

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Transportation and Telecommunications Committee March 4, 2019

**FRIESEN:** Okay. Welcome, everyone, this afternoon to the Transportation and Telecommunications Committee. My name's Curt Friesen; I'm District 34. A few things I'd ask, that you turn off all your cell phones and electronic devices. We'll be hearing the bills in the order listed on the agenda, and those wishing to testify on a bill should move to the front of the room here, as we get going, so that they're ready when the, when the testifier quits; and they'll be ready to jump in the seat. If you will be testifying, I'd ask that you legibly complete one of the green testifier sheets located on the table just inside the entrance. Give the completed testifier sheet to the page when you sit down to testify. Handouts are not required but, if you do have handouts, we need ten copies. One of the pages will assist you if you need help. When you begin your testimony, it's very important that you clearly state and spell your first and last name slowly for the record. If you happen to forget to do this, I will interrupt you and ask you to do that. We'll be using the light system. We will give five minutes testimony: four minutes of the green light, and then the yellow light will come on, and when the red light comes on, I'd ask that you please wrap up your testimony. Those not wishing to testify may sign in on a pink sheet by the rear door to indicate their support or opposition to a bill-- or neutral. I'd like to introduce the staff this afternoon: committee clerk Sally Schultz back there, and Tip O'Neill's my legal counsel to my right, and the pages are Alyssa and Preston. Is Preston here? Okay. So Alyssa, Alyssa will be our page tonight-- this afternoon. And I will let the senators introduce themselves, from my right, starting with Senator Bostelman.

**BOSTELMAN:** Senator Bruce Bostelman, District 23: Saunders, Butler, and the majority of Colfax Counties.

**ALBRECHT:** Good afternoon. Joni Albrecht, District 17: Wayne, Thurston, and Dakota Counties in northeast Nebraska.

**GEIST:** Hello. My name is Suzanne Geist. I represent District 25, which is the east side of Lancaster County: Lincoln, Walton, and Waverly.

**DeBOER:** I'm Wendy DeBoer, District 10, which is Bennington, surrounding areas in northwest Omaha.

**FRIESEN:** Senator Cavanaugh will be going in and out of the meetings today, too. And then we have Senator Hilgers and Senator Hughes will

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not be with us today. With that, we will open the hearing on LB620.  
Welcome, Senator Kolowski.

**KOLOWSKI:** Good afternoon, Senator Friesen and members of the committee. It's a pleasure to be here this afternoon; thank you. Good afternoon, and my name is Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, representing District 31 in southwest Omaha. I am here today to introduce LB620, regarding texting while driving. Current state law prohibits texting while driving. But it is a secondary offense, meaning that it cannot be the main reason for a law enforcement officer to stop a vehicle. However, if they are stopped for a primary offense such as running a red light, an officer who observes that driver texting can then also issue a citation for texting while driving. LB620 removes the language making texting while driving a secondary offense. Without that language it is considered a primary offense. This means that law enforcement will be able to pull you over when they see you texting. I have not changed or expanded any of the definitions in current law. I introduced this bill to help protect lives and property. We have all experienced a driver trying to pay attention to their phone while they are driving. It can be frustrating and very dangerous, while-- excuse me-- making texting while driving a primary offense will increase enforcement and save lives. A 2018 press release from the Iowa Department of Public Safety, Safety, states that, from July 2016 to July 2017, only 182 citations were issued for texting while driving by the Iowa State Patrol. In 2017 through July 2018, after texting was made a primary offense, citations issued by the Iowa State Patrol went to 1,131. That's from 182 to 1,131: that's a sixfold increase. It takes around five seconds to read or send a text. In that five seconds a driver going 55 miles an hour can travel the length of a football field. That's a long way to drive while not paying attention to your driving. There will be testifiers following me who will give you the statistics and facts on distracted driving. I appreciate your time and attention to this important matter. Thank you.

**FRIESEN:** Thank you, Senator Kolowski. Any questions from the committee? Seeing none, thank you.

**KOLOWSKI:** Thank you, sir.

**FRIESEN:** Proponents who wish to testify in favor of LB620.

**ERIC KOEPPE:** Good afternoon, Senator Friesen, members of the Transportation Committee. I am Eric Koeppe, E-r-i-c K-o-e-p-p-e. I am

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the president and CEO of the National Safety Council of Nebraska. We are a nonprofit organization that provides programs, resource services, and education to prevent and reduce both the personal and economic loss associated with injuries, accidents, and health hazards. I am here today to testify in favor of LB620. This bill promotes the ideals of keeping the state of Nebraska a safe and contemporary place to live. In 2017, the State of Safety report that was published by the National Safety Council ranks Nebraska as 36th in roadway safety, receiving a "D" grade. Two of the main reasons for concern from the National Safety Council were related to distracted driving and seat belts. In 2017, there were 4,699 reported distracted driving crashes that occurred in Nebraska, compared to 3,600 in 2013. That is an increase of almost 28 percent in five years. I think that's something that is worth repeating, that in a five year period, the number of distracted driving crashes increased by 28 percent. In 2017, there were 19 fatalities, 1,546 injuries, 3,100 property-damage-only crashes. I will point out that Nebraska is one of only four states that enforce texting while driving as a secondary law. In your packet that I handed out is a list of all the states and their laws. There is an increasing body of research that shows that the use of electronic devices while driving can lead to severe visual, manual, and cognitive distractions, thus impairing that driver's ability to process and respond to an immediate driving situation. These distractions place a driver 23 times greater risk of being involved in a serious or fatal injury crash. LB620 would make great strides in making the necessary changes to save lives and bring Nebraska to the forefront of states making roadway safety a priority. For these reasons, Nebraska must move to prevent the continued expansion of distractions behind the wheel and send a message that texting while driving is not acceptable. Research and education are not enough. In order to get drivers to adopt safer behaviors, education must be combined with strong laws and appropriate enforcement. I encourage you to advance LB620 from committee. Thank you for consideration.

**FRIESEN:** Thank you, Mr. Koeppe. Any questions from the committee?

**ERIC KOEPPE:** Thank you.

**FRIESEN:** Just, just a second yet, I guess.

**ERIC KOEPPE:** Oh, you had one, yes.

**FRIESEN:** We may have a question yet.

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**ERIC KOEPPE:** Yes.

**FRIESEN:** So I mean, obviously, there's some, there's some research--

**ERIC KOEPPE:** Yes.

**FRIESEN:** --that's been done but-- so when you, when we change it from a secondary to a primary, you know, the number of citations issued went up.

**ERIC KOEPPE:** Yes.

**FRIESEN:** Those citations issued, were they-- any of them overturned in court? Were any of them contested? Or were those the ones that were successfully-- had to pay a fine?

**ERIC KOEPPE:** I, I believe the senator gave the Iowa statistics. I don't have any information on the Iowa ones. I'm sure we can do some research on that and get back to you on that. But it was Iowa that had the--

**FRIESEN:** OK.

**ERIC KOEPPE:** --about sixfold [INAUDIBLE]--

**FRIESEN:** So when you when you say distracted driving, too, I mean there's lots of other distractions when a, when an accident happens.

**ERIC KOEPPE:** Absolutely.

**FRIESEN:** People will say: I was distracted by this or by that. Is, has, have you drilled down to see exactly what the numbers are when it comes to cell phone use or--

**ERIC KOEPPE:** So typically, when we, we state the statistics on distracted driving, in this case the National Safety Council ourselves, we're specifically talking about the use of electronic devices.

**FRIESEN:** Yeah.

**ERIC KOEPPE:** Yep.

**FRIESEN:** Senator DeBoer.

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**DeBOER:** How-- I'm not really familiar with how we currently prosecute these issues. What-- I mean, it seems to me that it would be a little difficult, in many instances, to know that someone was texting while driving because you may see them looking down but maybe they're getting a drink or they're-- whatever. So how is that-- what's sort of been the standard, would have been the ways that we do that? I don't know that it particularly matters as a primary versus secondary question. But then again, maybe it does because if a police officer is, you know, going in the opposite direction, even if you see a little bit of glow at night on a person's face I'm not sure that that really gets to the point where I can say OK I can prove that, you know, I know that they really were doing that. So can you speak a little bit to the issue of how we know that someone was doing that when, as a primary incident--

**ERIC KOEPPE:** Absolutely. I believe law enforcement, in general, with a lot of things relies on a couple different things. One is the testimony of the law enforcement official. They do a lot of that, you know, when they go into court they'll testify-- I witnessed this. So that's what the court relies on. The other would be a process whereby they would go through and subpoena these cell phone records. That would certainly be a much more arduous process. But the ability would be there for them to, to subpoena the records. I know, just in speaking from law enforcement, sometimes when there's a fatality, just as part of their investigative process, they will go through that, even if the person isn't charged, they'll go through that to make sure they can find the, find the record. One of the challenges, I will say, with our statistics on distracted driving, is that right now there's not a great way for that to be reported on our current crash reports. So nationally and in the state of Nebraska we believe that our statistics are actually understated, because there's only one-- you can only choose one thing as a cause for a crash. And if that's fixed, hitting a fixed object, that's what it'd be. There's no secondary thing that the reason they hit a fixed object may be that they were texting or distracted. And I know there might be some law enforcement testifying today.

**DeBOER:** Yeah, I think I--

**ERIC KOEPPE:** I think it would be very appropriate to ask them.

**DeBOER:** I think I'll wait and ask them; thank you.

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**ERIC KOEPPE:** Yeah. I think they would be better served to answer that question.

**DeBOER:** Thank you.

**ERIC KOEPPE:** I appreciate the question. If you don't get your answer, I mean, we'll definitely track that down for you.

**FRIESEN:** Thank you, Senator DeBoer. Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Friesen. Thank you for your testimony today.

**ERIC KOEPPE:** Yes.

**BOSTELMAN:** And on your chart that you have,--

**ERIC KOEPPE:** Yes, yes.

**BOSTELMAN:** So there's, to me there's probably three different categories.

**ERIC KOEPPE:** Yes.

**BOSTELMAN:** One's a hand-held ban.

**ERIC KOEPPE:** Yep.

**BOSTELMAN:** There's also a phone ban. Then one's a text and text messaging band.

**ERIC KOEPPE:** Yes.

**BOSTELMAN:** What-- and maybe Senator Friesen asked this. I'm not for sure; I may not have heard. What is the hand-- what, what's the difference when the hand-held ban and the other two?

**ERIC KOEPPE:** So the hand-held ban-- and I actually have my cell phone, so-- on our, under a hand-held ban, I would not be even allowed to hold it while I was driving, to even talk on the phone.

**BOSTELMAN:** OK.

**ERIC KOEPPE:** So that would be a complete hand-held ban.

**BOSTELMAN:** OK. So that's somehow different than cell phone ban?

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**ERIC KOEPPE:** Cell phone ban a lot of times goes to-- so just replies mainly to the talking, just on cell phone. Hand-held could be even a tablet or any other, any other hand-held electronic device. That's my understanding of it. If--

**BOSTELMAN:** And then--

**ERIC KOEPPE:** One of the people behind me can probably correct me if I'm wrong.

**BOSTELMAN:** The other question I guess I'd have is, for those who have devices that you put on the dash, on the windshield for, for tracking-- the plug-in for directions--

**ERIC KOEPPE:** Yes.

**BOSTELMAN:** --how, what's that considered?

**ERIC KOEPPE:** That would be a hands-free use. So in those states that maybe have a ban on hand-held, they would be allowed to maybe have it on the dash. But if they were then to be texting on that device or manipulating that device at all, then that would be a violation. So I guess in my thing, if I had it up on my dash and I had my GPS up, while as safety advocates we would prefer you not do that because it still takes your eyes off there, it probably would not violate a texting ban.

**BOSTELMAN:** OK, thank you.

**ERIC KOEPPE:** Yes, thank you.

**FRIESEN:** Thank you, Senator Bostelman. Any other questions from the committee? Seeing none--

**ERIC KOEPPE:** Thank you, Senator Friesen.

**FRIESEN:** --thank you for your testimony. Other proponents. If we could have the proponents just kind of move to the front so that we can move through in an orderly manner.

**MARGARET "MAGGIE" HIGGINS:** Sorry; I'm sort of crippled up a little bit, so--

**FRIESEN:** Welcome.

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**MARGARET "MAGGIE" HIGGINS:** Thank you. Better keep my glasses on. Good afternoon, Senator Friesen and members of this committee. I thank you for allowing me time to testify on, on LB620, the primary offense for distracted driving. I've served in government 25 years total.

**FRIESEN:** Would you please spell-- and spell your first and last name?

**MARGARET "MAGGIE" HIGGINS:** I apologize. It's Margaret, M-a-r-g-a-r-e-t, and then in parentheses, Maggie, M-a-g-g-i-e, last name Higgins, H-i-g-g-i-n-s. I served in government 25 years. I'm a former Gage County Treasurer. I'm a former state of Nebraska director of motor vehicles, serving under Kay Orr from 1987 to '91. And during the time as DMV director, I was appointed by Samuel K. Skinner, the secretary, Department of Transportation, which was under President George H.W. Bush, to the National Drivers' [SIC] Register Advisory Committee, which was addressing the issues, issues of problem drivers. After leaving government, I entered the financial services business. I've been a Nebraska licensed insurance agent. I've been in this career for 27 years. I wish to go on record in full support of LB620. I will be testifying more on LB40 and I want to give my support on this bill, this bill, as well. It is time to make distracted driving a primary offense. We own our motor vehicles, we own our phones; but we do not own the road. We share the road, and we should keep our eyes on that road while driving. This is all about safety. I'm asking you respectfully to forward LB620 out of committee and pass it into law this session. Thank you.

**FRIESEN:** Thank you, Ms. Higgins. Any questions from the committee? So from the insurance standpoint, do insurance rates change at all, compared to what state laws are in the state regulating driving, whether it's distracted driving or primary or secondary-- insurance rates affected by that at all?

**MARGARET "MAGGIE" HIGGINS:** I will refer to you, to an insurance agent that writes the property, casualty, and auto, which I do not.

**FRIESEN:** OK.

**MARGARET "MAGGIE" HIGGINS:** I, I have a handout on other costs of things. And it's basically to remind you folks, respectably, that there is cost from the time of a crash and depending on what happens to the people in those crashes, those vehicles. I mean I do the health



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insurance, I do the life insurance, the long-term care and those [INAUDIBLE].

**FRIESEN:** I, I was-- I had thought maybe you dealt with--

**MARGARET "MAGGIE" HIGGINS:** Sure.

**FRIESEN:** --automobile insurance.

**MARGARET "MAGGIE" HIGGINS:** I wouldn't want to quote something that was inaccurate. I've been talking to some of those folks to see, you know, to get an idea, but hopefully and, and that it would help to reduce rates.

**FRIESEN:** OK.

**MARGARET "MAGGIE" HIGGINS:** But I don't have any data at this time.

**FRIESEN:** OK. Thank you, Ms. Higgins.

**MARGARET "MAGGIE" HIGGINS:** Well, thank you, sir.

**FRIESEN:** Any other questions from the committee? Seeing none,--

**MARGARET "MAGGIE" HIGGINS:** Thank you.

**FRIESEN:** --thank you for your testimony. Welcome.

**ROSE WHITE:** Thank you, Senator Friesen, members of the committee. My name is Rose White, R-o-s-e W-h-i-t-e, and I'm here today proudly representing AAA and the Auto Club Group. And we stand in strong support of this legislation. Now we have been talking about this bill for several sessions, I understand, and so-- and I do try to address some of your issues today. One of them on law enforcement, we do have several people here who will speak on that, but I do want to let you know I was given a document, just here shortly ago, about Iowa's texting and driving law and how law enforcement looks at it. And basically it's a flow chart that indicates that, when they spot someone, what they do next. If they admit to driving and texting, there is a process there; if they do not, there's a process there. But I'll be happy to make copies of this and get this document to you, as well. I am here today, though, to let you know that we are very concerned about the entire issue of distracted driving. We see it all the time on the roadways. We hear it on the news every day, these horrific crashes that occur on our roadways. And what we need to do is

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look at ways to protect those people who work on the roadways. Many of whom are state employees. And as legislative leaders, policymakers, I think you need to look at ways on how you can protect those state employees. Now we're talking about people who are roadway crew workers with DOT, of course city public workers who are going to be out on the street soon filling those potholes, tow service operators who are performing necessary repairs, stranded motorists even, but pedestrians-- we know nationwide pedestrian fatalities have increased 35 percent from 2008 to 2017, while other traffic deaths have dropped 6 percent. In Nebraska last year, with 25 pedestrian fatalities, that was our highest level in 35 years. And what we've learned with our distracted driving studies is that people will develop a tunnel vision when they're on their cell phone or when they're texting. And basically it means that those things in a peripheral view which can include important signage, pedestrians, cyclists, those people basically are not seen when, even when we're looking straight ahead. And so we need to look at these issues and what we can do to prevent them. But of course we need to protect our law enforcement officers who are out there every day, as well. We have some 400 and something-plus state troopers that are on the roadway every day and we know that it's very dangerous for them to be on the roadways. And so we have to look at ways on what we can do to protect them. Also I want to make you aware of an MIT very expensive-- extensive study that they had just completed. And basically it showed that, when people are using cruise control, drivers 10 percent of the time are also on their cell phone or texting when the vehicle is on cruise control. So we have these technologies that are out there that are making things more complicated for drivers, more dangerous for other roadway users, but we have to keep our laws supporting these efforts and keeping ahead of these initiatives. In fact some of the states are now expanding their texting laws to include other things such as viewing, you know, videos and so forth. They've had to change the language to stay up with their primary texting laws. But looking at Nebraska's, we're far behind. In fact, looking at the states-- like it says, we're one of only four who have not yet moved it to primary where these other states now are improving their laws. And I know some of you might be concerned about racial profiling. Well, in Illinois when they moved their bill to primary, they actually had a companion bill that was introduced by the then Senator Obama, that basically provided language that basically, you know, caused them not to be concerned about the bill anymore and they did advance it. And so maybe we really need to look at those issues if you are concerned about that, in fact. But we do feel that the senator's bill is a strong bill that's needed now in Nebraska

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before we fall, fall even further behind. And so I'd like to be happy to answer any of your questions that you might have at this time.

**GEIST:** Thank you for your testimony, Miss Rose. Are there any? Yes, Senator DeBoer.

**DeBOER:** I don't know who's coming to testify after you, so I'll ask you and, possibly, this will be a question for someone else, as well. You talk about this idea of tunnel vision.

**ROSE WHITE:** Yes.

**DeBOER:** Do you know in-- was that a study you were referring to?

**ROSE WHITE:** Yes. This was probably the most comprehensive study. It was actually done in three parts, where people had devices on their brains, you know, on their head cap. Also had electronic cameras in the vehicle but they were basically measuring the cognitive distraction that's caused by distracted driving. But through this they basically found that there's this tunnel vision that takes place when people are on their cell phone texting.

**DeBOER:** So I once heard-- and this is why I'm asking you because I'm trying to, to sort of think more about this tunnel vision-- that, that one of the reasonings behind that was the, the neuroscience of when we are imagining someone who's in a spatial place different than us, that that was part of what's causing it.

**ROSE WHITE:** Um-hum.

**DeBOER:** So I don't know if that was part of this study, because it seems to me that then there are lots of ways in which now, I mean, I have, I talk on the phone through my, my car.

**ROSE WHITE:** Um-hum.

**DeBOER:** I don't know. They do a Bluetooth thing and, you know, and so I-- there would not be a way to know that I was doing that, as opposed to singing music, which also-- I mean, you can imagine a different place when you're in music. So what sets aside the actual use of, say, texting or, you know, some kind of hand-held interaction with a device, as opposed to these other, 'cause neurologically, if I'm imagining someone in a different space with something in my hand, that seems to be the same thing as imagining them in a different place with

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something that I don't have a hand-held device? So can you tell me about-- I don't know if you have any way to speak to that.

**ROSE WHITE:** I can tell you a little bit more about this study again that was done in three parts by AAA, the foundation. Basically it was measuring cognitive distraction and what types of things cause a driver to be more distracted than other-- and basically graded some of those things on a high risk or a medium- or low-level risk, and found that, at the top scale-- and of course, it's people who are texting and driving. And so through this study they were able to determine, like it says, what types of those things were making that a high risk. And one of the things was this tunnel vision that they were talking about where, basically, they may be looking straight at something but not see those cues, those important visual things that help make them a safe driver. Is the light changing? Is their pedestrian coming into view, a cyclist that might be beside their vehicle? They're completely not seeing these signs when they're driving. And so I'd be happy to share with you the full research that was done behind this study.

**DeBOER:** Yeah, that would be great; thank you.

**ROSE WHITE:** Thank you, Senator.

**GEIST:** Thank you for your question. Any other questions [INAUDIBLE]? Yes, Senator Bostelman.

**BOSTELMAN:** Thank you, Vice Chairwoman Geist. I'm looking at this chart.

**ROSE WHITE:** Yes, um-hum.

**BOSTELMAN:** And on it says, on the asterisk it says, "Includes all distractions, mobile phone distractions, distracted-other, and inattention." What are the other? Do you know what some of the other distractions that, that it says are considered on this?

