the ground. That's what it's meant to protect. Everything else if gravy. If I hit a signpost or a telephone pole and wrap my body around it at 70 miles an hour, game over. So I'm hoping that my gear, my helmet will protect me in the event that I fall off the bike. And I ride quite a bit. I propose to you that the burden of this particular regulation which, by the way, is rationally related to the police power of the Legislature and is narrowly tailored to minimize impact society as a whole actually decreases the overall burden of legislation to the citizens of all...the entire citizenry of the state and increases the liberty of the overwhelming majority of

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Nebraska citizens. And I'm going to point to a case that I found, Jacobson v. Massachusetts, U.S. Supreme Court, all the way back to 1905. It was an antivaccination case. The citation, Senator McCoy, is 197 US 11, if you're taking notes. It was an antivaccination case in Massachusetts where a gentleman in Cambridge, the local board passed a vaccination rule against, I think it was smallpox at the time, and fined you 5 bucks if you didn't get vaccination. And one guy didn't want to get vaccinated. And the Supreme Court said, hey, this is within the realm of the power of the states and local cities to pass laws against. They have the police power and they have the right and the need to so to protect all the citizens of the state. It's an infringement on the minority, but it's a minor infringement. As a motorcycle rider, I want the freedom. I make up a very small percentage of people that are riding on the roads in the state as compared to car drivers. We've heard the statistics. As a car driver and the majority of roadway users, and given the conditions today, I drove the car, I also want freedom. But I'm subject to a myriad of laws that govern my use and my conduct on the roads from speed to everything else. I want to make sure that if I have an accident with a motorcyclist and that motorcyclist dies I'm not subject to Nebraska revised statute 28-306 which is our motor vehicle homicide statute which has no provisions for the activity or inactivity of the other driver. It only looks at my behavior. Was I in any sort of law violation? If so, the other person dies I'm looking at a felony or at least a misdemeanor. As a citizen and a taxpayer I want to reduce my tax burden. So you've heard the arguments on geography and tourism. You've heard the arguments on whether helmets cause or increase injuries. Let's talk a little bit about the "spent." Last year, I took a ride across Nebraska. I went to at Buford, Wyoming, it's something called an Iron Butt ride. It was a personal bucket list. See if you can ride a thousand miles in 24 hours. I rode the interstate all the way out and back. I figured my total fuel spent, most of which was in Nebraska, was \$144 and about \$16 in sundries. That relates back to about \$10 into Nebraska's coffers for taxes. At the rate of travelers crossing the state, which Ms. White from AAA just brought forward, I calculated that brings about \$10,000 in revenue to the state. Doesn't even begin to cover what the cost of responding to one accident is. So I depend on you, the Legislature, my Legislature, to even though the squeaky wheel gets the grease and you've been well-lobbied by ABATE and others, please don't oil this particular squeaky wheel. Let's keep this law. And I'll take questions. [LB31]

SENATOR SMITH: Thank you, Mr. Mulherin. Do we have questions from the committee? Senator Brasch. [LB31]

SENATOR BRASCH: Thank you, Chairman Smith, and thank you for your testimony. It's very interesting. And I'm glad you're a motorcycle rider because I have a question. [LB31]

WILLIAM MULHERIN: Sure. [LB31]

SENATOR BRASCH: When you purchase a motorcycle, the user's manual, is there like

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a car, is there a manual that comes with it? [LB31]

WILLIAM MULHERIN: There is. There's a motorcycles owner's manual. [LB31]

SENATOR BRASCH: Do they give any warnings? Is it...any recommendation...is... [LB31]

WILLIAM MULHERIN: Just like everybody else that's producing a product, yes, they give all kinds of warnings. Now do they give a specific warning about helmets? I haven't read my manual for a while (laugh) so I couldn't tell you. But I could look it up. I could pull it out of the bike tonight, find out and send you an e-mail. [LB31]

SENATOR BRASCH: Where I'm going with this is if the burden lied with the manufacturer, like when you buy a hair dryer or something--don't use it near the bathtub. I don't with a motorcycle, a helmet, you know, where perhaps, you know, we're looking at the insurance industry and all and you have some good perspectives and I'm just curious if the users manuals to a motorcycle would strongly recommend the use of a helmet or if that's even a part of their dialogue. [LB31]

WILLIAM MULHERIN: I want to say that it is and there's a warning sticker that says, wear your helmet, use riding gear on the motorcycle fuel tank of all new motorcycles that are sold in this country. So I want to say yeah, it probably is. It's been well-recognized. [LB31]

