

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

Judiciary Committee
February 24, 2012

[LB722 LB1096 LB1111 LB1164]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 24, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB722, LB1111, LB1164, and LB1096. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Burke Harr; Colby Coash; Brenda Council; and Amanda McGill. Senators absent: Tyson Larson and Scott Lautenbaugh.

SENATOR ASHFORD: Good afternoon, everyone. Welcome to the final day of hearings of the Judiciary Committee for this Legislature. And it's auspicious that the Speaker will be leading off our final day of hearings, so...

SENATOR HARR: His final hearing.

SENATOR LATHROP: We voted to have you go last.

SENATOR ASHFORD: Yeah.

SENATOR MCGILL: This would be his final bill introduction.

SENATOR LATHROP: The Chair overruled it.

SENATOR HARR: Um-hum.

SENATOR ASHFORD: This may be...this probably will be his final bill introduction, so let's...

SENATOR LATHROP: Yes, this might be your final...this is where you started, right?

SENATOR ASHFORD: In a way, I...oh, no. Now I'm going to have to start getting teary-eyed about it.

SENATOR LATHROP: Here you are...oh, I am.

SENATOR ASHFORD: Okay. (Laughter)

SENATOR FLOOD: The friends I have made.

SENATOR ASHFORD: We can all have a big...everyone in the room could come up here.

SENATOR MCGILL: A big hug.

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

Judiciary Committee
February 24, 2012

SENATOR LATHROP: Probably started with a dog, too, didn't you?

SENATOR ASHFORD: Whoa. (Laughter)

SENATOR LATHROP: Did we turn the speaker on? Are we on...?

SENATOR ASHFORD: I think we are.

SENATOR LATHROP: Okay, welcome to Judiciary, Mr. Speaker.

SENATOR FLOOD: I'll have to look and see what your priority bill is this session.
(Laughter)

SENATOR LATHROP: He does.

SENATOR HARR: Yeah.

SENATOR LATHROP: It will be heard during the special session.

SENATOR ASHFORD: Yeah. Okay, Michael, welcome.

SENATOR FLOOD: Well, good afternoon, Chairman Ashford and members of the committee. My name is Mike Flood, F-l-o-o-d. I represent District 19. This bill shouldn't be passed this session, but it should be looked at to make government more efficient. It...this bill attempts to change the administration of license revocations for criminal convictions for crimes like DUI, motor vehicle homicide, reckless driving. It is not my intent with this bill to change the current penalties. Under LB1111 as written, a court would report the abstract of the judgment of conviction to the Department of Motor Vehicles for operator's license revocation action. The department would then carry out the revocation for the length of time specified in the statute. This issue presented itself to me last session in our work on LB667 and in the discussions I've had with the DMV and others over the last few years. For example, in Iowa, the Department of Transportation administers all driver's license suspensions. Their state code details what crimes can result in a suspension. And from the research my office has done, their courts appear to have a very limited discretion in suspending licenses, and then only in drug- and alcohol-related cases. I think our justice system would benefit from a predictable degree of uniformity in sentencing. A bill like this would take some affirmative steps to ensure that sentencing concerning license revocations will not produce widely disparate results for similarly situated defendants, that license revocations are imposed in a fair and uniform manner across the state. That said, this bill needs work. It is an ambitious task and one that probably deserves an interim study. This bill would benefit from more collaboration with the bench and the bar. Director Neth is here today and will testify, I believe, in a neutral capacity. I appreciate her many hours

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

Judiciary Committee
February 24, 2012

of work on LB667 last year and her willingness to get involved in this related matter. The bottom line is we have a system where we take your license in the courthouse and we take your license in the state DMV. It's confusing at best. You don't really know sometimes whether the license is suspended or revoked. Sometimes the judge keeps it; sometimes you mail it to the DMV. You know, I think that the court system should be in the business of handing out every penalty except driving revocation. That way, when somebody has an ALR or they are suspended and they get Interlock, one state agency deals with the Interlock because right now, you know, maybe they didn't get it timely filed for an Interlock on the ALR but the judge gives them an Interlock. Well, it's a mess. And the officer walks up to the car; if it wasn't put in properly, they don't know what the state of it is. You've got to call a state agency and you've got to call the county courthouse. That's why we need to be uniform in how we do it. This bill is not ready to be passed this year. I would hope that over the summer we could talk about it. If Director Neth has encouragement from this group, I'd really like to see her come back. I mean, we've got to get law enforcement--which I think will come to the table on some level--the defense bar, the courts, and the DMV. And it's designed to make it streamlined and understandable. And I'll waive my closing. [LB1111]

SENATOR ASHFORD: Thank you, Mike. Any questions of...? I mean, we have made a lot of changes, so. [LB1111]

SENATOR FLOOD: Yeah. [LB1111]

SENATOR ASHFORD: Senator Council. [LB1111]

SENATOR COUNCIL: Thank you, Senator Ashford and Senator Flood. I...when I read the bill, the only concern that I had was that it changes where now it's clearly within the jurisdiction and authority of the court to order a revocation as a part of the sentence. And I think one of the things that have to be looked at is: Is this an inappropriate delegation because it's based on a conviction for a criminal offense and we're delegating to the Department of Motor Vehicles the imposition, basically, of the sentence? So I just wanted to put that out there, too, as one of the things that we may want to be cognizant of. I know, I appreciate what the intent and purpose is. But if you look at the way the statute is written now, the order of revocation is a part of the sentence rendered by the court. And under LB1111, it just simply says the court convicts for the offense and then delegates to the Department of Motor Vehicles to impose, basically, a sentence. So we just need to be mindful of that as we go forward. [LB1111]