**ROSE WHITE:** There was basically a Nebraska report, Senator, and I'll be happy to ask a person with the DOT on what other distractions were included. It would have to be probably something that's listed on the accident report form, you know, maybe to get graded on there. But rather than provide you with an incorrect information, I'd be happy to look into that for you.

**BOSTELMAN:** Thank you.

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**ROSE WHITE:** Um-hum; thank you.

**GEIST:** Thank you. Any additional questions by the committee?

**ROSE WHITE:** I do want to mention that some of the material I handed out-- one of them is a DVD that's all based on Nebraska distracted driving crashes. I hope at some time that you might get the 25 minutes free to be, be able to take a look at that and learn something about the education component of distracted driving. And then plus, I've also provided to you a complete list of all of the violations that were issued last year. And I have highlighted on those the three that obtained-- or pertained to texting or cell phone use, just for your information purposes. OK, thank you.

**GEIST:** Thank you. I'll ask for-- one more time, if there are any additional questions. All right, seeing none,--

**ROSE WHITE:** Senator, thank you.

**GEIST:** Thank you. The next proponent, please.

**JULIE HARRIS:** Thank you. Good afternoon. I'm Julie Harris, J-u-l-i-e H-a-r-r-i-s. I am the executive director of the Nebraska Bicycling Alliance, and I'm here on behalf of the board and the members of our organization. Our mission is to cultivate a safe and accessible, active transportation in Nebraska through partnerships, education, and advocacy. The dangers of distracted driving are clear, and the stakes are perhaps highest for the most vulnerable users of our roads, namely people that are on bikes or on foot. People biking and walking have a unique front-row seat to the behavior, behavior of people driving vehicles. As cyclists, we are taught to assume you're invisible and to seek eye contact with motorists as you approach intersections to assure that you have been seen before turning or crossing a street. Many times when we seek eye contact, we instead observe a motorist's eyes on their phone rather than on the road. A pedestrian observing traffic while waiting to catch the bus or while walking with their child to school can attest to the rampant use of cell phone use while driving; and it is frightening. Generally speaking, our organization prefers solutions to safety issues that involve the building of our streets in our cities and towns to be safe for all users of the road in the first place, recognizing that enforcement-based solutions can sometimes be problematic because of profiling issues. At the same time we know that people of color and people in underserved communities are more likely to be involved in crashes as, as pedestrians or

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bicyclists. It's clear that distracted driving is a huge issue for vulnerable road users, and we should never allow even one person to be killed on the road to be counted as acceptable or the unfortunate cost of doing business. Therefore, it is imperative that we use the full spectrum of potential solutions: engineering, encouragement, education, evaluation, and enforcement, when necessary, to ensure the safety of everyone. Thank you.

**GEIST:** Thank you for your testimony. Are there any questions on the committee? None? Well, I can say that, as an avid cyclist-- and my husband's been hit before-- it's exactly right. We come to a, a intersection and we always wait for someone to look because we see it rampantly. So your testimony is very accurate, according to my experience.

**JULIE HARRIS:** Thank you.

**GEIST:** Thank you.

**JULIE HARRIS:** We're hoping to make it safer for you out there.

**GEIST:** Thank you. Any other questions? Thank you for your testimony. Any additional proponents?

**Laurie Klosterboer:** Good afternoon. My name is Laurie Klosterboer. Laurie is L-a-u-r-i-e; Klosterboer is K-l-o-s-t-e-r-b-o-e-r, and I actually combined my testimony for LB40 and LB620 just because they were so similar. The Nebraska Safety Council is a nonprofit organization, and our mission is to provide education and leadership to empower people to live safe and healthy. One of the core programs to serve our mission is providing traffic safety education and why I am here today testifying in support of LB620 and LB40. I think we would all agree that texting is unsafe when you are behind the wheel. Texting requires the three forms of distraction: cognitive, which is your mind; visual, which is your eyes; and manual, with your hands. Most of us have been behind or beside a driver in traffic who is texting. The driver is putting not only themselves at risk, but others they share the road with. Newly receipt, newly released research from the Insurance Institute for Highway Safety finds drivers are talking on hand-held phones less and fiddling with them more. According to David Kidd who co-authored the study, the latest data suggests that drivers are using their phones in riskier ways. The observed shift in phone use is concerning because studies consistently link manipulating a cell phone while driving to increased crash risk. It is time that

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Nebraska joined the majority of states that have a primary texting law. There is public support in Nebraska for a primary texting law. Each year the Nebraska Safety Council, in cooperation with the Nebraska Department of Transportation Highway Safety Office, conducts a traffic safety poll, asking a variety of traffic safety questions. One question asked: Would you support or oppose a law that allows law enforcement to stop a driver and ticket them solely for texting while driving? Ninety-two percent support such a law. Let's send the message that texting while driving is unacceptable. We ask that you move LB620 and LB40 out of committee and to the floor. And if I could try and answer Senator DeBoer-- your question about when you are using your Bluetooth in the car. You, you still are distracted because of the-- if you're talking on the phone through the Bluetooth, obviously you're engaged in a conversation with someone else that is not in the vehicle. So that's still a distraction. However when you're texting you're using all three, so you're using your mind while you're texting, but visual-- looking at what you're texting-- and then using your, your fingers. So I'm hoping that maybe that was answering part of your question.

**DeBOER:** Yes, thank you.

**GEIST:** Are there any questions on the committee? Yes, Senator Albrecht.

**ALBRECHT:** Thank you, Vice Chair Geist. Thank you for your information. You have a lot of it here to look over very quickly. But when I take a look at some of these other states, they're talking about being 21 years or younger or 19 years or younger. Do you believe this should just be for all drivers?

**Laurie Klosterboer:** I do.

**ALBRECHT:** And not--

**Laurie Klosterboer:** I do. I think that we need to send the message that driving is a very important skill. We need to be focused on the, on the driving. And we have so much manipulation with the cell phones going on. I think it's, it's putting all of us at risk, not just the driver.

**ALBRECHT:** And a lot of the new vehicles have, you know, hands-free, that you can talk on the phone, but you still kind of have to push

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your dash to decide if you want to take the call or not. Do you find that that's a problem?

**LAURIE KLOSTERBOER:** I do. I think-- hands free is, is not a solution. You're still a risk to yourself and to others because, when you are hands-free, you're still involved in that conversation that is going on with that person. So you're still, it's still an unsafe activity.

**ALBRECHT:** I didn't sit on the committee a year ago or the last two years, so I'm not familiar with all of the information that they had previous. So I hope everybody's sharing everything with us today because I do believe, Senator Kolowski, that this is a good bill. Another concern I have is, you know, when you come to a city that you really don't know exactly where you're at or how to get where you're going, I-- it would be nice if more people would just pull over and try to MapQuest it. But I see a lot of people probably more mapping, you know, when you go to different cities and such. So I'm anxious to hear from some law enforcement, too, on how they feel about some of these issues. So thank you for your time and your testimony.

**LAURIE KLOSTERBOER:** You bet.

**GEIST:** Thank you, Senator Albrecht. Any additional questions? Seeing none, thank you for your testimony.

**LAURIE KLOSTERBOER:** Just to let you know, the folder that I gave you has information on the other bills that I will be testifying on, as well. So all of that literature is in the folder.

**GEIST:** Okay; thank you.

**LAURIE KLOSTERBOER:** Um-hum.

**GEIST:** Any additional proponents?

**FRED ZWONECHEK:** Senator Geist and members of the committee, my name is Fred Zwonechek, F-r-e-d Z-w-o-n-e-c-h-e-k, recently retired after 37 years as Nebraska's highway safety administrator. I will-- my testimony has a number of things that some of the others have already addressed, so I won't, I won't duplicate that, but I will tell you that one of, one of the most effective laws at reducing traffic crashes today is trying to prevent people from using their cell phones while driving. As someone suggested, they're way underreported in terms of crashes, and I-- if, if-- anyone that drives can see people each day, as they're driving, not paying attention while using a cell



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phone. It is simply one of those things that, as administrator, everywhere I go people ask me: Why can't they-- what we, can we do to stop this? Well there's-- this is one way to do that. And as was mentioned, the poll of 900 Nebraskans, 92 percent said they favored a primary texting law. And-- let's see here-- oh, at the present time Nebraska is only one of four states that does not have a primary texting law for all population, not just underage. They do-- some states have both, as hopefully we do as-- will, as well. I also had the opportunity to visit with the Washington State highway safety director, who is a former State Patrol colonel and also chairman of the Governors Highway Safety Association, about their experience with a very similar law to what's being proposed here today. And he indicated to me that, with training and enforcement, they really don't have any prosecution issues at all, that simply, it's been very effective for them. They've been able to reduce their observed usage of people using cell phones, as well. I also visited with Pat Hoy who had-- is this highway safety administrator in Iowa who is a former colonel-- about their issues that were involving prosecution, and they-- at the at the time I talked to him in December, they had had really no issues involving prosecution of that offense. It's-- as I mentioned, the issues with distracted driving, especially with the use of cell phones, is at epidemic proportions. Education alone will never solve this issue. And while hands-free device is still presented as an increased crash risk because of the cognitive distraction, the crash rate risk is lower, as the studies indicate, for the use of a hand-held-- than hand-held devices. Let's see if I've missed anything here that-- yeah, there's no question in my mind, based on all of the studies that I've seen, both from this country as well as in other countries-- and there are extensive, there are volumes of studies that have been done with this, this kind of research involving, because it's not just the U.S. that has this problem or Nebraska; it's worldwide. And they're all trying to resolve it. And, for the most cases, it's enforcement that is one of the critical issues of trying to reduce. You need to get people to change their behavior. And, and we need people who think they're good at it-- and they're really delusional-- they see other drivers in fact that make those, those changes in lanes inappropriately, don't signal, fail to move when the light changes; we all see it and we all think it's not us. And I suspect that it's probably the same person who says that does that very same thing from time to time. It does put people at risk and, if we want to get a handle on reducing crashes, the fatalities that results, and don't forget all of the serious injuries that occur as a result of that. A lot of time we talk about fatalities. Obviously, we

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want to reduce that number. We really want to reduce all of the injuries, particularly those that are serious and permanently disabling. I'd be happy to answer any questions.

**GEIST:** Are there any questions on the committee? I do have one for you.

**FRED ZWONECHEK:** Uh-huh.

**GEIST:** If you change this from a secondary to a primary, how does it-- does, does it actually reduce the-- I, I'm, here I'm thinking out loud, so I probably should withdraw my question because I thinking-- I know [INAUDIBLE].

**FRED ZWONECHEK:** Does it reduce the behavior?

**GEIST:** Yes.

**FRED ZWONECHEK:** Yes. But in those cases where are they, much like we do with seat belt use, you can go out and do an-- observations--

**GEIST:** Um-hum.

**FRED ZWONECHEK:** --to determine if that behavior is improving. The same thing can be done with cell phone use and texting.

**GEIST:** Um-hum.

**FRED ZWONECHEK:** So you can you can make those observations, as well. And the same thing that, that some states indicated, that actually they, their violations-- the citations-- the numbers go down from the initial adoption of that particular provision or statute.

**GEIST:** Um-hum.

**FRED ZWONECHEK:** So that, it does change behavior. People, people for the most part, at least here in Nebraska when we have a law that makes a change, most of the people know it's the right thing to do. And so, basically, that number of people will, will make change, and some of you might have to do the messaging to get them to do recognize that it changed.

**GEIST:** Um-hum.

**FRED ZWONECHEK:** Sometimes that's a citation, as well, but it doesn't take long before it becomes unacceptable for people to do it. And so

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you can convince others to do the same and not, not take that risk. I suspect that, over a time, we're going to have enough people that are, unfortunately, victimized by drivers who are texting and driving that, much like drunk driving, you're going to have a lot of people that want, want to demand some sort of action that's going to discourage drivers from doing it. And this is certainly one opportunity to avoid that, getting to that situation.

**GEIST:** Thank you.

**FRED ZWONECHEK:** Um-hum.

**GEIST:** Thanks. Any, any other questions? Seeing none, thank you.

**FRED ZWONECHEK:** Thank you.

**GEIST:** Any additional proponents?

**TERRY WAGNER:** Good morning, Senator Geist.

**GEIST:** Good morning.

**TERRY WAGNER:** My name is Terry Wagner, T-e-r-r-y W-a-g-n-e-r. I'm the sheriff of Lancaster County. I really hadn't come prepared to testify for this bill, but I'm here. I'll be here for LB40, as well. But I know there were some questions Senator DeBoer had about enforcement strategies and so I'm, I'm really-- this is a good bill. These, this is something the Legislature really needs to look at. I know all of you probably have gotten the same questions that I have gotten out in the public when people find out you work in government. And invariably, the biggest irritation for people when they're driving are other motorists that are texting and driving and being distracted. And so they always say, you know, why don't you do something about that? And it's not as easy as it might, as it might seem. But this is certainly a step in the right direction and this kind of bill saves lives. So I'd be glad to answer any questions the committee might have.

**GEIST:** Senator Albrecht.

**ALBRECHT:** Thank you, Chair Geist. Is it-- are you the sheriff?

**TERRY WAGNER:** I am.

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**ALBRECHT:** You, you-- OK; I'm sorry about that. Sheriff Wagner. So if an officer pulls someone over, can they legally ask for their phone?

**TERRY WAGNER:** Well, let's just walk through that process. You know if, if-- first there has to be a violation of-- some other violation besides texting or whatever, and the officer walks up to car after the vehicle's been speeding or whatever violation you choose to think of, and there's some indication that the driver was texting. Maybe it's laying on the console lit up or something, and, and the deputy might say: Were you texting. Well no, I wasn't. Can I see your phone? I'd rather not. OK. Well, it looks like you were texting. I'm going to seize your phone and I'm going to get a search warrant to see if you were texting at the time this violation occurred. That's really an extrapolation of a pretty simple process that could be very lengthy, if it goes to that. Most people, you know for the most part: Well, you were weaving in your lane of traffic. Are you drunk? Well, no. What's--why were you doing that? Well, I was texting. I mean the fact of the matter is people are, by and large, pretty honest and they're going to say: No I wasn't. I'm not drunk, but I was distracted, so--

**ALBRECHT:** Let me ask you this then. If, if this bill were to come out of committee and to make it as strong as it needs to be for law enforcement, would asking for their phone and allowing the officer to check it right on site? I mean is that a violation of any right that someone may have to not allow them to? I'm just saying if we're going to write something like this and make it a primary offense, I can't imagine them not being able to look to see if they were on their phone.

**TERRY WAGNER:** You know we can always ask, and, and, you know, we can always ask--

**ALBRECHT:** Just making it a better bill and just--

**TERRY WAGNER:** But I don't know that you can legislate away somebody's Fourth Amendment right; I'm not sure about that.

**ALBRECHT:** Um-hum, because to make it primary, I mean, I would think that you'd have to ask for their phone or, or request records of their phone at that particular moment or, in time when you would go to court with them, to, to prove that, in fact, this is going to be a primary offense because you were, in fact, on the phone texting someone at that particular moment.

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**TERRY WAGNER:** Yeah, I agree with you. I think what Mr. Zwonechek said is, you know, we're going to have to engage in some training for our law enforcement employees across the state, if this bill is passed, to, to identify what is, you know, what is texting or what is an unlawful use of a hand-held device.

**ALBRECHT:** Um-hum.

**TERRY WAGNER:** And here are the enforcement strategies to do that. We've done that for years with drunken driving or other kinds of--

**ALBRECHT:** Right.

**TERRY WAGNER:** --driving behavior, so I think that that's going to be needed to conduct those enforcement strategies.

**ALBRECHT:** Is to help law enforcement is what I would be thinking, but thank you for your testimony.

**TERRY WAGNER:** Thank you.

**GEIST:** Senator DeBoer.

**DeBOER:** Thank you for testifying, Sheriff.

**TERRY WAGNER:** Sure.

**DeBOER:** A preliminary question, just to get it on the record. I've heard people say: Well, this is going to use a lot of law enforcement resources. It's another thing, we'll have a lot more pulling over, so I will ask you the question. Do you want law enforcement resources to be used this way?

**TERRY WAGNER:** Absolutely. I mean, you look at the time it takes to investigate a crash and, you know, the 8 to 11 minutes it takes to make a traffic contact and send somebody on their way. And every traffic contact's not going to result in a citation, perhaps, but it might be a warning. Those are sometimes as effective as citations are to let people know that, you know, their behavior was against the law. And so, you know, if you look at all the crashes, you look at the time it takes to do traffic enforcement, it's, it's a very wise use for our, of our resources.

**DeBOER:** Thank you, Sheriff. And then the harder question--

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**TERRY WAGNER:** OK.

**DeBOER:** -- which is: How do you-- if it's a, if it's a secondary offense, I understand that you can subpoena the records and say--

**TERRY WAGNER:** Sure.

**DeBOER:** -- OK, this is one of the causes-- I understand that you can maybe ask someone later. But how do you, as a law enforcement officer, sort of make the decision of who to pull over? You know at night the, the glow, or whatever, could be somebody's got their, their interior lights up too high and they've just got a lot of instruments that are showing, you know. Can, can you tell when someone is using, you know, is texting? Can you tell? How can you tell?

**TERRY WAGNER:** Well, yes and no. I mean it really is, it's fact dependent upon each particular case. You know, can we tell someone's drinking at night when they're driving down the road? No, because we may not be able to see them take a sip from a, from a drink or a can of beer, or whatever the case may be. But if, if they're stopped, and they've got the open can in their console, then, then you have a violation. The same could be true here. If the vehicle goes left of center or commits some other traffic violation that draws your attention, you know. Then, and then you see that the phone is lit, it's, it's on in the center console, it's not in the sleep mode like most of our phones, you know, go to after a couple of minutes, then you can take some enforcement action or at least you can make those inquiries.

**DeBOER:** But it seems to me that you could do that now. Could you not do that now because if it were a second, if, if you noticed that they were swerving or something, it seems to me you could pull them over anyway?

**TERRY WAGNER:** So you're right; you could. But let's, let's say you're at a stoplight. And I think you've probably been at a stoplight-- I what I know I have-- with a person next to me and I can see him texting. They're, they're working their thumbs and they're looking down and the light turns green and they're sitting there still. That, that person wouldn't get pulled over for that because that's not a violation. They might be impeding traffic, but that's a pretty subjective sort of violation, so you couldn't just pull somebody over sitting there texting or driving down the road. If they get their phone in their hands and their hands on the steering wheel and they're

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texting and trying to look over their phone as, as they're texting, you can't pull them over now unless they've committed some other violation.

**DeBOER:** Here, here's why I'm asking the question. It's because I've been teaching at the college level for a lot of years, and I can tell you that I say, on the first day of class: There's a lot of things you can do in this class, but texting is not one of them. That is the thing that gets me the most; please don't do it. And what I've found is that they just get better at texting. So I'm concerned that all we're going to do is make wilier texters. So I mean, I think it's a good idea; it's a good bill. But I wonder if we're going to get accomplished what we want to do or if what we're going to end up with is people who are better at hiding their texting.

**TERRY WAGNER:** We're going to have to look at best practices from other states and see what they have done to conduct those enforcement strategies. The one thing I'll tell you is that people, by and large, obey the law. I mean it's, it's just a fact. We-- OK, a 55 mile-an-hour speed limit-- and you're too young for that-- but that was a good example of a law that, that the population did not support, and we couldn't write enough tickets to enforce compliance under that law. So it takes voluntary compliance on the part of the mass of the population; and people, by and large, do that. I mean as the statistics will show, statistics will show you 92 percent of people support an anti-- or a do-not-text kind of bill. We'll get public support and then people will stop doing it. They'll, they'll make a conscious effort because they know it's illegal. Right now they know they're not going to get pulled over for texting, but if it's a, if it's a primary violation, people, by and large, obey the law. Otherwise--

**DeBOER:** Yeah.

**TERRY WAGNER:** --there's no way we could keep up with it.

**DeBOER:** Yeah. All right, thank you.

**GEIST:** Yes, Senator Cavanaugh.

**CAVANAUGH:** Thank you. Sorry. Thank you for being here today. I have a concern about this becoming the equivalent of racial profiling. What could you say today to alleviate that being my-- that's my primary concern is that, if we make this a primary offense, that it's going to

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essentially lead to racial profiling, especially in larger communities.

**TERRY WAGNER:** Hmm, OK. Never heard of that argument before--

**CAVANAUGH:** You haven't?

**TERRY WAGNER:** --with, with texting, aside from Senator Chambers, but--

**CAVANAUGH:** Well, as, as a primary offense. As a secondary offense I think it's already partially happening, but as a primary offense it opens it up to-- you don't really need cause to pull somebody over anymore. You think, you, you think that they're texting so you pull them over, and that's what the report will say. So how can we ensure that that's not what's going to happen here?