SENATOR BRASCH: I have no other questions. Thank you. [LB31]

WILLIAM MULHERIN: Sure. [LB31]

SENATOR SMITH: Further questions? Senator Davis. [LB31]

SENATOR DAVIS: Just a point more than anything else. But I recognize what you're saying and I get it, you know, but you could say the same thing about everything, about seat belts and about cell phones. You know, we should ban cell phones because they're distracting. So, you know, I understand the personal freedom question. I'm making a statement more than asking a question. [LB31]

WILLIAM MULHERIN: Sure. [LB31]

SENATOR DAVIS: That's it. [LB31]

WILLIAM MULHERIN: No, and you're right and what can the state regulate? I mean, there's two tests under this that have come out of the Supreme Court. One is if you're regulating somebody's fundamental right, freedom of speech, religion, there's a strict

scrutiny test. For something like this where you're really not regulating a fundamental right, the police power of the state is only subject to a rational review test. And, yeah, under that the state could potentially regulate anything. But the question becomes why don't they, and the answer to that is simply because there's not enough time in the day. I mean, you could regulate roller skating if you wanted to, but how many people would it affect and how much time would it take? I want to postulate one more thing. The issue came up earlier about why haven't states that have repealed helmet laws brought them back. And I want to postulate that at that point you're looking at politics. It's just not politically feasible to propose that kind of law without all kinds of screaming and yelling and everything going on. So it is, in fact, far easier to just leave the law in place and as we go on in time, you know, continue to compare our statistics versus other states and they'll continue to be, I think, in the favor of living and fewer injuries. [LB31]

SENATOR SMITH: Thank you, Mr. Mulherin, for your testimony. [LB31]

WILLIAM MULHERIN: You're welcome. [LB31]

SENATOR SMITH: I see no further questions. Continue with opposition to LB31. How many more folks do we have out there that are seeking to testify? Okay. Very good. Welcome. [LB31]

BRAD MEURRENS: (Exhibits 19, 20, and 21) Good afternoon, Senator Smith, members of the committee. For the record, my name is Brad Meurrens, B-r-a-d M-e-u-r-r-e-n-s, and I'm the public policy specialist for Disability Rights Nebraska. We are the production and advocacy organization designated for persons with disabilities in Nebraska. Under the federal Protection and Advocacy for Traumatic Brain Injury Act, we provide legal and other advocacy services to persons with traumatic brain injury. I am obviously here today to testify in opposition to LB31. First, I think I would remind the committee that driving or riding on the streets of Nebraska is a privilege, not a right. But the data from studies done nationally and in Florida, Arkansas, Texas, Kentucky, Louisiana, and Pennsylvania is clear. It consistently shows both motorcyclist fatalities and head injuries increase shortly after those states enacting legislation to...or appeal their helmet laws. The National Highway and Traffic Safety Administration reports that data from Oregon, Washington, California, and Maryland show significant decreases in fatalities and injuries. Michigan has seen an increase in injuries, fatalities, and medical expenses after their rollback of their universal helmet law. According to updated Michigan state police data, roughly one-fourth of motorcyclists in Michigan now ride without a helmet. But helmetless riders accounted for nearly one-half of motorcycle fatalities in 2013. The University of Michigan Transportation Research Institute found that reduced helmet use accounts for approximately 24 more deaths and 71 more serious injuries a year in Michigan. The study looked at 15,000 crashes from 2009 to 2013 and calculated that the risk of fatality is 2.8 times higher for riders not wearing a helmet while the risk of serious injury is 1.4 times higher, largely echoing studies in

other states. The Governors Highway Safety Association reports in 2013: Helmets are by far the single most effective strategy to prevent motorcyclist fatalities and serious injuries in a crash. Helmets are 37 percent effective in preventing fatal injuries to motorcycle operators and 41 percent effective for passengers. NHTSA estimates that helmets saved the lives of 1,617 motorcyclists in 2011. If all motorcyclists had worn helmets, an additional 703 lives could have been saved. They continue: A universal helmet law is the only motorcycle safety strategy whose effectiveness is demonstrated to be affected by several high-quality evaluations with consistent results, and they list this in their countermeasures that work study. Similarly, increasing the use of helmets is the only motorcycle safety strategy rated as proven in the American Association of State Highway and Transportation Officials guide for addressing collisions involving motorcycles and the only strategy rated scientifically proven in the Centers for Disease Control and Prevention's publication--Motorcycle Safety (Guide). Most recently, GAO reviewed nine high-quality studies, all of which concluded that universal helmet laws significantly decrease motorcyclist fatalities. GAO concluded that, quote, laws requiring all motorcyclists to wear helmets are the only strategy proven to be effective in reducing fatalities. And lastly, the American College of Surgeons reports that in states with universal helmet laws, the rate of traumatic brain injuries per 1,000 motorcycle accidents was 282 versus 307 in states with less than 18 years helmet legislation and 366 in states with less than 21 years helmet legislation. And for that, I urge the committee to not advance this bill. And I'd be happy to answer any questions that you have at this time. [LB31]

