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Judiciary Committee
February 08, 2012

[LB919 LB1021 LB1049 LB1107 LB1120]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 8, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1120, LB919, LB1021, LB1049, and LB1107. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: Why don't we get started, everyone. Thanks for coming. It's a little late, we're a little late but we have...can we just...there, have some bill. We have...welcome, everyone. We have five bills today in the Judiciary Committee. The first bill is LB1120 and Senator Larson is going to introduce this bill on behalf of Senator Karpisek. For those who have not been here before, we have the light system that will indicate, with the yellow light, that we'd like you to sum up your comments. You have three minutes to introduce or to make your comments, not including, obviously, any questions. So with that, let's just get right into the bill. Senator Larson, would you like to introduce LB1120?

SENATOR LARSON: Thank you, Senator Ashford and members of the Judiciary Committee. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, representing District 40 of northeast, north-central Nebraska, and I am today introducing LB1120 on behalf of Senator Karpisek, who was not able to make it today due to personal reasons. LB1120 limits liability relating to bucking bull activities. The language in this bill mirrors the current language relating to the liability limitations for equine activities found in Statutes 25-21,249 to 25-21,253. Bucking bull activity sponsors and bucking bull professionals would not be liable for injury, loss, damage or death of a participant resulting from inherent risks of bucking bull activities. These limitations would not apply in certain situations which are enumerated in Section 4 of the bill. An additional requirement included in the bill is that each bucking bull professional shall post a warning sign in a visible location near stables, corrals or arenas to inform people. Other states, like Iowa, have similar requirements for warning signs. Senator Karpisek brought this bill on behalf of one of his constituents who is here today to testify and will be able to answer any questions the committee may have. And though it's not my bill, if the committee should have any questions I'd be happy to attempt to do that as well. [LB1120]

SENATOR ASHFORD: Thank you, Senator Larson. Yes, Senator Coash has a question for you. [LB1120]

SENATOR COASH: Thank you, Senator Ashford. I ask this question, Senator Larson, in all seriousness because I know you're a little more familiar with these activities. [LB1120]

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

Judiciary Committee
February 08, 2012

SENATOR LARSON: Uh-huh. [LB1120]

SENATOR COASH: What about mutton busting? [LB1120]

SENATOR LARSON: That would actually probably be a decent one to put in as well. As somebody who is affiliated with rodeos, that's something that, though it's not in this bill and it's not my bill, I think it would be good, something to put in there because obviously parents are choosing to put their kids in these or similar situations. [LB1120]

SENATOR COASH: Do we have a mutton busting...is there a lot of that goes on? I mean I did have some constituents contact me. [LB1120]

SENATOR LARSON: Yeah. Yeah, there is actually quite a bit. As I said, my father is the former president of the Mid-States Rodeo Association and I'm involved now, and many rodeos do have mutton busting for local kids and it is something that a lot of them like to do. And I'll be honest, as a former mutton buster myself, it's something that I think would be a good idea to put into something like this, because it is the parent's decision to put their children on these animals. [LB1120]

SENATOR COASH: All right. Thank you, Senator Larson. [LB1120]

SENATOR ASHFORD: Thank you, Senator Larson. I believe that's...any...no other questions? We...how many would like to testify for this bill? Do we have...? Okay, sir, why don't you come on up and did you have an opportunity to fill out...and I didn't give very good directions but there's a form. You got it done, good. Have a seat and appreciate you being here. [LB1120]

ROGER MAAS: Okay. [LB1120]

SENATOR ASHFORD: Go ahead and give your name and proceed along. [LB1120]

ROGER MAAS: It's my first experience, you'll have to bear with me. [LB1120]

SENATOR ASHFORD: Yeah. No, we'll bear with you. [LB1120]

ROGER MAAS: My name is Roger Maas. I live out by Denton. I raise paint horses and my son raises bucking bulls. We feel this bill is something that will give us some protection as far as in the bucking bull business as is afforded us in the equine business. We raise paint horses. I've been fortunate to have two reserve world champions. And my son raises the bucking bulls and he had one that made the world finals at Las Vegas in 2004. I just say that in reference to let you know that we are serious about what we do and we're passionate about what we do. To this bill, I think the question was raised maybe of age levels or something. In Nebraska there is a high

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

Judiciary Committee
February 08, 2012

school rodeo. There's a little britches rodeo, which is kind of in conjunction with the high school but it's by itself. The bull bucking business brings money into the state. In fact, one of the stops in the PBR, Professional Bull Riders Built Ford Tough Series is in Omaha and so it, you know, it brings money into the state. And we feel that rodeo, I've been around livestock all my life and I feel that rodeo is part of our American heritage and I would like to see it preserved and kept as such, and bucking bulls in rodeo is part of that. And according to this bill or why I would like to see this bill put into effect is to afford us that protection that is afforded us in the equine business. So that's all I have to say and try and answer any questions. [LB1120]

SENATOR ASHFORD: Here let me just ask, can you just explain how the raising of the bucking bulls, how does that...how long does that take and what is the process that you undertake? [LB1120]

ROGER MAAS: Okay. [LB1120]

SENATOR ASHFORD: How do you train a bull? [LB1120]

ROGER MAAS: You start with your genetics, get them as deep as you can, and you have a cow have a calf and we buck their calves as yearlings with what we call a dummy. It's a little box that sits on their back and has an electronic trip on it because we only buck them for six seconds instead of a full eight. It simulates somebody on their back and some weight. And then that gives us an idea if he has any potential or not. If he doesn't, he goes to the sale barn. And we try and pick out the good. To put an actual rider on their back, they need to be two years old and three-year-old is ideal. And as far as the training, what we do is just handle them and get them familiar with the chutes and being separated and going down alleys and through gates and things like that. [LB1120]

SENATOR ASHFORD: But does the bull naturally... [LB1120]

ROGER MAAS: Yes. [LB1120]

SENATOR ASHFORD: ...react that way? [LB1120]

ROGER MAAS: The flank strap probably adds a little bit but... [LB1120]

SENATOR ASHFORD: Okay. [LB1120]

ROGER MAAS: ...they either buck or they don't. You cannot make a bull buck, I guarantee you,... [LB1120]

SENATOR ASHFORD: Okay. [LB1120]

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

Judiciary Committee
February 08, 2012

ROGER MAAS: ...or we'd have every one a winner. [LB1120]

SENATOR ASHFORD: No, I believe you. I have no way to refute that. Senator Larson, then Senator Council. [LB1120]

SENATOR LARSON: Thank you for coming in. And this is obviously trying to put us in line with the equine statutes. Do you have bronc or bareback horses? [LB1120]

ROGER MAAS: No, sir, we do not. [LB1120]

SENATOR LARSON: No saddle bronc. [LB1120]

ROGER MAAS: No. [LB1120]

SENATOR LARSON: But would...if a regular stock contractor, let's say, that does carry the saddle bronc and bareback horses as well as bulls, is it under...it's my understanding and I might be wrong, but is it your understanding that they are protected if a rider gets hurt on their bronc or bareback horses but not if a rider gets hurt on the bull ride, on the bulls. Correct? [LB1120]

ROGER MAAS: Right. [LB1120]

SENATOR LARSON: So this essentially brings in line all of...a stock contractor just all across the line for saddle bronc, bareback, and bull riding,... [LB1120]

ROGER MAAS: I would say... [LB1120]

SENATOR LARSON: ...so there isn't treat...so no event is treated any differently throughout the rodeo. [LB1120]

ROGER MAAS: I would say you're correct. [LB1120]

SENATOR LARSON: Because each one is...and has its own inherent dangers. [LB1120]

ROGER MAAS: Definitely. [LB1120]

SENATOR LARSON: And would you, my next question is, would you say that many cowboys understand the dangers that they are putting themselves in when they step onto a... [LB1120]

ROGER MAAS: They definitely do. You can ask any that have been around a while and

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

Judiciary Committee
February 08, 2012

they'll say not if but when. [LB1120]

SENATOR LARSON: I know a lot of cowboys and they are their own breed. [LB1120]

ROGER MAAS: Right. [LB1120]

SENATOR LARSON: I'll definitely say that, as my father is one but that's a different story. I just wanted to make sure for the record that we've got that on there... [LB1120]

ROGER MAAS: I think you're correct. [LB1120]

SENATOR LARSON: ...that they understand the risks and this is trying to protect those that own the livestock. Thank you. [LB1120]

ROGER MAAS: Right. You know, we have people that want to come out and we need to test our bulls, as far as the training. You have to do some riding at home and get some, what we call, outs on them... [LB1120]

SENATOR LARSON: Yep. [LB1120]

ROGER MAAS: ...to find out if they'll be any good... [LB1120]

SENATOR LARSON: Yeah. [LB1120]

ROGER MAAS: ...or worth hauling. It gives young riders that experience of doing that. [LB1120]

SENATOR LARSON: Yeah. [LB1120]

SENATOR ASHFORD: Senator Council. [LB1120]

SENATOR COUNCIL: Thank you. And thank you, Mr. Maas. I think Senator Larson was going down the line and, unfortunately, I don't have that statute, the statutes in front of me, but what are the protections that are accorded you as...under the equine laws? [LB1120]

ROGER MAAS: I believe, I don't have the statute in front of me, but it... [LB1120]

SENATOR COUNCIL: I mean but just like what's the difference from, I mean, that you can readily identify that separates your son's bull bucking development process and your... [LB1120]

ROGER MAAS: Right. Well, as it stands, there is no legislative protection for us now. Is

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

Judiciary Committee
February 08, 2012

that...does that answer your question? [LB1120]

SENATOR COUNCIL: For...I mean for even on the equine side? [LB1120]

ROGER MAAS: The equine does. [LB1120]

SENATOR COUNCIL: Okay, but like against what? [LB1120]

ROGER MAAS: And we brought this up to kind of parallel that as far as protection. Yeah. [LB1120]

SENATOR COUNCIL: So there are some defined inherent risks associated on the equine and does this relate to certain horses? [LB1120]

ROGER MAAS: You can...a horse, yes, you know, a horse could rear over backwards, land on a rider and, you know, and kill him. That's one of the inherent risks of horses. In calf roping or something, they can fall down, roll over the top of somebody. There's a lot of dangers in equine. They're different dangers but there's inherent danger in both of them. [LB1120]

SENATOR COUNCIL: Okay. Okay. [LB1120]

ROGER MAAS: It's not very clear but... [LB1120]

SENATOR LATHROP: Maybe I could ask a...you said that the risks of riding one of these things is obvious? [LB1120]

ROGER MAAS: Pretty much,... [LB1120]

SENATOR LATHROP: Okay. Cowboys that get on these things... [LB1120]

ROGER MAAS: ...because you have no controls over it. [LB1120]

SENATOR LATHROP: Right. [LB1120]

ROGER MAAS: Once the gate is open, it's on its own. [LB1120]

SENATOR LATHROP: That's right. And anybody that's ever watched a rodeo before they got on a bull would know you get thrown off, which is the object of it, and you can get stomped on. [LB1120]

ROGER MAAS: There's a chance you get stepped on. [LB1120]

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

Judiciary Committee
February 08, 2012

SENATOR LATHROP: And you can get hurt when you land on the ground or when you get stepped on. [LB1120]

ROGER MAAS: Correct. [LB1120]

SENATOR LATHROP: And that's obvious. [LB1120]

ROGER MAAS: Right. [LB1120]

SENATOR LATHROP: Okay. [LB1120]

ROGER MAAS: Right. [LB1120]

SENATOR ASHFORD: Yes, Senator Coash. [LB1120]

SENATOR COASH: Thank you, Chairman. Do you...are you required to carry liability insurance on your bulls? [LB1120]

ROGER MAAS: I have a liability on my farm that would cover me to an extent. But if we were to produce an event, it would not cover me. I'd have to have a separate liability. If we had a bull bucking event on our premises, I'd have to have a separate liability. [LB1120]

SENATOR COASH: Okay. And you're not in the business of having events. You're just raising the animals. [LB1120]

ROGER MAAS: No. Right. Right. [LB1120]

SENATOR COASH: Okay. Then thank you. [LB1120]

ROGER MAAS: Okay. [LB1120]

SENATOR ASHFORD: I don't see any other questions. [LB1120]

ROGER MAAS: Anything else? [LB1120]

SENATOR ASHFORD: Thank you very much, Roger, for coming down. [LB1120]

ROGER MAAS: Thank you. Appreciate it. [LB1120]

SENATOR ASHFORD: Appreciate what you do. Do we have any other...anybody else who would like to testify for this bill? How about opposed? John has got some bucking bull expertise coming up here. You...this one of your fields of expertise, Senator

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

Judiciary Committee
February 08, 2012

Lindsay? [LB1120]

JOHN LINDSAY: It is. Senator Ashford, members of the committee, for the record my name is John Lindsay, L-i-n-d-s-a-y, appearing as a lobbyist on behalf of Nebraska Association of Trial Attorneys. First issue, there will be other...a couple other bills I think that I'll be testifying on a little bit later, but a reminder that there's...the bill at least ostensibly seeks immunity from liability. Our association has long had a position that when persons are immune from liability that tends to breed negligence because there is no accountability for those actions. That having been said, primary objection to LB1120 is that it's not necessary. It appears...it appears to be a restatement of what the common law is. The equine...it appears to be based on the equine liability bill or law that was passed I think around a dozen years ago, 10-12 years ago. [LB1120]

SENATOR COUNCIL: 1997. [LB1120]

JOHN LINDSAY: I'm a little bit...I'm older than I thought, 14 years ago. And that bill at that time, again, was a restatement of what the law was at that time regarding equine activities. And it was oftentimes a lack of understanding of what...whether there is liability can result in attempts to correct a misunderstanding rather than attempts to correct an actual problem. In this case, this would provide an immunity from liability for injuries occurring from the inherent...and that's the operative section of Section 3, from the inherent risks of bucking bull activities. And I would suggest that...and that does I think track the language from the equine liability bill and that is, again, a restatement of what the law is now, which is I think where Senator Lathrop may have been going with his questions, and that is everybody knows those dangers associated with bucking bull activities are open and obvious. Everybody participating knows what those dangers are and there is, under the law, what's referred to as assumption of risk. And when that risk has been assumed, that provides a defense to a claim under that activity. So that, again, the primary objection is it appears to be a restatement what the law is now. It's not necessary legislation and we would urge that the bill be indefinitely postponed. I'd be happy to try to answer any questions in, Senator Ashford, what you've termed my area of expertise. [LB1120]