**TERRY WAGNER:** Well, I guess you can't ensure that it's never going to happen. I think, you know, what you're, what you're suggesting is part of, part of what we do with our racial profiling data that we submit to the Crime Commission annually, we take a look at, at the, the race of the drivers and the unfortunate actions taking place in a number of different categories, if you've ever seen that report--

**CAVANAUGH:** I have not.

**TERRY WAGNER:** --that the Crime Commission does; it's on their public Web site. But we conduct-- we, we've been doing that for a number of years now. I don't see this law making that any more or less effective.

**CAVANAUGH:** Do you--

**TERRY WAGNER:** It's still going to be a traffic contact. It has to be reported in our traffic, our racial profile, profiling statistics.

**CAVANAUGH:** So currently, what proportion of secondary offenses are minorities?

**TERRY WAGNER:** I have no idea.

**CAVANAUGH:** Would you be able to find that out for me and for the committee?

**TERRY WAGNER:** Probably not. I mean in Lancaster County, you know, the, the data that I would have at my fingertips in Lancaster County of



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secondary offenses, I'm not sure we categorize them that way. I'm not sure. The Crime Commission may have some of those statistics on their Web site, but I'm not sure about that. They do have the racial profiling data.

**CAVANAUGH:** OK. So there's not really any mechanism in place to protect against this being an abuse of power, basically.

**TERRY WAGNER:** Well, I mean we have policies prohibiting it internally. There are laws--

**CAVANAUGH:** But if you're not tracking-- would you, would you then be tracking what races--

**TERRY WAGNER:** We do, we do now.

**CAVANAUGH:** OK.

**TERRY WAGNER:** There's a state law that requires us to report traffic stop race and other data; and we do that.

**CAVANAUGH:** So you have the data on traffic stops.

**TERRY WAGNER:** But not for secondary violations.

**CAVANAUGH:** OK. Well, do you know how it skews for minorities versus nonminorities for traffic stops?

**TERRY WAGNER:** It really depends upon where the deputy's working. If you have a deputy working in an area where there--

**CAVANAUGH:** Just in your county, in Lancaster County, is it proportional to the population?

**TERRY WAGNER:** No.

**CAVANAUGH:** Is it disproportionate affecting minorities?

**TERRY WAGNER:** Yes.

**CAVANAUGH:** OK. So I guess that answers my question; thank you.

**GEIST:** Thank you. Any other questions? Yes, Senator Albrecht.

**ALBRECHT:** Just one quick question, Sheriff. Would you think that the tickets need to be changed at all if we want to try to track-- if this

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were to become law? Before you had the first offense, like crossing a line or whatever, and then you're going to ask about it. But if you're just going to ask on texting alone, would, would a ticket need to be changed, the way it is written today?

**TERRY WAGNER:** No. I mean it would be, it would be no different than getting stopped for speeding, getting a citation or warning for speeding. If you were observed texting, you could get a warning or a, or an official citation for texting, so it wouldn't be any different.

**ALBRECHT:** OK.

**TERRY WAGNER:** And both of those would be reported on the racial profiling data that we submit to the Crime Commission, if that's the question that you're asking.

**ALBRECHT:** No, I'm not asking about that. I'm simply asking if, if, because previous testifiers with the National Safety Council had talked about another gal, that their information is based on, what the ticket says. So just, if it would say that if you were pulled over for texting, then that would be important that that's exactly what's on the ticket.

**TERRY WAGNER:** That's correct.

**ALBRECHT:** And--

**TERRY WAGNER:** And we have charge codes so they'd be entered, if it'd be texting, and then it would be entered in the computer that way.

**ALBRECHT:** And I do like the idea of best practices for other states. We don't need to reinvent the wheel; we simply need--

**TERRY WAGNER:** Right.

**ALBRECHT:** --to find best practices, so thank you.

**GEIST:** Thank you. Any additional questions? Seeing none, thank you for your testimony.

**TERRY WAGNER:** Thank you.

**GEIST:** Are there any other proponents? OK, then we'll move on to the opponents.

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**SPIKE EICKHOLT:** Good afternoon.

**GEIST:** Good afternoon.

**SPIKE EICKHOLT:** Madam Vice Chair and members of the committee, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. We are opposed to the bill. As an association, we support and we try to defend maintaining our freedoms and our rights under the Fourth Amendment to the U.S. Constitution and the Nebraska Constitution at Article 1 Section 7. That is the right, essentially, to be free to travel in this state and not be arbitrarily stopped by law enforcement. I would submit-- we would submit that Nebraska has the right balance, that has texting while driving or, more importantly, use of a hand-held wireless communication device as a secondary offense; and that's because of this. We already have crime to criminalize negligent driving, reckless driving, careless driving, willful reckless driving. Even the example that Senator Kolowski gave in the introduction where, if a person runs a red light for whatever reason, they can be cited with a secondary offense of use of a phone device. In other words, using your phone in any manner doesn't permit you to violate other rules of the road. If you are weaving within a lane, if you speed, if you're driving excessively slow, all of these things you can be stopped for. You already have, in our current traffic code, a nexus to police, if you will, bad driving behavior, no matter what causes it. I just want to kind of respond to a couple of things that people have said and people talked about. There was one statistic that was mentioned earlier about Iowa made their traffic-- or made their phone law-- texting-- a primary offense, and then last year something like six or almost tenfold increases in citations. But I didn't hear the necessary leap and that is that they had any safer streets or any lower accident reports. And no one said that, and I don't have the handouts and stuff. Maybe you have that reflected somewhere; I just didn't hear that. But that's one thing to look to. Also, if you look at the current law, it-- we've been referring to it. Other people were referring to this texting while driving, but it really is much more than that. If you look at page 2 of the bill, which is current law, lines 6 and 7, it provides that "no person shall use a handheld wireless communication device to read a written communication." We all have our phones with us. Many of you have your phones with you right now probably. If you get a notice on your phone, one of those news notices, like Luke Perry died, for instance-- that's not something to laugh at, I shouldn't say that; I'm sorry. But that's-- it happened

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here. And if you just happen to glance at that, you are reading a written communication-- that's not texting-- you're in violation of this law. As I said before, there's other offenses that can be prosecuted now, that we would argue already control this. A couple of things. I know that people have compared us to other states and so on, and I always sort of resist that because many times you could look at those other state laws-- in reality, maybe it's somewhat comparable; maybe it's not, Maybe we're talking about people under 19 in one state or whatever. But one thing that I do know is that, in our state, our courts are very deferential to law enforcement when it comes to reasonableness of a stop. In other words, officers are generally entitled to a good faith exception. Even if they don't actually witness what they consider a traffic violation, if they reasonably do then the course is set. That's where it-- that's valid. I mentioned that because Senator DeBoer asked earlier about law enforcement enforcing this. And I would argue that, as a practical matter, that person's not going to be able to beat a texting while driving charge or whatever they might want to call this. In other words, if you just happen to look at your phone and the officer glances over really quick and can see the glow of the phone on your face, and maybe you're just moving it off the console to put it on your seat or maybe someone's calling you and you're trying to hit "ignore," an officer is going to be reasonable to look at you and think, well, that person's probably texting somebody. We don't lock our phones in the trunk, we don't lock them in the glove box, we don't put them in our bags and shut them down; we always have them with us. One thing that Senator Albrecht asked earlier, whether law enforcement could somehow seize or ask to look at a phone. The U.S. Supreme Court said, in Riley v. California, that office law enforcement needs a warrant before they can actually search onto a phone. Now as Sheriff Wagner said earlier, a person could always sort of waive that right of privacy but, as a practical matter, you may just want to get your ticket and go. You're really don't want to hand your phone over to law enforcement. Whether you got nothing-- anything to hide at all, you just don't like that; so much of your life is on your phone, even, even if you maybe you have not done anything all that wrong. So for those reasons and others, we would urge the committee not to advance the bill.

**GEIST:** Thank you for your testimony. I do have a quick question for you, and you brought up one of the things. I was going to, waiting for the right person to ask. And it's about that hand-held wireless

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communication device, which many smartphones are. For instance, I can text through my car--

**SPIKE EICKHOLT:** Um-hum.

**GEIST:** --and it will read the text and it will ask me if I want to reply. And then it will read my reply back. But is that a-- it's not hand-held, but what if I'm texting, with my phone in the cup holder, on voice-to-text? That then is a wireless handheld device that has written communication on it which, in line 30 says-- it defines it and then, in line 7 on page 3, says that's not included in this bill.

**SPIKE EICKHOLT:** Yeah, I mean it is sort of that-- and maybe-- and when the law was written-- technology has just changed so much. I mean it used to be when we criminalized these things, it was only using your phone to talk. There was no such thing as texting or web apps or anything like that. And I think you kind of bring up some of that issue. In some respects the current statute maybe does too much and then also not enough. In other words, some people-- and something, what Senator DeBoer said, I think the younger generation-- I'm always kind of amazed and impressed, frankly, how quickly they can text and stuff like that. They can do it, I would submit-- and this is anecdotal-- but they can do it better than older people like me. I think-- I don't know if it's any less distracting to use that talk-to-tech [SIC] feature or that speaker phone feature with your car. I mean some people are distracted by that, and I get that. And-- but at least one other proponent said that ought to be also included in this. So if you're going to make it a primary offense, perhaps one of the things the committee wants to do, even though we wouldn't support it, is maybe amending the definition of what it means to use one of these devices, to capture an actual distracting impact that those things might have.

**GEIST:** OK. Does anyone else have a have a question? Sorry I jumped in front of everyone. Senator Bostelman, did I see you?

**BOSTELMAN:** Yeah.

**GEIST:** Go ahead.

**BOSTELMAN:** Thank you, Vice Chairman-- Vice Chairwoman Geist. The definition of, of distracted driving is a question, I guess, I have because if that definition would include the use of texting or cell phones, that-- would that change things? Because now it's not-- I

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would say it's not a definition. And where I'm going with this-- are there other, are there other statutes that would cover if it was distracted driving and that would be included in that definition. This wouldn't be necessary.

**SPIKE EICKHOLT:** I would submit that. I think we-- I think my answer will be responsive. If you look at Section 60-6,212, that's careless driving, and that means, "Any person who drives any motor vehicle in this state carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving." And in some respects that's better because, if you include the use of a phone in there, well then you're going to have to [INAUDIBLE] going down the laundry list of talking to passengers, or speaking on a phone, or speaking on the speaker feature with a car, or listening to music, or whatever it might be. In other words, you all-- the state doesn't have to show anything else. You're driving, you're driving carelessly; that's enough. You, you weaved out of the lane, you hit the curb a couple of times, people had to get out of your way-- for whatever reason. And that's one point I tried to make before. I can't say, I can't come to court and say: Hey, I was on my phone; I'm not guilty. I mean you're still, you're still guilty of that. For whatever reason, you've committed that crime-- careless driving. And there's similar crimes: reckless driving-- it's 60-6,213-- and then willful reckless driving-- it's 60-, 60-6,214. And then you have a whole other series of infractions where if you don't signal when you turn, if you change lane without signaling, if you don't come to a complete stop. All those things can be prosecuted, whether you're using a phone or not.

**BOSTELMAN:** I have one more question for you, so kind of going down to what we were talking, what has been said before about if I have my phone laying out on the seat. Well, if I get a text or if I, if I am connected to the Internet and it pops up something, well, my phone will light up.

**SPIKE EICKHOLT:** Right.

**BOSTELMAN:** I may not be using it whatsoever. I may not be looking at it, but it will still activate. It will still light up. So I guess I'd like to hear your response to that.

**SPIKE EICKHOLT:** Well, if you look at page 2, lines 6 and 7 of the current law, if you happen to look at your phone and read whatever message is lighting up, you're probably violating the law. And if you

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make it a primary offense and an officer witnesses that, you can be stopped.

**BOSTELMAN:** Well, I guess-- yeah, right, and I understand that. And the point was, was an officer comes up, your stop comes up, your phones lit up.

**SPIKE EICKHOLT:** Right.

**BOSTELMAN:** Well, my phone could light up for a number of reasons, not that I am even aware of or I've even touched or I've even looked at it. So I guess that's where my question was more pointed towards.

**SPIKE EICKHOLT:** Yeah, in my opinion that's gonna be really tough, difficult to contest one of these citations.

**BOSTELMAN:** OK.

**SPIKE EICKHOLT:** I mean, you're-- unless like I said, unless you lock your phone in your trunk, right? I mean the officer-- in defense, they've got a tough job to do. They don't have time to sort of deal with it. And many people are always going to contest how fast they were going when they get stopped for speeding. I mean it's just a natural thing. They're trying to negotiate that point of fact with the officer. But our phones are just there with us. They light up, they send us messages people text us, people call us, and we don't know that. That's just how things work.

**BOSTELMAN:** Thank you.

**GEIST:** Thank you. Senator Albrecht.

**ALBRECHT:** Thank you, Vice Chair Geist. You know, I put on a lot of miles driving back and forth here to Lincoln from northeast Nebraska. And I do witness a lot of people texting. I personally am not-- I'm just as guilty as the next guy. But I would like to see behavior change. And when you say an officer shouldn't be able to request your phone, would you agree that they, to take them to court on a primary offense, they'd have to prove that they were on the phone?

**SPIKE EICKHOLT:** They would.

**ALBRECHT:** And in proving so, they'd have to request records, right?

**SPIKE EICKHOLT:** Right.

**ALBRECHT:** So that would, I believe, have to be a part of this particular bill to make that happen. But I don't believe that we're going to change behavior unless we do have something like this, because it's here to stay and it's only going to become much more technology driven. And if you have the car that you can look at your dash, looking at your dash you can see what, what the people are asking you that are texting you, you know. You can push the button and listen to it or read it. So that becomes a problem, as well. So finding the right verbiage for this so that, that it does have some teeth and we can change some behaviors. Because you know what? I don't care who you represent or who is coming to testify against something like this. A life is worth so much more than whether that particular message meant to you, to any of us, because I certainly don't want to be the product of someone who's lost their life because of myself thinking that some message is more important than my responsibility on the road. So I, I don't know if this actually even got out of committee. I don't believe it did last year-- did-- if somebody introduced it. But, but this is something I believe-- I would sure like to hear from more law enforcement, as well, to see how the Nebraska State Patrol feels about it. The county sheriffs, the cities, we-- I appreciate one sheriff being here today. But, but to-- and I would hope, too, that drivers would actually tell the officer that, yeah, I was wrong, I did that. You know I was texting. But if they don't, and you have to get the information, we need to have that in this bill. Would you not agree?

**SPIKE EICKHOLT:** I think I would agree with some things that you said. But yeah, I think you're probably right, and it's something that I mentioned to the Madam Vice Chair earlier. And that is, if the committee is going to act on this, you might want to change some of the definitions under current law to really capture what you're trying to do. In other words--

**ALBRECHT:** Would you be willing to sit down and work through that?

**SPIKE EICKHOLT:** I'm always willing to sit down and work through that, consistent with what my association wants to do. But absolutely, I would.



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**ALBRECHT:** I just think it's important for all parties that want to make it a better bill, to do so. So I appreciate your testimony. Thank you.

**GEIST:** Thank you, Senator Albrecht. Any additional questions? Seeing none, thank you for your testimony. Any other pro, opponents? Seeing, seeing none, are there any who wish to testify in the neutral capacity? I will call Senator Kolowski back to close, if you'd like, and turn the hearing back over to Senator Friesen.

**KOLOWSKI:** Mr. Chair, thank you very much, committee for the opportunity to present this today. I would like to make just a couple of brief comments. From my own background, I think I need to share a little bit with you on either a family member. My brother was a state trooper in Illinois for 20 years and his experience is on the road. The Chicagoland area and a little bit downstate were extensive and the 20 years that he put in were very well done. But also he told me stories that I wouldn't repeat in a mixed group like this. The things that he had to deal with, the issues that he had to clean up on the road that happened, as far as accidents, and the number of times hand-helds were a part of that, were part of the discussions that I had with my brother over those years. A second point is, I look at my car. Okay, it's two years old. I've got the maps and the, the phone that you just touch a button and everything works; you know that. It's not-- in fact I never have my phone out on the dash. It's usually in the bag behind my seat but it's within the working areas of the car, and it makes that, makes that work as far as the touching of a button and making something, which, which takes much less than five seconds, as you can imagine. But it is using, using your, your, your hand-held in that way. Maps on the dash were talked about, and that can be done in a couple of different ways, depending on the aspect of your automobile, how modern it is and, you know, what you're able to use. But I would leave this last item with you. I was a high school principal for 15 years of my 20, of my 30-- 41, excuse me-- years in public education, and those last 15 years of one of the major Class A schools in the state of Nebraska. A number of times I'd be going to an afternoon meeting at the board office and on my way back, at 3:15, the kids would be dismissed. If you want to find out what kids look like at dismissal time, go to your local high school. You want to see cell phones being used? You want to see all sorts of driving behavior, all sorts of things taking place? I was caught in that traffic a number of times, and I sat watching a number of times to see the, the volume of students and what their behaviors were as they were leaving the campus

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at, at 3:15 in the afternoon. That's enlightening. That takes some time and energy to do, but it's really worth it to see the, the aspects of what the kids are doing and how many hand-helds are being used at that time. They're not driving the new, modern cars. They're driving something of a secondhand hand-me-down in a family usually. And those don't have all the features that a new car would have. So I just leave you with that. I thank all the testifiers today and those who have come forward, and I thank you very much for your time. I'll be glad to answer any additional questions.

**FRIESEN:** Thank you, Senator Kolowski. Are there any questions from the committee? Seeing none-- oh, Senator Cavanaugh.

**CAVANAUGH:** All by myself over here. Thank you, Chairman. Thank you, Senator Kolowski, for bringing this bill. As I expressed previously, I do have concerns about the possibility for racial profiling. Is that something that you would be willing to work with the ACLU on?

**KOLOWSKI:** Absolutely. And also, keep in mind that all but four states have passed this. So every kind of state you can imagine out there already has been dealing with that and that particular topic in multiple ways.

**CAVANAUGH:** I'm definitely against texting and driving. You can ask my staff; I mother them about it quite a bit. But I just want to make sure that we're not doing this at the cost to others, so--

**KOLOWSKI:** Absolutely. I agree with you, and I would not want to see that. The cost savings of lives and property is, is the main savings that you'll have with this particular bill.

**CAVANAUGH:** Thank you.

**KOLOWSKI:** And that's huge.

**FRIESEN:** Thank you, Senator Cavanaugh. Any other questions from the committee? Seeing none, we do have some letters in support from: the Nebraska State Board of Health; Margaret Higgins; Kevin Stukenholtz, Saunders County Sheriff; the National Safety Council; Nebraska Cooperative Council; Nebraska Medical Association; the Police Officers' Association of Nebraska; Nebraska Insurance Information Service. With that, we will close the hearing on LB620.

**KOLOWSKI:** Thank you, sir.

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**FRIESEN:** And now we will open the hearing on LB40. Welcome, Senator Hilkemann. And it looks like it's Senator Hilkemann afternoon after this.

**HILKEMANN:** I'm, I'm on it. Yes, I think we are.

**FRIESEN:** Keep the seat warm.

**HILKEMANN:** That's right. Good afternoon, Chairman Friesen and members of the Transportation Committee. I'm Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n, and I represent Legislative District 4: west Omaha. I'm here to introduce to you LB40, which would make texting, and by that I refer to the text, the statute-- the use of a hand-held, wireless communication device to read, manually type, or send a written communication while operating a motor vehicle which is in motion, while driving, making that a primary offense. In 2010, this committee, under previous membership, of course, advanced to General File the bill that first placed into Nebraska law this prohibition. It was advanced by the committee as a primary offense. It advanced to General File as a primary offense. It wasn't until a Select File amendment was adopted that it ended up being placed into law as a secondary offense. I think that was a mistake. There are safety experts here today who will be able to share with you-- you may have already heard from them-- with statistics supporting the need to strengthen our texting-while-driving laws. And I will leave that information to them. I would like to say, however, that the use of wireless devices in our everyday lives has grown even more significantly than it was when the original law was adopted in 2010. At that time, not everyone had a cell phone and, for most of us who did, it was probably a flip phone that wasn't nearly as engaging or capable as the phones most people use today. It is important that, as legislators, we continue to improve our laws to ensure we are keeping up with advances in technology. It is also important that we ensure we are sending the right message to our citizens. You can see people at every stoplight or driving down the interstate, using their smartphone to scroll through social media or read or type a text message, putting their lives, the lives of their passengers, and those people around them on the road at risk. Enforcing this law as only a secondary offense sends the message to our drivers, both young and old, that we don't take it seriously. It sends the message that it's not as serious as exceeding the speed limit by 3 miles per hour, which is a primary offense, or having a taillight out, which is also a primary offense. I expect that there will be opposition to the bill with claims of how

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difficult it will be to enforce. However, I want to remind you that Nebraska is just one of four states to classify texting while driving as a secondary offense. Our neighboring state of Iowa, in 2017, strengthened their law and took it from secondary to a primary offense. If it can work in 46 other states, it can work here, too. I believe it is time for our state to take a stand against texting while driving by putting the proper enforcement behind it. Thank you for your time, and I'll be happy to ask any questions.