SENATOR FLOOD: And I think, you know, if you think about a nursing license, a right to practice as a nurse, if you get a felony conviction for methamphetamine possession, it's reported to the Department of Health and the Department of Health then revokes the license of the nurse based upon the conviction, so it's similar in that way. I think you...if

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

Judiciary Committee
February 24, 2012

you...if we did this, the question would be the Legislature probably needs to say what penalties the department will administer. For a long time, we had this automatic 15-year revocation on a third. [LB1111]

SENATOR COUNCIL: Um-hum. [LB1111]

SENATOR FLOOD: And then Senator Dwite Pedersen came in with Senator Mike Friend and they changed it where you can get probation, all sorts of stuff now. [LB1111]

SENATOR COUNCIL: Right, right. [LB1111]

SENATOR FLOOD: But I think with the ignition Interlock thing, the penalties can be spelled out by the Legislature and then you can allow ignition Interlock within the scope of the law as it currently is. But you basically are taking the discretion away from the judges and that's got to be something that meets with their approval on some level or it's not going to work. [LB1111]

SENATOR COUNCIL: Okay. Oh, and another thing. Well, I think probably the way to do it is not so much to address it in the criminal code but in the Department of Motor Vehicles'... [LB1111]

SENATOR FLOOD: Regulations? [LB1111]

SENATOR COUNCIL: ...regulations that specifically outline that convictions of specific offenses will result in an administrative revocation. [LB1111]

SENATOR FLOOD: Yeah. [LB1111]

SENATOR COUNCIL: And then it's clear who is exercising what jurisdiction because it... [LB1111]

SENATOR FLOOD: I almost... [LB1111]

SENATOR COUNCIL: ...because that's almost what...I mean, I could see what you're talking about. I mean, if I am convicted of a felony, I'm at potential risk of losing my bar license, but it's not...it's because the bar has that rule and not the court, you know, taking my...so I think there's a way to do it, but just giving the authority to the Department of Motor Vehicles upon being notified/advised of a conviction... [LB1111]

SENATOR FLOOD: Yeah. [LB1111]

SENATOR COUNCIL: ...as opposed to...and then set it out that a conviction for third offenses can result in an administrative revocation for X number of... [LB1111]

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

Judiciary Committee
February 24, 2012

SENATOR FLOOD: I think that our system now is confusing at best. [LB1111]

SENATOR COUNCIL: Yeah. [LB1111]

SENATOR LATHROP: Thanks. [LB1111]

SENATOR COUNCIL: Right. [LB1111]

SENATOR MCGILL: Um-hum. [LB1111]

SENATOR COUNCIL: That's all I have, Senator Ashford. [LB1111]

SENATOR ASHFORD: Thank you, Senator Council. Thank you, Speaker Flood. [LB1111]

SENATOR FLOOD: Thank you. [LB1111]

SENATOR ASHFORD: So the director is here, I think. Do we have some proponents on this bill, anybody for the bill? How about opponents? Neutral? Yes, neutral. Come on up. Welcome. [LB1111]

BEVERLY NETH: (Exhibit 1) Thank you. Good afternoon, Chairman Ashford, members of the committee. I am Beverly Neth, B-e-v-e-r-l-y N-e-t-h, director of the Department of Motor Vehicles, appearing today to offer neutral comments on LB1111 and to provide some information regarding the issues associated with changes proposed in the bill. The DMV is certainly interested and generally supportive of the concept of LB1111. The current law that provides shared revocation authority between the courts and the DMV is complex and unpredictable, as Senator Flood mentioned. LB1111 would provide for uniform revocation periods applied to all drivers. However, LB1111 represents a considerable change in Nebraska law. It has potential to influence a number of areas of law. The DMV believes as written, it may have unintended consequences. For example, Nebraska Revised Statute 60-4,125 currently allows the courts to impound a permit for a violation of a learner's permit or a school permit. LB1111 removes the impound language, which effectively requires revocation of the permit. Any driver whose driving privileges are revoked must maintain an SR-22 insurance policy for three years as a condition of the license or permit reinstatement. Impoundment does not trigger an SR-22 insurance requirement. As written, LB1111 would require every young driver convicted of a permit violation to obtain an SR-22 policy. LB1111 appears to make the installation of an ignition Interlock device mandatory for anyone convicted of a DUI. That requirement may have an effect on the department's ALR or Administrative License Revocation program. LB1111 calls for the Legislature to set revocation periods for a variety of motor-vehicle-related offenses. An analysis of other states' revocation periods

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

Judiciary Committee
February 24, 2012

may be instructional and provide guidance in establishing those periods. However, such analysis would take time and would not be feasible within the current session. The DMV believes that LB1111 is a sound basis for an interim study. An interim study would provide the opportunity to hear from all stakeholders, give the DMV and the Court Administrator's Office the chance to determine the extent of needed IT programming related to the JUSTICE and DMV systems, provide for a careful review of all statutes impacted by the proposed change, and determine an appropriate effective date. Chairman Ashford, I'd be happy to answer any questions the committee might have. [LB1111]