SENATOR ASHFORD: Thank you. We're glad you're here. Any...yes, Senator Council. [LB1120]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford. And thank you, Mr. Lindsay. I just pulled the equine liability statute and there appears to be quite a difference in the activity and perhaps...because I'm trying to understand why we would have passed a law that just restates assumption of risk. And just looking at the equine, I think trying to provide an explanation is that it doesn't deal with hazardous equine activities, per se. I mean I don't think that there's anything that's not hazardous associated with buck riding or whatever we call this. [LB1120]

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

Judiciary Committee
February 08, 2012

SENATOR MCGILL: Bucking bull. [LB1120]

SENATOR COUNCIL: Bucking bull. I don't think there's anything that's not inherently dangerous about a bucking bull. Okay? And I'm trying to, again, trying to provide some justification. When you look at the activities that are defined in the equine statute, a fair, dressage, just driving, pulling, English and western performance riding that involve any or all breeds of equine and any of the equine disciplines, any, so I mean just going to Mahoney and paying to ride the horses. [LB1120]

JOHN LINDSAY: Right. [LB1120]

SENATOR COUNCIL: And in that case I guess reasonable minds wouldn't expect, you know, to get trampled by a horse or...because I mean that's not the nature of that activity. [LB1120]

JOHN LINDSAY: But it is the nature of the animal and that's... [LB1120]

SENATOR COUNCIL: It's the nature of the animal, right. [LB1120]

JOHN LINDSAY: ...and that was what was being attempted to be addressed at that time. [LB1120]

SENATOR COUNCIL: Okay. [LB1120]

JOHN LINDSAY: And again, I believe it was at that time a restatement of the law, what...I mean a codification... [LB1120]

SENATOR COUNCIL: Uh-huh. [LB1120]

JOHN LINDSAY: ...of what common law was. It does not protect against a, for example, problem with the saddle... [LB1120]

SENATOR COUNCIL: Right. [LB1120]

JOHN LINDSAY: ...or something that a reasonable person engaged in that activity would check into or would make sure was in proper shape. But the animal, we know there's inherent risk with animals. Animals do what they want to do and so even if you're riding at Mahoney Park, people know that animals sometimes are unpredictable. And so that's, again, was codifying at that time, much like this is now codifying what common law is. [LB1120]

SENATOR COUNCIL: Okay. Well, I guess that for me, and I may be the only one who's

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

Judiciary Committee
February 08, 2012

drawing this distinction, here it's like the activity. I mean that...I understand the nature of the animal but the activity here is enough to put you on notice that this is inherently dangerous, whereas on the equine I could understand the nature of the animal but it's more the activity. [LB1120]

JOHN LINDSAY: Well, but they all come together. [LB1120]

SENATOR COUNCIL: Okay. [LB1120]

JOHN LINDSAY: The activity itself is, I mean if you're riding a bucking bull, which I would assert staying on a bucking bull is like trying to stay in this chair for eight seconds when Senator Lautenbaugh is questioning you. It's tough either way. But you know the activity itself is, as I think Senator Lathrop described, it's designed... [LB1120]

SENATOR COUNCIL: Yeah. [LB1120]

JOHN LINDSAY: ...that you will come off of that bull in one of a couple of ways and one of them is not all that good. [LB1120]

SENATOR COUNCIL: Well, I guess what I'm saying, I think there's a little distinction between... [LB1120]

JOHN LINDSAY: Right. [LB1120]

SENATOR COUNCIL: ...even trying to say we're introducing this to bring it in line and to make it comparable to equine, I don't think it's necessarily comparable, because on the equine it's not so much the activity; it's, you know, you're talking about the nature of the animal. Here it's not only the nature of the animal, it's the activity. [LB1120]

JOHN LINDSAY: Right. I think it's both actually and the activity, for example, riding, riding a horse, there's different inherent risks from riding a horse on a trail at Mahoney than there are from riding a horse, same variety of animal, same species, in a rodeo... [LB1120]

SENATOR COUNCIL: Yeah. Right. Right. Exactly. [LB1120]

JOHN LINDSAY: ...where again the goal might be to be...or the...being thrown from that animal is one of the risks that's assumed. So I think it's a combination of both that's a... [LB1120]

SENATOR COUNCIL: Okay. Thank you. I didn't mean to belabor it. [LB1120]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB1120]

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

Judiciary Committee
February 08, 2012

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you, Mr. Lindsay. And this is great because I can't think of seven senators more qualified to discuss this than the seven of us that are here right now. (Laughter) This is spectacular. [LB1120]

SENATOR ASHFORD: Yeah. [LB1120]

SENATOR COUNCIL: Nay, nay. [LB1120]

SENATOR LAUTENBAUGH: So is your concern that this is not needed because it's already covered in the common law? [LB1120]

JOHN LINDSAY: Yes. [LB1120]

SENATOR LAUTENBAUGH: It doesn't do anything bad; you just think it's not needed. [LB1120]

JOHN LINDSAY: I think that would be fair. [LB1120]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB1120]

SENATOR ASHFORD: And this covers live bulls, not those... [LB1120]

JOHN LINDSAY: Not the ones that... [LB1120]

SENATOR MCGILL: The mechanical bulls? [LB1120]

SENATOR ASHFORD: Mechanical bulls. [LB1120]

JOHN LINDSAY: The mechanical bulls, well, I... [LB1120]

SENATOR ASHFORD: I mean would you object if we included it? [LB1120]

JOHN LINDSAY: To mechanical bulls? Yeah,... [LB1120]

SENATOR ASHFORD: Okay. [LB1120]

JOHN LINDSAY: ...probably. [LB1120]

SENATOR ASHFORD: Thank you, John. Any other testifiers? Senator Larson isn't here so he waives closing. Senator Schilz, let's go to the next bill, LB919. [LB1120]

SENATOR SCHILZ: (Exhibit 1) Good afternoon, Chairman Ashford and members of the

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

Judiciary Committee
February 08, 2012

Judiciary Committee. My name is Ken Schilz, K-e-n S-c-h-i-l-z, and I represent Legislative District 47. I introduced LB919 at the request of a number of sheriffs from western Nebraska and the Nebraska Sheriffs' Association. First, I know that there are a number of questions about the statutory construction of this bill and what the bill is intending to do, especially as it relates to the additional court fees. Second, I know that some of the sheriffs' fees were just raised in 2009 with the passage of LB35, and as a result some of you may be questioning whether it is reasonable to think that we should even be discussing increasing these fees again. The reality is that statutory fees charged by sheriffs for carrying out their statutorily mandated duties are inadequate and do not cover the actual cost for performing such duties. I think this is best illustrated by the table that I have provided you that shows the fees we are amending, along with the date that most of these fees were last increased. As you can see, some of the fees haven't been increased since 1965. Typically, there is significant opposition to this type of bill. However, instead of just opposing the increase of the fees as unreasonable or stating that it is a 100-plus percent increase, I would like the opposition to provide some thoughts regarding a couple questions. First one is, who should be responsible for paying for these services? Should it be all property taxpayers or should it be those that actually use the service? What are...number two, what are some of the solutions for addressing the discrepancy between the statutory fee and the real cost for providing the service being used by a particular individual or business? During the last session we cut aid to counties. During this session legislation has been introduced to eliminate the inheritance tax, but we also continue to pass laws and mandates that the counties and, in this case, sheriffs need to carry out. There is nothing for a sheriff to do except carry out what the law requires them to carry out and without the benefit of adjusting fees so that it covers the actual cost associated with the service. This becomes even more difficult when you consider that the cost for carrying out a particular statutory duty depends greatly on the population of the county and the number of the people in the office. So again, the question that needs to be answered is who is best able to assume the cost of services provided by the sheriffs, the actual user of the service or the property taxpayer who must make up the difference between the fee paid and the actual cost of providing that service, a service only being carried out because a particular user accessed that service? Please look at this legislation closely and I ask that you take some time with your busy committee schedule to discuss this problem and try to make some determinations about where we go from here. The sheriffs stand ready to provide their insight and thoughts regarding this issue and are willing to work with the committee to arrive at a reasonable solution. I have provided the handout which shows the history of fee changes for court fees, sheriffs' fees, and handgun certificate fees. I would like to say that this is...this bill was brought to start that discussion of exactly the questions that I laid out. I understand that there can be and there usually is opposition for things like this, but at some point we have to take in account how much it costs, where those...who's paying those fees, and where best they should be coming from. So with that, I thank the committee for the time and I would be happy to try to answer any questions you have. [LB919]

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

Judiciary Committee
February 08, 2012

SENATOR ASHFORD: Ken, let me just...how much money does this raise on the court fee side? Do you know? [LB919]

SENATOR SCHILZ: You know, I don't know exactly. I don't have that information. [LB919]

SENATOR ASHFORD: Okay. [LB919]

SENATOR SCHILZ: But there may be folks behind me that may be able to answer that and, if not, I will get that information to you. [LB919]

SENATOR ASHFORD: So it's \$4 for the...goes to the counties? [LB919]

SENATOR SCHILZ: Right. Yeah, there's... [LB919]

SENATOR ASHFORD: And the other amount goes to the sheriffs or... [LB919]

SENATOR SCHILZ: Correct, yeah, in order to provide security and things like that in the courtrooms, yes. [LB919]

SENATOR ASHFORD: For...primarily for courthouse security, is that it? [LB919]

SENATOR SCHILZ: Yeah, amongst other things, but that's the main thing that folks were talking about. [LB919]

SENATOR ASHFORD: Okay. Okay. Senator Coash. [LB919]

SENATOR COASH: Thank you, Chairman. I looked for it on the sheet but I see it in your statement, the judges' retirement fee... [LB919]

SENATOR SCHILZ: Uh-huh. [LB919]

SENATOR COASH: ...going from \$5 to \$6. That was something we dealt with in this committee a few years ago. That's not covering a service. That's just putting more money into the judges' retirement. [LB919]

SENATOR SCHILZ: Retirement, correct. [LB919]

SENATOR COASH: Are you getting any indication that the retirement pot is...for the judges is too small; we're going to have to... [LB919]

SENATOR SCHILZ: You know what, I will defer to others. But I have not had any direct

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

Judiciary Committee
February 08, 2012

conversations with anybody from the judicial branch. [LB919]

SENATOR COASH: Okay. I just wanted to confirm, it looks like, with the exception of that retirement fee, everything else is a service. [LB919]

SENATOR SCHILZ: Right. [LB919]

SENATOR COASH: Is that correct? [LB919]

SENATOR SCHILZ: As far as I understand it, yes. [LB919]

SENATOR COASH: Okay. Thank you. [LB919]

SENATOR ASHFORD: Yes, Senator Council. [LB919]

SENATOR COUNCIL: Yeah, thank you, Chairman Ashford. And, Senator Schilz, in response to Senator Coash's question, I was looking at this too and you're correct that most of them are there for a service to an individual or someone pursuing, and I was just curious. The last section deals with transporting convicted prisoners to the Department of Correctional Services and that's a fee that the county pays to the sheriffs, so comes out of this. I mean if the sheriff's department is included in the county budget,... [LB919]

SENATOR SCHILZ: Right. [LB919]

SENATOR COUNCIL: ...it's just what? It's budgeted for in the county budget and then paid out to the sheriff? [LB919]

SENATOR SCHILZ: You know that's a good...I'm not sure how they do that. I'm not sure how that works, and that's a lot of the reason for bringing the bill forward is to have those discussions, where should that be going, because it would be the sheriff's office carrying that out. But then if the county gets the money, then does it get back to the sheriff's office? So those are the questions that... [LB919]

SENATOR COUNCIL: Okay. We've got it, for example, that the department...the Nebraska Department of Corrections pay the county for transporting and then the county pays the sheriffs. I don't... [LB919]

SENATOR SCHILZ: Right. And I don't know...I have to be honest with you, I don't know how that works exactly so... [LB919]

SENATOR COUNCIL: Okay. Thank you. [LB919]

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Transcriber's Office

Judiciary Committee
February 08, 2012

SENATOR SCHILZ: Yeah. [LB919]

SENATOR ASHFORD: I think that's it. Thanks, Ken. [LB919]

SENATOR SCHILZ: Thank you. [LB919]

SENATOR ASHFORD: Any proponents of this bill, of LB919, wish to...those for it? [LB919]

SHAWN HEBBERT: Good afternoon, ladies and gentlemen. My name is Shawn Hebbert, spelled S-h-a-w-n H-e-b-b-e-r-t. I'm the Grant County Sheriff, Panhandle district's representative for the Nebraska Sheriffs' Association. I also belong to the Sandhills Area Sheriffs' Association who brought this question to Senator Schilz originally. I'm a strong supporter of this bill. I drove 320 miles in 6 hours to be here today to testify for 30 minutes, and I'll be headed back home another 6 hours. As Senator Schilz has showed you, there's 26 fees on the schedule, 13 of those have not been adjusted since the 1960s. Part of the problem that I face as a sheriff is that the counties are losing outside funding. State aid has already been cut. We're losing federal dollars because we're not Adam Walsh compliant through the sex offender registry laws. We're currently looking at legislation to eliminate or reduce inheritance tax. I'm not saying these reasons are good, bad or indifferent. I'm simply stating that funding is going down. The cost of doing business is going up and the taxpayer is the one that's taking the big hit for this. LB919 would help reduce the strain on the taxpayer. Every time the sheriff's office...someone in the sheriff's office walks out to do a paper service, a background check, or a VIN inspection, the sheriff's office loses money. That is to say the fees collected for those individual services does not meet the actual expenses or the cost involved. If John Doe gets sued, paper service is performed. Fees and mileage are collected but the average actual cost is in the neighborhood of \$15 more per service. That's \$15 per service the taxpayer, who really doesn't care that John Doe got sued, has to make up for. With an estimated, and this is an estimate, of 219,156 paper services per year at \$15 a service, the taxpayer is losing \$3,287,340 statewide right there. Gun permits, an estimated...we collect \$5 right now. It's estimated they're in the neighborhood of \$10, \$11 actual cost. That's another \$1,095,780. VIN inspections probably cost us, we're estimating, \$20 instead of \$10, \$2,191,560. If you add in the court cost along with these other expenses, that's \$8.7 million in tax relief. You were asking, Senator Council, about the numbers. These are estimates. That's... [LB919]

SENATOR ASHFORD: Is that the total number, Shawn? Is it? [LB919]

SHAWN HEBBERT: With the... [LB919]

SENATOR ASHFORD: Your... [LB919]

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

Judiciary Committee
February 08, 2012

SENATOR COUNCIL: Just of those categories. [LB919]