**FRIESEN:** Thank you, Senator Hilkemann. Any questions from the committee? Senator Cavanaugh.

**CAVANAUGH:** Thank you, Chairman. Thank you, Senator. I have the same question for you that I had for Senator Kolowski. Is there anything that can be done to strengthen protections so that this isn't used as a racial profiling tool?

**HILKEMANN:** I think, Senator, you know, certainly in 46 other states they have this law in effect, obviously, that they would have the same issues, I would think.

**CAVANAUGH:** There are states that have this in effect that have that issue.

**HILKEMANN:** And if we can if we can work, if we can work with this bill to make it so we can make it more palatable, I, I would be happy to work with that. I certainly do not want racial profiling either.

**CAVANAUGH:** Thank you.

**FRIESEN:** Thank you, Senator Cavanaugh. Any other questions from the committee? Seeing none, proponents who wish to testify in favor of LB40.

**ERIC KOEPPE:** Afternoon again, Senator Friesen and members of the committee. Again, I'm Eric Koeppe, E-r-i-c K-o-e-p-p-e, president, CEO of the National Safety Council of Nebraska. A little bit differently in LB40, it talks a little bit about the underage drivers, drivers, drivers that are 18 or under. So I've got a couple of stats I want to put out because I don't think we've heard them today. But the percent of distracted driving crashes has increased overall. However, the youngest of our drivers-- 14 to 19-- and the oldest of our drivers have experienced the sharpest increase in the proportion of crash due to distracted driving. Over the last 10 years, on average, Nebraska

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drivers, age 15 to 19, have been involved in 39 cell phone distraction crashes per year. That is a fairly large amount for a small population. In Nebraska, 36 of the 150 traffic crashes involving cell phone distractions, involve teen drivers; that's 23 percent. You know, our youth have about-- I think it's about a 7 percent of our drivers, right around there-- I'm sure somebody will correct me if I'm wrong-- but they represent 23 percent of distracted driving crashes. So it's a disproportionate number that hit those younger drivers. A couple of things I want to point out, and Senator Bostelman pointed it out, it's in addition to the, the texting because, if I'm going to talk to someone that's 19 and under, they're probably not even going to be texting today, right? Facebook, Instagram, Snapchat, video-- recording video on their Snapchat. All of these things are taking place. So for our younger drivers, it's really is an issue of an additional use of that hand-held device. I do want to remind, because I think-- I haven't heard it yet today, but I made myself some notes here-- that driving is the most dangerous thing we do every day in our lives. It is the most dangerous thing. It is the number one cause of unintentional deaths and injuries in Nebraska. It is something that is dangerous and we have to respect it. I will say that safety agencies actually make a recommendation that, when people get in their car, they place their phone in the backseat or in the glove compartment to remove that temptation for a distraction, because the minute it goes off, we have some things that, in our brain, that say: Ooh, I've got to see that. So you know, we are certainly, certainly in support of LB40. And, and I think, as Rose said, there's some things that have been done in other states regarding the racial profiling that I think could be looked at and I think would be very supportive for this. So I'll get my green sheet here for this bill and, and give it to the page there. And I've got some other handouts, so--

**FRIESEN:** Thank you, Mr. Koeppe. Any questions from the committee?

**ERIC KOEPPE:** Thank you.

**FRIESEN:** Seeing none, thank you. Other proponents?

**MARGARET "MAGGIE" HIGGINS:** Senator Friesen and members of the Transportation Committee, I thank you again for allowing me time to testify on LB40, primary offense for distracted driving. Some of this is repetition, but I will read it in anyhow. My name is Margaret, M-a-r-g-a-r-e-t, parentheses is Maggie-- I go by M-a-g-g-i-e-- Higgins, H-i-g-g-i-n-s. I'm a former Gage County Treasurer, widow of a former Gage County deputy sheriff. I'm a former state of Nebraska

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director of motor vehicles, serving under Kay Orr from 1987 to '91. And during the time as DMV director, I was appointed by Samuel K. Skinner, the Secretary, Department of Transportation under President George H.W. Bush, to the National Drivers' [SIC] Register Advisory Committee, addressing the issues of problem drivers. After that I entered the financial services business, and I have been a Nebraska licensed insurance agent-- I have been in that career for 27 years. I am involved now in seeking your help, because I believe distracted driving is a growing concern. On May of 19, or of 2018, I was two weeks into recovery from major back surgery, and my son had gone to run errands. When he returned home, he told me that a woman ran a red light. She slammed into the, she slammed on the brakes-- excuse me-- he slammed on the brakes to avoid hitting her and she went through the intersection in front of him, missing him by inches. However, another lady rear-ended his vehicle. The person running the red light got away. The person that ended his, his vehicle received a ticket for following too close. Back in 2003, my husband was involved in a similar accident. A woman ran a red light and he hit her vehicle. Both vehicles were a total loss. And he was severely injured, and his life was saved because he was wearing a seat belt. And the injuries he incurred during his crash bothered him the rest of his life. When my son told me about this near crash, I was so frightened and then I became angry, very angry. Something told me I had to try and do something. I was flying, lying flat on my back, not able to do a whole lot. However, I knew that I could talk. So I called Fred Zwonechek, Nebraska Highway Safety director then. He asked me what I wanted to do. I said, there has to be a major change in how people are driving. They weave all over the road, run red lights and speed. I came up with a long list of things from act, activating the cameras at intersections where tickets would be sent out to traffic violations, increasing fines, even putting driver's education back in our school system. I formed a working committee and what surfaced seemed, and that surfaced and seemed to be the most definite need was elevating the lack of seat belt use and distracted driving as a primary offense. I have even had near misses myself with people running red lights here in Lincoln on Highway 2 and another at 27th and Woods. I have witnessed people on their phones running red lights, weaving back and forth as they drive. I warn family and friends to check the oncoming traffic and not immediately pull into the intersection when the light turns green. I'm asking you to change Nebraska law to make distracted driving a primary offense. The handout I provided to you-- and I and I've duplicated with each time I am testifying-- is information, the cost of crashes from when law enforcement and EMT appear on the scene,

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to emergency rooms, hospital stays, rehabs, therapy treatments, home care, assisted living, long-term care, and finally, burial costs resulted by motor vehicle crashes. You call it what you want, distracted driving and, and/or selfish driving. Something needs to change, and I do believe now is the time. Thank you. Think of the lives you would be saving and, yes, taxpayers' dollars, not to mention the dollars individuals and families will save, along with the hurt and grief that follows. I'm asking for you to forward LB40 out of Transportation Committee and pass it into law this session. And thank you for allowing me to testify.

**FRIESEN:** Thank you, Ms. Higgins. Any questions from the committee? Seeing none, thank you.

**MARGARET "MAGGIE" HIGGINS:** Thank you.

**TERRY WAGNER:** Good afternoon, Senator Friesen and members of the Transportation and Telecommunications Committee. My name is Terry Wagner, T-e-r-r-y W-a-g-n-e-r. I'm the sheriff of Lancaster County. Today I'm here on behalf of the Nebraska Sheriffs' Association and, on, on their behalf, urge you to advance LB40 to the floor. I appreciate Senator Hilkemann introducing this bill to, to reduce distracted driving in Nebraska. If you're like me, when people recognize me and know that I'm a law enforcement officer, the topic will get around to the aggravation most motorists have with other motorists who are either texting and driving or using their phone while driving, seeming, seemingly oblivious to everything around them. And why isn't law enforcement doing something about it? It's about that time when I throw the Legislature under the bus and let the citizens know the law forbidding use of electronic devices is a secondary violation and, despite a number of attempts to make it a primary violation in the last few years, it has not passed. LB40 needs to be expanded to prohibit the use of any electronic device for any reason, not just texting. We have all seen motorists who are driving slower than all the other traffic or sitting at a traffic signal after it has turned green because their head is buried in their cell phone and they're not paying attention to their driving. Everyone has heard the account saying use of cell phones while driving is as hazardous as driving while intoxicated. There are national advertising campaigns to demonstrate the dangers of texting while driving. Yet people continue to do it. Nebraska Revised Statute 60-6179.02 provides robust fines for texting while driving: \$100 for the first offense, \$200-- or \$300 for the second offense and \$500 for the third offense. But people

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realize the difficulty of enforcing that statute and are willing to take that chance. I urge the committee to advance LB40 to the floor. Thank you, and I'd be glad to answer any questions the committee might have.

**FRIESEN:** Thank you, Sheriff Wagner. Senator Geist.

**GEIST:** Yes, thank you, Sheriff Wagner, for your testimony. And I wonder if you would respond to whether the current laws of reckless driving or negligent driving-- are they adequate for the problem? Or are-- I know you spoke to a loophole--

**TERRY WAGNER:** Um-hum.

**GEIST:** --that might not fit everything earlier. But let's say that we didn't pass this out of committee. Would your law enforcement officers still be able to stop someone and cite them if they're texting?

**TERRY WAGNER:** I would have to-- and I apologize for not knowing this off the top of my head, but it's been a long time, time since I've written a traffic citation. I'd have to look at the statute again for careless driving and reckless driving, and willful reckless driving. I know that the, the points assessed are higher. There's a number of-- it is more difficult to prove. It's--

**GEIST:** I just don't know about the threshold that needs to be reached for reckless or negligent.

**TERRY WAGNER:** Right. I don't think somebody, you know, driving within their lane in traffic or sitting at a stoplight after it's turned green would constitute careless or negligent driving. It'd be very, very difficult, I think, for a court to look at somebody sitting at a stoplight that's green and still remaining stopped, and say that that's reckless or careless driving.

**GEIST:** Um-hum, OK. But the, but someone who's weaving or hitting a curb or--

**TERRY WAGNER:** Well, you know, there's left of center. There are a number of different violations that, that, you know, are below willful reckless or reckless driving that might be applicable. It just-- and even though somebody is pulled over-- let's say somebody drives off the right side fog line on the right, and the deputy would, you know, initially want to write them a warning for that, you can't write a warning for the primary violation and then an official for the



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secondary violation, if that's what you feel. They both have to be, they both have to be officials.

**GEIST:** OK.

**TERRY WAGNER:** So if you're stopped for a violation and the thought was to give a warning for whatever violation occurred, if, if you're texting or if you don't have your seat belt on at that time--

**GEIST:** Um-hum.

**TERRY WAGNER:** --you can't write an official for those violations because you have to write it official for the first violation.

**GEIST:** OK. Thank you; that helps.

**FRIESEN:** Thank you, Senator Geist. Senator DeBoer.

**DeBOER:** I just have a very limited question here. You've said now, a couple of times, where someone is sitting at a stoplight and texting--

**TERRY WAGNER:** Um-hum.

**DeBOER:** --and It turns green or something, is that-- maybe I'm missing something-- is that dangerous? They're not moving the vehicle, they're texting.

**TERRY WAGNER:** Well, 8:00 in the morning when they're, when traffic's real heavy-- and I'm thinking of 14th and Highway 2 on my way to work because it happens all the time-- and it's really aggravating. And then other motorists do, they start exhibiting some dangerous behavior themselves, just to get around somebody that's just not paying attention. And so, yeah, it's aggravating. It's not necessarily dangerous, but it's certainly aggravating.

**DeBOER:** OK.

**TERRY WAGNER:** And when drivers get aggravated, they do stupid things.

**DeBOER:** Sure, but I mean, in this particular, in that particular instance, there's a lot of things that are aggravating that maybe aren't something we ought to go out of our way to regulate.

**TERRY WAGNER:** OK.

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**FRIESEN:** Thank you, Senator DeBoer. Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Friesen. Again, thank you for your testimony, Sheriff Wagner. And with the sheriffs' departments across the state and any other law enforcement, we have this bill and the previous bill. Which of the two would you say is more important, to have everyone being looked at for a texting violation as a primary offense or just certain age groups?

**TERRY WAGNER:** And as I read, I was-- I confess I didn't read LB620 really closely before I got here.

**ALBRECHT:** LB620 was everyone. This particular one pertains, if I'm reading it correctly, to 16 years of age up to 18 years of age issued a provisional, provisional operator's permit from the Department of Motor Vehicles.

**TERRY WAGNER:** At the-- but at the end it talks about--

**ALBRECHT:** Learner's permits.

**TERRY WAGNER:** --69-6179--

**ALBRECHT:** Um-hum.

**TERRY WAGNER:** --at the-- I think the-- Section 4, the last two pages of the bill, and I think that includes all drivers, and--

**ALBRECHT:** OK, so let me rephrase that. Do you believe all texting offenses should be primary?

**TERRY WAGNER:** Yes.

**ALBRECHT:** All should.

**TERRY WAGNER:** Yes. And I'm not sure you know if these bills couldn't be combined and sort of massaged to include all of that, but I think it's important to-- that young people, it forbids any sort of hand-held device by them--

**ALBRECHT:** Um-hum.

**TERRY WAGNER:** --during that period where they're on their provisional, provisional--

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**ALBRECHT:** While they're going--

**TERRY WAGNER:** --operator's permit.

**ALBRECHT:** --for their license, correct?

**TERRY WAGNER:** And then, as with it with adults with a full license, it prohibits it-- hand-held communication. So yes, I do think it needs to apply to everybody.

**ALBRECHT:** OK, thank you.

**FRIESEN:** Thank you, Senator Albrecht. Any other questions from the committee? So if, if someone-- speeding, and you want to write them a citation for speeding, do you ever look at cell phones or see once if they were doing something while they were speeding?

**TERRY WAGNER:** Well, you know, the basic enforcement strategy is that the deputy should have their mind made up, before they ever go make contact with the driver, what kind of enforcement action they're going to take. And that way the attitude of the driver is not an influence on the enforcement action. And then it encourages deputies to set thresholds. For speeding, for example, you know, are, are you going to warn for zero to five over the limit and then cite over that or, you know, you pick whatever number that might happen to be. So if somebody is speeding seven miles an hour over the speed limit and the deputy was initially going to write them a warning for that, when they got up there, if they found out the motorist was texting at the time for-- however they found that out-- then there. Then there is a dilemma that they've got to, got to make. They've got to say: Am I going to write for the speeding seven over, when I really wouldn't have normally, to be able to write a citation for the texting or just warn them for both violations?

**FRIESEN:** Is there-- OK. Is there--

**TERRY WAGNER:** Does that answer your question?

**FRIESEN:** I think it does. So if there is an accident, whether it's following too closely or it's a single vehicle accident, do you automatically look at cell phone records to see if they are on their cell phone when that happens?

**TERRY WAGNER:** Only if it's a serious injury or death, we will, we will look at the phones. And it, it's a matter of resources. You know, we

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have to have the phones analyzed and we have to pay sometimes to have that done, so it's a matter of resources. So if it's a noninjury, rear-end collision, we're probably not going to have phones analyzed.

**FRIESEN:** OK, thank you. Any other questions from the committee? Seeing none--

**TERRY WAGNER:** Thank you.

**FRIESEN:** --thank you for your testimony.

**ROSE WHITE:** Thank you again, senators. My name is Rose White, R-o-s-e W-h-i-t-e, and I'm with AAA, the Auto Club Group, an organization that strongly supports this legislation. And I know I did provide comments and information earlier, but I just wanted to address some of the other questions that came up during the other bill. One question was on a form that I had handed out on Nebraska drivers involved in distracted driving crashes. The question was: For distracted driving, what is included in the "others" category? Well, I just discussed this with Fred Zwonechek, who probably helped design this form, and he indicated just about everything else follows in that category. And that could be including eating, putting on makeup, or anything else that caused a distraction. And Senator Friesen, I believe you asked a question about insurance rates and whether or not they would drop in states that passed primary texting laws. Unfortunately, automobile expenses-- claims expenses-- they're not constant; there's other factors that are always included. And I'd like to give one example. I recently leased a new car that has all the automatic features in it-- automatic braking, lane departure and so forth, about eight very sophisticated computer systems. And when I went to renew my insurance, it was about twice as much. And the reason for that is because these systems have to be recalibrated each time your vehicle's involved in a crash; and that includes a minor crash. And so the additional \$3,000 charge that I'll have to pay for under my collision and so forth, you know, each time I have a crash, has raised the cost of my insurance. And so all other kinds of factors, including health care costs that continue to rise and so forth, so sadly we don't see those decreases like we would like to. The other situation I wanted to mention concerns the changes, like it says, that we're seeing in other states. You know, we're seeing other advancements in their texting laws, where we still lag solely behind. As an example, in May 2018, Georgia became the 16th state to ban drivers from using hand-held wireless electronic devices while driving. And that law went into effect July 1, 2018, and it included messaging to now include watching, recording, or

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broadcasting movies or videos, and includes the use of stand-alone electronic devices. And so, as you can see, this is a very liquid type of issue with the advancements that are being made. We have to stay on top of them. And some of these states are, but sadly, we have not made any changes. And again, regarding the racial profiling issue, I think we can thoroughly look at what other states have done to address that and maybe introduce some companion amendment that will help to solve this issue and resolve the concerns that you might have with this issue. So if you have any other questions at this time, I'd be happy to address them if I can.

**FRIESEN:** Thank you, Ms. White. Any questions from the committee?  
Seeing none--

**ROSE WHITE:** Thank you again, Senator.

**FRIESEN:** --thank you for your testimony.

**FRED ZWONECHEK:** Chairman Friesen and members of the committee, my name is Fred Zwonechek, F-r-e-d Z-w-o-n-e-c-h-e-k, and I'm recently retired as the-- after 37 years as Nebraska's highway safety administrator. I had a-- obviously a lot of experience and expertise looking at data and the science and studies involving all of these kinds of issues, and I can say with confidence that restricting teen communication in any fashion while driving is a critically important policy for their safety and all other roadway users. Teens in Nebraska represent 7 percent of the licensed driving population but are involved in 25 percent of all crashes, so they make up a quarter of all the reported crashes in Nebraska. The reason why is that they are inexperienced as drivers and are more prone to errors in judgment and decision-making. We are not alone in being able to see this happening. Obviously insurance companies have rates established for those very reasons; and it's high. Today nearly every teen has a cell phone and are among the biggest users of cell phones. As new drivers it just should surprise no one that they are mixing the use of any electronic communications devices with driving; it's an extremely risky behavior for them. We have learned much, over the past decade, about the development of the teen brain and that young brains do not fully develop until age 25. As a young, inexperienced driver, it is critical that every possible distraction be eliminated in order to help them focus strictly on the task of driving. LB40 goes a long way with that help, with teens knowing that law enforcement could now pull them over for using, or attempting to use, an electronic device-- the communication device-- while driving and being issued a citation. Things we do know that work

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are that teens fear being cited for traffic violations, the reaction of their parents, and the accumulation of citations that result in loss of the driver's license, by, in other words, the accumulation of points. Also, as teens begin to get tickets, word spreads quickly that their driving behavior changes for the better. We happen to know that, with all of the secondary violations in our graduated licensing law, which ranks poor among all states, that they know they've got to be pulled over for something else before they can be cited for any of those violations. Therefore, it eliminates some behavior change in their [INAUDIBLE]. This measure is long overdue for this age group. This will make our roadways safer for them and all of us. Please adopt this policy, and I would suggest adding an emergency clause for the, for a good measure. I'll be happy to answer any questions.

**FRIESEN:** Thanks, Mr. Zwonechek. Any questions from the committee?

**FRED ZWONECHEK:** Thank you.

**FRIESEN:** Seeing none, thank you. Any other proponents? Seeing none, anyone wish to testify in opposition to LB40?

**SPIKE EICKHOLT:** Good afternoon, Chairman Friesen and members of the committee. My name is Spike Eickholt. First name is S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association, in opposition to the bill. Our position is similar to what it was with LB620, that bill that we heard earlier today. As I argued then, or at least tried to argue then, we already criminalize, in a variety of different offenses, distracted driving or bad driving. I gave some of the examples, and Senator Geist asked Sheriff Wagner about those. If a person's driving bad because they're distracted for any reason, it can be prosecuted and people can be stopped now. This would go further. In other words, this would allow someone who isn't even driving bad or poorly or recklessly or even negligently or even in a distracted manner, but if an officer believes or witnesses that person using a phone and, as I argued before in the other bill, even reading a message on a phone, it would allow that person to be stopped and cited. Part of this bill does what LB620 does before. And I think that Sheriff Wagner was right. If you look on pages, pages 8 and 9 of the bill, that is essentially LB620. But this also does provide for the primary offense for people who are driving on learner's permit and school permit. That's kind of another issue there because I'm not sure that an officer can just visually-- I, everyone looks young to me anymore, right? So I don't know how an officer is going to know if they see a young person driving, if that

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person's driving on a learner's permit or school permit. I don't think there's any other way the officer can do that until they identify who that person is. So then you've got another sort of issue, if you will, there where you're allowing people to be stopped just essentially on the officers-- admittedly perhaps-- good faith perception. So for the reasons I stated before, it's our position that we have the right balance now where, if a person is driving recklessly or distracted in any kind of manner, there's ample crimes for that, that if they are using a phone and the officer can observe that, the officer can cite for that as well. And we would urge the committee to not advance the bill.