SENATOR ASHFORD: Thanks, Beverly. Any questions of Bev? Thanks, good to see you. [LB1111]

BEVERLY NETH: Well, an easy crowd. [LB1111]

SENATOR LATHROP: I just need this assurance that if we do this, you won't get absorbed by Health and Human Services. (Laughter) [LB1111]

BEVERLY NETH: Well, I would resist that as much as I possibly could. (Laughter) [LB1111]

SENATOR LATHROP: Okay, that's all I need to hear. [LB1111]

SENATOR ASHFORD: Not everybody can be so lucky, Steve. [LB1111]

SENATOR LATHROP: It apparently has a gravitational force; things just get stuck there. [LB1111]

SENATOR ASHFORD: We try to pull them away, but they keeping putting them...okay, thanks. [LB1111]

BEVERLY NETH: Thank you very much. [LB1111]

SENATOR ASHFORD: Any other testifiers on this bill? Senator Coash is next with...I want to...this being our last hearing, is Ally (phonetic) here? Evan and Ally, thank you for all your work as pages all session. Ally is not here, so I'll have to thank her when she comes back. [LB1111]

SENATOR MCGILL: She ran up to Steve's office. [LB1111]

SENATOR LATHROP: She ran upstairs. [LB1111]

SENATOR ASHFORD: Okay. Senator Coash. [LB1111]

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

Judiciary Committee
February 24, 2012

SENATOR COASH: All right. Good afternoon, Chairman Ashford, my Judiciary Committee colleagues. For the record, I'm Colby Coash. I represent District 27. This is LB722. This is a bill that would allow for a court to withhold the costs and fines from a defendant's bond. Last fall, I spent part of the day with the Lancaster County Board of Commissioners talking about potential legislation that we could adopt here at the Legislature that would reduce the cost for the county and this bill is the result of that. For many years, there have been stories around the courthouse and around the jail of those individuals who have either enough cash on them or access to enough cash to bond out of jail. Obviously, this bond is returned following the disposition of their case. This would provide a mechanism to the court to withhold a portion of this bond in an effort to get any fines or costs paid. I thought that made sense. I've got somebody here from Lancaster County who is going to talk more to the committee about additional thoughts they may have on the potential effect of this legislation. I would point your attention to the fiscal note. I just caught it. The fiscal note says the Supreme Court says this may actually increase revenue, which is... [LB722]

SENATOR LATHROP: Thanks. [LB722]

SENATOR COASH: ...because we may end up collecting more fines than we had in the past. So that is the extent of my testimony. [LB722]

SENATOR ASHFORD: Thank you, Colby. Yes, Senator Council. [LB722]

SENATOR COUNCIL: Since Senator Harr stepped out of the hearing room, but we've had a brief conversation about this and in the limited criminal matters I've handled in Douglas County, if the defendant had a cash bond posted and they were fined, they take that fine out before the balance is returned. [LB722]

SENATOR COASH: We found that out since introducing this bill. [LB722]

SENATOR LATHROP: I always thought they did. [LB722]

SENATOR COASH: The Douglas County is accessing the defendants' bonds to cover court costs; however, they're not statutorily authorized to do so. [LB722]

SENATOR COUNCIL: Authorized to do so. Oops, okay. (Laughter) [LB722]

SENATOR ASHFORD: Oh. [LB722]

SENATOR COASH: So I'm hoping that... [LB722]

SENATOR COUNCIL: I was going to say that's standard practice in Douglas County.

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

Judiciary Committee
February 24, 2012

[LB722]

SENATOR LATHROP: Yeah. [LB722]

SENATOR COUNCIL: I mean, you don't... [LB722]

SENATOR COASH: It's not standard practice anywhere else that we could find and... [LB722]

SENATOR ASHFORD: Huh. Why don't you all just go do it then? [LB722]

SENATOR COASH: We'd like Lancaster County and the rest of the 91 counties across the state to do this as well and make sure that they have the statutory authority to do it, and so that's why I'm going to ask we move this forward, and I'll see if I can get this through the finish line. [LB722]

SENATOR COUNCIL: You know, and perhaps the way it's done in Douglas County is that the judge, as a part of the order, orders a withholding of the fine from the bond when they sign the order. [LB722]

SENATOR COASH: It may be. [LB722]

SENATOR COUNCIL: Okay, that...but I know they do it routinely. [LB722]

SENATOR COASH: This may be just one of those rare occasions where Omaha does something different than the rest of the state. (Laughter) [LB722]

SENATOR MCGILL: And better for once, anyway. [LB722]

SENATOR COUNCIL: Learn from the best, let's go. [LB722]

SENATOR MCGILL: (Inaudible) one example of that. [LB722]

SENATOR ASHFORD: I'm aghast though, Colby, that you brought this. I don't know where we go from here. I'm starting to lose faith in my...anyway, thank you. And Ally, we acknowledged Evan, but you were gone, so I acknowledge Ally, our other page, who has done such a great job this year. Thank you for your help. Good to see you again. [LB722]

KERRY EAGAN: (Exhibit 2) Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Kerry Eagan, that's K-e-r-r-y E-a-g-a-n. I'm the chief administrative officer for Lancaster County. Thank you for the opportunity to provide information on LB722. These are challenging fiscal times for Lancaster County. We're