SENATOR SMITH: Thank you, Mr. Meurrens, for your testimony. Do we have questions from the committee? Seeing none, thank you. Welcome. [LB31]

PEGGY REISHER: (Exhibit 22) Thank you. Members of the council, my name is Peggy Reisher, it's R-e-i-s-h-e-r, and I'm the executive director for the Brain Injury Association of Nebraska. I have the honor of advocating and representing the 36,000 Nebraskans living with a disability because of brain injury in our state. And I, too, like everybody else testifying in opposition to LB31. We're kind of at a point where we don't need more members. (Laugh) That's really where we're at. I have my testimony written out. I don't know that I have anything new to add. I'm not a good data person. I'm a social worker by trade, so I'm not going to rattle off any numbers for you. I can tell you I'm always thankful for people like Mr. Lange to come forward and help share his story. Those are the stories we hear daily within our organization. Patrick came all the way from Cozad. But we represent all of Nebraska and certainly do get a lot of calls looking for resources and information about services that people might be eligible for. One of the big things I think we see as an association, when we get the calls, people are looking for resources. We have a great rehab program here in Nebraska. I used to work...I spent 14 years at one of our local rehab units and I got a chance to see that as we discharge people from that facility there weren't a lot of resources for them. As now the executive director for the Brain Injury Association, I look at where can we...how can we better serve those

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with traumatic brain injury? And we oftentimes see that there...we have a lack of funding for folks needing those types of services. Comparable to Iowa and our other states without helmets, they have huge trust funds, millions of dollars are spent on brain injury in those states. Nebraska spends zero. That would be zero on brain injury. We have a brain injury trust fund that one could say you could utilize for brain injury, but that serves about 23 patients right now and that's at about a tune of \$600,000. So I guess my biggest request of you is if you are to move this forward that you seriously look at how much you really are spending on brain injury services in our state. Because as we get more individuals needing services, if they don't have helmets, then I know we're going to be forced with more...sorry, we just don't have that here. So that is my testimony at this time. Take any questions. [LB31]

SENATOR SMITH: Thank you, Ms. Reisher, for your testimony. Do we have questions from the committee? I see none, thank you. [LB31]

PEGGY REISHER: Thank you. [LB31]

SENATOR SMITH: We continue with opposition to LB31. Welcome. [LB31]

LAURIE KLOSTERBOER: (Exhibit 23) Thank you. Good afternoon, Chairman Smith and members of the Transportation, Telecommunications. My name is Laurie Klosterboer, Laurie is spelled L-a-u-r-i-e, Klosterboer is K-l-o-s-t-e-r-b-o-e-r, and I'm the executive director for the Nebraska Safety Council. We are a nonprofit organization and our mission is to provide safety and wellness education to Nebraskans, safety at work, safety on our roads, and in our homes and communities. I'm not going to...we've had a lot of testimony today and so really I would just have you look at one item on the sheet. When it talks about cost, we did look in Nebraska in 2013, so this was for one year, the total charges for all riders hospitalized as the result of motorcycle injury was over \$11 million; 9 percent of that was paid by Medicare or Medicaid. So we do know that there are public dollars being used. We would...if we would repeal our law, we would see that number increase. We feel that you would see that increase substantially. And so the rest of the items other folks have talked about in the testimony today. So with that, I will conclude my comments and if you'd have any questions I'd be happy to answer them. [LB31]

SENATOR SMITH: Thank you, Ms. Klosterboer. Appreciate your testimony. Questions from the committee? I see none. [LB31]

PEGGY REISHER: Thank you. [LB31]

SENATOR SMITH: Thank you. Welcome. [LB31]

BEVERLY REICKS: (Exhibit 24) Thank you. This is sort of a card/handbook and I think