**FRIESEN:** Thank you, Mr. Eickholt. Senator DeBoer.

**DeBOER:** Thank you for testifying today. Do you have any idea how often reckless or careless drivers-- we have the statute here, 60-6,212. Do you know how often that that is actually charged as a primary offense? Do you have any sense of it?

**SPIKE EICKHOLT:** Many times I've seen a citation that's with another one. It's speeding and careless driving, it's failure to yield and careless driving. You often see it as a secondary-- that's a bad use of the term. You often see it, and it's as a companion charge anyway, kind of what Sheriff Wagner said before, the way that things now, the officer has some discretion when he or she decides to cite somebody with something. And then, of course, a prosecutor has the discretion, as well, deciding what to charge with. So I see it regularly, either as a principal traffic citation or just as a companion citation. And many actual criminal cases where someone's stopped for some traffic infraction, and then they find the person's got a warrant, they find drugs in the car, I'll still see a notation that someone was cited for careless or reckless driving.

**DeBOER:** But you said-- I think I heard you say that it you've often, you've regularly seen it--

**SPIKE EICKHOLT:** Regularly seen it.

**DeBOER:** --as a sort of stand-alone. Is that true?

**SPIKE EICKHOLT:** Right, that's true.

**DeBOER:** OK. So it seems to me that-- I mean, how would you prove carelessly or without due caution unless there's a [INAUDIBLE], so

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that-- the statute says, "any person who drives any motor vehicle in this state carelessly or without due caution so as to endanger a person or property shall be guilty of careless driving." How would you show that--

**SPIKE EICKHOLT:** I mean it's always--

**DeBOER:** --without a--

**SPIKE EICKHOLT:** --fact intensive. And many times what you see-- if someone comes to me with this kind of charge, one of the things that I'm going to try to do is negotiate a different infraction, because I think it's got either a three- or maybe even a six-point assessment on your license. But for an example, say someone is driving, they hit the curb a couple of times, I'll try to negotiate for failure to stay in a lane which is another infraction but it's a lesser impact on them. So it's not uncommon, and many people can do that themselves-- reason with the prosecutor. Or sometimes the prosecutors can just charge at less than what was cited. And even going back further, sometimes the officer will just cite somebody for something less than that, because it does have a fairly significant impact, as far as your license.

**DeBOER:** So it's maybe not entirely accurate that this is an adequate substitution or a one-to-one substitution for making texting a primary offense.

**SPIKE EICKHOLT:** No, because if you make texting a primary offense, you don't have to have any kind of proof the person was driving bad; you are making a brand-new primary offense.

**DeBOER:** Yeah, I would like to address that. I mean it seems to me that you can be an excellent driver up until the second that you do something bad, which is the thing that causes you to get in a car accident.

**SPIKE EICKHOLT:** Right.

**DeBOER:** So you don't have to have a history of bad driving. You can be the best driver on the planet and then you do one bad thing, and that's the thing that gets you into the fatal car accident. So I'm not sure that, you know, having a history-- I guess that's not a question, that's more of a comment. So you can, you can drive perfectly until the second that you don't. So I don't know if, if the symptom-- bad driving--



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**SPIKE EICKHOLT:** Um-hum.

**DeBOER:** --is really equitable with the cause-- distractedness.

**SPIKE EICKHOLT:** That's true. And then there's another sort of level, lever, layer of distractedness. I mean you can be distracted for many other reasons: music-- have nothing to do with a phone-- eating, makeup, thinking about what happened at work, all those things.

**DeBOER:** Absolutely. You can be distracted for, for a number of reasons. I think this is just a policy question of how do we decide, you know, at what point we have a bigger issue involved than just an isolated case here or there.

**SPIKE EICKHOLT:** Right.

**DeBOER:** So I think that's probably the question that we have. Thank you.

**SPIKE EICKHOLT:** Thank you.

**FRIESEN:** Thank you, Senator DeBoer. Any other questions from the committee? Seeing none, thank you. Any other opponents, LB40? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Hilkemann. We do have letters from: Advocates for Highway and Auto Safety, American College of Surgeons-Nebraska Chapter, Kids and Cars Organization, Nebraska Cooperative Council, Nebraska State Board of Health, Nebraska Medical Association, Police Officers' Association of Nebraska, Nebraska Insurance Information Service. Senator Hilkemann, you wish to close?

**HILKEMANN:** Just a couple of comments in closing. Number one, we think the real difference here is that we specifically outline people who are having a learner's permit and a school, and a school permit. We believe that they need to come under this, and we certainly heard testimony to support that younger drivers need to-- so that, that's what, how this bill differentiates from one, from one that you heard earlier. The other thing I'd just like to point out is, is that we get talking about distracted driving. This whole bill is on using a what, hand-held higher-- or, or a hand-held wireless device; and let's not get those confused. And with that, I would end my testimony and answer any questions you may have.

**FRIESEN:** Thank you Senator Hilkemann. Senator Geist.

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**GEIST:** I have a question. Thank you, Chairman. And thank you for bringing this bill. I do think it's important. I, it's just-- and I think this was what I was trying to speak to in the previous hearing, was I think there's-- in the definitions in this bill, I think there's a, something that you're missing, and that is this talks about a hand-held wireless device. But many of our hands-free wireless devices will perform exactly the same function-- still maybe be distracting. So a teen or an adult could be using those and would slip through your hand-held wireless device and not be-- now I'm not an attorney, so I'm just saying that, as I read it, that's what I see. And I wonder if you would be interested in, in fixing that if, in fact, people who are much smarter than me agree that that's a--

**HILKEMANN:** And I'm sure that we've got people a lot smarter than me on that, too, Senator Geist. And I would be happy to work with that, to make-- have it so that we get, we get the legislation right.

**GEIST:** Yeah. I think it's important that if, if I can speak-to-text and that's on my hand-- it's on a hand-held device but it has a hands-free function-- you, or at least it needs to be clarified.

**HILKEMANN:** Right. I would be happy to work on clarification of that.

**FRIESEN:** Thank you, Senator Geist. Any other questions from the committee? Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Friesen. Senator Hilkemann, I'm not so sure that you were in when we were having this conversation on the previous bill. I think these are both very important bills, but to make certain that law enforcement has the tools they need to prosecute-- we were talking about a Fourth Amendment right, that they can't just take their phone from them-- you can certainly ask them: hey, were you texting, and they're not going to either admit it. It's kind of like: have you been drinking and driving-- well no, you know. But you get a test after that. But what do you get if, if you can't actually have-- if the law enforcement can't take your phone, we have to be able to have a records request, you know, so if they go before a judge they can say yes, he was pulled over at 3:30, and at 3:30 he had multiple texts from this time to this time, so he was obviously texting while he was driving. Would you be willing to work with law enforcement to make that a part of the bill, and a stronger part, so that we can, in fact--

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**HILKEMANN:** I sure would.

**ALBRECHT:** OK. I appreciate that; thank you.

**FRIESEN:** Thank you, Senator Albrecht. Any other questions from the committee? Seeing none, thank you, Senator Hilkemann. We'll close the hearing on LB40, and we will open the hearing on LB39.

**HILKEMANN:** Good afternoon, Chairman Friesen and members of the committee. I am Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n, and I represent Legislative District 4. I'm here to introduce LB39, which would accomplish two things: first it would change passenger restraint system enforcement from a secondary offense to a primary offense; and secondly, it would require the use of occupant protection systems for each vehicle occupant. When it comes to vehicle passenger safety, most people view the law as the minimum standard. They trust us, as lawmakers, to set the bar. Over the years, as technology has improved and as experts have continually studied crash data, we have taken that evidence and raised the bar to keep people safer. We have more than enough evidence that shows people are safer in a seat belt when riding in a vehicle. It's most important when it comes to keeping a person inside the vehicle during a crash. When a passenger is ejected from a vehicle, their chances of survival are significantly more reduced than if they remained in that vehicle. An unbelted rear seat passenger also becomes a danger to the driver when the body is propelled forward into the driver's seat or front of the vehicle. The first handout I have shared with you is from the National Highway Traffic Safety Administration. The mission of NHTSA is to save lives, prevent injuries, reduce vehicle-related crashes. From October 2017, the document uses crash data to show lives saved in 2016 by restraint use. In Nebraska, 26 lives would have been saved if the vehicle occupant would have been wearing a seat belt. The Nebraska Strategic Highway Safety Plan for 2017 states that the objective of the plan is to significantly reduce traffic deaths and serious injuries in the state. The first of the five critical emphasis areas, on which we'll concentrate their efforts, are based on crash data-- is increasing seat belt usage. The five-year average of seat belt usage in Nebraska is 81.4 percent. That's pretty good, but we can do better. In Iowa, where seat belt use is a primary offense, the five-year average is 92.6 percent. Nationally the average is 88.4. Only nine states enforce seat belt use in the front seat only as a secondary offense. Our state is lagging behind. Even with over 80 percent compliance, seven in ten vehicle occupants killed in crashes were not using seat belts. We

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require 18-year-olds to buckle up no matter their seating position in a vehicle. Then, when they are 19, the law says they can ride in the back seat and not wear a seat belt. I think that sends a very mixed message, and it's time to ensure all passengers in a vehicle are wearing a seat belt. I've shared with you an article from Sunday, May 6, 2018, a day when multiple-fatalities crashes occurred on I-80 near Seward. In the first crash, the driver of an eastbound 2010 Buick Lucerne was wearing a seat belt and, while injured, survived. The second vehicle was a westbound 2005 Chevy Equinox. The 20-year-old driver was the lone survivor in that vehicle. The front seat passenger was killed due to blunt force trauma caused by the collision. Both front passengers were wearing seat belts. The three other passengers were killed and ranged in age from 19 to 20. Investigators believe that all three passengers were not wearing seat belts and were ejected. This is just one tragedy, one example of what can happen when we say that it isn't important that rear seat passengers in a motor vehicle wear a seat belt. We need to change that. It is time for us to raise the bar again. As with LB40, opposition will state complications with enforcement. But I will remind you that many other states have primary seat belt enforcement, and it works; it's not impossible. And when it comes to the safety of our citizens, we need to make sure that is as important as the many other primary offense infractions currently in law, many of which will not impact someone's survival, when in a crash, like seat belts will. Thank you for your time and for giving this bill serious consideration. And I'm happy to answer questions you may have.

**FRIESEN:** Thank you, Senator Hilkemann. Any questions from the committee? Seeing none--

**HILKEMANN:** Thank you.

**FRIESEN:** Opponents who wish to testify in favor of LB39.

**ERIC KOEPPE:** Good afternoon again, Senator Friesen and members of the Transportation Committee. I'm Eric Koeppe, E-r-i-c K-o-e-p-p-e, president, CEO of the National Safety Council, Nebraska. Of course, I'm here to testify in favor of LB39. I'd like to say-- thank the senator for introducing this important legislation. I'm kind of-- I'm an accountant by trade so I just love numbers, so when I come up here I like to talk about numbers. So in 2017-- we'll do a little reset here-- Nebraska experienced about 35,000 crashes. And I have to applaud Fred Zwonechek here because I do a lot of this, too. We talk a lot about the 228 people killed in 2017, but I also like to bring up

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the fact that there were 17,691 individuals in Nebraska that were injured in car crashes. Over 17,000 of our residents, friends and neighbors of ours, were injured in car crashes. Again, it's the most dangerous thing we do every day. Seat-- Nebraska seat belt usage last year was 86 percent. That's below the national average of almost 90 percent. In addition, I think the senator mentioned that seat belts were not used-- were not used in 71 percent of the vehicle-occupant crashes, the fatalities-- seven out of ten fatalities where the seat belt was not used. Seat belt use is the single most effective driver and passenger behavior that reduces deaths in motor vehicle crashes. It's the single most important thing. Wearing a seat belt can reduce serious crash-related injuries and death by 50 percent. This bill will save lives and reduce injuries by requiring the seat belt use by all passengers in a motor vehicle and make that a primary enforce, enforcement. Again I will state that we do a lot of research, we do a lot of education. A lot of our organizations do the education but we also need the ability to enforce these laws, to have good law enforcement with this. So with that, I would encourage you to advance LB39 from committee and pass it. Thank you for your consideration. And if you have any questions, I would be happy to answer them.

**FRIESEN:** Thank you, Mr. Koeppe. Any questions from the committee?  
Seeing none--

**ERIC KOEPPE:** Thank you.

**FRIESEN:** --thank you.

**TERRY WAGNER:** I sound like a broken record here. Good afternoon, Senator Friesen, member of the Telecommunications and Transportation Committee. My name is Terry Wagner, T-e-r-r-y W-a-g-n-e-r. I'm the sheriff for Lancaster County, and today appear before you as an active member of the Nebraska Sheriffs' Association. On behalf of our association, I urge you to advance LB39 to the floor. LB39 is simply a bill that saves lives. Nebraskans are more likely to use their seat belts in their vehicle if they know that they could be pulled over and cited for that violation alone. Many testifiers for this bill will provide statistics for the percentage of Nebraskans that are currently wearing their seat belt and what that percentage are in other states where seat belt is a primary violation. There's also crash data available that verifies seat belt usage is the number one action a motorist can take to reduce their chances of serious injury or death from a motor vehicle crash. I just know, from my personal experience, there are many people who have been severely injured or killed in

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motor vehicle crashes that may have survived had they been properly restrained. Do seat belts prevent fatal injuries in all motor vehicle crashes? Absolutely not, but it improves one's chance of surviving in a crash. States that have seat belts, have seat belts as a primary violation generally see usage in the 90 percent range. States that have seat belts in a secondary violation generally are in the high-70s to mid-80s range, so that we could probably increase our seat belt use just by 10 percentage points if our seat belt law was a primary violation. Currently, seat belt violations can only be enforced if another violation is cited or charged. If a deputy pulls a vehicle over for speeding for what normally would be within the warning range, as I talked about earlier, but the motorist is not wearing their seat belt, the deputy cannot issue warnings for speeding and a citation for speed, seat belt violation. He or she would have to issue an official citation for the speeding and if there was to be any kind of enforcement action for the seat belt violation. Nebraskans know they should be wearing their seat belt. When a motorist sees a patrol car next to or close to them, or if they are getting pulled over, you'll see, you'll see the motorist very covertly reaching over and grabbing their seat belt and buckling up. If they're not, if not wearing a seat belt is a primary violation, the vast majorities of Nebraskans are going to wear their seat belt. I urge the committee to advance LB39 to the floor. Thank you, and I'd be glad to answer any questions the committee might have.

**FRIESEN:** Thank you, Sheriff Wagner. Any questions from the committee?

**TERRY WAGNER:** Thank you.

**FRIESEN:** And thank you.

**MARGARET "MAGGIE" HIGGINS:** Senator Friesen and members of this committee, thank you again for allowing me to, time to testify on LB39, a primary offense for seat belts' nonuse. And my name is Margaret Higgins, M-a-r-g-a-r-e-t-- Maggie, M-a-g-g-i-e Higgins, H-i-g-g-i-n-s. Again I'm repeating, but I served in government 25 years. I'm a former county treasurer and widow of a former Gage County deputy sheriff. I'm also a former state of Nebraska director of motor vehicles, serving under Kay Orr from 1987 to '91. And during the time as DMV director, I was appointed by Samuel K. Skinner, Secretary, Department of Transportation, under President George H.W. Bush, to the National Drivers' [SIC] Register Advisory Committee, addressing the issues of problem drivers. After that I entered the financial services business, and I've been a Nebraska licensed insurance agent, and I've

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been in that career 27 years. I tell you this to establish why, as a director of motor vehicle-- DMV-- appointed to a national committee and now a citizen traveling the highways and streets, I have major concerns with our Nebraska law that seat belt nonuse is a secondary offense. I mentioned my husband. He was a deputy sheriff, a deputy sheriff in Gage County for 18 years, back from 1969 to '87. And as you can imagine, over a time he was dispatched to several crash scenes. On a snowy, cold winter night like we've had, in the middle-- in the early '70s, he was called to a crash site. That night he arrived to find his best friend in the crash, who then died in his arms at the scene. A few years later, he was also called to another crash scene, and this time the injured parties were a father and an infant son. The child died in my husband's arms before being transferred to an emergency room. Back then vehicle safety wasn't what it is today, and seat belts were hardly, if ever, used. When you look at recent data for seat belt nonuse, yes it has improved over the years, but not to the degree that it needs to be. Some people will tell you they have the right to not wear a seat belt; it is their right to take the risk. Well, let's look at that, what their so-called right costs. And I've duplicated in, with each testimony the cost handout that I've supplied you, with an overview from the time a law enforcement or EMT appears on the scene, arrives at the scene, on through to the various possibilities of what that crash has caused, to even end of life-- all these things just because someone feels they have the right not to wear a seat belt. If these people do not have good health insurance plans, other insurance coverage, taxpayers will bear the costs through Medicaid. In this session, you are faced with finding millions of dollars that you will not have available in the state budget to offset taxes and the recently approved Medicaid expansion. The more people you have on Medicaid, the more taxpayer dollars you will need to find. My advice to you, respectfully, is to look at the source of what drives these costs. Type, tighten up the nonuse of seat belts to a primary offense is a good start. Please give this serious consideration and move LB39 out of Transportation Committee. And I thank you.

**FRIESEN:** Thank you, Ms. Higgins. Any questions from the committee? Seeing none, thank you for your testimony.

**MARGARET "MAGGIE" HIGGINS:** Yes.

**FRED ZWONECHEK:** Chairman Friesen and members of the committee, my name is Fred Zwonechek, F-r-e-d Z-w-o-n-e-c-h-e-k, recently retired after 37 years as Nebraska's Highway Safety administrator. If, as it was

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mentioned before, this is the most important behavior that drivers can do to avoid, prevent injury and fatalities. It's a simple action. It's a simple public policy, and it needs to be primary. In June of 2018, last year, a scientifically validated statewide seat belt use observation survey in Nebraska, results found that 86 percent of drivers and front seat passengers were obeying the current state seat belt law; however, at the same time, 74 percent of those killed in passenger vehicle crashes were not. Sadly, that remaining 14 percent that do not obey Nebraska's current seat belt law annually make up three-quarters, nearly three-quarters of our fatalities that, in cars, trucks, vans, and SUVs. For your information, for every 1 percent we increase seat belt use in Nebraska is 19,000 additional users every day. The use of a seat belt reduces the risk of fatality by about 50 percent in a serious crash and 70 percent if a rollover is involved. In Nebraska over 10 years, 39 percent of fatal crashes involved a vehicle rollover. A 2018 scientifically conducted survey, telephone survey of 900 Nebraska licensed drivers by Research Associates found that 58 percent supported increasing Nebraska's current law to a primary enforcement, allowing law enforcement officers to stop and issue a ticket for a seat belt violation only. The experience of states that have changed from a secondary to a primary has resulted in an initial increase in observed use rate from 5 to 7 percent. If that's the case, this would mean 95,000 to 128,000 additional Nebraskans buckling up every day. Estimates by the National Highway Traffic Safety Administration would suggest that that increase in use could save between six and seven lives annually. It would be reasonable to also expect to prevent nearly 100 permanently disabling injuries as well. Currently 34 states, the District of Columbia, and the U.S. Territories of Guam, Northern Marianas [SIC] Islands, Puerto Rico, and the Virgin Islands all have primary enforcement seat belt laws; and many of them have to, have had them for many years. Nebraska is one of 22 states with no rear seat belt requirement for all passengers. We have maximized our educational and messaging of getting everyone to wear seat belts, accompanied by continued enforcement efforts. There is no question that your support of this simple public policy action in LB39 will save lives and reduce injuries. Had the members of this committee-- I believe it was 2011-- allowed this policy to advance to the floor the last time it was introduced, there would be 70 families that would have not lost loved ones that didn't buckle up. Don't allow a repeat of this very costly mistake. Thank you. You have any question?



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**FRIESEN:** Thank you, Mr. Zwonechek. Any questions from the committee? Seeing none, thank you for your testimony.