SENATOR ASHFORD: Per category or... [LB919]

SHAWN HEBBERT: ...with...in those categories with the... [LB919]

SENATOR ASHFORD: Do you know what the total...what would the...do you have a total on what the county would receive? [LB919]

SHAWN HEBBERT: What my county would receive? [LB919]

SENATOR ASHFORD: Or what...no, across the board. Were you giving whole gross numbers for the entire state? [LB919]

SHAWN HEBBERT: That should be an estimate of the gross numbers, sir. That would be the service fee increases, the gun permit increases, the VIN inspection increases, and the court cost along with the judges' retirement. The grand total should be in the neighborhood of \$8.7 million that the taxpayer does not have to come up with. [LB919]

SENATOR ASHFORD: I think the Adam Walsh statewide is about \$180,000 so I'm not sure that's a significant amount compared to the \$8.7 million. I'm not...I'm just suggesting that your...the numbers here would far exceed that. [LB919]

SHAWN HEBBERT: Right. The Adam Walsh, just the last I knew we're losing Adam Walsh money. [LB919]

SENATOR ASHFORD: It's about \$180,000, \$175,000. [LB919]

SHAWN HEBBERT: Yes, and that number is going down. [LB919]

SENATOR ASHFORD: We've lost that much in there, yeah. I mean there isn't...the money we were getting from the feds for Adam Walsh compliance are not what they had been in the past. [LB919]

SHAWN HEBBERT: Correct. Correct. [LB919]

SENATOR ASHFORD: Okay. I'm not sure. I totally understand the \$8.7 million is in additional dollars that you would...counties would receive statewide. Is that what you're suggesting or did I misunderstand? [LB919]

SHAWN HEBBERT: That is what, yes, the counties' law enforcement agencies would receive statewide with these increases. [LB919]

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

Judiciary Committee
February 08, 2012

SENATOR ASHFORD: Okay. Okay. Okay. Do we have...okay, and you do tell us when they were last increased on this chart, so some of them are quite old but... [LB919]

SHAWN HEBBERT: Yes, sir. [LB919]

SENATOR ASHFORD: Okay. Does anyone have any questions of Shawn? I do appreciate you coming all the way down. [LB919]

SHAWN HEBBERT: Thank you. [LB919]

SENATOR ASHFORD: Yep. [LB919]

SHAWN HEBBERT: Appreciate you letting me be here. [LB919]

SENATOR ASHFORD: Yep. Any other testifiers? Yes. [LB919]

JANET WIECHELMAN: (Exhibit 2) Good afternoon, Senator Ashford and committee members. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n, and I am the clerk of district court for Cedar County and I also am the legislative liaison for the Clerk of District Court Association. I am here in support of LB919. It has been over 25 years since the county docket fees were increased. The county docket fee in 33-106 was increased from \$25 to \$35 in 1977, and the county docket fee for transcribed judgments was increased from \$10 to \$25 in 1986. These are the only docket fees that a district court receives in a filing fee for that county. We appreciate Senator Schilz's efforts to provide the counties with the additional \$4 docket fee in civil cases filed which benefit the county general fund; however, our association has concern about the distribution of that \$4 docket fee based on the acres of school lands in a county and in the judicial district. I have enclosed an example worksheet for your information which is based on the civil filings of each county for 2011, which is provided by the Court Administration Office, and also the acres of land in each county which is provided by Department of Education. I do not have a grand total. I just have a total based on those estimates for each judicial district. As you can see, there are some counties that do not have any leased school lands and would not receive a percentage of any of the docket fee based on the calculation formed in LB919. Also, some of the larger counties have the smallest percentage of school lands but the highest amount of case filings. As an example, in the 6th Judicial District, of which Cedar County is in that judicial district, Dodge County and Thurston County do not have any leased school lands and, therefore, would not receive any distribution of the additional county docket fee. Dodge County historically has more civil filings than any other county in the 6th Judicial District and also has the highest population in the 6th Judicial District. Cedar County would actually receive the highest percentage of that docket fee of the 6th Judicial District. If this legislation is to proceed, the Clerk of District Court Association would request the distribution stated in LB919 be amended. From the sponsors of the Clerks of District Court, we believe the \$4 county

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

Judiciary Committee
February 08, 2012

docket fee should be retained by the county in which the case was filed. Our association will work with Senator Schilz to find appropriate language for an amendment. We would request that you advance LB919 to General File with the committee amendment. Thank you for your time and I'll answer any questions. [LB919]

SENATOR ASHFORD: I don't see any, Janet. Thank you. [LB919]

JANET WIECHELMAN: Thank you. [LB919]

SENATOR ASHFORD: Thanks for being here always on these issues. Any other testifiers on this bill, for the bill? How about against the bill? [LB919]

TESSA HERMANSON: (Exhibit 3) Good afternoon, senators. My name is Tessa Hermanson, T-e-s-s-a H-e-r-m-a-n-s-o-n, and I am general counsel for Credit Management Services and I am here today to oppose LB919. With regards to the \$4 filing fee increase, first of all it only is proposed in reference to civil court cases, not criminal cases, not traffic cases, and I don't know why they have chosen that the money is to go to the state General Fund, as the testifier before me pointed out. We do not support that, where it's not ear tagged to support the Sheriffs' Association, the county in which it was filed, or the users of the court. Additionally, filing fees were increased in civil county court cases in 2009 by \$3, from \$42 to \$45. I don't see that there's any merit for another increase this year. With regards to the sheriff fee increases, specifically I wanted to talk to you about the ones that were increased by LB35 in 2009. We strongly oppose another increase to these service fees. Our industry worked with and ultimately compromised with the Sheriffs' Association in 2009 to arrive at the 20 percent increase that they received at that time. I think it was a total of \$8.50. It's our understanding that the fee adequately compensated the sheriffs for those services and would not require another increase for some time. I'd also point out that process servers establish businesses based on these fees. They run profitable businesses with fees at these levels. Yet their testimony today was that there's not enough fees to compensate service of documents. I think there's some inadequate information involved in there. With regards to the sunset provision, the judges' retirement right now we are paying \$6 per filing for that. There was a sunset provision that was supposed to make that end in 2014 to go back to \$5, and that's what they have eliminated. When we were here in 2009, we were told that the purpose of that was to temporarily remedy a shortfall in the judges' retirement. There's been no testimony today that that has changed or that the need for that continues. I would just conclude with saying that I believe that the Sheriffs' Association should have the burden to show that all of these fees are needed. There would be a lot more information to be gathered and to be determined that such substantial increases, like 1,900 percent, is actually needed before it is implemented. I have nothing further but I would answer any questions. [LB919]

SENATOR ASHFORD: I don't have any questions other than that when we let these

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

Judiciary Committee
February 08, 2012

fees go for such a long period of time, common sense would indicate that those kind of costs do go up over 35 or 40 years when there hasn't been. And I know there have been increases in the ones we've worked on together, but some of these others that haven't gone up since the '60s, I mean obviously there have been cost increases since I was ten or whatever. [LB919]

TESSA HERMANSON: Understood. [LB919]

SENATOR ASHFORD: Anyway, but having said that, I do appreciate your work, the work of your group in arriving at compromises in 2009. So thank you. [LB919]

TESSA HERMANSON: Thank you. [LB919]

SENATOR ASHFORD: Next testifier. [LB919]

LOY TODD: Senator Ashford, members of the committee, my name is Loy Todd, that's L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. As Senator Schilz indicated that his goal was to find a fee for services that were appropriate for the services being delivered, and we certainly support that concept. We do not want to be in a position of being a burden on the taxpayers or the system for services that we need in conjunction with the sale of motor vehicles. So from that standpoint, we stand ready to work with him. I will tell you some things that we find interesting about the proposed increase from \$10 to \$20 for a motor vehicle inspection and that is that there's a real variety out there already. Some counties, the sheriff actually comes to the dealership in order to do multiple vehicles at the same time, avoid cluttering up the parking lots of the courthouses, and we certainly appreciate not having to send employees to do that. Others simply will not do that. It's also interesting that through the years we've learned that some sheriffs already charge more than \$10 for these inspections, and my dealers are in a pretty poor position to say much about that. When inquiries have been made, that we've even had some sheriffs tell my dealers that they have a county attorney's opinion they can charge more than the statutory amount, which I found fascinating. However, you know, you have to get along and that's what happens. I can also share with this committee that there are tons of unnecessary inspections required by the law now and when we address this issue and hopefully work on this in the future maybe we can eliminate a lot of those. There is virtually no chance whatsoever that a motor vehicle being redistributed by a manufacturer is going to be a stolen vehicle. If General Motors is redistributing a vehicle from their program or from leased vehicles, those kinds of things, to dealers, those aren't stolen cars and they're not going to be stolen cars and to inspect all of those is a waste of everybody's time and money. And so we would like to see the opportunity to address quite a few of those things. Also, through the years we have suggested opportunities to do a lot of this electronically, to fax or distribute information and VIN numbers that way and not had much luck in that regard, so we truly welcome the

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

Judiciary Committee
February 08, 2012

opportunity to address this subject matter. Thank you. [LB919]

SENATOR ASHFORD: You have and, on your last point, and I think the lesson behind a lot of this is we haven't. And not...in due respect to Senator Schilz because I think it takes, in my view, to come here and to talk about the need, you know, to raise fees is not the easiest thing to do because it's easier to just say forget it. But to your point and it's back to '86 and '87 and '88, when we were talking about electronic, that's going back 25 years, and I just have seen very little movement on the counties' part to break through some of those old sort of syllabus and those old ways of doing business at all. And just as an aside very briefly, I was...this applies only to Douglas County but was reading the 2003 study on the consolidation of the Douglas County Sheriff and the Omaha Police Division, which the sheriff deputies support, and it was recommended in 2003. It was absolutely a no-brainer really for those 128 rural patrol sheriffs to go to the city and be part of the city police, but not one single solitary thing has been done on that. So I mean I guess to a certain extent there's a lot of griping about...by the counties about not having enough money, and I understand that, we got to balance the budget, but at the same time I've seen very little movement by the counties to do anything along the lines of developing substantial efficiencies. And in the law enforcement area is one area where that...and this may very well not apply in areas outside of the metro area, but at least in Omaha I've seen there's been no movement and in your point about being more efficient in notifications and filings, as you have said that over and over again before this committee. So anyway, enough said but thanks, Loy. [LB919]

LOY TODD: Thank you. [LB919]

JUSTIN BRADY: Senator Ashford and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association, the Nebraska State Home Builders Association, and Media of Nebraska. All these entities historically have said they are willing to look at and pay fees and, quote, their fair share for the filing, the records keeping, the serving of individuals. They question some of the increases in this bill as to whether or not it goes...they go too far and actually become a revenue generator at times for counties, which is something all of these entities have said that's not what these fees should be for. They should be to cover the cost. And we're more than willing, all of us, to sit down and talk to Senator Schilz and any members of this committee about finding out what those numbers are. And I'll just give you a couple examples of some of the ones that are smaller ones than what were previously talked about but that brought attention to some of these entities. I mean making of copies increased from 25 cents to 50 cents. Well, chances are probably with technology that cost isn't that 50 cents anymore. It probably was at one time; now it's probably cheaper than 25 cents. An example of advertising in the newspaper, this is the cost above and beyond what you have to pay for the ad in the newspaper, goes from \$1 to \$20. This is just to allow them to submit to the newspaper. So I mean those are some of the ones that brought their attention to

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

Judiciary Committee
February 08, 2012

say, hey, if we need to increase them, let's sit down and have a discussion to find out what the actual costs are and go from there. So with that, I'll try to answer any questions. [LB919]

SENATOR ASHFORD: Any questions? I don't see any. Thanks. [LB919]

JUSTIN BRADY: Thanks. [LB919]

SENATOR ASHFORD: Any other opponents? [LB919]

GREG HOGENMILLER: Senator Ashford and members of the committee, my name is Greg Hogenmiller, it's H-o-g-e-n-m-i-l-l-e-r. I'm here today representing the Nebraska Collectors Association and we're opposed to LB919. I'm not going to reiterate a lot of the points that were already made. In response to a couple of the questions that were raised earlier though, I did want to point out with respect to who should pay for these services, I think that's a very valid question and I think it's one that should be considered. Because with respect to a lot of these costs, service of process fees and things like that, those costs are ultimately paid by the defendant in civil cases typically or the person who gets a speeding ticket, things like that. These are not generally paid by the people filing the action, although they initially front those costs. I mean ultimately these are borne by consumers, typically those who are in the least position to be able to pay extra fees. I would agree with the comments earlier that, you know, to the extent it legitimately costs more to provide these services, then that ought to be looked at. I think there's some question here about, you know, what those numbers really are and whether, you know, these are in fact needed to provide those services. With that, I guess I'll just open up to questions. I don't want to go over the old...same old things. [LB919]

SENATOR ASHFORD: Great. Any questions? Thanks for your testimony. [LB919]

GREG HOGENMILLER: Okay. [LB919]

SENATOR ASHFORD: Next opponent. [LB919]

WARREN WHITTED: Senator Ashford, members of the committee, my name is Warren Whitted, W-a-r-r-e-n W-h-i-t-t-e-d. I am here as president of the Nebraska State Bar Association, appearing in opposition to LB919. Our opposition is a little different than that that you have previously heard. We're not objecting to specific sheriffs' fees. We are objecting to the theory of the use of filing fees. We are particularly objecting to Section 2 of the bill which increases the filing fee in civil cases by \$4 with the funds being generated going to support general county operations. We believe that the separate and equal, coequal branch of government, the judicial branch should be the recipient of funds generated by the filing fees. Now that isn't entirely the case up to now

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

Judiciary Committee
February 08, 2012

and we've seen multiple attacks on the filing fees, including the efforts to divert them to general county funds in other situations. We believe that this, the court fees generated by filing fees should go to support the judicial system. We believe that in this case that is not happening. Those of you who have been in the Legislature for some time realize that last year and every other year we run into serious questions about funding the court system, and we look at...we the members of the judicial system, look at filing fees as a source to help offset those additional costs and shortfalls faced by that system. If everybody else attacks the filing fees, suddenly there's not an available resource there. We believe that use of the filing fees for anything other than support of the judicial system is inappropriate and we stand here in opposition to LB919 on that basis. And I'd be happy to answer any questions. [LB919]

SENATOR ASHFORD: I don't see any. Do the filing fees, 100 percent of those, go to the courts now? Is that what... [LB919]

WARREN WHITTED: No, Brad, or I mean, Senator Ashford, there are a number of different... [LB919]