I'm the last testifier. (Laughter) Good afternoon, Chairman Smith, members of the Transportation, Telecommunications Committee. I am Beverly Reicks, B-e-v-e-r-l-y R-e-i-c-k-s. I'm the president and CEO of the National Safety Council Nebraska. Our mission is much the same as the Nebraska Safety Council here in Lincoln. We work to educate and train and provide resources for the prevention of injuries and fatalities across the state of Nebraska. I just want to say you have my testimony and quite a bit of factual information. I just want to let you know that we stand with the 77 percent of Nebraskans, as evidenced in the research associates May 2014 poll of Nebraskans, that support the existing helmet law. And would offer up any...the opportunity to ask any questions if you have any questions. One thing I would say, Senator Davis, about halfway through my fact packet is the Governor's Highway Safety Association survey of states for helmet laws that will give you, I think, answer your question you posed earlier about what are the laws of the states that have universal laws, some sort of a partial law and then the three states that don't have any law. That would conclude my testimony, Senator. [LB31]

SENATOR SMITH: Thank you, Ms. Reicks. Do we have questions from the committee? I know that the National Safety Council participates in providing rider safety training. To what degree does the whole discussion of helmets come up during that training or with that training? [LB31]

BEVERLY REICKS: Certainly that's a big part of the training. Anyone who takes a training at us, and I believe any other motorcycle safety foundation program is required to wear all of the safety gear while they're taking the training, including the helmet, the leathers, the gloves, the boots, the eye protection. It is integral to the safety training and the number one thing that we would talk about just as a whole part of the training in addition to the skills riding and all of the classroom work you do as a part of that program. And you're right, Senator. We're one of the largest safety providers for motorcycle safety providers in the state. Very proud of that fact. But education in the state of Nebraska is a bit challenging given our compressed riding season that we have here. We really are maxed out with the, I think it's seven providers right now across the state of Nebraska, they're training about 2,500 riders a year. If it's a weekend training, takes an entire weekend to do, and that's when most the rider training takes place across the state. So when you come down to the number of riders that you can put into a class, it's maxed out at 12 riders per class. And these are all the rules that are promulgated by the state of Nebraska Department of Motor Vehicles. So you're really fairly limited in the number of riders you can train each year. In Nebraska, I think we train about half of the riders who get an endorsement in Nebraska, about 5,200 riders a year, I think, that are endorsed. [LB31]

SENATOR SMITH: I'm curious, your counterpart in Iowa, how do they go about their training if they do not have a helmet law? [LB31]

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BEVERLY REICKS: Well, their training, I believe, is provided by ABATE. Whenever we are asked questions, that is where we send the individual because we are so close...the state...you need to be trained in the state that you're going to get your driving privileges. So in Iowa, you contact a member of the local ABATE organization and you do your training through ABATE. [LB31]

SENATOR SMITH: Okay. So they do not have the same type of safety training program there that we do here? [LB31]

BEVERLY REICKS: It could be the same...that it could be the Motorcycle Safety Foundation's training. But there is other training but primarily across the country Motorcycle Safety Foundation training is what the standard that people train to. [LB31]

SENATOR SMITH: Very good. Thanks for what you do. Questions from the committee? I see none. Thank you for your testimony. [LB31]

BEVERLY REICKS: Thank you. [LB31]

SENATOR SMITH: Yes, and Ms. Reicks thought she was the last. [LB31]

ROBERT CORNER: I'm sorry. [LB31]

SENATOR SMITH: You get the honor. Welcome. [LB31]

ROBERT CORNER: Thank you. Senator Smith, members of the Transportation Committee, my name is Robert Corner, C-o-r-n-e-r, and I've wanted to testify before this committee for about the last 38 years. That's how long I was a state employee. I'm now retired, so I'm representing myself. But for those 38 years, 34, I was with the Department of Motor Vehicles and the last four with Department of Roads. Only reason I was with roads is because I moved to highway safety division from DMV to roads. Twelve years of that or the last twelve years while I was at DMV, I was in charge of the motorcycle safety education program that you just talked about a little bit ago. Great program. I'd encourage all motorcyclists, both new riders and old riders to take either the new course or the experienced riders course. It's a great program. It really teaches people how to ride motorcycles correctly. I just want to state a couple facts. I didn't bring my written report. I left it back there because you've heard a lot of statistics today. But the fact is--if this law...or if this bill gets to the floor of the Legislature and for somehow gets the necessary votes to pass it, Nebraska will, as every other state that's repealed their law, will have more motorcycle deaths and more motorcycle injuries. That's just a basic fact. Another basic fact---if you're on a motorcycle...I was a former rider. I don't ride anymore but I was a former rider. But if you're on a motorcycle and if something happens that causes you to no longer be on the seat of that motorcycle but somehow flying through the air or whatever, the law of gravity is going to grab you and sooner or