**FRED ZWONECHEK:** Thank you.

**LAURIE KLOSTERBOER:** Chairman Friesen and members of the Transportation and Telecommunications Committee, my name is Laurie Klosterboer-- Laurie, L-a-u-r-i-e Klosterboer, K-l-o-s-t-e-r-b-o-e-r. I am the executive director for the Nebraska Safety Council, a nonprofit organization. Seat belts are the oldest form of occupant protection, with Volvo patenting the first rudimentary seat belt in 1889. Beginning in 1968, the federal government required seat belts to be installed in all new passenger cars. All these years have provided much research on the effectiveness and value of being buckled up in our vehicles at all times and in all seating positions. This is what we know from research. Seat belts are effective. Unbelted occupants pose a risk to other people in the vehicle. Seat belt laws reduce injuries and fatalities. Primary laws have the greater effect. The effect of primary versus secondary loss on fatalities is estimated at 3 to 14 percent. Medical costs are less for belted occupants versus unbelted occupants in vehicle crashes. And traffic crashes don't discriminate. It doesn't matter your gender, age, religion, or race. Racial profiling has been one of the concerns expressed about moving from secondary to primary enforcement. Other states that have moved from secondary to primary have discussed and debated this same concern. We would propose incorporating language in this bill similar to other states to collect data on stops and study if differential enforcement involving minority groups is occurring. I would subscribe that not passing a law that we know will save lives and decrease injuries, because we are trying not to perpetuate racial profiling, is not getting to the root cause of that issue. Racial profiling is a civil rights issue, not a traffic safety issue. Respectfully, we ask that the Transportation and Telecommunications Committee move LB39 out of committee and to the floor. And in my earlier testimony, I had provided you with a folder that has information and, specifically on the issue of the minority ticketing, I have included information about the relationship of primary seat belt laws to minority ticketing; and this has come from the National Highway Traffic Safety Administration. Lastly, I would just say that I think secondary laws send the message to the citizens in our state that it's not an important law. And I would ask you to please move this out of committee. Thank you, and I would be happy to answer any questions.

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**FRIESEN:** Thank you, Ms. Klosterboer. Any questions from the committee? Seeing none, thank you--

**Laurie Klosterboer:** Thank you.

**FRIESEN:** --for your testimony.

**ROSE WHITE:** Senators, thank you. Chairman, thank you. My name is Rose White. R-o-s-e W-h-i-t-e, and I'm with AAA, the Auto Club Group, who strongly supports the advancement of this legislative bill. Now the handouts that you're receiving right now basically lists all the states in the U.S. and where they stand on their safety belt laws. In the first group, you should see 22 states that have primary enforcement for front and rear seat passengers. In the second group, you have 17 states that have primary enforcement for front seat passengers. The third group is states with secondary enforcement for front and rear seat passengers. And sadly, Nebraska falls in the fourth group where it's a state with a secondary enforcement for front seat passengers only. This legislative bill will change that. That will put us into that top category where we can provide the maximum safety benefits for our state safety belt law. And I do want to mention that one of the other side issues that we've seen with restraint use, is that among children, often depend upon the driver's safety belt habits. And studies show that almost 40 percent of the children riding with an unbelted adult were themselves riding unrestrained without the protection of a safety belt or a safety seat. Nebraska's child restraint law is primary for those seven and under but, for children eight years of age and older, the law is secondary enforcement. Even for our inexperienced young novice drivers, teens with a school permit, learner's permit, or provisional operator's permit, Nebraska's lifesaving law is weak, as a secondary measure. We need to change this. We also need to address the important issue of rear seat passengers, as this bill does. And all of you should have received an e-mail communication from me that had a short video link that was only about two minutes long, but it shows what happens to a front seat passenger when a rear seat passenger is unbelted in a 35 mile-per-hour crash. In those types of incidences, it's not the crash that kills the driver. It is the back seat passenger who is unrestrained with their body's force being forced into that person who's then pushed into the steering wheel. And so these are the types of things that this law will help to prevent if you move it forward. I also want to let you know that, if we looked at Nebraska's fatalities and our percentage of usage of safety belts, and if we go back to when

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we first initiated a law, back at that time we were seeing fatalities, you know, in the 1970s-- 450 fatalities a year here in Nebraska, you know, over 400. So you see this very high level and then you see us pass a safety belt law. And what you see then, looking at this page, is a big giant X where you see the fatality rates drop and the usage rate climb, and so-- and that's a type of positive impact our safety belt law, even being secondary enforcement, has had in Nebraska. We are very proud to say that we have 86 percent of our Nebraskans buckling up on a regular basis, but that clearly still is not enough when you look at over 70 percent of the fatalities are unrestrained. We know this law can save lives. The people in this room today, some of them I've had the pleasure to work with for more than four decades on highway safety issues. And so we've studied the items, we've researched the data. And I can tell you, as far as my personal viewpoint, that nothing has had a greater impact on saving lives in Nebraska than our safety belt law. But we also know that comparing it to what other laws are out there, we're still weak; and we can do better. I would love to see you advance this bill so that it becomes law and that we can work together in saving lives. Thank you.

**FRIESEN:** Thank you, Ms. White. Any questions from the committee?

**ROSE WHITE:** OK.

**FRIESEN:** Seeing none, thank you.

**ROSE WHITE:** Thank you, Senator Friesen.

**FRIESEN:** Any other proponents for LB39? Seeing none, anyone wish to testify in opposition to LB39?

**SPIKE EICKHOLT:** Good afternoon, Chairman Friesen and members of the committee. My name is Spike Eickholt, S-p-i-k-e; last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association, opposed to the bill. The portion of the bill that we're opposed to is the change in the law that would make not wearing a seat belt a primary offense and allowing for a person to be stopped just for that reason alone. So some of the arguments that I had before apply here, in the sense that our association believes that your right to sort of be left alone ought to mean something when you're in a vehicle. This is a little different than maybe texting while driving and those other bills because, in this instance, the only person who's at risk is the person who chooses not to wear a seat belt. We already have protections for primary offense, for, for

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children not wearing seat belts and that sort of thing. And however poor of a choice that might be, that is a choice that people can make. Senator Cavanaugh asked on a couple of the earlier bills, and one of the testifiers said before: well, don't worry about racial profiling because that's a civil rights issue. But I'd argue you really can't separate those two. The courts have been clear in this state that any traffic violation, any primary offense, no matter how minor it might be, is probable cause to stop a motor vehicle-- stop a person driving a car. They said that consistently again and again. Every year the Crime Commission compiles profiling data and, consistently, law enforcement stops people of color more, and they stop them for traffic infractions. Creating another primary offense, I would submit, is just going to continue that trend. So I don't think you can separate it and say, well, that's a civil rights issue but still let's just let people be stopped. And I'm not saying that's Senator Hilkemann's motivation for it at all. I understand the safety issue and that's not what I'm saying. But I don't think you can separate those two. That has a consequence of broadening state's authority and law enforcement's power to stop people when they're on the road. The other part of the bill that would provide for the-- way I read it, I think, on pages, on page 2, lines 19 through 20-- I think what that would mean, if you didn't do the other part, it would allow for a secondary offense for anyone in the vehicle to be cited if they weren't wearing a seat belt. We don't take a position on that part. Our position, and our position of opposition, is only to the elevation of this as a primary offense. I urge the committee not to advance the bill.

**FRIESEN:** Thank you, Mr. Eickholt. Senator DeBoer.

**DeBOER:** Can you talk to me for a second about how, legally, it works to charge some, a driver for the behavior of people in other parts of the car? So it seems to me that you could be driving a car in the front seat, and someone could take their seat belt off. And the most reasonable thing to do would be to continue driving and not pull off the interstate or something like that. You can try and say, put your seat belt back on but--

**SPIKE EICKHOLT:** Um-hum.

**DeBOER:** I don't know how you would--

**SPIKE EICKHOLT:** Yeah, it's different, and I don't know if there's any cases that really talk about that. You know, I've known of instances where people have thrown things out of the vehicle-- passengers have--

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and they've stopped a vehicle for that. But I don't think you can hold somebody criminally. Even though it's a traffic infraction, it's still a minor crime. I don't know if you can hold a driver criminally liable for something a passenger does in the vehicle unless you already have an affirmative duty for that passenger, as in if it's a child or something like that.

**DeBOER:** Yeah.

**SPIKE EICKHOLT:** And that is tricky. I guess I hadn't thought about that component of it, but that's a good point.

**DeBOER:** All right; thank you.

**SPIKE EICKHOLT:** And many times, you know, it's just kind of [INAUDIBLE]. I don't know how you'd-- if you have that duty, how are you going to make-- do you have to look back every couple of minutes to make sure?

**DeBOER:** I don't know. It's-- that's the question that I have. I mean I want people to wear seat belts, and this was new information to me today. I think maybe you and I before hadn't heard this, and so your testimony didn't reflect what we've heard today about someone in the back seat can actually injure someone else in the front seat. And that was, that was new information for me. I'm glad to, to those who brought that to my attention. But the part where I get caught up is, is how to police those in your car in a way that puts the liability on you, as the-- I mean, so this is a strict liability crime, but then it's strict liability for what other people are doing. So I just-- I didn't know how that works.

**SPIKE EICKHOLT:** Yeah.

**DeBOER:** All right. Thank you.

**SPIKE EICKHOLT:** Thank you.

**FRIESEN:** Thank you, Senator DeBoer. Any other questions from the committee? So if a person in the rear seat would not be wearing a seat belt, but everyone else in the car was wearing their seat belt, who gets the ticket?

**SPIKE EICKHOLT:** I'm not certain of that now because, if the person in the rear seat is not wearing a seat belt, it's not necessarily a crime; it's not an infraction. One thing, if you make that a primary

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offense, as the bill does, that means the driver can be pulled over. That's the first thing, let alone who's going to get cited for it. You're already sort of stopped and, arguably, that can be kind of an inconvenience, especially if everyone's an adult in the car. And perhaps that's-- and maybe that's the intent of the bill, to [INAUDIBLE] put that duty on somebody who's driving a vehicle. You have some responsibility for everyone in the car, and perhaps [INAUDIBLE]. But then you're talking about who gets the citation for it.

**FRIESEN:** 'Cause that's-- I mean if you're making this a primary offense, and so it's very difficult to see a person in the rear seat. It's hard enough to see in the front seat to make sure that they don't have their belt on. So I mean it's easy to meet someone and say: ah, I didn't think he had his seat belt on. I'll quickly go pull him over-- primary offense, we can write him a ticket. You get up there, he's buckled his seat belt. The guy in the back is the one that didn't buckle up, yet you have a primary offense. Somebody's going to get a ticket.

**SPIKE EICKHOLT:** Yeah. Maybe you need to delineate in the law that that could be something that the passenger could be cited for, which is kind of odd 'cause they're not even driving a motor vehicle. And it's got a point-- maybe it's got a point consequence. I'm not sure. It's sort of an odd dilemma.

**FRIESEN:** Thank you. Senator Bostelman.

**BOSTELMAN:** Senator Friesen, Senator-- thank you, Chairman Friesen. Thank you. I don't remember, did we-- do not have in a statute if it's 18 years or younger, you have to be belted, no matter what?

**SPIKE EICKHOLT:** I think it's 18. I think it was raised to 18 a couple of years ago.

**BOSTELMAN:** We're just, we're just-- this [INAUDIBLE] talking about adults now, and--

**SPIKE EICKHOLT:** That's right.

**BOSTELMAN:** --then going back to the question that's just been here is that we're having an adult that chooses not to put a seat belt on, and now the driver of the vehicle is going to be--

**SPIKE EICKHOLT:** Stopped?

**BOSTELMAN:** --receiving the citation for that adult, that may or-- that's not wearing a seat belt.

**SPIKE EICKHOLT:** That's right.

**BOSTELMAN:** And-- but would that fall under a similar area, say, if there's a open container in a vehicle? So I'm in the back seat and I've got an open container. I get-- Senator Albrecht gets pulled over for going too fast. Well then, she would then get the-- would she then get the-- a citation for my open container? Or how does that work?

**SPIKE EICKHOLT:** You have to show who is possessing that open container. And if no one's actually holding it, Senator Albrecht's not holding it but it's the nearest to her, then she'd probably be cited for it. She could argue that it was actually you who put it back there and you can just quibble over that and that does happen. This is a little different because there's a seat belt per person. And if-- you know it's, it's "problemsome" 'cause if the driver-- if everyone's an adult, like you know, somebody directly behind you-- you can't always know whether they have their seat belt on. And maybe that's the intent of the bill, to make sure that the driver has that duty.

**BOSTELMAN:** OK, thank you.

**SPIKE EICKHOLT:** But that's another issue.

**BOSTELMAN:** All right, thank you.

**FRIESEN:** Thank you, Senator Bostelman. Any other questions from the committee?

**SPIKE EICKHOLT:** Thank you.

**FRIESEN:** Seeing none, thank you. Any other opponents? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Hilkeemann? We do have letters of support from: the Advocates for Highway and Auto Safety; American College of Surgeon [SIC], Nebraska Chapter; kidscars.org [SIC]; Brain Injury Alliance, Nebraska; Kevin L. Stukenholtz, Saunders County Sheriff; Maggie Higgins; Scotts Bluff County Sheriff's Office; National Safety Council; Nebraska State Board of Health; Nebraska Medical Association; Nebraska Brain Injury

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Advisory Council; Nebraska Nurses Association; Police Officers' Association of Nebraska; Nebraska Insurance Information Service.

**HILKEMANN:** Thank you, Senator Friesen. I'll just close with a couple of comments here. First of all, I want to make sure that we realize that there's two faces of this bill. Not only are we making a primary offense, but we're also making it mandatory for people in the rear seat, which we don't have at the present time. I'd really like to thank Rose for coming here and testifying today and, if you have not seen the video, it is really-- take, take moments-- she'll probably-- I'll ask Rose to send it to all of you members so that you can see it again. Take a look at that, what it makes a difference for that rear passenger, what it does to the driver in the front seat. As far as who is responsible, the track-- that is the law now, that you need to wear a seat belt, and it, and the driver is responsible. I'm a pilot of an airplane. When I, when I-- one of my deals is that everybody in that plane has to be buckled in. When you ride in my car or my wife is driving in a car, you make darn sure that everybody is buckled in. That's where that, that's, that's one of the, that's one of the responsibilities we have as a driver of the vehicle. And so I, that, that's how I would answer that question. And I would certainly work with-- we need to have special language to ensure that, but that's-- when you have-- as we've talked about, it's a dangerous place. Let's make it as safe as we possibly can, 'cause every one of us are out there every day driving our vehicles. We have a great deal of trust in the people around us. Let's do it as safely as we possibly can in this society. I'll answer any other questions that you may have.

**FRIESEN:** Thank you, Senator Hilkemann. Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Friesen. Senator Hilkemann, I noticed in here we leave the fine at \$25. Have you looked at what happens if we increase it to \$200--

**HILKEMANN:** I have not.

**BOSTELMAN:** --and if that has an effect? Just curious.

**HILKEMANN:** Yeah.

**BOSTELMAN:** Thank you.

**HILKEMANN:** I have not looked at that.



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**FRIESEN:** Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, thank you, Senator Hilkemann. That will close the hearing on LB39. And we will open the hearing on LB634.

**HILKEMANN:** Good afternoon again, Senator Friesen and members of the committee. I am still Robert Hilkemann, R-o-b-e-r-t H-i-l-k-e-m-a-n-n, and I still represent District 4 in west Omaha. I am introducing, for your consideration, LB634, which is a bill similar to those I have introduced in the past which would have required seat belts in school buses, but with some important changes. LB634 would require any vehicle used by, or on behalf of, a school district or educational service unit for the transportation of students, to be equipped with a three-point safety belt system. Vehicles are exempted from this requirement: if purchased prior to the effective date of the act by the school district or the educational service unit using the vehicle for transportation of students; if such a vehicle used by or on behalf of the school district or an educational service unit for the transportation of students pursuant to a contract entered into prior to the effective date of the act; or if prior to the purchase of or contract for the use of such a vehicle, a determination is agreed upon by a majority vote, in an open public session of the school board or the board of the educational service unit, that there is no capacity in the school district or educational service unit budget, for such budget year, to accommodate the additional cost. This is an issue that I am passionate about, and it is also an issue that continues to evolve at the federal level. The National Transportation Safety Board issued safety recommendation H-18-010 to Nebraska on June 21, 2018, as a result of their special investigation report concerning school bus transportation. The recommendation states, "Enact legislation to require that all new large school buses be equipped with passenger lap/shoulder belts for all passenger seating positions in accordance with Federal Motor Vehicle Safety Standard 222." I have shared a letter with you, addressed to Governor Ricketts from the chairman of the NTSB, dated October 22, 2018. The letter is a response to the Governor's letter informing the NTSB of pending legislation to comply with the recommendation. In an attempt to make the transition to compliance easier for our school boards and ESU boards, I discovered less, legislation enacted in Texas that has a similar pro, provision to what you will now see in LB634, which allows for the board to opt out of the purchase requirement due to financial constraints. The facts about school bus transportation safety are clear, and the leaders in developing those policies are speaking in a unified voice about seat belts on school buses at last. At the end of 2015, a major

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change occurred within the National Highway Transportation Safety Administration. The NHTSA is the national agency which is comprised of experts whose purpose is to determine the policies that need to be enacted relative to school buses, to ensure that they are as safe as possible. On November 8, 2015, Dr. Mark Rosekind, the administrator for the agency at that time, gave a groundbreaking speech which signaled a changing position in regard to the use of seat belts in school buses. Rosekind stated, and I quote, "-- there is one issue that carries elevated significance in the minds of the media, policymakers, and the families we all serve. And that is the issue of seat belts on school buses. It is not new. The data and the arguments have not changed, but my message to you today is that we don't really need to change the data and arguments. What has to change is all of us. As NHTSA's administrator, my primary role is as the leader of our agency. NHTSA has not always spoken with a clear voice on the issue of seat belts on school buses." So let me be-- "let me clear up any ambiguity now: The position of the National Highway Traffic Safety Administration is that seat belts save lives. That is true whether in a passenger car or in a big yellow bus. And saving lives is what we are about. So NHTSA's policy is that every child on every school bus should have a three-point seat belt." End of the quotes. Throughout his speech, Dr. Rosekind mentioned that seat belts are icons of safety, and that every child on a bus seat without a seat belt means more risk of serious injury to precious cargo. He stressed everyone-- NHTSA, state policymakers, local school district, manufacturers-- everyone with a stake in this needs to step up. The NHTSA led on the issue in 2015; the NTSB has followed up. It's time for us to take the next step forward so that our districts can begin to prepare for when it's time to purchase a new bus or enter into a new contract. I've introduced this bill again because it isn't a matter of if there'll be another fatal school bus crash in Nebraska, but when. I don't want to read about another school bus tragedy without being able to say I did all I could. Dr. Rosekind posed two very important questions in his remarks on that November day. How could we not want every child who rides a school bus to have the protection of a three-point belt? How can we not work to remove every barrier to that basic safety protection? Thank you for your time and consideration of LB634.

**FRIESEN:** Thank you, Senator Hilkekmann. Any questions from the committee? Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Friesen. Senator Hilkekmann, thank you for bringing this bill. I just have a couple of questions. You, you

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had just mentioned the state of Texas. Are there any other states that are currently having this in law, that, that school buses must have seat belts?

**HILKEMANN:** Yes, we have a number of states that have requirements of seat belts.

**ALBRECHT:** There are?

**HILKEMANN:** And I, I--

**ALBRECHT:** I'd like--

**HILKEMANN:** Senator, I can get you the exact number.

**ALBRECHT:** --to find out how they--

**HILKEMANN:** I do know that, on a nation, more kids ride to schools in school buses with seat belts than do not.

**ALBRECHT:** Oh, I, I hear what you're saying. How much would the cost be just to put seat belts in an existing vehicle or a brand new one? Any idea?

**HILKEMANN:** Now where-- the cost to retrofit a bus is higher than if you buy the school bus new with it.

**ALBRECHT:** With them, with them on them.

**HILKEMANN:** And we are-- that specifically I'm not asking for retrofitting of school buses.

**ALBRECHT:** To correct them.

**HILKEMANN:** The additional cost to a school bus when you buy it, if you have it equipped with three-point seat belts, is approximately \$10,000 more.

**ALBRECHT:** OK, thank you.

**FRIESEN:** Thank you, Senator Albrecht. Any other questions? Senator Bostelman.

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**BOSTELMAN:** Thank you, Chairman Friesen. Thank you, Senator, Senator Hilkemann. Question on school buses-- charter buses. How does that affect those? So some schools have the yellow school bus.

**HILKEMANN:** Right.

**BOSTELMAN:** And some have-- I call them charter buses, something, you know, the ones that, you know, they've got the high-back seats. Then what--

**HILKEMANN:** Like Arrow Stage Line or something like that? Those already have seat belts on them.

**BOSTELMAN:** Have the three-point on them already?

**HILKEMANN:** Right.

**BOSTELMAN:** Okay. The other question I have is on page 2, lines 24 and 25. There it just talks about liability. How have you seen this affect, or not-- if you've seen it, read anything about other schools, other states where school districts have opt out? Has that been, has that, has that been an issue or not? And not that liability, feigning liability at all-- that's not my point. It's just that--this has caused, perhaps, some school districts to be sued in an area where, perhaps, they shouldn't, because they didn't buy a bus with three-point?

**HILKEMANN:** Senator, I've not done extensive study into that issue. I would be happy to provide that information for you. Certainly when you have these accidents, it doesn't make any difference; there will be lawsuits that follow.