SENATOR ASHFORD: Yeah, places. [LB919]

WARREN WHITTED: ..."carve-offs." [LB919]

SENATOR ASHFORD: Yeah. [LB919]

WARREN WHITTED: And you know it's kind of like... [LB919]

SENATOR ASHFORD: Okay. [LB919]

WARREN WHITTED: ...is the horse out of the barn or not? [LB919]

SENATOR ASHFORD: Okay. [LB919]

WARREN WHITTED: But we've got to preserve those fees to the extent that we can. [LB919]

SENATOR ASHFORD: Okay. Any other questions? Thanks, Warren. Any other opponents? Neutral testifiers? Senator Schilz, and you've got the next bill as well. (See also Exhibits 5-6) [LB919]

SENATOR SCHILZ: Thank you, Senator Ashford. And just briefly, obviously you heard from Sheriff Hebbert who came in, and when we sat down and talked about this bill to start out with, he explained to me the situation that they have in Grant County, which is like the situation is in a lot of the smaller counties. Just for information, Grant County

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

Judiciary Committee
February 08, 2012

has a total population of 747 people. Most of the people that are charged with traffic tickets and misdemeanors and things like that are not necessarily from the county. So it is very essential that those folks pay what it costs to do this; otherwise, it really does go back on the property tax owner or the property taxpayer to take care of this stuff. I would...a couple clarifications. If I understand it correctly, one of the opponents was talking about the civil actions and the filing fees there, and I'm not sure but I know that in Section 3 on page 9, that's where the criminal fees come into place and that's where they're located. I'm not sure if, you know, I'm not sure exactly how that works between civil and criminal, whether there's filings and things like that. You guys would know better than I. But that's kind of where that starts. We tried to encompass all the fees in order to have the complete conversation about whether or not we are charging enough. And that's just it. I don't think...I don't think that any of this here was put in place to be a revenue enhancer or a revenue maker. It really was just to start the conversation about how do we cover the costs. And I can't agree with you more, Senator Ashford. If there's efficiencies to help reduce these costs rather than to have to raise the fees, well, that's the direction we need to go in first. [LB919]

SENATOR ASHFORD: And that's what I was trying to say. I think you clearly acknowledge that and I know that, and I know you look for that all the time, but sometimes you just have to address... [LB919]

SENATOR SCHILZ: Right. [LB919]

SENATOR ASHFORD: ...these cost issues, and in the rural areas just the economies are so different. [LB919]

SENATOR SCHILZ: True. But I think it's a conversation that we do need to have. I do hope that we can continue this conversation. You know, I understand that it's pretty hard to kick something like this out right away without the conversations, but hopefully those conversations can and will be had in the future. [LB919]

SENATOR ASHFORD: I appreciate it. Thanks, Senator Schilz. [LB919]

SENATOR SCHILZ: Thank you. [LB919]

SENATOR ASHFORD: The next one is LB1021, vehicle collisions with domestic animals or domestic animal collisions with motor vehicles. [LB919]

SENATOR SCHILZ: (Exhibit 4) Right, unlike the last bill, this is something I have a little bit more knowledge about so. Good afternoon, Chairman Ashford and members of the Judiciary Committee. Once again, my name is Ken Schilz, K-e-n S-c-h-i-l-z, and I represent the 47th Legislative District. Today I bring LB1021 before you on behalf of livestock producers in Nebraska. As a cattle feeder myself, I understand how important

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

Judiciary Committee
February 08, 2012

it is to maintain good fences and keep our animals under our care within their pens and places of confinement. This bill begins the discussion that I would like to have with the committee to clarify what the legislative policy should be regarding livestock owners' liability for negligence when their animals escape. This discussion occurred once over a decade ago when the statute in question was put in place. Yet a recent instance where a truck collided with livestock indicates that further discussion and clarification needs to occur. I am not proposing to create immunity, nor am I proposing that a producer who poorly maintains his or her fences or has frequent reported incidences of animals getting loose should be protected. LB1021 gets at the heart of what our legislative policy should be on this issue, that specific acts of negligence be alleged in a civil action where a vehicle has collided with livestock. LB1021 makes clear that parties be required to prove negligence rather than infer it, according to the doctrine of res ipsa loquitur. Man, that's a tough...I'll tell you what,... [LB1021]

SENATOR COUNCIL: We love that. [LB1021]

SENATOR LATHROP: We know what it means. [LB1021]

SENATOR SCHILZ: ...for a farmer like me...anyway, the public and even courts in Nebraska believed that this was the case until a recent Nebraska Supreme Court case was handed down, McLaughlin Freight Lines, Inc. v. Gentrup in 2011. Livestock have minds of their own and can escape pens without their owners being negligent. It is this key fact that makes a legal doctrine that allows negligence to be inferred without alleging any evidence of actual negligence unsuitable for cases where vehicles collide with livestock. I thank you for your time. I would just like to put in a personal thing here. Our operation, our feedyard, lies right on the south side of Interstate 80 and it has about 20,000 vehicles that pass by every single day, and the closest pens to those vehicles, where they're traveling, is probably about 150-200 feet from the roadway, and so our concern has been, you know, somebody could just stop on the road, decide they're going to have a little fun and go open gates. Now the question is if those animals then do that and get out on the road, if we don't have something like this in place then what can happen is I would be held liable from the beginning, and that in and of itself gives rise and gives importance to a bill like this. Thank you very much and I hope to get your support, and I would be happy to try and answer any questions. [LB1021]

SENATOR ASHFORD: Senator Lathrop. [LB1021]

SENATOR LATHROP: I'd just like to have you educate me a little bit about a couple of things, Ken. Are we talking primarily about cows or cattle? [LB1021]

SENATOR SCHILZ: Yes,... [LB1021]

SENATOR LATHROP: Okay. [LB1021]

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

Judiciary Committee
February 08, 2012

SENATOR SCHILZ: ...primarily. That's where almost all of these incidents are coming from. [LB1021]

SENATOR LATHROP: Okay. And what do you regard as the standard of care for containing cattle? [LB1021]

SENATOR SCHILZ: Well, I mean... [LB1021]

SENATOR LATHROP: Is it a four-strand barbed wire? [LB1021]

SENATOR SCHILZ: Oh, you know, depending on where you're at. In a feedyard, in a feedyard it would be substantially more. It would be like iron fences with iron gates that have actual locking mechanisms. [LB1021]

SENATOR LATHROP: Because of the concentration of animals? [LB1021]

SENATOR SCHILZ: Right, absolutely, but on a ranch a four-wire fence or even in cases sometimes on the open range, what you'll do is you'll pass through what we call a cattle gate or cattle guard and then it's wide open and... [LB1021]

SENATOR LATHROP: You know when you cross one of those things... [LB1021]

SENATOR SCHILZ: Well, you should. [LB1021]

SENATOR LATHROP: ...because it's like a rumble bar and you know you're now... [LB1021]

SENATOR SCHILZ: Yeah, you should know. If you don't then you probably shouldn't be driving. [LB1021]

SENATOR LATHROP: Right. And those are typically on dirt roads though, aren't they? [LB1021]

SENATOR SCHILZ: Pretty much, yes. [LB1021]

SENATOR LATHROP: Okay. So the question that that presents is if a four-strand barbed wire fence is the standard, can animals escape that? In other words, does the standard fence that one would typically put in around a ranch, is that effective in containing animals? [LB1021]

SENATOR SCHILZ: You know, it is almost all the time. Every once in a while you'll have one that, for lack of a better term, goes rogue and gets wild and will jump out, but most

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

Judiciary Committee
February 08, 2012

of the time when stuff like that happens a fence like that is enough to hold them in unless they get riled up, unless they get...stampeded or something like that, so... [LB1021]

SENATOR LATHROP: Okay. So absent a stampede, the fence that is the standard of care should contain them. And the question I think, because I've actually handled one of these things that involved horses and it was a mess and somebody died in it. When something like that happens, the question that people have afterwards, first of all, the night that it happens, have you ever had one of your cattle hit on the road? [LB1021]

SENATOR SCHILZ: Uh-huh. [LB1021]

SENATOR LATHROP: Like by somebody going 50 or... [LB1021]

SENATOR SCHILZ: Seventy-five, eighty. [LB1021]

SENATOR LATHROP: Okay. It's a mess, right? [LB1021]

SENATOR SCHILZ: Semi. Oh yeah. [LB1021]

SENATOR LATHROP: And if people don't die, they... [LB1021]

SENATOR SCHILZ: Both literally and figuratively, yes. [LB1021]

SENATOR LATHROP: Right. No, literally it's a mess. And so the question, my experience tells me that everybody is focused on the guy inside the car and how he's doing and all that business. Nobody goes and looks at the fence to see where the cow got out, right? [LB1021]

SENATOR SCHILZ: I would guess. [LB1021]

SENATOR LATHROP: The sheriff doesn't look to see if there's a gate open because he's focused on the accident scene and nobody looks to see if there's a tree branch on a fence, which can happen in a storm, to see if that's where they got out. And a lot of the explanations are all within the cattle rancher's knowledge, right? The guy with the family member that died or that got hurt can't go check the fences, right? [LB1021]

SENATOR SCHILZ: Right, sure. [LB1021]

SENATOR LATHROP: And the idea behind this, I can just share with you, the idea behind it is if you have a fence that meets the standard of care and the standard of care should keep them confined, generally wouldn't that indicate that somebody left a gate open? [LB1021]

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

Judiciary Committee
February 08, 2012

SENATOR SCHILZ: It could, but as I said before, I've seen cattle that can jump six-foot high fences. The problem is you don't know which ones they are until they do that. And, you know, most folks when they find animals like that and they know that they're there, a lot of times a rancher will cull those out of the herd because it is a problem. [LB1021]

SENATOR LATHROP: You don't want them jumping the fence. [LB1021]

SENATOR SCHILZ: And so...but until you...I mean, as you guys know, one cow can look just like the next one, and so it's... [LB1021]

SENATOR LATHROP: They all look the same. [LB1021]

SENATOR SCHILZ: (Laugh) And so it's one of those things where under almost all normal circumstances, those fences will hold those animals in but you run into these things and these animals, I mean like...oh, I think it was Mr. Lindsay said before, these animals will do what they want to do, and at times that's jumping out of pens or running through a fence. And if an animal really wants to, you know, a four-wire fence, especially what happens is the first one gets stopped. It's the 10 or 15 behind it that hit it that then break the fence and then you've got the issue. [LB1021]

SENATOR LATHROP: Okay. I don't know what the solution is. I appreciate your concern. [LB1021]

SENATOR SCHILZ: LB1021. [LB1021]

SENATOR LATHROP: Okay. Senator Lautenbaugh. [LB1021]

SENATOR LAUTENBAUGH: Thank you, Mr. Vice Chair. You may be the one who ends up answering this question. I don't know. I don't know the answer. I've never had one of these cases. Under existing law now without this bill, if another car leaves the roadway and knocks the fence down and then cattle escape and another car is involved in an accident with those cattle, is it res ipsa, the farmer's fault, the rancher's fault unless they can show what happened, another cause? Do you know how it currently works? [LB1021]

SENATOR SCHILZ: Senator Lautenbaugh, thank you for the question, and fortunately I think I have somebody coming up afterwards that may be better able to answer that question or at least give you an opinion. [LB1021]

SENATOR LAUTENBAUGH: Thank you. [LB1021]

SENATOR LATHROP: Okay. Very good. Thanks, Ken. [LB1021]

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

Judiciary Committee
February 08, 2012

SENATOR SCHILZ: Thank you. [LB1021]

SENATOR LATHROP: Are you going to stay around to close? [LB1021]

SENATOR SCHILZ: I'll stick around a little bit, yeah. [LB1021]

SENATOR LATHROP: Okay, good. First proponent of the bill. Welcome. [LB1021]

KRISTEN HASSEBROOK: Thanks. [LB1021]

SENATOR LATHROP: Yeah, go ahead and start with your name and... [LB1021]

KRISTEN HASSEBROOK: (Exhibits 7-8) Okay. Well, members of the Judiciary Committee, thank you for letting me have the opportunity to speak to you today. My name is Kristen Hassebrook. That's K-r-i-s-t-e-n H-a-s-s-e-b-r-o-o-k. I'm a registered lobbyist for the Nebraska Cattlemen Association. I'm here today in support of LB1021. On any given day in Nebraska there are in residence at least 4 million cattle between cows and those on feed. And the well-maintained fences that Senator Schilz talked about are what keep the vast majority of those 4 million animals enclosed every single day. Our livestock producers conduct daily inspections, maintenance and updates to their fences too. However, livestock are living, breathing beasts with cognitive minds and bodies that can weigh up to 1,400 pounds, and so even though it seems unbelievable at times, truly these animals can and will jump fences of any size and structure and construction. They will scratch and rub gates open, even lick gates open sometimes, let alone instances where weather, trespassers, or other unknown causes encourage their escape. It is these unique factors about livestock that no producer's best management practices can prevent against that sets the kind of context for why this discussion needs to be had. So LB1021 helps to clarify an issue that's extremely important to our livestock producers. The statute at issue was enacted in 2001 after a lawsuit where a producer was found guilty when the jury was allowed to infer negligence under the theory of res ipsa loquitur. Most of you guys are probably aware, res ipsa loquitur is Latin for the thing speaks for itself. It's a legal doctrine that allows you to infer negligence when direct proof is lacking. This is generally an exception to the standard rule of negligence. It was the understanding of the general public and Nebraska Cattlemen members and livestock owners that when this statute was put in place that res ipsa loquitur would be precluded going into the future. I can... [LB1021]

SENATOR ASHFORD: Continue, Kristen. [LB1021]

SENATOR LATHROP: You can talk to the red...or through the red. I'm sorry. [LB1021]

KRISTEN HASSEBROOK: Okay. I can talk fast but not fast enough obviously. [LB1021]

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

Judiciary Committee
February 08, 2012

SENATOR ASHFORD: You have some time so... [LB1021]

KRISTEN HASSEBROOK: So the case that Senator Schilz brought up is the classic instance of how even the district county court here in Nebraska believe that the statute precluded a res ipsa argument and they dismissed the case originally because of it. And so that's why we are here today in support of LB1021 because there are instances where livestock can escape without the negligence of their owner. And so this threshold of res ipsa loquitur basically allows an inference in an instance when it's unsuitable. Livestock aren't an inanimate object. And I looked back through the classic case, which is a barrel of flour. They're not an inanimate object like a barrel of flour that rolls out of a warehouse onto a sidewalk. They're living, breathing animals that can get out, and it seems unbelievable but it's true. So with that, I finish and you can ask me any questions. [LB1021]