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later you're going to hit the ground. Without a helmet, I can guarantee you there's going to be some injuries. Even with a helmet sometimes you're going to have injuries. But without a helmet, you will have injuries and we will see a considerable more people in this state with head injuries. I heard from numerous motorcyclists that had lost people either through crashes or...and a lot of them said they'd be better off if people would have died in a crash instead of had a head injury that they had and what they had to go through after that. I wouldn't want anybody to...any of my family to go through something like that. Senator Murante, you asked the question earlier, it was brought up, why in '89 when they passed a motorcycle helmet law did all of a sudden injuries go down. The reason for that, I think, is it wasn't the helmet law, but the helmet law was blamed because there were fewer...both registrations and licensees after the helmet law was passed. Helmet law got blamed for that, but it wasn't the helmet law. It's because this committee also passed a law that required you to have proof of insurance and a lot of people, I think, that were riding motorcycles at that time didn't have insurance, so that's why it went down. Since then, both the ridership, both licensees and registrations have gone up dramatically. In fact, we're way past what we were prior to the motorcycle helmet law when we used to average about 40 deaths a year in Nebraska with a lot fewer licensees and registrations. So I encourage you, please, don't pass this law out of this committee. Don't even let it get to the floor. Because if you get it to the floor, it is a life and death situation. More people are going to die on Nebraska roadways. The other fact is, Nebraska does not have a north-south interstate. So we hear all this testimony...I was happy to hear the testimony of Rose White talking about Sturgis. People who want to get to Sturgis quickly, they go up I-29. That's the fastest way to get there across 90 in South Dakota. They don't come through Nebraska. But if you go to any...Highway 83, any of the highways in northern Nebraska up toward the South Dakota border when Sturgis is going, I will guarantee you, you will see lots of motorcyclists coming through this state. A lot of motor homes pulling motorcycles coming through this state. So it's not that they don't come through this state to get to Sturgis. But a lot of people, especially the ones south that want to get there quick, they're going to go up the north-south fastest way they can get there, and that's I-29. There was an individual here from Kansas a couple of years ago that testified that he won't come to Nebraska because he has to...because of our helmet law. He'll go up I-29. He was from eastern Kansas. I wished one of you would have asked him, well, how did you get through Missouri without wearing your helmet because Missouri is a full helmet state just like Nebraska, but nobody ever did. I don't know how that individual got through Missouri without wearing his helmet, but obviously he had to if he got to Sturgis. Thank you. I'm happy to answer any questions. [LB31]

SENATOR SMITH: Thank you for your testimony. Appreciate you being here today. Sorry it took you 38 years to get here. (Laughter) Do we have any... [LB31]

ROBERT CORNER: Well, it's because the Governor said we couldn't testify. (Laughter) [LB31]

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SENATOR SMITH: Do we have questions from the committee? Yes, Senator Murante. [LB31]

SENATOR MURANTE: I just wanted to follow up just to clarify with what you just said. So you were working for the state in 1989, is that correct? [LB31]

ROBERT CORNER: I started the state in '77. [LB31]

SENATOR MURANTE: '77. Okay. [LB31]

ROBERT CORNER: So, yes, I was working in '89. [LB31]

SENATOR MURANTE: And at the approximate...was it the same year that the Legislature passed a law requiring insurance that they also reinstated... [LB31]

ROBERT CORNER: No, it was like a year before or two years before they passed the law that you had to have proof of insurance. But it just started to catch up and all of a sudden registration started dropping off. [LB31]

SENATOR MURANTE: Sure. And then once we saw a mandatory insurance law, the number of, I would assume it would just be vehicles on the road decreased. Is that... [LB31]

ROBERT CORNER: Well, they should have decreased if there had been fewer licensees and registrations, but I don't...I can't say for sure that they decreased. [LB31]

SENATOR MURANTE: So that resulted in fewer accidents. Okay. [LB31]

ROBERT CORNER: But at least they should have because of that, yes. [LB31]

SENATOR MURANTE: Okay. Thank you very much. [LB31]

SENATOR SMITH: Additional questions? Seeing none, thank you, Mr. Corner, for your testimony. [LB31]