**BOSTELMAN:** I understand completely. Yeah. All right, thank you.

**FRIESEN:** Thank you, Senator Bostelman. Any other questions from the committee? So if, if a school board-- the way it looks here, if, if they don't feel they have the resources, they can vote to opt out.

**HILKEMANN:** That's after they have a public hearing.

**FRIESEN:** So is there any liability upon that decision if somebody finds out they did have the resources or could have worked it under their budget because, with our lids in our system, sometimes that-- is

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that a, is that statutory that they cannot have the resources or if they don't feel they have the resources?

**HILKEMANN:** I think that if they have the testimony or they've had the hearing, and that the school board still feels that they didn't have the resources to it, that they'll have to comply with the school board. I think that they would-- I don't, I don't-- and specifically, whether that's going to make that school board liable, I don't know: I don't know school law that way.

**FRIESEN:** That was just one of the questions.

**HILKEMANN:** I'm just a little old, lowly podiatrist.

**FRIESEN:** So then the driver of the bus, I take it, has to make sure that every student is buckled in. You can have the seat belts but, if the kids don't have them on, is the driver then liable for that kid not wearing a seat belt?

**HILKEMANN:** Well, I've been asked that question before. I think you can make these available and I don't think it's-- school bus driver's going to-- if that, it's the child's responsibility, also, that they have to be instructed to wear it-- put their seat belt on. But we're not-- I don't think we can make the school bus driver liable that a child back in the rear seat took his seat belt off. I don't think that that's--

**FRIESEN:** Thank you. Any other questions? Senator DeBoer.

**DeBOER:** I just have a quick question. You probably said this, but I was thinking about several things. What, what does it cost to outfit a school bus with these things?

**HILKEMANN:** It's about \$10,000 to-- for a new-- when you buy a new bus, you, it, that's approximately \$100,000 for a new school bus. I'm told that for you, when you equip it with three-point safety belts, it adds today that's about \$10,000 to the cost of a new school bus.

**DeBOER:** OK, thank you.

**FRIESEN:** Thank you, Senator DeBoer. Seeing no other questions, thank you, Senator Hilkemann. Proponents who wish to testify in favor of LB634?

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**DAWN PRESCOTT:** My name is Dawn Prescott, D-a-w-n P-r-e-s-c-o-t-t. Thank you for allowing me to speak to you today. I had previously introduced myself, a few years ago, to a couple of you: Senator Bostelman, Senator Geist, Senator Friesen. I also have been in communication with all of you on this committee, so you may recall an e-mail from me regarding my story. As a classroom teacher for 24 years, I care deeply about kids. I'm also a mother. I'm also a school bus crash survivor, so I speak from firsthand experience. My husband and I lost our 14-year-old son Benjamin in a school bus accident in October, 2001. Senator DeBoer recently stated: There are only a certain number of times you can say somebody ought to do something about that before you say, wait, maybe I should do something about that. As a parent who takes responsibility of keeping children, children safe very seriously, I have been tirelessly trying to do something about this. I've been advocating for this law for 16 years. I have testified here in this place too many times. So again, I'm compelled to speak on my son's behalf and on behalf of all children in our state who trust us, as adults, to keep them secure and safe. On a sunny fall Saturday in 2001, I climbed aboard a school bus with Ben. I was a parent chaperone for his high school band, travelling for a marching competition in Omaha. Little did I know I would never again look into his smiling eyes, hear his voice, or be able to hold him close. That afternoon, as we headed home, the school bus we were riding in careened off a bridge and plunged 60 feet into a creek bed. It's difficult to put into words, but one thing is sure. I survived because I subconsciously reached up and grabbed the overhead luggage rack as the bus plummeted off the bridge. I remained conscious through the accident because I clung to that luggage rack. After the impact, all I could think about was getting to my son at the front of the bus. My seatmate and friend, another band mom, lay in the aisle, dead. Students were lying everywhere, having been tossed violently inside the bus when it landed-- bodies impact, impacted bodies-- and lay in tangled heaps in the aisles and on the side of the bus, which was now the floor. I climbed over other students desperately crying for help, other people's children who were struggling to breathe and screaming to get free. When I got to Benjamin, he was motionless, his body lying on top of his friend. As I climbed out of the bus behind rescuers carrying my son, their attempts at CPR failed. My son was gone. The bus driver that day was the only person on the bus with the option to buckle up. While unbelted passengers continued moving after the crash, only stopping upon their impact with a seat, the bus's interior, the ceiling, or another body, the bus driver remained secure. While others were flying like human pinballs, the driver stayed belted. He is alive

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today with a wife and children. Our children need and desire consistency as they grow up, especially when forming healthy habits. We send an inconsistent message to our children when law requires us to make sure they wear seat belts in the car and even on an airplane, but we put them on a school bus with no safety belts. As parents, we have a responsibility to ensure that our children are placed in the safest environments possible. You'll undoubtedly hear arguments that urge you not to act on this bill, but I challenge you to think about the motivation for such oppositional testimony. Ask yourself: Why would anyone be against a bill that protects children and keeps them safe? Opponents of lap and shoulder belts like to ask these hypothetical, hypothetical questions. What if a school bus gets stuck on railroad tracks or lands in the river? How can the bus driver be sure all the children can get out of their seat belts? It is already law that all small school buses must be equipped with lap and shoulder belts, most often transporting preschool children and students with special needs. If any child might have trouble getting out of a seat belt, wouldn't it be a preschooler or a mentally challenged student? A conscious child who is securely belted has much better odds to survive an accident. Lap and shoulder belt technology is state-of-the-art, affordable, and readily available and, with recent innovations, doesn't even decrease bus capacity. It's not a matter of if another school bus accident occurs, but when. The NTSB weighed in on this issue in May of 2018, after being called to investigate increasingly frequent and deadly school bus accidents nationwide. This federal transportation safety agency has now publicly voiced their strong recommendation that states pass laws requiring lap and shoulder belts on all school buses. When the NTSB takes such a strong public stance on students' transportation safety, it is incumbent on us to follow their lead. Here are my personal thoughts on the risks this committee takes if this bill does not advance and become state law. There were multiple, substantial financial settlements levied against the construction firm found liable for improper construction zone design following the NTSB's review of the Seward accident in which Benjamin died. It would be my guess that failure to implement appropriate legislation concerning seat belts on school buses will expose Nebraska school districts to expanded financial liability in the event of a preventable injury, now that the NTSB has publicly announced their seat belt recommendations for school buses nationwide. I leave it to your committee to carefully and thoughtfully assess the risks you will be taking by failing to implement this legislation. We owe it to our children to make their transportation as safe as possible. My husband and I will forever live with the memory of losing our son while riding

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on a school bus without seat belts. We made that mistake once, and our vibrant and precious son's life was lost forever. This bill aims to ensure that school boards make transparent decisions about school bus safety so parents and students know where board members stand. It is my hope that, when decisions are made, school boards will listen to the federal experts and vote for student safety. Please vote to advance this bill, LB634, to the General File immediately. Our students and our children are watching us.

**FRIESEN:** Thank you, Ms. Prescott. Any questions from the committee? Senator DeBoer.

**DeBOER:** This isn't a question. I just want to say thank you for your testimony, and thank you for doing something.

**DAWN PRESCOTT:** Thank you.

**FRIESEN:** Seeing no other questions, thank you for your testimony. Would you take your picture, please?

**DAWN PRESCOTT:** Pardon?

\_\_\_\_\_ : The picture.

**FRIESEN:** Picture.

**DAWN PRESCOTT:** Oh, yep.

**MARGARET "MAGGIE" HIGGINS:** Senator Friesen and members of this committee, I thank you for allowing me to testify on BL-- on, testify on LB634 for safety belts on school vehicles. Again I will repeat what I served: you know, in government 25 years; former director of motor-- or former Gage County Treasurer; I'm a former state of Nebraska director of motor vehicles-- served under Kay Orr from 1987 to '91-- and during the time a DMV director appointed by Samuel Skinner, Secretary, Department of Transportation under President George H.W. Bush, to the National Drivers' [SIC] Register Advisory Committee, addressing the issues of problem drivers. After leaving government, I've entered the financial services business, and I'm a Nebraska licensed insurance agent. I've been in the career for 27 years. I will make this short. I wish to go on record in support of LB634. It's time to focus on protecting our children and the staff that are passengers in the vehicles that transport them to classes and activities. I'm asking you to forward LB634 out of committee and pass it into law this session. I will add one thing. As I was sitting here and listening



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about cost-- it always comes up and it's a fact-- we haven't talked about any fines in this legislation. But fines and licenses goes back to schools. I'll just add that as a reminder for you folks. So I'm asking you to forward this bill on out of committee and pass it into law this session. Thank you.

**FRIESEN:** Thank you, Ms. Higgins. Could you say and spell your first name for the record?

**MARGARET "MAGGIE" HIGGINS:** I'm sorry. Margaret, M-a-r-g-a-r-e-t; and I go by Maggie, M-a-g-g-i-e, last name Higgins, H-i-g-g-i-n-s. And I thank you all this day. You've been very patient with all of us.

**FRIESEN:** Any questions from the committee?

**MARGARET "MAGGIE" HIGGINS:** Thank you.

**FRIESEN:** Seeing none, thank you for your testimony.

**TRAVIS HEDLUND:** Hello, senators. Thank you for this opportunity. My name is Travis Hedlund; that's T-r-a-v-i-s H-e-d-l-u-n-d, and I work for Children's Hospital and Medical Center as the injury prevention coordinator. I also serve as the coordinator for Safe Kids Douglas County. I have several years of public health experience, and I'm involved with multiple injury prevention issues, child passenger safety being one of the main concerns of mine. I want to speak to you today about the ways that the passage of LB634 could improve the safety of our school-age children. The current method of occupant protection in school buses is called compartmentalization. This consists of using closely spaced, energy-absorbing high-back seats to form a compartment around the occupant that disperses crash forces throughout the entire body, as opposed to solely the head and neck. This allows them to ride down a collision gradually. This safety feature has made school buses the safest way to transport children to and from school. According to the National Highway Traffic Safety Administration, or NHTSA for short, students are 70 times more likely to get to school safely when taking a school bus instead of traveling by car. However, a closer look at the numbers reveals a glaring issue in the safety net that we have developed for school buses. According to the National Transportation Safety Board, between the years of 1985 and 2016, there were 3,492 school bus crashes in the United States, resulting in 352 occupant deaths. Even though rollovers accounted for only 3 percent of school bus crashes during this time, they accounted for 35 percent of all the deaths. This disproportionate number of

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deaths underlines the fact that the compartmentalization approach is simply not designed to handle these types of crashes. Compartmentalization is designed to handle rear and forward facing crashes, but precrash maneuvers like swerving, side impact crashes, and rollovers leave occupants dangerously unprotected, as they are likely to throw students out of their seats, rendering compartmentalization useless. To underline this point, according to NHTSA, of the fatal school bus crashes from 2007 to 2016, more than 50 percent were not frontal crashes for which compartmentalization was designed. Furthermore, NHTSA points out that the lap and shoulder belts may reduce rollover fatalities by 74 percent. Investigations, conducted by the National Transportation Safety Board, of school bus crashes, have come to the conclusion that lap and shoulder belts enhance compartmentalization by keeping occupants in the seating compartment before, during, and after a crash. In other words, compartmentalization does work, but only if seat belts keep children where they are supposed to be-- in the seat. This law has the potential to greatly decrease the amount of nonfatal injuries suffered by school bus occupants, as well. Without a proper restraint, a sudden brake, swerve, or even a pothole can cause a child to fall out of their seat and sustain minor injuries, like bruises and lacerations, to severe injuries, like femur and pelvic fractures. It is unquestionable that a seat belt, worn appropriately, will keep children in their seats and decrease their risk of sustaining an injury. This assertion is, again, backed up by NHTSA and the National Transportation Safety Board. Seat belts on school buses can also have an indirect impact on occupant safety. The National Transportation Safety Board solicited input from school districts in several states, all of which have up, school buses equipped with lap and shoulder belts. These districts have reported that the seat belts have improved student behavior as students are less likely to move around the bus and get up from their seats. A school district in Indiana even reported that discipline issues were down as much as 90 to 95 percent. They also reported that drivers who were initially hesitant to have lap and shoulder belts on their buses had started asking for seat belts when they heard about the drop in discipline issues on other buses with belts. The districts also reported that driver distraction was also reduced when buses were fitted with seat belts. This makes a lot of sense to anyone who has driven with children in their car, as a properly and safely restrained child allows the driver to keep their focus on the road. Distracted driving causes thousands of fatalities and hundreds of thousands of injuries in the U.S. each year. And we, at Children's, see our share of distracted driving victims. If this

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law reduces bus driver distraction, as the data suggests, we would do well to pass it. Seat belts have been mandatory in cars since 1968. They have been in airplanes for decades. We teach our children to always have a seat belt on when they ride in a vehicle and we tell them it isn't safe to ride without one. So why should it be any different when we get on a school bus? Yes, compartmentalization makes buses safer than they were 50 years ago. Seat belts will make them safer than they've ever been. The statistics support it, and the experts confirm it. It's my hope, and the hope of Children's Hospital, that this bill will advance from committee and find strong support in the Legislature. I thank you all for your time, and I'm happy to answer any questions you may have.

**FRIESEN:** Thank you, Mr. Hedlund. Any questions? Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Friesen, and thank you for your testimony.

**TRAVIS HEDLUND:** Sure.

**BOSTELMAN:** And why hasn't the Nebraska State Board of Education taken this up, do you know, and required this of all schools?

**TRAVIS HEDLUND:** I do not know for sure. I would imagine cost may be a factor, but I do not know.

**BOSTELMAN:** Well, I don't, I don't know that the State Board of Education should be concerned about cost. I think it's more of a policy that they should have on stuff like, that maybe they're not-- I don't know why; I just-- I didn't know if you knew.

**TRAVIS HEDLUND:** I do not.

**BOSTELMAN:** OK, thank you.

**FRIESEN:** Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, thank you for your testimony.

**LAURIE KLOSTERBOER:** Senator Friesen and members of the committee, my name is Laurie Klosterboer, L-a-u-r-i-e K-l-o-s-t-e-r-b-o-e-r, and I'm the executive director for the Nebraska Safety, a nonprofit organization. I'm not going to repeat what the others have said before about the NTSB and the changes with NHTSA. We just feel that, that although we understand that schools have legitimate concerns about the cost for seat belts on buses, we feel that LB364 is a commonsense

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approach to involve local school boards and their constituents on this decision. We would ask that you move this out of committee and on to the floor. I'd be happy to answer any questions you might have.

**FRIESEN:** Thank you, Ms. Klosterboer. Any questions from the committee? Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Friesen. I'll ask you the same question. Do you know why the State Board of Education hasn't taken this up? Is this something outside of their scope? Or do you--

**LAURIE KLOSTERBOER:** I don't know, Senator.

**BOSTELMAN:** OK, thank you.

**FRIESEN:** Thank you, Senator Bostelman. Senator Geist.

**GEIST:** Yes, thank you, Chairman. I do have a quick question and that is, that the three-point safety harnesses aren't appropriate size for everyone. Is there an attachment that would come with those that would make the shoulder belt harness part fit each individual student? Do you know?

**LAURIE KLOSTERBOER:** I'm not up on that, Senator; I would have to check. I know that there's a lot of different manufacturers out there, so I'm sure someone can answer that question. But I don't have the answer for you.

**GEIST:** Thank you.

**FRIESEN:** Thank you, Senator Geist. Any other questions from the committee? Seeing none, thank you for your testimony.

**LAURIE KLOSTERBOER:** Thank you.

**FRIESEN:** Any other proponents of LB634?

**MARK RICHARDSON:** Good afternoon, Senators. My name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n, and I'm here today on behalf of the Nebraska Association of Trial Attorneys, in support of this legislation, as we've supported it the last couple of times that it's been introduced, as well. I have had, I would say, the solemn duty, I guess, to represent some families that have been involved-- consult with some families that have been involved in, with their children, in school bus crashes here in Nebraska. I have seen the investigative

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reports. I have seen the photos from the scenes. And they range all over the place from as bad as it gets, when a child is killed in one of these, to, you know, bumps and bruises and everything in between. This is a commonsense bill. This is something that just makes logical sense, to keep people restrained. I have a little bit of a unique knowledge of this, too. I was involved in a minor school bus crash when I was in junior high in rural Nebraska. We actually saw a white truck, off on an icy road, lose control and start veering towards us. He got it fishtailed, but he still sideswiped us as he went by. And even that, I mean the, the bus was so much heavier than that truck that it didn't force us off the road or anything like that. But even the impact of the sideswipe was enough to knock several of the students into the aisle. Fortunately, nobody had more than scrapes and bumps and bruises as a result of that. But as I look back on that, I just sit there and think, had, had we all been restrained, nobody would have had even bumps and bruises as a result of that type of collision. Just listening to the testimony here today, I can just also speak as a parent of a 3-year-old and a 4-year old who's about to enter the school system, and it certainly would scare me to send my child, child on a bus that I know does not have restraint systems on it. There was a question-- there have been a couple of questions here that I'd like to try to address, one with regard to the restraint that was just asked about whether it's adjustable. I know the last time this bill came up, we had a model of what this restraint system looked like. And it absolutely had an adjustable system that made it appropriate for the size of the child to be restrained. There was also some questions about liability and what would happen, and that's obviously something I'm fairly well familiar with, both on behalf of the school board, if the school board elected not to make the-- if the school board, school board made the decision that it had the necessary financial hardship to not be able to do this, as well as maybe a school bus driver who did not force a child to wear a seat belt. And what I would just say to that is they are going to be held to the same standard as everybody else when they're making decisions about the well-being of other people. It's a reasonable and prudent standard in the state of Nebraska. And if the decision that they make is ultimately determined to be reasonable and prudent-- in the case of a school board that would, that decision would always be made by a sitting judge. In the case of an individual driver, it would probably also still be made by a judge here in Nebraska as part of the Political Subdivision Tort Claim [SIC] Act. Those are not entitled to jury trials. So if it's part of the school, then it is a decision made by a judge as to whether they acted reasonably and prudent. The

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example I would use or the way I would state it, for example with regard to the school bus driver, is that, you know, if this was a driver who had a pristine record of always requiring their students to buckle up, and it had, there happened to be a collision on an unfortunate day and it was one kid who had just, you know, unbeknownst to the driver, unbuckled-- hard, that's gonna be hard to pin something like that on a driver, in terms of liability. On the other hand, if it's a driver that routinely ignored the children buckling up, didn't have anything that mandated that, that is the situation where we look at that and we say, well, we don't want that kind of behavior, that's kind of behavior that should be held liable, if they're not generally, you know, requiring the kids to buckle up. So with that, I'm happy to answer any questions. But again, we would certainly strongly support this bill and have it be advanced out of committee.

**FRIESEN:** Thank you. Any questions from the committee? Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Friesen. I'll ask you the same question. Do you know? Has the State Board of Education actually taken a position, one way or another, on, on this in the past, why they haven't required schools to do this?

**MARK RICHARDSON:** That's one that I'm just not familiar with; I apologize.

**BOSTELMAN:** Thank you.

**FRIESEN:** Thank you, Senator Bostelman. Any other questions from the committee? Seeing none, thank you for your testimony.

**MARK RICHARDSON:** Thank you.

**FRIESEN:** Any other proponents to LB634? Seeing none, is there anyone who wishes to testify in opposition to LB634?

**BRAD WILKINS:** Good afternoon, senators. My name is Brad Wilkins, B-r-a-d W-i-l-k-i-n-s. I would like to thank you for the opportunity to share my story today. My name is Brad Wilkins, and I drive the bus for Ainsworth Community Schools. I also serve on the local school board. I am the current vice president of the Nebraska Association of School Boards and serve on the NASB Legislation Committee. I am here today wearing the hat of a school board member and a bus driver. This morning I set out from Ainsworth in my Ford F150 pickup truck.