SENATOR ASHFORD: Yeah, we'll get some questions for you so you can... [LB1021]

KRISTEN HASSEBROOK: Perfect. [LB1021]

SENATOR ASHFORD: Yeah, Senator Lautenbaugh. [LB1021]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today. You were here for the question I asked Senator Schilz about, under a res ipsa case, if you can show that somebody else came along and knocked down the fence so it wasn't the rancher's fault, is that a defense then? Does that overcome the res ipsa? [LB1021]

KRISTEN HASSEBROOK: So in Nebraska for the plaintiff to use the res ipsa argument, they have to prove three parameters, and if I'm repeating things that you understand I truly apologize. The first is that this is the type of instance that wouldn't happen in the normal course of events, absent the defendant's negligence; second, that the instrumentality causing the accident is under the exclusive control of the defendant; and third, that there is no...the defendant has no reasonable explanation for as to how the accident occurred. Now in the scenario that you provided to Senator Schilz, there would be an argument to say why that, you know, why the fence went down, if a car drove through it. However, that would just mean the person couldn't use res ipsa. They could still continue on with their claim. And really the types of instances that we're trying to get at is like in this most recent case. Literally, the gate was open the next morning. There was no other evidence really presented at all other than how the fence was constructed, that he inspected it and that he didn't have a history of any animals escaping. And it's those types of cases when the reality is livestock live, breathe and move on their own that something like res ipsa is just unsuitable. [LB1021]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB1021]

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

Judiciary Committee
February 08, 2012

SENATOR ASHFORD: I don't see any other questions. Senator Council. [LB1021]

SENATOR COUNCIL: Yeah, with what you just said, Kristen, you get back to the three prongs... [LB1021]

KRISTEN HASSEBROOK: Uh-huh. [LB1021]

SENATOR COUNCIL: ...of res ipsa and the first one is that it wouldn't happen in the absence of some negligence, right? [LB1021]

KRISTEN HASSEBROOK: Uh-huh. [LB1021]

SENATOR COUNCIL: From your testimony and Senator Schilz's testimony, it would happen in the absence of negligence. If cattle jump over fences all the time, if...now I have a problem with licking the lock open, you got a really bad lock there but I mean... [LB1021]

KRISTEN HASSEBROOK: They have big tongues. [LB1021]

SENATOR COUNCIL: Yeah, I mean the fact that cattle jump, that cattle weigh 1,400 pounds and can break through something eliminates the first prong of the...so you're saying the court is not applying the test properly or...? [LB1021]

KRISTEN HASSEBROOK: I don't...the court...the Supreme Court in Nebraska did not...the Supreme Court in Nebraska believes that the res ipsa can be applied in these cases; however, I would say the point that you're making has been brought up in statutes and cases across the country. There are many states that don't allow res ipsa loquitur to be used in livestock cases such as this because of the very fact you just made, that there are instances when animals escape in the absence of negligence. Other states have outlawed the res ipsa claim on the second prong that animals are not always under the exclusive control, especially when they're spooked by an unknown factor, and so that they have precluded a res ipsa argument in other states because of those, because of the two prong...the first two prongs that seem sort of inappropriate. [LB1021]

SENATOR COUNCIL: Okay. But I'm just saying, I mean, the courts could exclude a res ipsa on the very same set of facts. And I guess that's what I'm wondering, why they're not...I... [LB1021]

KRISTEN HASSEBROOK: I would have the same question. [LB1021]

SENATOR COUNCIL: Okay. [LB1021]

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

Judiciary Committee
February 08, 2012

KRISTEN HASSEBROOK: But I'm a livestock owner so... [LB1021]

SENATOR COUNCIL: Well, I'm just a confused lawyer right now. [LB1021]

SENATOR ASHFORD: Well, thanks, Kristen. Thank you for your testimony. [LB1021]

KRISTEN HASSEBROOK: Thank you. [LB1021]

SENATOR ASHFORD: Any other proponents of Senator Schilz's bill? Any opponents? [LB1021]

JOHN LINDSAY: Senator Ashford, members of the committee, for the record my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys in opposition to LB1021. LB1021, as you've heard, would repeal the common law doctrine of res ipsa loquitur with respect to animals, livestock on the roadway. And the bill, by the way, itself again amends legislation that was passed in 2001 that was intended to codify the law that existed at that time. This bill though now goes into res ipsa and repeals a portion of that. The doctrine, and this may get to your question, Senator Lautenbaugh, the doctrine of res ipsa loquitur has a couple of prongs. One is that the...whatever caused the injury to the victim must have been in the exclusive control of the defendant and that there must be evidence that without negligence the incident would not have happened. With those then there's an inference that is created that does not require specific acts of negligence be shown that there would be a presumption of negligence. It does not. And in fact, it's totally allowed for a defendant to show an alternative cause of the incident. In the case that you mentioned, Senator Lautenbaugh, evidence would be allowed to show a car went through the fence and that's what caused...allowed the cattle to go free and it would not be negligence on the part of the rancher in that situation. Or I think Senator Lathrop mentioned if there's evidence that a tree fell on the...during a storm a tree fell on the fence and, thus, allowed the cattle to get out would show an alternative cause. It simply creates a presumption that is rebuttable and it is a doctrine that goes back hundreds of years, again the theory being that the ability to prove what caused the accident is within the exclusive control of the other party and that...of the defendant party. And that defendant has the ability, in inspecting the fences, to say, look at this, there was a problem with the fence, that something happened to the fence. It's hard for the person, if not impossible, the person who was injured or killed in the accident to go out and inspect that fence or to see if there was a gate left open or to do any of those things. So it is...and, by the way, res ipsa loquitur applies to any incident, not just to livestock, if the underlying principles are applicable. With that, we would urge the indefinite postponement of LB1021. I'd be happy to try to answer any questions. [LB1021]

SENATOR ASHFORD: Senator Lautenbaugh has a question, but I just want to...and

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

Judiciary Committee
February 08, 2012

then I'll turn it over, I just wonder, it's not really a question, if the...in Senator Schilz's case where there is a highway that runs within 120 feet of his fence line, I'm sure that you have to go back to when that Interstate 80, what year that was built, but at some point is that in his exclusive control? I'm not...I'm just posing it as a rhetorical question. Is it in his exclusive control? Has the construction of the highway somehow changed the nature of that? That's just something that comes to my mind. But, Senator Lautenbaugh. [LB1021]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. And thank you again, Mr. Lindsay. I think I may have thrown out the easy hypothetical as to how you get around res ipsa but it sounds like some of the proponents are saying that it just wouldn't be proper because we're dealing with livestock. And what do we do in the circumstance then where there's a case where there's a ranch by the highway and there's a...one of the rancher's steers is out there on the highway? There's no open gate. There's no hole in the fence. Nobody knows how it happened. Is it proper, because of what we've heard, that these are wild...not wild animals but, you know, animals, to apply res ipsa on those facts? [LB1021]

JOHN LINDSAY: Well, I think it certainly comes down to a policy question, but I think in fact it is. The question there is, was there a fence open at some point that got closed, not within the control of the person who's in the ambulance, probably in the control...I mean the first thing I would think is rancher is going to make sure that if there's a fence open, they're going to go check and make sure no other livestock get out because those animals are very valuable to the rancher. And so I think the policy is that if animals do have that propensity to jump a four-string barbed wire fence, then maybe it's got to be a little bit higher. But the idea is how do we protect the public from just using a highway as it was intended to be used? [LB1021]

SENATOR LAUTENBAUGH: Yeah. Thank you. [LB1021]

SENATOR ASHFORD: Is there...and I'm just throwing just to my question, is the nature of this particular case or the nature of the demographic here, you've got a road within 120 feet of where cattle are being penned so... [LB1021]

JOHN LINDSAY: Well, I think in response to your hypothetical or the situation that Senator Schilz mentioned that again if that fence was within 100 and...what did he say, 200 feet of the road or whatever, the concern is did somebody stop and open that gate. [LB1021]

SENATOR ASHFORD: Well, I guess what I'm saying, is that a condition? I don't want to belabor it but is that...does the highway going that close to the property where the livestock is being kept, does that somehow change the nature of the risk? I mean you're... [LB1021]

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

Judiciary Committee
February 08, 2012

JOHN LINDSAY: Oh, I don't think so. We have, whether it's a highway outside of town or a street inside of town, there are things that happen within the proximity to that road or that highway that could cause injury, but we still hold persons responsible. [LB1021]

SENATOR ASHFORD: No, and I understand. I just wonder whether the presumption would apply. [LB1021]

JOHN LINDSAY: The presumption would still apply, yes. [LB1021]

SENATOR ASHFORD: Well, I know. I mean arguably it would, but I mean I wonder if it should in a case where there is this proximity. But anyway, whatever. Maybe I'm misunderstanding. But, Senator Lathrop. [LB1021]

SENATOR LATHROP: Yeah, it might be. The res ipsa doesn't create a presumption, it creates an inference, which is different because... [LB1021]

SENATOR ASHFORD: And I was going to ask that question too. What's the difference? [LB1021]

SENATOR LATHROP: ...in the bill as it...or in the law as it exists right now, the burden of proof never changes. [LB1021]

JOHN LINDSAY: Right. [LB1021]

SENATOR LATHROP: It's always the plaintiff's. [LB1021]

JOHN LINDSAY: Right. [LB1021]

SENATOR LATHROP: But the idea is that they can...they're favored with an inference of negligence. [LB1021]

JOHN LINDSAY: Right. [LB1021]

SENATOR LATHROP: Nothing in the current law stops a rancher from offering an explanation, which is... [LB1021]

JOHN LINDSAY: Right. [LB1021]

SENATOR LATHROP: ...I walk the fence, all the gates were shut, all the fence was in place, it's four barbed wire strands and that's the standard of care, I must have had a jumper and didn't know it. And that would be a defense, right? [LB1021]

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

Judiciary Committee
February 08, 2012

JOHN LINDSAY: Right. [LB1021]

SENATOR ASHFORD: It's not a...that's a defense. [LB1021]

SENATOR LATHROP: That's a... [LB1021]

JOHN LINDSAY: It is evidence of negligence without specific acts of negligence alleged or pled, and that's the inference that the jury is entitled to draw from what is out there. [LB1021]

SENATOR ASHFORD: And it's not necessary to plead that there was some sort of act of negligence on the part... [LB1021]

SENATOR LATHROP: Right. [LB1021]

SENATOR ASHFORD: ...of the landowner... [LB1021]

JOHN LINDSAY: Right. [LB1021]

SENATOR ASHFORD:because it's in his exclusive or... [LB1021]

SENATOR LATHROP: And being next to the interstate may raise the standard of care, which is why he's got iron bars along the interstate, just because there's more risk there, but... [LB1021]

SENATOR ASHFORD: Okay. Thanks, John. Any other opponents? Neutral testifiers? Senator Schilz. [LB1021]

SENATOR SCHILZ: Thank you, Senator Ashford and members of the committee. Just a couple points: One of the things, our feedyard is located right next to Interstate 80. They moved us when they came through and so we went where they told us to go, so there's that. It's not always necessarily the best thing to be right next to a major highway but we make do. [LB1021]

SENATOR ASHFORD: Right, but it wasn't your choice. [LB1021]

SENATOR SCHILZ: One other thing, kind of a little bit on the lighter side, but quite honestly cattle have and do lick the snap locks on gates and I've seen it happen, I've watched it happen. One thing about an animal in a pen is sometimes they get bored and they do have very, very, what should I say, their tongues can do a lot of things and they are pretty big and they can get a snap in their mouth and actually pull the chain right off, I'm serious, and they can walk right out. [LB1021]

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

Judiciary Committee
February 08, 2012

SENATOR ASHFORD: I believe you. [LB1021]

SENATOR SCHILZ: I've watched. [LB1021]

SENATOR LATHROP: Yeah, I don't disbelieve that. [LB1021]

SENATOR SCHILZ: Okay. And coming from that, quite honestly there are many situations where cattle escape absent of negligence on the cattle owner's part, whether they're jumping the fence, whether they lay down, right, go underneath a strand and then stand up and all of a sudden they're on the other side. I mean it's just things that you couldn't imagine, that you would never, just like Senator Council, you know, some of these things sound outlandish but they...you know, it's living, breathing things and nothing is crazier than nature, right, and the real thing. But you know we talk about...I think it was Senator Lathrop that was asking about, you know, if there's nobody there to see what's going on. The bad part about this thing is that, yeah, that animal may have licked the lock, may have opened the gate and walked out. The bad part is we can't put him on the stand to talk about it, I mean unless we know a cow whisperer, I don't know. But what I'm saying is sometimes the only...sometimes the only, quote unquote, witness to this would be the animals themselves and that runs into...that runs into exactly what we're trying to talk about here. And then just one other thing, you know, we've got a lot of other animals out and loose on the road that get hit all the time that belong to the people of the state of Nebraska, as in deer. Do we go against the state of Nebraska when somebody hits those? And that's...I know that's a little bit farfetched but that's kind of where we're at. I know that the beef producers of this state do as good a job as they can of keeping their fences. On the other side of that, we in no way, by introducing this bill, want to get somebody that is negligent any sort of leeway at all. Those folks absolutely need to be held for what they do and I believe that this bill doesn't stop that. So with that, I would try to... [LB1021]

SENATOR ASHFORD: Yeah, Senator Council. [LB1021]

SENATOR COUNCIL: Thank you. And thank you, Senator Schilz. And, Senator Lathrop, I was reading the case that...the Supreme Court decision that has given rise to this, and all of the discussion that we've had that which...be evidence that the proper care was taken, the court decided that that was evidence that it couldn't have happened but for negligence. And that's...just for example, the record reflects that the defendant stated that he had used the cattle pen since 1993 without any cattle escaping, that he did not notice his cattle behaving out of the ordinary when the cattle were placed, that he did not notice any animals in the vicinity which may have spooked the cattle, and that his inspection of the pen after the accident revealed that the pen's fences were intact, though the chain to the gate was unlatched and the gate was open. And the fence at issue here is a steel cattle fence with "sucker rods," whatever that is, which is secured to the ground. Affidavits also indicated that the defendant's cattle pen was standard in

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

Judiciary Committee
February 08, 2012

the industry yet the conclusion was that that was enough to show that the only way they could have escaped was through negligence. [LB1021]

SENATOR HARR: Well, because the gate was open. [LB1021]