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

Judiciary Committee
February 24, 2012

continuously looking for new ways to generate revenue without raising property taxes. There aren't a lot of those avenues available to us because of existing state law, but one possible source of new revenue is the cash bonds posted by defendants in criminal cases. Although convicted defendants are often ordered to pay court costs, in fact many fail to do so, leaving the counties liable for these costs by statute. At the same time, a lot of these same defendants have posted cash bonds to guarantee their appearance. But--and here's the law on this--Section 29-901(3)(b), "The cash deposit shall be returned to the defendant upon the performance of all appearances." So unless there's a voluntary agreement by the defendant or some other circumstances or maybe there's a lien on it or something else, the law is pretty clear that it's mandatory that the money be returned to the defendants who have posted the cash bonds. The purpose of LB722 is to give the courts discretion to access the cash bonds of offenders to help pay costs and fines. The amount of money here is not insignificant. I spoke with the district court yesterday and they indicated that they pay out approximately \$50,000 in cash bonds per month. During an average year, the district court will collect approximately \$104,000 in court costs in criminal cases, and according to a district court representative--or a clerk representative that I talked to--a lot of this goes uncollected. Of this amount, we're mandatorily required to pay first about \$60,325 to the state for the nonwaiverable fees to support the judges' retirement, the automated court system and other costs. So whether we collect it or not, the counties are responsible for that cost to the state. In addition, we estimate that there's approximately \$11,000 per month in uncollected fees that are generated from the county court. Allowing the courts to take costs from cash bonds would greatly reduce the amount of uncollected costs because that's when the money is available. Lancaster County could see a savings also under LB722 through a reduction in the number of defendants serving time in our jail to satisfy unpaid fines. In 2011 alone, for instance, the county jail took in \$1,254,000 in bond money, which was sent to the county court, and another \$133,500 that was sent to the district court from inmates while in jail that was then sent down to post their bonds. Yet, many of these same offenders end up in our jail after sentencing for failure to pay their fines. Again, it makes sense for the courts to access and collect the money when it's available. I wish this was as straightforward as I'm making it out, but we recognize in sponsoring this legislation that anytime you have a large pot of money sitting there, there's many people that are going to want to get their hands on it. For instance, attorneys may ask defendants, as a condition of their representation, that they assign the bond money to them. And they will often take these assignments and file it with the county clerks--a county court clerk or the district court clerk--so that we're aware of it. We also have some competing interests from the...with the counties because our child support attorneys will go after that money, too, and try to attach it for unpaid child support. And also, there are situations certainly where a close relative who can ill afford to lose the money graciously lends the money for, you know, their son or their grandson who has screwed up, got themselves in jail. But when the money is returned, it goes to the defendant so, you know, there's no guarantee one way or the other that they will be repaid that money if it's repaid to the defendant because it is returned to the defendant.

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

Judiciary Committee
February 24, 2012

However, under LB722, the authority is discretionary and not mandatory, thereby allowing the judges to sort through the various interests when deciding who should...who is the most entitled to receive the proceeds from these available cash bonds. So just another aside, too. We presently have 7 percent of our sentenced population that are serving out fines rather than straight jail time, so. [LB722]

SENATOR ASHFORD: What was the number again, the total amount that you would be able to access potentially that's there? Did you give me that number and I missed it? [LB722]

KERRY EAGAN: Well, there's...it...these numbers were hard to get my hands on. [LB722]

SENATOR ASHFORD: Okay. [LB722]

KERRY EAGAN: But the best figures I got were from the Lancaster County District Court Clerk's office and they indicated about \$50,000 per month is returned to the offenders who have posted a cash bond. [LB722]

SENATOR ASHFORD: Huh. [LB722]

KERRY EAGAN: So that's \$600,000 a year. And, of course, much more than that is collected because, you know, a lot of people fail to appear or end up forfeiting their bonds or other reasons, but that's a significant amount of money. [LB722]

SENATOR ASHFORD: And the fines far exceed that, obviously. [LB722]

KERRY EAGAN: Yeah, the fines far exceed that. Of course, all the collected fines go to the county's school fund, but where it impacts us is with the people who serve out their time at \$90 a day in our already overcrowded jail. We're sending off, you know, hundreds of inmates to other counties while we build a hugely expensive jail now to keep all our population in one place. [LB722]

SENATOR ASHFORD: Yeah, seems like a good idea, sort of consent calendar material maybe. Anyway, thanks. I don't have any... [LB722]

SENATOR COUNCIL: Question. [LB722]

SENATOR ASHFORD: ...or maybe not. [LB722]

KERRY EAGAN: I didn't think I'd get off. [LB722]

SENATOR COUNCIL: Maybe that just...that just...I'm sorry, but that just hit me...