ROBERT CORNER: Thank you. [LB31]

SENATOR SMITH: (Exhibits 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34.) Any remaining opposition to LB31? Opponents to LB31. Seeing none, we do have ten letters for the record in opposition to LB31. I'm going to forgo reading those, but we will enter those into the record. Do we have anyone wishing to testify in a neutral capacity? [LB31]

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SENATOR SEILER: He left. He was about five years old and he was raising his hand to leave. (laughter) [LB31]

SENATOR SMITH: Neutral capacity. Seeing none, Senator Bloomfield, you're invited to close on LB31. [LB31]

SENATOR BLOOMFIELD: Thank you, Chairman Smith. I'm going to try to answer a couple of questions that were asked earlier if I can. I think it was Senator Davis that asked about when the bills were repealed, which state. It was either Davis or Garrett, I'm not sure which one at this point. But Colorado repealed their bill in '77; Iowa in '76; Kansas in '76; South Dakota in '77; and Wyoming in '83. So it's been a while. They've had the experience. They haven't come back with a bill to reinstate it. I think that's the question I wanted to answer. You know, we heard a lot of stories today about bad things that happen. Bad things happen to good people. I buried my brother on my 15th birthday. He was killed in an accident. Had 74,000 pounds of semitruck around him. Bad things happen to good people. I lost a nephew on Interstate 80 over in Iowa. He was seat-belted in in the backseat of that vehicle when the driver lost control, went across the median, and head on into not one or two but four semitrucks. There were four people in the car. Unfortunately, we buried all of them. Three of them were closed casket ceremonies. Bad things happen. That's...bad things are going to happen to good people riding motorcycles with or without helmets. And I'll go to my written closing. LB31 reflects my strong belief that as free Americans and free Nebraskans, adults should be able to make decisions that affect their lives and do not interfere with lives of others. We have by law denied a particular segment of our population and certain individuals from outside our state that ability. The senators on this committee are given a great deal of power. There were over 97,000 licensed motorcycle operators in Nebraska in 2014. You, with a no vote on this bill, can simply say to all of them that you know better than they do what they should do. With a yes vote, you can give them the chance to regain their freedom to choose and let the full Legislature, after full and fair debate, decide the issue. This issue deserves to be debated on the floor where all 49 of us can be involved in the decision that affects so many in our state. Ninety-seven thousand is not a number to be taken lightly in Nebraska. President John Kennedy said, quote, in giving rights to others which belong to them we give rights to ourselves and our country, unquote. I think it's time that we give these free men and women back their right to decide whether or not wearing a helmet is something they want to do. Many of these folks made the decision when they were younger to serve our nation in the military, putting themselves in harm's way to protect and defend our rights. Now we are telling them they do not have sense enough to decide whether or not to wear a protective device and that we, the state, know better than they do and we must protect them from themselves. Give me a break. No, let's give them a break. The Declaration of Independence says life, liberty, and the pursuit of happiness, not conformity, control, and a safe cocoon. Again, I'd like to make this my priority bill provided that it is advanced out of the committee to the full Legislature. I leave with the words of President Ronald Reagan, quote,

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government exists to protect us from each other. Where government has gone beyond its limits is in deciding to protect us from ourselves, unquote. Thank you. [LB31]

SENATOR SMITH: Thank you, Senator Bloomfield. Do we have questions from the committee. Senator Bloomfield, real quick, all but Iowa of the surrounding states have some type of helmet law, partial law. [LB31]

SENATOR BLOOMFIELD: That's correct. [LB31]

SENATOR SMITH: What do you say about that? [LB31]

SENATOR BLOOMFIELD: What I will say about that is last year I had a 21-age limit on this bill and we put a child age limit on it. I am not opposed to putting an age limit on the bill. The child thing, I think we get into telling parents how they should parent again and I don't know that that's a good idea. We had height and age restrictions on it last year. You had to be, if I remember right, four foot, eight. Some people never get to be four foot, eight. So we put an age limit of 16 on it. If the committee feels determined to put amendments on, that's fine. I would like to see the amendments put on out on the floor where everybody can decide on it. I'd like to see this bill come out of committee clean the way it is. But I'm certainly willing to talk to you about it. [LB31]

SENATOR SMITH: I see no further questions. Thank you for your closing. [LB31]

SENATOR BLOOMFIELD: Thank you. [LB31]

SENATOR SMITH: That closes LB31 and the hearings for today. Thank you. [LB31]