SENATOR ASHFORD: And that's the problem I have with it. [LB1021]

SENATOR COUNCIL: Yeah, well, the...yeah, the... [LB1021]

SENATOR HARR: The gate was left open though. [LB1021]

SENATOR COUNCIL: ...the gate was open but he... [LB1021]

SENATOR ASHFORD: Well, it was open but it could have been opened some other way. [LB1021]

SENATOR SCHILZ: Can I address that, please? [LB1021]

SENATOR ASHFORD: Yeah. [LB1021]

SENATOR SCHILZ: As far as I understand it, and others can...others can correct me if I'm wrong, but the case, as I understand that, that case was reversed and taken back to the lower court. And we can ask... [LB1021]

SENATOR COUNCIL: Yeah, it was reversed and remanded. [LB1021]

SENATOR LATHROP: So we don't have a problem? Is that what you're saying? [LB1021]

SENATOR SCHILZ: What's that? No, I think we absolutely do have a problem and I think the problem is that we've got owners of animals, owners of cattle that are having to go through the whole entire legal process basically here to prove they're innocent, and all we know is that there was a gate open. And I think that what has been brought here today, you know, on the record, shows that cattle can open gates themselves at times and it's not anything that...and it can be the fact that...for a number of different reasons. One of the reasons that it can happen is exactly this. A cow can lay down on the ground, stand up underneath the fence, raise it high enough that the locking mechanism that usually comes down into another bowl comes out, the gate goes open. And that...and we see this stuff all the time. So it is a policy question. It's what we decide as the Legislature should be the law of the land, and the cattle owners of the state of Nebraska would like it to be this way. [LB1021]

SENATOR LATHROP: Okay. That's fair enough. [LB1021]

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

Judiciary Committee
February 08, 2012

SENATOR SCHILZ: Thank you. And with that, I would ask for your support, if there's no other questions. [LB1021]

SENATOR ASHFORD: Okay. I think we'll have to discuss this further. [LB1021]

SENATOR COUNCIL: Yeah, we have to discuss it, because the way... [LB1021]

SENATOR ASHFORD: Yeah, because the way this seems is... [LB1021]

SENATOR COUNCIL: ...the way the court decided was... [LB1021]

SENATOR ASHFORD: ...sounds like the plaintiff lost in the end. [LB1021]

SENATOR HARR: No, the plaintiff won. [LB1021]

SENATOR ASHFORD: Plaintiff won? [LB1021]

LAMONT RAINEY: Yeah, plaintiff won. [LB1021]

SENATOR COUNCIL: Yeah, plaintiff won. I mean, well, when it goes back I don't know what the final decision... [LB1021]

SENATOR LATHROP: They reversed the decision. [LB1021]

LAMONT RAINEY: I don't know what the final decision was. [LB1021]

SENATOR ASHFORD: Okay, it's an interesting...I think you've raised an interesting point and I appreciate it, Ken. We'll look at it. [LB1021]

SENATOR SCHILZ: Yeah. I got to be honest with you, when I tried to read the case and I read through it, it was confusing to me so maybe there's others that can better answer the question. [LB1021]

SENATOR COUNCIL: But all I...excuse me. [LB1021]

SENATOR ASHFORD: Yes, no, please. [LB1021]

SENATOR COUNCIL: But all I'm saying is if you...the reason the Supreme Court reversed, because they had granted the defendant summary judgment... [LB1021]

SENATOR SCHILZ: Right. [LB1021]

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

Judiciary Committee
February 08, 2012

SENATOR COUNCIL: ...and the reason the Supreme Court reversed and sent it back... [LB1021]

SENATOR SCHILZ: Right. [LB1021]

SENATOR COUNCIL: ...was that the Supreme Court found that the plaintiff had presented other evidence... [LB1021]

SENATOR ASHFORD: Okay. [LB1021]

SENATOR COUNCIL: ...in conjunction with the fact that the... [LB1021]

SENATOR ASHFORD: Just that the gate was open. [LB1021]

SENATOR COUNCIL: Right. Well, and that must have been the other evidence, but that they presented other evidence in conjunction with the fact that the livestock were out. [LB1021]

SENATOR SCHILZ: Right. [LB1021]

SENATOR COUNCIL: And said that because of that, the current law wouldn't bar the claim. I think arguably you've reached the same result under this language without evidence of specific acts of negligence, and that would be the gate being left open or the gate being...you know, you'd have to...I guess specific action, you'd have to say they...you'd have to have evidence of someone actually leaving the gate open. Okay. All right. [LB1021]

SENATOR SCHILZ: And that's where you start to run into the issue. Yeah. [LB1021]

SENATOR COUNCIL: All right. Okay, I get it. I get it. [LB1021]

SENATOR ASHFORD: And if you have...never mind. [LB1021]

SENATOR COUNCIL: I gotcha. I gotcha. [LB1021]

SENATOR ASHFORD: Thanks. Thanks, Ken, very much. [LB1021]

SENATOR SCHILZ: Thank you. [LB1021]

SENATOR ASHFORD: You've raised a brain tickler for us. [LB1021]

SENATOR SCHILZ: Thank you very much. [LB1021]

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

Judiciary Committee
February 08, 2012

SENATOR LATHROP: And you do have to try them to rural juries, by the way. [LB1021]

SENATOR COUNCIL: Yeah. [LB1021]

SENATOR ASHFORD: Yeah, and you know because you've tried them. I'm just trying to...Senator Cornett. So it's all okay? Okay. All right. Senator Cornett is here and is introducing LB1049. [LB1021]

SENATOR CORNETT: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Abbie Cornett, C-o-r-n-e-t-t, and I represent the 45th Legislative District. I introduced LB1049 to address a problem which is occurring more frequently than thought before--the theft of manhole covers and sewer grates. This is a safety concern for pedestrians and drivers, as well as a cost to the political subdivisions who have to replace these items. LB1049 changes Statute 69-401 to read that regulated metals include manhole covers and sewer grates. As a number of you remember that were here, a few years ago I did the scrap metal bill. This is somewhat of an enhancement of that bill for some problems that have arisen. It also states that no secondary metal recycler shall purchase or receive any manhole cover or sewer grate except from: one, an authorized representative of the political subdivision that owns the manhole cover or sewer grate, as is evidenced by the stamping or engraving on the cover and/or grate; two, by a third party who has a legitimate bill of sale or letter of authorization or similar approval from the political subdivision. The payment for manhole cover or sewer grates must be made by draft or check and sent by the U.S. mail, postage prepaid, to the official address of the finance department or political subdivision or third party seller. The check can only be made out to the political subdivision or authorized third party. LB1049 also states that any copper purchase of \$150 will require payment sent by check though the U.S. mail, postage prepaid. I do have an amendment that was an agreement with the scrap metal dealers lowering that from \$150 to \$100. There are several parties that have worked together over the course of the summer and fall on this bill and a representative from the police department will be testifying after me to answer any questions on how this bill...the need, how the need for this bill arose. And then there will be someone following her on the technical questions you may have. I do apologize, I have a bill up in Revenue next so I am going to have to waive closing, but I'd be happy to answer any questions. [LB1049]

SENATOR ASHFORD: Is this an amendment to what we passed before or is this a different section of the...? [LB1049]

SENATOR CORNETT: It would be the same section. [LB1049]

SENATOR ASHFORD: Same section. [LB1049]

SENATOR CORNETT: It would be...well, it wouldn't be an amendment. It's a new bill to

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Transcriber's Office

Judiciary Committee
February 08, 2012

the bill that I passed... [LB1049]

SENATOR ASHFORD: Or it's new language added... [LB1049]

SENATOR CORNETT: ...I think five years ago on scrap metal, four or five years ago. [LB1049]

SENATOR ASHFORD: Well, yeah, we... [LB1049]

SENATOR COUNCIL: Well, we've had one since I've been here. [LB1049]

SENATOR ASHFORD: We've had a couple. [LB1049]

SENATOR CORNETT: A couple since then, yes. [LB1049]

SENATOR ASHFORD: Okay. Any questions of Senator Cornett? See you, bye. [LB1049]

SENATOR CORNETT: Sorry. I got to run. [LB1049]

SENATOR ASHFORD: See you later. [LB1049]

TINA JENNUM: Hello. My name is Tina Jennum. It's J-e-n-n-u-m. I'm with the Omaha Police Department. I'm a sergeant of their pawn and salvage unit and today I am here representing them in support of this LB1049 submitted by Senator Abbie Cornett. The reason this came about is I contacted Senator Cornett probably about last summer and I asked for her assistance in helping us curtail the thefts of manhole covers and sewer grates. We had noticed that there had been an increase in those types of items and we're looking at reducing that number and looking to her for some help on how we could do that with changes in laws or amending LB766 with some different language. There's a couple different reasons why we wanted to do this. First and foremost is for safety of our citizens. When these manhole covers and these sewer grates are taken off the street, it leaves a large hole and people can get hurt or their vehicles or property can get damaged. There was an incidence where there was a 16-year-old male who did get hurt while he was riding his bike to his aunt's house. He was knocked unconscious when a sewer grate was taken, possibly stolen. He went unconscious, suffered a large gash in his chin and had to be transported to the hospital, and that's my main reason is just because of the safety of the citizens and not only the cost of maybe property getting damaged but also to save the taxpayer some money in putting out new manhole covers and sewer grates. Right now a person who takes in a sewer...a manhole cover is getting about \$20 to \$30 per manhole cover. They're made of iron. It will cost the city about \$100 to replace that manhole cover. That's just for the item itself. That's not including the man-hours it costs for them to replace it. I contacted Craig Christians with the city of

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

Judiciary Committee
February 08, 2012

Omaha. He is in charge of our...he's a manager of the sewer maintenance division. I contacted him and he told me that basically when they replace a manhole cover it costs about \$500 to replace a manhole cover due to the fact that a team will have to go out there, assess it, and then they'll have to go back out and replace the damaged part or replace the whole part, and usually this is done during nighttime hours, same with the sewer grates. They're both affecting us. I can tell you that from what I've learned from...I can tell you from what I learned from Craig Christians of the Omaha Public Works is there were quite a number of sewer grates and manhole covers stolen last year and he gave me an estimate for about 11 months. The total loss cost the city a little over \$19,000. If there's any support I can give for you guys leaning this way to keep manhole covers and city grates out of the scrap yards, I would really appreciate it. [LB1049]

SENATOR ASHFORD: Thanks, Sergeant. [LB1049]

TINA JENNUM: Uh-huh. [LB1049]

SENATOR ASHFORD: Senator Council and then Senator Lautenbaugh. [LB1049]

SENATOR COUNCIL: Thank you. Yeah, thank you, Sergeant. I certainly appreciate the concern with regard to the manhole covers and the sewer grates but also as well the effort, the continued efforts with regard to copper. And my question is, has law enforcement looked at some kind of national registry or some way to deal with this almost interstate activity? And I'm sure you know what I'm talking about. I mean we've taken steps with the support and the assistance of the scrap dealers in Nebraska,... [LB1049]

TINA JENNUM: Uh-huh. [LB1049]

SENATOR COUNCIL: ...which I suspect has had an impact on reducing the amount of stolen material that's taken to Nebraska's metal dealers. My problem is a lot of this material is being stolen in Nebraska, taken to Iowa where they don't have the requirement that the payment not be in cash, they don't have a requirement that the check be mailed. Is there anything that we can do? And maybe it's just an OPPD issue. Deputy Chief, you need to put a cruiser at 16th and Locust and stop the folks traveling into Iowa. I mean is there anything, I mean, that we could do from... [LB1049]

TINA JENNUM: Well, unfortunately, when we're talking about scrap metal and you're talking in particular about copper, there are no identifying marks with copper whatsoever. You have copper pipes and you have copper wire, you have insulated copper, and it's very hard to determine where that copper came from, especially after someone steals it, burns it, cuts it. We are just basically left with the diameter of it and, unfortunately, there's no identifying marks to put that back towards a victim. There are other things in place but they're not in place here in the United States yet. There is a

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

Judiciary Committee
February 08, 2012

water system in Europe where they attach DNA to water and then they put it on the copper, so that way the law enforcement can go ahead and track those back to the victims. Unfortunately, we just don't have anything like that here right now. There have been efforts made to...in reference to catalytic converters. I'm sure that's one of your concerns. Catalytic converters, they can get at a scrap yard anywhere from \$60 to \$120 per catalytic converter, which is very costly because it costs the owner about \$500. [LB1049]

SENATOR COUNCIL: About \$300, \$300 to \$500. [LB1049]

TINA JENNUM: Yeah, it's expensive. And the thing is there's nothing identifying that back to the owner. There were suggestions made for contact being made a little bit higher up to where we get the automobile industry to maybe etch in the VIN number to the catalytic converter, much like they do the windows to a car to stop the thefts of auto thefts going over the country. But I haven't heard anything back, any support from that whatsoever. [LB1049]

SENATOR COUNCIL: Okay. Well, for those who don't know the reason for my interest, I have unfortunately been the victim of too many central air-conditioning units leaving, too many walls destroyed, taking copper pipes out of properties, and it just seems that it's escalating despite what we're doing in Nebraska and what law enforcement and what the metal dealers are doing. So then you start asking around and that's the response we get, is Iowa. [LB1049]

TINA JENNUM: Right. Well, you know, there are items still being scrapped here in Omaha, from where I'm at, and from LB766 it is helping out that we...that the owners have to fill out those cards. So it is letting us know who goes there and who doesn't. Unfortunately, there's just no tracers from those cards the type of items that they're selling unless they're unique or distinctive, like if someone stole a bronze statute or a cemetery plot or... [LB1049]

SENATOR COUNCIL: Uh-huh, monument or something. [LB1049]

TINA JENNUM: ...yeah. It has to be very distinctive. Otherwise, all the material kind of blends in together. But it does kind of give us an idea of who maybe some of the players are and some of the thieves are. [LB1049]

SENATOR COUNCIL: Yeah. And it gives an information base. [LB1049]

TINA JENNUM: Yeah. Uh-huh. [LB1049]

SENATOR COUNCIL: Thanks. [LB1049]

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

Judiciary Committee
February 08, 2012

SENATOR ASHFORD: Do you have a question, Scott? [LB1049]

SENATOR LAUTENBAUGH: No. Brenda covered it. [LB1049]

SENATOR ASHFORD: Okay. Thanks, Sergeant. [LB1049]

TINA JENNUM: Thank you. [LB1049]

SENATOR ASHFORD: Next proponent. [LB1049]