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

Judiciary Committee
February 24, 2012

[LB722]

SENATOR ASHFORD: Oh. [LB722]

SENATOR COUNCIL: ...because I sponsored the bill last year to increase the... [LB722]

SENATOR ASHFORD: Yes. [LB722]

SENATOR COUNCIL: ...the offset for people serving out fines. [LB722]

KERRY EAGAN: Right, yes. [LB722]

SENATOR COUNCIL: And you're saying that...and my understanding that you're allowed to serve out a fine if you can demonstrate that you can't afford to pay the fine. But if you've got a cash bond that's going to be returned, I think it's something about seeing how you can say I don't have the money when there's a cash bond. [LB722]

KERRY EAGAN: Yeah. Yes, it... [LB722]

SENATOR HARR: It happens all the time. [LB722]

KERRY EAGAN: Yeah, and the money is available at that time, you know. [LB722]

SENATOR COUNCIL: Right. [LB722]

KERRY EAGAN: When they've satisfied their appearances,... [LB722]

SENATOR COUNCIL: Exactly. [LB722]

KERRY EAGAN: ...that's when the money is returned, according to the statute. I guess it doesn't always happen that way, but that's what the statute says. [LB722]

SENATOR COUNCIL: Yeah. [LB722]

KERRY EAGAN: So that's when the money is there and that's when the time to get access to it would be. [LB722]

SENATOR COUNCIL: So you see, (inaudible) now, you see in Lancaster County people serving out their fines and then getting their cash bonds returned? [LB722]

KERRY EAGAN: Well, in this particular case, I asked them to check today and they couldn't find any bonds that were on file at the county court clerk's office, but they could have been paid out already. [LB722]

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

Judiciary Committee
February 24, 2012

SENATOR COUNCIL: Okay, okay, all right. [LB722]

KERRY EAGAN: There's another situation that complicates it where they might have multiple charges. And they'll post bond on one case and they get out and then they're immediately arrested on five other cases. And then they plead guilty to one of the other cases and they get their cash bond back because, you know... [LB722]

SENATOR COUNCIL: Okay. [LB722]

KERRY EAGAN: And this statute wouldn't even address that situation because it's a different criminal offense that they've posted the bond on. So it gets really complicated the more I learned about it, which is not a whole lot at this point, the more complicated it got. But it does seem to be good policy to me to have access to the money when it's available. [LB722]

SENATOR COUNCIL: Available. Right. Thank you. [LB722]

SENATOR ASHFORD: Good point. Good, thanks for enlightening us on that,... [LB722]

KERRY EAGAN: Well, thank you. [LB722]

SENATOR ASHFORD: ...how Douglas County seems to have conquered it, but...good for them, I guess. [LB722]

KERRY EAGAN: Well, you know, it could come back to bite them. Thank you. [LB722]

SENATOR ASHFORD: Yeah, bird in the hand or whatever it is, yeah. Any other testifiers on this bill, for or against? Neutral? Senator Coash waives? All right. (See also Exhibit 3) [LB722]

SENATOR MCGILL: Nice.

SENATOR LATHROP: Moving right along.

SENATOR MCGILL: Yes.

SENATOR ASHFORD: Senator Fulton is here, ready to go. This is going to be a record; this will be a record today.

SENATOR FULTON: Record to reflect, I was going to testify in opposition to Senator Coash's bill, but...(Laughter)

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

Judiciary Committee
February 24, 2012

SENATOR ASHFORD: Yeah, that's not allowed in here. Okay.

SENATOR FULTON: Okay. Mr. Chairman, members of the Judiciary Committee, for the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29 here in the Legislature. I bring to you LB1164. LB1164 amends the duties of the Attorney General to specifically prohibit the Attorney General from bringing an action pursuant to 42 U.S.C. 6304. This federal statute provides attorneys general of individual states the option of bringing an action to restrain any person from distributing in commerce a general service incandescent lamp, commonly known as an incandescent light bulb. That does not comply with the applicable standard established under the Energy Independence and Security Act of 2007. That act, as of January 1, imposes an efficiency standard that, according to the U.S. Department of Energy, essentially eliminates the standard 100-watt light bulb. The EISA suggests two means of enforcement: the U.S. Department of Energy and states' attorneys general. As the current Congress has delayed funding to the United States Department of Energy to enforce that such light bulbs are no longer placed in the stream of commerce, state attorneys general are the sole remaining means of enforcement. LB1164 is intended to prohibit the potential for such enforcement in Nebraska. Whether or not one agrees with my contention that this is an overreach of the federal government, I wish to call your attention to a little-realized and highly-troubling fact about these...this new practice, these CFLs. The standard CFL contains a level of mercury vapor that's considered by both federal and state standards to be hazardous waste. As this federal standard is gradually implemented in the coming years for lower-wattage bulbs, the prevalence of CFLs will increase in the home of every Nebraskan. As less than 2 percent of all CFLs are properly disposed of today, our exposure in our homes to Mercury will also increase. I certainly realize that there is little under the supremacy clause for Nebraska to do to effect the implementation of these standards. However, where the federal law creates an instance for which a constitutional officer of our state to act by their own accord, it at least should call into question whether we as representatives of the citizens wish to allow for such an action to occur. And I'll stop there. [LB1164]

SENATOR ASHFORD: Yeah, it is an issue. I've seen some things on it around. Any... [LB1164]

SENATOR COUNCIL: My only question, Senator Ashford,... [LB1164]

SENATOR ASHFORD: Yeah. [LB1164]

SENATOR COUNCIL: ...is: Really? [LB1164]

SENATOR LATHROP: It ties up your days. [LB1164]

SENATOR FULTON: I...let... [LB1164]

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

Judiciary Committee
February 24, 2012

SENATOR ASHFORD: I was trying to give him some credit. (Laughter) [LB1164]