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Although the weather is bitter cold outside and some of the roads that I traveled were not completely clear, I left home with a high degree of confidence that I would arrive safely in Lincoln to share my story. Thankfully I am here, even though there was some degree of risk that I might be in an accident driving my relatively unsafe F150. As you've been told earlier, statistics say that I would have been much safer if I were driving a school bus. School buses are the most regulated vehicles on the road. According to the National Highway Traffic, Traffic Safety Administration, the school bus is the safest vehicle on the road. Your child is much safer taking a bus to and from school than travelling by car. School buses are designed to be highly visible and include safety features such as flashing red lights, cross-view mirrors, and stop sign arms that other vehicles do not. They also include protective seating, high crush standards, and rollover protection features. In addition, there are a number of laws to protect students who are getting off and on a school bus by making it illegal for drivers to pass school buses while dropping off or picking up passengers, regardless of the direction of approach. Seat belts have been required on passenger cars since 1968, and there is no question that they play an important role in keeping passengers safe in these vehicles. The school buses are different by design. Large school buses are built heavier and distribute crash forces differently than passenger cars and light trucks do, to experience much less crash force through a concept called compartmentalization. This requires that the interior of large buses protect children without them needing to buckle up. Children are protected from crashes by strong, closely spaced seats that have energy-absorbing, absorbing seat backs. Small buses with a gross vehicle weight rating of 10,000 pounds or less must be equipped with lap and/or lap/shoulder belts at all designated seating positions. Since the sizes and weights of small school buses are closer to those of passenger cars and trucks, seat belts in those vehicles are necessary to provide occupant protection. Personally I thank God that I've never been in a bus accident with life-threatening injuries, but I have concerns that the added responsibility of making sure everyone one on board was able to get out of their seat. I wouldn't want to worry about removing children from restraints before pulling them out of the bus. The additional time required to remove restraints might create more danger and loss of life. Now putting on my school board hat, I know that purchasing or retrofitting buses with seat belts costs \$7,000 to \$11,000 per bus. This is money that many districts do not have. I believe that this bill allows for districts to avoid mandatory compliance if the board, board votes in open session to forgo the seat belt requirement. The bill stops short of

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mandatory seat belt compliance, but it is distasteful to me, as a locally elected school board member. If we are going to require a vote on seat belts and buses, why not require a vote on metal detectors, on-site security officers, security cameras, or exterior locks? These are all safety issues that board members wrestle with on a regular basis. As a board member at Ainsworth Community Schools, I would much rather allocate money that could be spent on seat belts to student mental health. The loss of life due to teen suicide is staggering in comparison to the four to six lives lost nationally in school transportation vehicles each year. I want you to hear me when I say that it doesn't matter whether you're from Ainsworth or Omaha, Lincoln or Scottsbluff. None of us have enough resources to meet this need. What keeps me up at night is not worrying about a school bus accident. What worries me is that we will fail to meet the need of a student who is crying out for help, and that failure results in harm to that individual or someone else. Board members are faced with allocating increasingly scarce resources to assure that the safety and educational needs of our students are met. I want to assure the members of the Legislature that school board members take this responsibility very seriously. I believe that our state has no greater resource than its students, and I believe that there is no more noble task than preparing those students for our future.

**FRIESEN:** Thank you, Mr. Wilkins. Are there questions from the committee? Senator Bostelman.

**BOSTELMAN:** Thank you, Chairman Friesen. Can you tell me-- and thank you for your testimony. Can you tell me, does, has the State Board of Education come out with a policy or just-- or a statement on, on, and why or why not?

**BRAD WILKINS:** Well, I don't, I don't know, Senator, for sure. The thing is, I think that they would probably support local control, which has been a premise in Nebraska for, for many years. And I think that the data and statistics, especially about the school bus being 70 times safer than a passenger car-- I think that would probably have been a reason that they may not have issued a directive on that. Just on a personal note, I have two students, a senior in high school and a freshman in high school. Right now they're probably getting on a school bus to come back from a speech competition in Ogallala. And it really gives me great comfort to know that they are so much safer in the school bus than if they were riding with their mother in a passenger vehicle.



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**BOSTELMAN:** And what I-- my follow up question. I would-- I take it, since this is on an NASB letterhead, that they also have not taken a position, as far as policy, other than that it should be a local control.

**BRAD WILKINS:** That's correct.

**BOSTELMAN:** OK, thank you.

**FRIESEN:** Thank you, Senator Bostelman. Any other questions from the committee? Senator Albrecht.

**ALBRECHT:** Thank you, Senator-- or Chairman Friesen. So Mr. Wilkins, how long have you driven a school bus with the children?

**BRAD WILKINS:** Five years.

**ALBRECHT:** And has, have any of the children ever been hurt, in any way, on your bus?

**BRAD WILKINS:** Never.

**ALBRECHT:** Well, this is just a quick story, but I have 12 grandchildren under the age of eight. Only one family right now has elected to allow their children on a school bus because of the seat belt issue. But we happen to have-- the one child that goes on a school bus was sick the day that the school bus drove in front of the school and hit a curb, simply hit a curb. And these, this little student flew out of the seat and cut his head open. So if something like that were to happen, does the school have the responsibility to take care of that child or does the parent?

**BRAD WILKINS:** Well, I, I don't know where the liability necessarily rests on that.

**ALBRECHT:** Surely they, you do carry liability.

**BRAD WILKINS:** Absolutely. Yes, yes, we do.

**ALBRECHT:** Yes, that's good; OK.

**BRAD WILKINS:** We do. What-- if I could just-- in researching this, a couple of the recent bus accidents that made headlines, one in Pottawattamie County of Iowa--

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**ALBRECHT:** Um-hum.

**BRAD WILKINS:** --involved a bus where a driver picked up a student and then he actually backed into the ditch and got stuck. And, and the, the bus caught fire--

**ALBRECHT:** Um-hum.

**BRAD WILKINS:** --and it involved a fatality of both the driver and the one person that was on the bus. They were unable to get out of the bus because of the fire.

**ALBRECHT:** Um-hum.

**BRAD WILKINS:** And then, also, there was an accident in Blue Hill, I believe, in about 2013. Also, it involved a collision and a fiery crash. There were some bystanders, actually some farmers in a field, that saw it happen. They actually were able to break the windows and help remove five of the students that were in the bus. Two students perished, the driver, and then the driver of the other vehicle. So in an instance like that, I feel that it's questionable whether seat belt restraints would be helpful or a hindrance.

**ALBRECHT:** I guess that's what I always think about is, what is a life worth. And quite frankly, when we, when we have these laws that we just had previous to, to this particular one that we listened to, that everyone needs to be restrained in a car. But yet we let our children, you know, and we spend millions-- billions of dollars funding schools. I, I just have to question why someone wouldn't want to put seat belts in a vehicle that a child's in, because they don't, they don't have that option whether it's the right thing to do or the wrong thing to do. But-- and, and some of us have no other way of getting the children to school. So if it were to be a local issue, I can't imagine that, that people wouldn't make that decision, whether it's private funds instead of public funds; it could go either way. But thank you for your testimony.

**FRIESEN:** Thank you, Senator Albrecht. Senator DeBoer.

**DeBOER:** Thank you for your testimony. I'm thinking about-- sometimes I help my sister buckle her-- she has three kids in car seats-- quite a, quite a car full. And it's a process to get them into the car seats, right? I mean, you know, it takes a little time and I think about that. And clearly that's, that's mandatory; it's required. So it seems

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to me that if that's required, I mean if there were some kind of situation where there was a fire in the car it would be very difficult to get those kids out of there. But we've made a public policy decision that says that it's more, more dangerous for them not to be in car seats. So I think that the, the science must be in favor of buckling in, in those situations. So, so I guess the question remains to me, if, if you had the money, if the money were here for you and suddenly you have the money for the seat belts in the bus-- magically, I don't know how-- would your opposition go away? Would you be in support of this if the money were found?

**BRAD WILKINS:** Absolutely. If we had unlimited resources, as a school board member, I would probably put in metal detectors. I would, we could have a security officer. We could, we could put seat belts in schools-- or in school buses. You know, if we move the needle from 70 times safer to 80 times safer, you know, that, that's great. And I, and I agree with Senator Albrecht. What's the value of a human life, I mean, if it's dollars and cents? But in my testimony I also talked about, you know, we don't have enough money for mental health--

**DeBOER:** Yeah.

**BRAD WILKINS:** --you know, and that, that-- take a look at the numbers on teen suicides. I mean, it's huge, even though it's not like a school bus, bus accident where ten people die in one time across. It's a big issue in our state and it's huge nationally, as well. And so when we allocate scarce resources, as school board members, we have to make tough decisions. And if we had enough money, I'd be all in favor of it. But you know, when we-- we don't. We have scarce resources, and I think that, that there are other places that that that money is going to be better used than, than making a school bus from 70 to 80 times safer than a, than a passenger vehicle.

**DeBOER:** Thank you.

**FRIESEN:** Thank you, Senator DeBoer. Any other questions from the committee? Seeing none, are, are you representing a certain organization?

**BRAD WILKINS:** I am representing the Nebraska Association of School Boards.

**FRIESEN:** Thank you.

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**BRAD WILKINS:** Thanks.

**FRIESEN:** Any other opponents?

**CHERI WIRTHELE:** Good afternoon, Chairman Friesen and members of the Transportation and Telecommunications Committee. My name is Cheri Wirthele, C-h-e-r-i W-i-r-t-h-e-l-e. I have been a member of the Sterling School Board for 11 years. I am also a member of the ESU, Educational Service Unit Number 4, out of Auburn, Nebraska, for the last seven years. For 19 years I have been a bus driver. I have driven for the school bus district of Sterling for all 19. I've also been recruited and asked to come to other school districts within the area. I think it's because I'm kind of mean. I am here today in opposition of LB634 for a number of reasons. As a bus driver, my job is the safe delivery of my kids-- and they are my kids on my bus-- to and from their homes to school and back home again, or to their activities. Please understand I take this job very seriously and I keep students seated properly in their seats. It's my job and I make it happen. Well, I'd like to give you examples. And sitting in the presentation room here, I've learned a lot because this is my first time to testify. And I've learned, from many of the things today that the examples that somebody might give might not measure up to someone else's. But as a bus driver, you know, I sit through every scenario. When I'm going down an icy road or I'm going down a snow, snow-packed road coming back from MUDECAS basketball, and I have to decide how I'm going to get my 25 students or athletes home, I do the safest thing I can. And one thing is, if I was to do something and put them in there, no matter what size they are, if they were locked in with seat restraints, I would have no way to undo them if they were, say, knocked unconscious. Or let me tell you, kids do get a little bit panicked, OK, just as adults do, and they freeze on you. So I'm not allowed to carry any kind of sharp items. It's kind of against the rules. We make sure the kids follow the rules; I have to follow the rules. I'm not allowed to bring a knife, a scissors, any kind of sharp item on the bus. So getting a student out of a bus is not, is not-- a restraint is not something I see, a visibility of thing I can accomplish. When I have younger students in there on a-- to or from school, same thing. I have seven grandchildren. I have five children that we allowed, we did not allow to drive to school. They all rode the bus for all 12 years because we believed in what they did, and what the safety that they were, and the drivers that took them. I take care of my kids just as another mom on the bus. I do get upset if someone does do that jumping up or something. We, we-- you're sitting

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down-- just as a grandma or a mom would do, or a grandpa, I guess. I think there's more dangers on the bus of the, the book bags or the band instruments or the things that they put up in the racks or don't put up in the seat correctly. They don't put that in there or they don't set something under their seats. And that is a concern because that tends to want to fly. But as far as a student-- and because I do care, I know that their safety is the most important thing to me. At this time, also being on a board, I know it's hard to encourage, even as a bus driver, other people to be a bus driver. Nebraska right now does not have that many bus drivers. They talk about safety and we, we deal with the Safety Center. There's not that many bus drivers out there, and you can't get them to drive on a bus and, or want to drive a bus, because, why? There's so many responsibilities that you have as a bus driver and, and that is the key thing. My kids know because I talk to them. I let them know the reason I'm keeping them on the stick is because I have to get them up that icy hill or I have to get them that sloppy road that's-- Nebraska county roads are sometimes-- I need them to sit, stay seated, and be quiet. They can talk, but they need to listen when I speak. At this time, I just wish we could do more to get more Nebraska drivers, but I do feel that this is another responsibility that they're going to shy away from big time. I love my job. And the safety of my kids are my priority again. The buses I drive are made to ensure that our students are safe. And I believe the three-point harnesses are not necessary in our buses. I thank you for giving me this opportunity to share with you how I live this life and every day as a bus driver. I'm happy to answer any questions that I can.

**FRIESEN:** Thank you for your testimony. Any questions? Senator Albrecht.

**ALBRECHT:** Thank you, Chairman Friesen. And thank you for being here. You seem very spirited. You love your job, you have a passion for it; and I thank you for being a bus driver. But what happens, who's, who's next up? Are they going to care as much? It's not even about whether somebody cares or not. They, they're not going to take that job unless they have a heart for the children or if they have a heart, for you, know making sure that they have a responsibility to get those kids to and from. But, but you know, in today's society, I think we have to, to really think about that kind of thing. And I know that I have seen, like even for parents to have this little tool in their car that, if there was an accident, a rollover or something, that there's this tool you can use, and it's like encased, and you could just cut the, the

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seat belt off. If they had something like that, would it change your mind?

**CHERI WIRTHELE:** It would be a consideration of something. I mean again, if there is a limited amount of time to get somebody off of a bus--

**ALBRECHT:** Um-hum.

**CHERI WIRTHELE:** --it is, you know, any kind of sharp item, you know, would be helpful; there's no doubt. But I do have concerns that, that those other ones, they're going to freeze and, and getting them off and--.

**ALBRECHT:** And again I'll ask that question. You've driven for 19 years. Have you had anyone, because of a book bag or a band instrument, hit them or hurt them or fall out of their chair because you went over a--

**CHERI WIRTHELE:** 'Cause I went over, 'cause I-- as we, we call it, you know, hit a bump or hit a, hit something? No, I haven't had anybody fall out of their seat.

**ALBRECHT:** Oh, you're a very good driver.

**CHERI WIRTHELE:** Excuse me?

**ALBRECHT:** You're a very good bus driver. Even as an adult, I find myself hanging on times when people are driving, but--

**CHERI WIRTHELE:** Sometimes speed bumps. You know, if you go over a speed bump at the wrong speed, the back kids will, you know, can bounce. I laugh at them because they, we know, what-- even if you go-- I don't know if you've been, rode, ever rode in a bus lately, but any type of a bump or anything you go, you're going to do like this. And-- but it's not like I'm throwing them.

**ALBRECHT:** But you haven't had any head injury.

**CHERI WIRTHELE:** No, ma'am. I am so blessed that I have never had an accident.

**ALBRECHT:** You're very fortunate.

**CHERI WIRTHELE:** And I do pray for angels every time I go out.

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**ALBRECHT:** Very fortunate.

**CHERI WIRTHELE:** And I tell the kids that.

**ALBRECHT:** Thanks again for your testimony.

**CHERI WIRTHELE:** Thank you.

**FRIESEN:** Thank you, Senator Albrecht. Any other questions from the committee? Seeing none, thank you for your testimony.

**CHERI WIRTHELE:** Thank you very much.

**FRIESEN:** Any other opponents wish to testify? Seeing none, anyone wish to testify in a neutral capacity? Seeing none, Senator Hilkemann. We do have two letters of support: Nebraska Nurses Association and the Nebraska State Board of Health.

**HILKEMANN:** Thank you, members of the committee. And I want to thank all those who came to testify again. Let me say-- I'll be the very first-- there is no safer way for a child to get to school than in a school bus. As they say, the number, the percentage-- it is, it just blows it away. But we can make them safer. We've heard from two drivers. I-- over the years-- this, this has been-- the very first year that I was a senator I brought this bill. Didn't get very far. But I cannot tell you the number of drivers of school buses over the years who would say to me, don't give up. It's really an important issue. You know, we've had the question about how we're going to get the kids out if there's a bad accident. Well you know, wouldn't it be a better problem to help kids get dislodged from a belt than to have to unpile them, as we did in Dawn's testimony, because they were all piled up in one area and they'd fallen on one another, they'd had all those injuries? As far as an object, there is a scissors in every first aid kit within a school bus. Our experts are saying it's time. Again I'll use my illustration as a pilot. Every time there's an accident there's-- with a plane, the NTSB always comes out and they determine why that accident happened. They do the same thing with school buses. They're saying it's time that we improve our safety. You know, what, what brought me this-- yeah. I didn't get very-- as I said, I didn't get very far with this bill four years ago when I brought it up. Why did I bring it back again? Well, I was down in Texas. I have two daughters that live down in Texas, and I, my-- I was taking my youngest ones for a walk. I went by one of the elementary schools and there was newspaper publishing going on, and they were

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taking pictures and one thing and another. And I just said, what's, what's the event? And they said, well, this is the first day in Texas that school buses have to have school-- safety restraints on them. And I said, oh really. I said, I'm interested in that, and I talked with the director of the Houston school systems. And, and I thought, if they can do it in Texas, 'cause they've certainly got lots of rural school districts in Texas, as well, how is it that they do it? And they did it with the whole thing of a local control, Senator. They had this, they had-- didn't mandate it. You simply had to have a discussion within your school district to find out if, indeed, parents are willing to spend the extra \$7,000 to have our school buses with seat belts on it. So there is the local control component of this particular bill. Senator Geist, I will-- we will try to arrange for a-- when I brought this bill four years ago, I had-- Safeguard provided a seat belt, or, or a school bus which showed the kids that were-- and the, the, the school-- they're easily adjustable so that they can accommodate children of all ages. In fact, even for the youngest of children, they actually have- you can actually take two-year-olds in them. They've got like a, they've, they've even-- if you modify-- there's a little modification that they can make on that seat so that they can modify it, even for the youngest of children if they have to be on those school buses. So that, it is-- and I don't know if you watch television very much, but there's a Hy-Vee ad that I appreciate that shows a school bus out there right now, and it has a three-point harness on it, and I appreciate that. So I think those are some of the questions that I wanted [INAUDIBLE]. And I have heard Dawn's story before. Let's make this the last year that Dawn needs to come and share her story. Let's move this out. Let's have a full discussion at the Legislature. I think it's an important issue and, as technologies change, we need to-- if we can get our kids safer. We had a couple of incidents that were talked about. I think I can answer those. I'll talk to those off mike because I think I can answer a couple of the questions we had on that one, but I want to make sure before I do. Any additional questions I could answer on this, Senator?

**FRIESEN:** Thank you, Senator Hilkemann. Senator Cavanaugh.

**CAVANAUGH:** Thank you, Chairman. Thank you, Senator. I just wanted to share. So I grew up riding the school bus to school. And when I was five, I was literally thrown about on the school bus and one time ended up in the like well, where you get on, and hit my head on the



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handlebar thing. And that happened pretty regularly with small children on the bus, unfortunately. And also it was rowdy on there.

**HILKEMANN:** Um-hum.

**CAVANAUGH:** And when I think about what just having the kids seat-belted would do for the safety of the driver on a daily basis, not to mention if there were an accident, I just really appreciate that you've brought this thoughtful piece to us. And, and we've heard from a lot of different people, so thank you for doing that. And I'd be interested to talk a little bit more, in the future, about the funding part of it because that's definitely a concern for everyone. But sometimes we have to do good policy even if it costs us money.

**HILKEMANN:** Thank you, Senator Cavanaugh. That's one other thing. The school bus drivers have said to me that we would love to have our kids-- that it would help them in the discipline role of it. And I think one of our testifiers mentioned that school, that kids that are transported-- I think he used the illustration in Indiana-- are much-- it's much safer to have them transported, yeah.

**CAVANAUGH:** And Senator DeBoer did mention a look into the tragedy that is my life every morning and every evening, of getting three small children in and out of restraints. And you would think that I could win a wrestle, wrestling match with that.

**HILKEMANN:** Well, as a grandfather with, with-- but when I had our kids we didn't have all those sort of wonderful things. And so it's tough for grandparents to help out with that, too.

**FRIESEN:** Thank you, Senator Cavanaugh. Any other questions from the committee? Senator DeBoer.

**DeBOER:** I'm just curious if you could speak to me about why this is only going forward. Is it significantly more expensive to retrofit a bus with restraints? Or is there just the concern about just the ginormous cost that would be?

**HILKEMANN:** Partly it is. The, it, it, it, it's more costly to retrofit a bus than-- and I, but what I want to do is to, is-- average lifespan of a bus is about 12 to 15 years, I'm told. So over a 10 to 12 year period of time, we will eventually have all of our buses that would be equipped with it. I'm very sensitive to school districts when they have to pick-- what they had to go back to that, so we're going to

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phase this in so that it doesn't-- if you had 50 buses and all of a sudden you had to retrofit 50 buses, this is a, this is a \$1 million item, whereas if you, if you are getting five new buses this year, or whatever else, this is a \$40,000 or \$50,000 additional. Now that's so-- but over the course of the years, guess what? We're going to have all of our school buses eventually equipped with the school, with the safety belts.

**DeBOER:** Thank you.

**FRIESEN:** Thank you, Senator DeBoer. Any other questions from the committee? So can you still buy buses without seat belts?

**HILKEMANN:** I think you can get a school bus without a seat belt.

**FRIESEN:** So it's just, the NTSB just recommends it.

**HILKEMANN:** That's correct.

**FRIESEN:** Are there any, any laws currently that stop a school district from buying buses with seat belts?

**HILKEMANN:** We have school districts in Nebraska that buy school buses with seat belts.

**FRIESEN:** So they can buy.

**HILKEMANN:** That's correct.

**FRIESEN:** So there is nothing that prohibits them from doing it.

**HILKEMANN:** That's correct.

**FRIESEN:** OK. Thank you. Seeing no other questions, thank you for your testimony, your bill. And with that, we'll close the hearing on LB634, and we'll close the hearings for the day.