DAVID BORSUK: (Exhibits 9-10) Good afternoon. My name is David Borsuk, D-a-v-i-d B-o-r-s-u-k. I'm employed by Sadoff and Rudoy Industries, and we have two metal recycling facilities in the Lincoln Air Park. I also represent the Northwest Chapter of the Institute of Scrap Recycling Industries, ISRI, and its 12 member companies in Nebraska. We as a trade association and as individual companies are against metal theft and are fully supportive of LB1049 with a check requirement in excess of purchase of \$100 for copper scrap. We appreciate the efforts of Senator Cornett to allow us to participate with other stakeholders to offer input in this bill. As a matter of background, I'd like to point out that the Nebraska scrap recycling industry directly employs 630 people with annual wages of \$27 million and an economic impact of \$94 million. In one of the handouts that I provided you, the economics are in there. We know that metals theft is a pressing issue and we would like to have a continuing dialogue with all those affected parties, such as material property owners, the recycling industry, law enforcement, prosecution, and judiciary, to develop meaningful solutions to this issue. It is only by working together that we can have a lasting solution. Our national trade association, ISRI, has taken several steps to help address this issue. We've developed best management practices to combat metals theft. We are currently working with the International Association of Police Chiefs to develop a study to evaluate the effectiveness of various metal theft laws and the establishment of ScrapTheftAlert.com, a free service for law enforcement to log in scrap theft and the electronic distribution of this notice in a 100-mile radius of where it's taken place. We feel that awareness is a key component to combatting metal theft. In conclusion, we want to be part of the solution and welcome the opportunity to meet anytime to address this problem. Thank you very much. [LB1049]

SENATOR ASHFORD: Any questions? [LB1049]

SENATOR COUNCIL: I just want... [LB1049]

DAVID BORSUK: Ma'am. [LB1049]

SENATOR COUNCIL: ...applaud the industry for their efforts. [LB1049]

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

Judiciary Committee
February 08, 2012

DAVID BORSUK: I'm sorry? [LB1049]

SENATOR COUNCIL: I just want to applaud the industry for their efforts. [LB1049]

DAVID BORSUK: Oh, thank you. [LB1049]

SENATOR ASHFORD: Any questions, any other questions of David? I don't see any. Thanks. [LB1049]

DAVID BORSUK: Okay. And, Senator Council, if we could talk or give me the information, your thought about national scrap theft legislation or some kind of harmonization, there is something underfoot but I don't know exactly where it is right now. [LB1049]

SENATOR COUNCIL: Okay. Thanks. Appreciate that. [LB1049]

DAVID BORSUK: Thank you very much. [LB1049]

SENATOR ASHFORD: Thanks, David. How many testifiers do we have on this bill altogether? I guess this is...Don, you may be...or one more, two more. [LB1049]

DON WESELY: Mr. Chairman, members of the Judiciary Committee, my name is Don Wesely, D-o-n W-e-s-e-l-y, a registered lobbyist for Alter Trading Company. We're here to support the bill. We worked with Senator Cornett five years ago. We're working again this year in constructively trying to address this problem. And we have good legislation on the books; this will make it better. We think it's reasonable. The \$150 figure in the bill, we originally, as an industry, wanted it at \$300, so Senator Cornett got us down to \$150 and now we're down to \$100. But we really don't want to go below that and it actually ties into your question, Senator Council, because you make it so onerous by our regulation here, they go over the bridge and go to Iowa. And if you saw the article, and I don't know if you had a chance and I apologize, I should have brought copies, the World-Herald had an article about this whole issue a month ago or so in anticipation of this legislation and they found where those manhole covers and sewer grates were largely going and that's to a scrap yard north of Council Bluffs. And so we can crack down in Nebraska but we don't address the problem if we don't get some help over in Iowa. And so we'll do what we can and we think we're being reasonable here, but you know there's a bigger issue we're going to have to figure out how to address. So anyway, we're here in support of the bill. [LB1049]

SENATOR ASHFORD: Thanks, Don. I don't see any questions. Next proponent. [LB1049]

KIM ROBAK: (Exhibit 11) Senator Ashford and members of the committee, my name is

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Transcriber's Office

Judiciary Committee
February 08, 2012

Kim Robak, R-o-b-a-k. I'm here today on behalf of AT&T in support of LB1049. You may wonder why a phone company cares about manhole covers. The bill in Section 3 also addresses or makes the law more stringent with regard to the sale of any type of metals by these...by the companies that deal with these, the scrap metal. Section 3 requires that an individual who now, based on the amendment that's proposed, anybody who purchases \$100 of scrap metal would have to write a check and mail it to somebody rather than handing them the money at the time. That way you're sure you have a record of somebody who actually is...has a residence, has a place that they can actually pick up that check. So AT&T has to deal with this issue because of copper. People actually climb telephone poles and take the copper, causing phone outages. Actually causing several electrical deaths because they get electrocuted by the electrical wires that are also nearby. So it is a matter of public safety and a huge expense to the phone industry, so we would support the bill. And in fact, in a letter that you will receive from Beth Canuteson from AT&T, she indicates anything else that you can do to make it harder for people to sell this scrap metal when they steal it, anything that you can do in that regard AT&T would support. [LB1049]

SENATOR COUNCIL: Just real quick. [LB1049]

SENATOR ASHFORD: Kim, yes, thanks. Senator Council. [LB1049]

SENATOR COUNCIL: Yeah. And, Ms. Robak, you were here when I was asking the question, and maybe this would be something to discuss with Ms. Canuteson, is looking at it from a national perspective because it's not just in Nebraska. [LB1049]

KIM ROBAK: It is a national problem. [LB1049]

SENATOR COUNCIL: It's a national problem and if we don't get some consistency like it was being said, our dealers are complying with our laws and acting professionally, responsibility, and potentially losing income from, you know, people who are legitimately in the business of selling scrap because they have to go through the process that we're putting...the processes that we put in place. And I don't want, you know, our dealers to be bearing the brunt of the failures in other states to address... [LB1049]

KIM ROBAK: This is...Senator Council, this is a huge issue nationally. I am aware that in Iowa there was an incident maybe a year or two ago where an individual died when someone stole copper piping and the house blew up as a result... [LB1049]

SENATOR COUNCIL: Somebody's house blew up, right. [LB1049]

KIM ROBAK: ...of a gas leak. And so I'm surprised that Iowa hasn't changed the law because I know there have been some efforts in Iowa. I do know that regionally there are efforts being made to change the law. I don't know about uniformity... [LB1049]

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

Judiciary Committee
February 08, 2012

SENATOR COUNCIL: Okay. [LB1049]

KIM ROBAK: ...and I will mention that as well to AT&T. [LB1049]

SENATOR COUNCIL: Okay. Thanks. [LB1049]

KIM ROBAK: So thank you. [LB1049]

SENATOR ASHFORD: It's good comments. Thanks, Kim. [LB1049]

KIM ROBAK: Thank you. [LB1049]

SENATOR ASHFORD: Next proponent of the bill. Opponents? Neutral? [LB1049]

KRISTEN GOTTSCHALK: (Exhibit 12) Chairman Ashford and members of the Judiciary Committee, my name is Kristen Gottschalk, K-r-i-s-t-e-n G-o-t-t-s-c-h-a-l-k. I'm the government relations director and registered lobbyist for the Nebraska Rural Electric Association and I'm here to testify in a neutral capacity on LB1049. Now truth be told, there really is never truly neutral testimony and that's the case today. NREA members certainly do not oppose LB1049. In fact, they would really love to be strongly supportive of the legislation but feel that changes need to be made to make it an effective theft prevention tool, and part of that we would propose the removal of the \$150 threshold and implement a three-day wait for the bill. Now I know that seems to be somewhat onerous but I want to address that a little bit later. We do thank Senator Cornett for this. It was our proposal to include mailing of the check as that part. We are primarily concerned with our memberships' theft of ground wires from distribution lines, distribution poles, and from our substations, and concerns with the safety to our employees as well as a concern that we don't want to kill somebody in the process of stealing copper materials as well. As the price of copper goes up, so does the thefts. And as we see an increase in the use of street drugs in certain areas, especially methamphetamine, we do see a significant increase. Now we, from our membership, we're seeing whole rolls of wire, contents from scrap bins where we collect our scrap materials, and most troubling is the theft from the ground systems from distribution and substations. Grounding of the system is very important to ensure safety and we want to be sure that we protect against that. For thefts from our facilities, say the storage yards, that we no longer store spools of wire on job site. They're always locked up. We have installed cameras to ensure theft prevention. The industry has gone to different types of technologies hoping to prevent theft and one of those is marking wire but, of course, copper is very easily manipulated into a form so where the markings are no longer visible. The newest thing is to have copper-coated steel wire, which will serve the same purpose, but it has absolutely no scrap value. But when you consider we have 80,000 miles of distribution line out there and we have ground wires on a minimum of four poles

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Transcriber's Office

Judiciary Committee
February 08, 2012

per mile, that's a lot of material. Thieves will chop off the ground wire at a height they can reach, and that's usually about eight feet. They get like 64 cents for that eight feet of wire. So when you stop and think about it, to reach that \$150 threshold we would have to...it would have to be the wire from 78 distribution poles and that's the equivalent of four to five miles of line. So it's a significant amount of damage and the damage to replace, if it's just the wire, okay, it's \$100. Maybe we can absorb part of that but we can't absorb the issue of the danger of losing those ground wires. So I'd be happy to answer any questions you may have. [LB1049]

SENATOR ASHFORD: It is an amazing thing. I mean how often does this...you have reports of incidents obviously. How often does this occur? [LB1049]

KRISTEN GOTTSCHALK: It is occurring, you could say, on a daily basis. [LB1049]

SENATOR ASHFORD: To you... [LB1049]

KRISTEN GOTTSCHALK: Some distribution systems... [LB1049]

SENATOR ASHFORD: ...or to your members. [LB1049]

KRISTEN GOTTSCHALK: To my member systems. Some distribution systems will have it happen more frequently and, really, you can correlate the frequency with increased problems with illegal drugs in the area. So it's very frequent. [LB1049]

SENATOR LATHROP: Just briefly,... [LB1049]

SENATOR ASHFORD: Senator Lathrop. [LB1049]

SENATOR LATHROP: ...we have these hearings and it seems like the problem or what we try to address as the response to junkies that are trying to do this, and I'm not so sure we shouldn't have somebody that's an expert on junkie behavior come in here and tell us what their habits are. Because if the check...if they all need money right now and the check does the trick, then this would be the answer and we'd end our problem. But we always have law enforcement come in and then we have the junk dealers come in and we never have an expert on junkies. [LB1049]

KRISTEN GOTTSCHALK: A junkie? [LB1049]

SENATOR ASHFORD: A junkie. (Laughter) [LB1049]

SENATOR LATHROP: And it seems to me like having somebody come in and say this is what they're after and this is how they operate and if we interrupt their behavior through our policy, but just an observation. [LB1049]

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

Judiciary Committee
February 08, 2012

KRISTEN GOTTSCHALK: Right. What we've seen in policy... [LB1049]

SENATOR ASHFORD: That is a great point though. I mean it would be great to get an ex-junkie. [LB1049]

KRISTEN GOTTSCHALK: It is a good... [LB1049]

SENATOR LATHROP: I don't know if we need an ex-junkie but we might have a cop here that can do that. [LB1049]

KRISTEN GOTTSCHALK: It is a good point. But when you consider that we, you know, we've implemented different policies that maybe were directed more at the scrap dealers when they may not have the ability to tell. In some states though they're making them hold the materials before they can disperse it. That's a hardship to the reseller. And so the reality is to prevent the theft is what we need to do. The scrap metal dealers are buying stolen copper but not...I'm not seeing that it's knowingly. It's just an unfortunate situation. [LB1049]

SENATOR ASHFORD: Hmm. It is a problem. [LB1049]

SENATOR LATHROP: We could, I suppose, stop them from selling to people who don't have teeth. [LB1049]

KRISTEN GOTTSCHALK: We imagine that they're... [LB1049]

SENATOR ASHFORD: That's another option. You've got... [LB1049]

SENATOR LATHROP: You can't buy scrap from somebody with no teeth. (Laugh) [LB1049]

SENATOR ASHFORD: You've got so many great ideas today, Senator Lathrop. [LB1049]

SENATOR LATHROP: But that might be throwing the net a little too wide. [LB1049]

SENATOR LAUTENBAUGH: Sort of a minimum requirement? [LB1049]

SENATOR ASHFORD: Yeah, a minimum. [LB1049]

SENATOR LATHROP: It's starting to get a Friday afternoon feel in here. Pardon me for contributing. [LB1049]

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

Judiciary Committee
February 08, 2012

SENATOR ASHFORD: Yeah. It's that flashing light, Senator Lathrop. [LB1049]

SENATOR LATHROP: The flashing light. [LB1049]

KRISTEN GOTTSCHALK: That flashing light. I didn't know if that was the next step past the red light, that I had been in the chair too long. [LB1049]

SENATOR ASHFORD: No, that's fine. Yeah, that's the...if you don't stop when you're told, that thing goes off and then heaven knows after that. Thank you, Kristen. I don't think there's any other questions. [LB1049]

KRISTEN GOTTSCHALK: Thank you. [LB1049]

SENATOR ASHFORD: Thank you for your comments. Other neutral testifiers? (See also Exhibit 13) Okay, Senator Pirsch has the next bill. [LB1049]

TANYA BORJES: Good afternoon, Chairman Ashford, members of the Judiciary Committee. Despite the striking resemblance, I am not Senator Pirsch. I am his legislative aide and I am here to open on LB1107, and for the record my name is spelled T-a-n-y-a and the last name is B-o-r-j-e-s. And he sends his apologies that he cannot be here this afternoon. Basically, LB1107 and its intent is in relation to the movement of vehicles and property after an accident. It would provide a limited immunity from such movement of the vehicles or the property. It has been shown that such quick clearance policies have dramatically reduced the secondary accidents. There's also governmental liability to consider and then secondary crashes, economic impact from traffic disruption, road closures and those types of things. So a quick clearance practice would simply improve the safety, the risk factors for the public and those first responders alike. I also have and will ask a page to help distribute an amendment. Thank you. Basically, the amendment that we're presenting would narrowly...would narrow, actually, the language to allow movement of vehicles and other property in the case of a minor injury versus a serious injury, minor injury being like a scrape or a bruise, but they would be able to get everything out of the way. Obviously, a serious injury though would stay put and wait for the first responder to arrive. And that is LB1107. [LB1107]