SENATOR FULTON: Fair enough. I...but I...let me...if I could, I...Senator Council, I actually...I know what you're thinking. (Laughter) This is...I just...I don't think people...and we debated whether to...I would have cried if...to get this scheduled a different time and I understand where this falls in the scheme of importance. I just...I don't think people realize what's going on with these CFLs. If you...there...right now, the EPA has this three-page handout, what to do if you break a CFL in your home, and this is what actually got me on to this in the first place. I know it's a wild and crazy idea and it's crazy to bring forward. But we have these CFLs in our house, we use them for certain of our outlets because I...they are more efficient; I've measured them. But there are places where we don't use them because they don't work as well or because we're worried because our kids play in such a room. If you break one of these CFLs, it's hazardous waste and there is a way to get rid of them. So that's what got me on to this. I have another bill in Natural Resources dealing with that. But this, it just...it seemed...there's also an enforcement mechanism, so there's going to be an enforcement to say that you can't put these into the stream of commerce and that troubles me, particularly when I want to...and so I understand this apprehends a bigger issue. But that's why I brought it forward. I don't think people realize this is the way going forward that we're going to be because you can't buy incandescents at 100 watts anymore, they're not manufactured, and this is the way that we're going to go. And eventually, we're going to have these CFLs in our homes, and I don't think anyone's thought through the fact that many of us don't want them for safety reasons. So really,... [LB1164]

SENATOR COUNCIL: My question still is: Really? But that you would think that the issue that you're dealing with, that you really need to prohibit the attorney general. Really? Come on. [LB1164]

SENATOR FULTON: Senator, I looked for...we were coming up with creative ways to militate against... [LB1164]

SENATOR COUNCIL: Yeah, that's it. You can't even say that with a straight face. [LB1164]

SENATOR FULTON: You make me smile, Senator. [LB1164]

SENATOR COUNCIL: Okay, I'm through, Senator Ashford. Thank you, Senator Fulton. You're a good guy. [LB1164]

SENATOR ASHFORD: You're a good guy, a good speaker. [LB1164]

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

Judiciary Committee
February 24, 2012

SENATOR COUNCIL: But... [LB1164]

SENATOR LATHROP: And you were here for the last time. [LB1164]

SENATOR ASHFORD: But your idea is terrible and (inaudible). No, I'm kidding, no... [LB1164]

SENATOR MCGILL: This is his last time. [LB1164]

SENATOR HARR: This is your last hearing, too. [LB1164]

SENATOR LATHROP: This is Tony's swan song. [LB1164]

SENATOR FULTON: Yeah, there is...I... [LB1164]

SENATOR COUNCIL: And I got to ask you a "really?" Thank you. [LB1164]

SENATOR FULTON: There is some truth to this. I...this is, I think, ten years... [LB1164]

SENATOR ASHFORD: Well, I...it is...it has become an issue. I realize it has and... [LB1164]

SENATOR COUNCIL: I understand the underlying environmental issue. But really? To prohibit our Attorney General, really? [LB1164]

SENATOR FULTON: You know, there could be another Attorney General someday. [LB1164]

SENATOR COUNCIL: Oh, yeah, right. [LB1164]

SENATOR FULTON: Could be Attorney General, you know, some other attorney. I...there...ten years from now, I do think this is something that will be in the consciousness. [LB1164]

SENATOR ASHFORD: What is the date? What is the date that...there's some sort of transition date. [LB1164]

SENATOR FULTON: Well, the...it's begun. [LB1164]

SENATOR COUNCIL: It's begun, yeah. [LB1164]

SENATOR ASHFORD: Or...but is there a final date or...2030 or something? [LB1164]

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

Judiciary Committee
February 24, 2012

SENATOR FULTON: It's...it will be some...it...maybe '13 or '14. What they're doing is they're phasing down, 100 watts to...and right now, it's the 100 watt, so. [LB1164]

SENATOR ASHFORD: Right, right. Thanks, Tony. [LB1164]

SENATOR FULTON: Okay, thank you. [LB1164]

SENATOR ASHFORD: Any testifiers on this bill? My goodness, it must be people here on my bill. [LB1164]

SENATOR COUNCIL: Come on, we're...hey, there...yeah, all the people are here on your bill. There are no light bulb guys out there. [LB1164]

SENATOR ASHFORD: Well, I wish that GE would have sent some representatives, but... [LB1164]

SENATOR LATHROP: Right? Where is Cookson at? Isn't the AG here? [LB1164]

SENATOR HARR: He's in D.C. [LB1164]

SENATOR LATHROP: John, are you on this bill? Lindsay? [LB1164]

SENATOR MCGILL: I didn't see any support. [LB1164]

SENATOR LATHROP: Well, apparently not. All right, Mr. Chairman, you are going to bat cleanup, then. [LB1164]

SENATOR HARR: For the year. [LB1164]

SENATOR ASHFORD: Kind of wind it up here with LB... [LB1164]

SENATOR LATHROP: Wrap it up, Mr. Chair. [LB1164]

SENATOR ASHFORD: ...LB1096. My name is Brad Ashford, District 20. And LB1096 was brought to me by the Omaha Police division and it arises out of the issue of breaking and entering into automobiles as it relates to a variety of offenses that stem from those thefts. The...what the bill does is it aggregates offenses for breaking and entering of an automobile, makes it a separate offense. "No person shall enter into a motor vehicle without the permission of the owner for the purpose of committing a crime." And it aggregates the offenses up to a felony IV and it indicates that each crime shall be treated as a separate and distinct offense. One of the obvious issues here is that often, the...when a car is broken into and a theft occurs, that the items that are stolen are of little value and do not rise to the level of a felony. The other issue

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

Judiciary Committee
February 24, 2012

that--actually, I'd had a conversation with Don Kleine about it at a conference we were both at--is the issue of identity theft and taking of identity documents out of a car which in and of themselves have very little value but can be obviously used for ill-gotten gains. So that's the reason for the bill. [LB1096]

SENATOR LATHROP: Very good. Any questions for Senator Ashford? [LB1096]

SENATOR HARR: Are you running for mayor? [LB1096]

SENATOR LATHROP: Do you want to close on this? [LB1096]

SENATOR ASHFORD: I think I will because it's the end of the year and I have some statements, points I want to make generally about the world. (Laughter) [LB1096]

SENATOR LATHROP: Great. We'll talk about truancy and efficiencies in city-county government. [LB1096]

SENATOR MCGILL: Yeah. [LB1096]

SENATOR ASHFORD: Yes, I have some last comments on city-county merger. [LB1096]

SENATOR HARR: Transformational changes to... [LB1096]

SENATOR MCGILL: Transformational, yes. [LB1096]

SENATOR LATHROP: Transformational. The first proponent may come forward, those in favor. Anyone? [LB1096]

SENATOR ASHFORD: Good afternoon. [LB1096]

ALAN REYES: Good afternoon, sir. My name is Alan Reyes. I'm a sergeant with the Omaha Police Department, assigned to the criminal investigations bureau. I'm here to speak in favor of LB1096. I would like to thank Senator Ashford and Senator Council for introducing the bill. I started the police academy on April 4, 1994. I woke up that day excited to be starting a new job, only to find that my vehicle had been broken into while it had been parked in my apartment complex parking lot. [LB1096]

SENATOR ASHFORD: Jeez, Pete. [LB1096]

ALAN REYES: My vehicle was broken into a second time about one-and-a-half years later, when I was parked at the Westroads fitness center. During that break-in, my police ID, military ID, and credit card were stolen from my vehicle. My car was damaged

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

Judiciary Committee
February 24, 2012

both times and I know firsthand the frustration, heartache, and financial loss that victims suffer. My unit, South Investigations, covers the Henry Doorly Zoo, the Old Market, the Bob Kerrey Pedestrian Bridge, and the downtown College World Series area. These areas bring in a large amount of residents, tourists, visitors, and ultimately revenue to the city and are a source of pride for the city of Omaha. Travelers to these areas are sometimes just passing through Omaha and have no option but to leave all of their personal belongings inside of their vehicles. While I could give several examples of individuals that this law would target, I will speak about one that I have had personal experience with: Troy Stuart (phonetic), age 47. Stuart's preferred area to target was the Henry Doorly Zoo. He first came to our attention when he was arrested with an AR-15 semiautomatic assault rifle that had been stolen from a vehicle that was parked at the zoo in May of 2009. He was charged federally for the gun offense and was released on federal parole in September, 2010. Stuart was in a halfway house barely a month before he began breaking into cars and stealing other people's personal belongings, mostly from vehicles parked at the zoo. The victims included a family from Kansas who were on vacation at a visit to our zoo. In addition to the parents' property, Stuart had stole a child's video game system that was recovered at the home of Stuart's girlfriend. He had given it to their son as a gift. We were able to tie him to five vehicle break-ins and he did a total of approximately five months' jail time in Douglas County Corrections. Stuart's thefts were in support of his methamphetamine habit. Under the proposed legislation, with a felony conviction, the courts would be able to sentence Mr. Stuart to up to five years in prison for a third offense. In summation, our intent in proposing this bill to the Legislature was not to target the offenders such as a wayward juvenile or an isolated incident in which the suspect breaks into a vehicle one time, gets caught, and learns his lesson. Our hope is that with the increased threat of a felony arrest for a third offense--it's significant jail time for a second offense, which would be a Class I misdemeanor conviction--suspects would be deterred from breaking into vehicles and stealing items. For those suspects who do not learn from these increased penalties, the increased incarceration time would isolate them and protect society. If we can decrease the number of break-ins to vehicles in our areas frequented by residents, visitors, tourists, then these areas will become safer and visitors will have a more positive experience in our city. Thank you and I would be happy to entertain any questions that the committee might have. [LB1096]

SENATOR ASHFORD: That's a good presentation, Sergeant Reyes. [LB1096]

ALAN REYES: Thank you, sir. [LB1096]

SENATOR ASHFORD: Yeah. Senator Council? [LB1096]

SENATOR COUNCIL: Thank you. And thank you, Sergeant Reyes. And I had a couple of conversations with Deputy Chief Baker about this particular piece of legislation, and he conveyed the department's concern about the serial perpetrators. [LB1096]

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

Judiciary Committee
February 24, 2012

ALAN REYES: Yes, ma'am. [LB1096]

SENATOR COUNCIL: But the point that I had a concern with and about is that this legislation only serves your purposes if you don't catch the person in the act of breaking into the vehicle. Because if you catch him in the act of breaking into the vehicle, then you have to have some other evidence that they intended, that they broke in with the intent to commit a crime, so. [LB1096]

ALAN REYES: In my experience, it's very difficult to tie them to a crime actually inside of the vehicle and committing a crime that would fall under the statute. Most of the time, we find the stolen property after the fact. These serial habitual criminals do sometimes get caught in the act. John C. Johnson is another individual that I didn't mention, Troy Stuart. If we can start getting them caught in the act and hopefully charging them with this particular law, we'll be able to aggregate. [LB1096]