SENATOR ASHFORD: Any questions of Tanya? I don't see any. Thank you. [LB1107]

TANYA BORJES: Okay. Thank you. [LB1107]

SENATOR ASHFORD: Proponents. Dave, welcome back. [LB1107]

DAVID BAKER: Thank you. My name is David Baker, B-a-k-e-r. I'm the deputy chief of the Omaha, Nebraska, Police Department. Thank you, Senator Ashford, for allowing us

the opportunity today, and the committee, to speak before the committee. OPD supports LB1107 as an integral part of our traffic instant management plan. The National Cooperative Highway Research Program defines a quick clearance program as the practice of rapidly and safely removing temporary obstructions from the roadway. There are over 40 states that have instituted part or all of a safe quick clearance program and this...which basically consists of three laws. One of those laws was the one that was passed last year. It was the slow down, move over law that has drivers slow down and move over a lane if there is emergency vehicles, stopped traffic on the shoulder and things of that nature. The other two components are authority to remove, which is covered in LB1107, as well as the driver remove it clause. In many of these states, the mandatory removal by drivers when the vehicles are movable and there's not a serious injury is not a matter of choice. In this particular bill, we elected to allow that as a choice for the drivers at the time if they felt that they could go ahead and safely. We're not mandating that the drivers would move over, although that is part of the national safe quick clearance program. This is very close to that. And secondarily, the authority for removal and a liability waiver for us clearing the roadway quickly. What this is set to do is to help primary accidents and keep primary accidents from becoming secondary accidents. Statistically, secondary accidents are much more severe than primary accidents. Getting the drivers off the roadway, having the police or our agents, that being the tow truck drivers, remove as quickly as possible obstructions from the roadway makes for a safer driving environment for everybody involved. It lessens the economic impact of the traffic jams and the slowdowns that cause trucks and other things to be delayed, people to be delayed going in and out of work. Safe quick clearance has shown an 11 percent reduction in delays caused by minor accidents with a lane blocked in states that have a driver removal law, a 69 percent reduction in secondary accidents due to a traffic incident management program that incorporates this, and it saves an annual delay of 143.3 million hours, that was in 2009 of the 40 states that did have the safe quick clearance policy. Essentially what this does is it makes our roadway safer. It allows the smaller departments, I know we look at departments like Omaha and the State Patrol to have somewhat deep pockets, be able to go ahead and afford to remove these types of things. You wonder why do we need liability limitations or immunity for that type of thing. We don't want to be so myopic in our view of this. We have smaller agencies throughout this state for which defending even a lawsuit much less losing one could ruin a budget for years to come. We want to encourage our departments to be able to remove obstructions from the roadways to make our roadways safer. And make no mistake about it, this will save lives and it's proven to do so in other states. And with that, I'd be happy to take any questions. [LB1107]

SENATOR ASHFORD: Thanks. Senator Council. Thanks, Dave. [LB1107]

SENATOR COUNCIL: Thank you. And thank you, Deputy Chief. You know that you and I had a conversation or two about the bill before it was introduced and fundamentally I

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

Judiciary Committee
February 08, 2012

have no problem with Section 1 and the addition there about allowing a driver to move voluntarily. My question was then and continues to be the necessity for this liability provision when law enforcement moves, because at some point in time law enforcement clears the road. So, you know, my question is, what liability are you being protected against if you...if without this language at some point in time you go to clear the roadway? [LB1107]

DAVID BAKER: Yes, ma'am. We are going to... [LB1107]

SENATOR COUNCIL: Why whether you do it, you know, 10 minutes sooner or 30 minutes sooner, I mean don't get me wrong, I don't like traffic backups on 80 waiting for a vehicle to be moved, but they're moved at some point in time. [LB1107]

DAVID BAKER: Uh-huh. And we may actually employ different equipment to move them. We may not be able to move the damage completely off the roadway. It may be on the shoulder and later on there would be an incident with the blocked shoulder, say a drunk driver or something driving into the back of the scene, and there could be alleged that because the officers cleared the lane, because they weren't able to completely remove it from the roadway, because they did it in the way in which they did could increase the liability. That, in conjunction with the fact that currently now you can look at it as if there is an accident and there's liability for the accident one person caused and another person or more was a victim of that accident. If we remove it from the roadway, say for example if using push bars on a cruiser, and in so doing cause accident to the vehicles that we're removing, we may well save lives or we may save secondary accidents or simple inconvenience to other motorists on the road, but we're going to incur liability as a department. When you look at that from a department size of Omaha, you can understand where even though our budgets are tight we do have some ability to pay there. But this isn't being written simply for Omaha, Nebraska. This is being written for Nebraska and that's not the case throughout the state. And secondarily, you can look at the reason why we have liability in an accident is the person that actually caused the accident that caused the obstructions and all the ancillary problems that will follow is going to have liability for that. And if there is another...look at the simple right and wrong of this. If there is a need for the taxpayers' agent, that being the law enforcement agency, to remove that from the roadway that this person who is liable caused, shouldn't that person also then be liable or that person's insurance be liable for any subsequent damage that would have never occurred had it not been for the initial negligent act that caused the accident? And should the taxpayers then go ahead and bear the responsibility of that person's lack of responsibility? [LB1107]

SENATOR COUNCIL: Okay. And in that regard, so my question is, can't we impose liability on...I mean, well, it could be imposed on them in any event. I mean if car A strikes car B and they're blocking the roadway, and to open up traffic and for protection car B is moved off to the shoulder where it's struck a second time by car C. Now I have

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Transcriber's Office

Judiciary Committee
February 08, 2012

to turn to my colleagues who do more personal injury and insurance work, but I would believe that legally the owner of car B has a claim against the owner of car A and car C, or would have just a claim against car A if car C had no insurance. They could recover all of their damages. [LB1107]

DAVID BAKER: Certainly I'm not an attorney but if this bill does pass that would be the case with no doubt. [LB1107]

SENATOR COUNCIL: Uh-huh. [LB1107]

DAVID BAKER: That would remove the doubt in this particular case. And I would agree that the person... [LB1107]

SENATOR COUNCIL: But all this bill does is make...is grant the city immunity. It doesn't say anything about... [LB1107]

DAVID BAKER: It does grant the police, the law enforcement agency. [LB1107]

SENATOR COUNCIL: Yeah, it grants law enforcement immunity but in terms...and we did a little checking and if I'm the unfortunate owner of car B,... [LB1107]

DAVID BAKER: Uh-huh. [LB1107]

SENATOR COUNCIL: ...I get hit with two deductibles because they're considered two different accidents. I appreciate what the department is trying to get to. I'm still trying to work through my...in my head how we can get it done so that the roadways are cleared expeditiously, traffic is opened up, safety is enhanced, and the law enforcement isn't looking at, you know, incurring liability. But I just don't know whether this immunity from liability provision is the best way to accomplish that. But I'll keep looking at it. Thank you. [LB1107]

SENATOR ASHFORD: Thanks, Senator Council. Thanks, Dave, for your comments. [LB1107]

DAVID BAKER: Thank you. [LB1107]

SENATOR ASHFORD: Other proponents of the bill? Opponents? Opponents? John, man, it's kind of the same theme going on here. [LB1107]

SENATOR COUNCIL: Yeah. The bill has the word "immunity" in it and he springs up like a jack-in-the-box. (Laughter) [LB1107]

SENATOR ASHFORD: He just springs right to action. It's just... [LB1107]

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

Judiciary Committee
February 08, 2012

JOHN LINDSAY: Senator Ashford. [LB1107]

SENATOR ASHFORD: It's great to see you really, I mean. [LB1107]

JOHN LINDSAY: Senator Ashford, members of the committee. [LB1107]

SENATOR LATHROP: And he brought law with him. [LB1107]

SENATOR COUNCIL: And he brought law books with him. [LB1107]

SENATOR ASHFORD: Yeah, you brought the statutes. [LB1107]

JOHN LINDSAY: I speak truth. [LB1107]

SENATOR COUNCIL: You speak truth. [LB1107]

JOHN LINDSAY: I am hoping to get through this presentation without saying cattle or speaking Latin. [LB1107]

SENATOR ASHFORD: Yeah. [LB1107]

JOHN LINDSAY: John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys. Two points I would...by the way, no objection to Section 1. The concern that we have is subsection (4)(a), the changes there. And two points: One is Nebraska Association of Trial Attorneys opposes immunities from liability. The civil justice system is set up to weigh who is at fault and to hold accountable those who are at fault, and so we have a longstanding policy that we do oppose immunities from liability. The second point is that this issue is already addressed I believe in the Political Subdivisions Tort Claims Act, Section 13-910(1). Remember the Tort Claims Act is a waiver of sovereign immunity by the state on behalf of political subdivisions, so sovereign immunity continues to apply unless it's waived therein. In 13-910.01 it excludes any claim based on an act or omission of an employee of a political subdivision exercising due care in the execution of a statute, which is...statute, ordinance, etcetera, which is exactly what they're doing there. And secondarily, in (2) it excludes any claim based on the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of the political subdivision or an employee, etcetera. And again, this is...the statute itself authorizes a peace officer or law enforcement officer if, in his or her opinion, that an emergency situation requires the clearing of that obstruction, the Political Subdivision Tort Claims Act is already set up to address that. We don't...I don't believe we need to go and start addressing tort liability for municipalities outside of that act. We should allow that act to cover. We would urge that the bill...that that second area in the changes to (4)(a) be removed from the bill. I'd

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

Judiciary Committee
February 08, 2012

be happy to answer any questions, Mr. Chairman. [LB1107]

SENATOR ASHFORD: I don't see any. Thanks, John. Any other opponents? Any neutral testifiers? [LB1107]

JO ANNE HITZ: Good afternoon. My name is Jo Anne Hitz, J-o A-n-n-e, last name H-i-t-z. I am representing the Professional Towers Association of Nebraska. We were involved with the Omaha incident management team when they came up with a traffic plan for their traffic management program that they were trying to implement. We were the only private sector that was asked to participate in their plan. I think what needs to be addressed is that ultimately the private sector is the one that's doing the quick clearance of the highway so we would be the...the private sector is who is going to need the release of liability in order for the plan to be implemented, I feel. It's a good plan. It's a national plan. There's increments of minor versus major incidences. They give a protocol on the amount of time that they feel that you should have an incident cleared from the highway. On a major accident, which is multiple vehicles, they give an hour and a half of clearance time, which is a very quick amount of time. I mean that's not very much to remediate a severe incident. So in order for that plan to really be implemented in the way that it needs to be implemented, the release of liability would come on to the private sector. That's basically all I have, short, sweet, to the point. [LB1107]

SENATOR LATHROP: It was. Good to see you again. [LB1107]

JO ANNE HITZ: You too. [LB1107]

SENATOR ASHFORD: How is the slowdown part of the law, how is that working? Do you know? Do you have any...have you had discussions about that or... [LB1107]

JO ANNE HITZ: I have talked to towers that are members along the state of Nebraska to see if it's even being enforced. To my knowledge, it's not even being enforced. [LB1107]

SENATOR ASHFORD: I mean it would seem to me that it would have an impact, but I guess we'll have to see over time. Senator Council. [LB1107]

SENATOR COUNCIL: Yeah. I just had...you're testifying in a neutral, was it a neutral capacity? [LB1107]

JO ANNE HITZ: Correct. [LB1107]

SENATOR COUNCIL: Okay, and because you're looking for protection or indemnification from liability for the private towing companies. So are you urging the committee to look at include...amending the bill to add such indemnification? Because

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

Judiciary Committee
February 08, 2012

there's nothing in there now. Is that what you're... [LB1107]

JO ANNE HITZ: I, in my...I operate a towing service in York. There is not a law enforcement agency that does any sort of clearance of the highway in my area. I'm called upon to do that. [LB1107]

SENATOR COUNCIL: Uh-huh. Right. [LB1107]

JO ANNE HITZ: So I'm a little bit confused on... [LB1107]

SENATOR COUNCIL: Okay. [LB1107]

JO ANNE HITZ: I understand why they're putting it in there and I agree that they probably need that, but they're not doing the remediation of the incident. [LB1107]

SENATOR COUNCIL: Okay. And that's the reason I'm asking the question because your company does not fit within the definition of a law enforcement agency. [LB1107]

JO ANNE HITZ: Correct, but I am called upon by a law enforcement agency to remediate their highway. [LB1107]

SENATOR COUNCIL: Okay. [LB1107]

JO ANNE HITZ: I have to remediate the highway per their request but within regard to the liability that I'm exposed to, to remediate their highway. [LB1107]

SENATOR COUNCIL: Okay. Yeah. [LB1107]

JO ANNE HITZ: They want it done quickly and efficiently, but I also can be sued for the damages that are incurred because of the condition the person has put their vehicle in. [LB1107]

SENATOR COUNCIL: Okay. Well, understood. [LB1107]

SENATOR ASHFORD: I get it. Thanks. [LB1107]

JO ANNE HITZ: Thank you. [LB1107]

SENATOR ASHFORD: Thank you very much for your comments. Any other neutral testifiers? Senator Cornett, or I'm not...Senator, do you want to, Tanya, do you want to close or...? Okay, that concludes the hearing. Thank you all for coming. Okay. I'm sorry. [LB1107]

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

Judiciary Committee
February 08, 2012

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k, neutral on LB1049. This bill is too complicated. We do need something. Why should the...tell a scrap dealer to buy a stolen manhole cover and send the money to the city? The police do not pay a pawn shop for stolen objects. They just take them. Business of bulk buying scrap is the same as a pawn shop. They're very similar. A simple bill to cover scrap buying with the requirements of a pawn shop would be sufficient, not LB1049. Talking to pawn dealers about people being dumb to pawn objects that have serial numbers, she said there are dumb people and dumb drunks that are different. I sold a lot of scrap to Neidens in Lincoln years ago. They knew what kind of steel they were buying. After many years of not selling scrap, we sold some six months ago to Alter. Alter bought Neiden out. Alter runs the place like a factory. Alter does not know what kind of steel they are buying. They buy it in a truckload. Believe me, it's a mess to sell to Alter now. Copper is weighed by the pound so the operator knows what they're getting, but this truck, they're just buying a truckload and they all drive off and they unload it. Thank you. [LB1049]

SENATOR ASHFORD: Thanks, Richard. You know what we're going to do is we're going to...I know you intended to talk and I was...I apologize for not being clear about the last bill but I think you're probably talking about Senator Cornett's bill, so we'll make sure that this testimony gets to Senator Cornett's bill. Thanks for coming in. All right. [LB1049]