SENATOR COUNCIL: Okay. But see, but that's the problem. If you catch them in the act of breaking in, in order to prosecute them successfully under this bill, LB1096, the prosecutor has to show, has to present evidence that the break-in was with the intent to commit a crime. [LB1096]

ALAN REYES: Um-hum. [LB1096]

SENATOR COUNCIL: Otherwise, all you've got is a destruction of property, and if it doesn't rise to a certain monetary amount, you're still going to be stuck with the misdemeanor. And that was the discussion that Deputy Chief Baker and I had, that if law enforcement is fortunate enough to be driving by as one of these serial perpetrators is...if you...if they don't admit that I was breaking in to get that purse or...I mean, the...all you're going to be able to do is prosecute them for destruction of property or vandalism. [LB1096]

ALAN REYES: Um-hum, um-hum. [LB1096]

SENATOR COUNCIL: But to get them under this, it's going to be the case where after the fact you catch them with the stolen items or can trace stolen items back to them. Is that correct? Is that your understanding? [LB1096]

ALAN REYES: Um-hum, I agree, ma'am. I think it's going to depend on some good interviews by detectives to get them to make those admissions, which would probably help the prosecutors. But yes, I believe it's going to take some admissions from our suspects. [LB1096]

SENATOR COUNCIL: Okay. Yeah, because I just wanted Deputy Chief Baker to

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

Judiciary Committee
February 24, 2012

understand that passage of this wasn't a panacea. Unless you could tie some stolen property to that person,... [LB1096]

ALAN REYES: Yes, ma'am. [LB1096]

SENATOR COUNCIL: ...you're not going to be able to get him under this progressive system. And I'm aware of several of your serial break-in/purse snatcher, so... [LB1096]

SENATOR ASHFORD: People. [LB1096]

ALAN REYES: Yes, ma'am. There's a few going around. [LB1096]

SENATOR COUNCIL: Yes. [LB1096]

ALAN REYES: Yes. [LB1096]

SENATOR COUNCIL: Thank you. [LB1096]

SENATOR ASHFORD: And it...they...and immediately...and was at a conference with Don Kleine as I mentioned, and these credit cards immediately are fenced out. I mean they go...they are... [LB1096]

ALAN REYES: Yes, sir. They...within the hour, they'll be charging, yes. [LB1096]

SENATOR ASHFORD: They're gone. They're charging or else they go to somebody who is...well, they're probably charging right away, aren't they? [LB1096]

ALAN REYES: And that's kind of...that's been the best way for us to catch them, is after the fact when they're charging and we get video. [LB1096]

SENATOR ASHFORD: Yeah. [LB1096]

ALAN REYES: And sometimes, we'll even get advanced notice from the victims, so we can actually catch them at the business, charging these items that...from credit cards that they've stolen. [LB1096]

SENATOR ASHFORD: And looking at the numbers, we look at the numbers about, you know, different types of crimes and the...what's up and what's down. And this kind of crime is the one area where there is a fairly significant increase in Omaha, isn't that generally correct? I mean theft, car theft, is really an issue as it relates to identity theft. [LB1096]

ALAN REYES: From crime analysis, it went down just slightly from 2010 to 2011.

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

Judiciary Committee
February 24, 2012

[LB1096]

SENATOR ASHFORD: Okay. [LB1096]

ALAN REYES: But it's very prevalent, very prevalent. We have just...I review all of the reports, incident reports, and there's just a whole bunch of them. Unfortunately, there's not a whole lot we can do for our victims. [LB1096]

SENATOR ASHFORD: Right. [LB1096]

ALAN REYES: So our hope is to catch these people. And we figure one person is committing a multitude of offenses, so if we can take one or two of them out, we can... [LB1096]

SENATOR ASHFORD: And then you've got other victims who the store becomes a victim, in effect, because they're... [LB1096]

ALAN REYES: Yes, ma'am, or yes, sir, when they cooperate with the investigation, the stores can become victims, too. [LB1096]

SENATOR ASHFORD: Well, I mean if the store, if there's a charge in the store... [LB1096]

ALAN REYES: Yes. [LB1096]

SENATOR ASHFORD: ...and they don't get paid, nobody...yeah, it's just...it's a multitudinous problem, yeah. [LB1096]

ALAN REYES: Yes, it is. It affects a lot of different people. [LB1096]

SENATOR ASHFORD: Right. [LB1096]

ALAN REYES: Yes. [LB1096]

SENATOR ASHFORD: Well, thanks for your work. [LB1096]

ALAN REYES: Okay. [LB1096]

SENATOR ASHFORD: Thank you. [LB1096]

ALAN REYES: Thank you, sir. [LB1096]

SENATOR ASHFORD: Thank you. I don't see any other questions. Thanks, Sergeant.

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

Judiciary Committee
February 24, 2012

[LB1096]

ALAN REYES: Okay, thank you. [LB1096]

SENATOR ASHFORD: Yeah. Anybody else wish to testify on this bill, either for or against? Neutral? And we're done. [LB1096]

SENATOR COUNCIL: We be done. [LB1096]

SENATOR LATHROP: You waive? [LB1096]

SENATOR ASHFORD: I waive. (See also Exhibit 4) [LB1096]