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Transportation and Telecommunications Committee
February 04, 2014

[LB701 LB727 LB816 LB910]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 4, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB701, LB727, LB816, and LB910. Senators present: Annette Dubas, Chairperson; Jim Smith, Vice Chairperson; Lydia Brasch; Galen Hadley; Beau McCoy; John Murante; and Dan Watermeier. Senators absent: Charlie Janssen.

SENATOR DUBAS: Good afternoon and welcome to the Transportation and Telecommunications Committee. My name is Senator Annette Dubas. I'm the Chair of the committee, and I'm from Fullerton. I'll begin by introducing members of the committee. To my far left, we have Senator Lydia Brasch from Bancroft; Senator Beau McCoy from Omaha. I know Senator Hadley was with us; I'm sure he will be coming back in soon; he is from Kearney. To my immediate left is Anne Hajek; she is the committee clerk. To my immediate right is Joselyn Luedtke; she is the legal counsel for the committee. Senator Jim Smith from Papillion is the Vice Chair of the committee. And we have Senator John Murante from Gretna, and Senator Dan Watermeier from Syracuse. I believe we'll be joined here shortly by Senator Charlie Janssen from Fremont. I'll wait and introduce our page when he get back here. Okay, let's begin by just doing a few little housekeeping duties. When you come forward to testify on the bills, we'll take proponents, then opponents, and then neutral. If you will have this green sheet filled out and bring that forward with you when you testify, the page will pick that up and get it to the clerk. If you're here today, and you want to be on the record one way or another that you were here, but you don't want to come forward and speak at the table, the pink sheet on the table back there by the door allows you to put your name, address, the bill, and whether you support or oppose, and that will go into the record. Ask when you come forward to testify, if you will speak clearly into the microphone; state and then spell your name for the record, that will help us...making sure that if there are any questions or just clarity for the record, we ask that even if you have a simple name, if you will spell that for the record, we appreciate it. Also ask that you refrain from adjusting the microphone as much as possible. It's pretty sensitive, and so any time you're moving it around that makes noise into the tape and, again, makes it difficult for the transcriber...the microphone tends to be more for transcribing purposes rather than amplification. So I know we have that natural tendency to want to adjust it, but if you could refrain from that, we would really appreciate it. If you have copies that you would like distributed to the committee, bring those forward with you as well; ask that you have 15 copies. If you don't, the page can get those copies made for you, and the page will also distribute those to the committee. If you would please silence your telephone or any electronic devices that, again, keeps...prevents interference on our recording equipment and disruption of the hearing, as well as any conversations you may want to have, if you would take those out into the hallway, we would really appreciate it. We're fortunate to have in the Legislature a page program. And the pages are very helpful to

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us in keeping some order and helping us take care of our duties. We do have a page; he is apparently out on an errand right now, but his name is Jonathan Beck; he's originally from Centreville, Virginia, currently resided in Seward, Nebraska; he is a senior majoring at UNL, majoring in political science, with a minor in communications. We are very appreciative of the services provided to the Legislature by the page program and appreciate Jonathan's help with this committee. I think that's taken care of most of the housekeeping. There is our page now on queue. As I said, if you need anything, he will help you in any respect as far as copies, etcetera. So with that I think we've taken care of all of the housekeeping. The order of the bills that we'll be hearing today will be LB701, then LB727, LB816, and LB910. I will be introducing the first bill, LB701, and so I will turn the hearing over to Senator Jim Smith.

SENATOR SMITH: Thank you, and Senator Dubas, you are recognized to open on LB701. [LB701]

SENATOR DUBAS: Good afternoon, Senator Smith, members of the Transportation and Telecommunications Committee. My name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s. I represent Legislative District 34. LB701 was brought to me by insurance companies to help address an issue where the insurance company cannot obtain a title to a vehicle that has been declared a total loss. Unfortunately, I'm going through an experience like this right now with a situation, had a little run in with a deer this weekend and probably am going to be looking at close to a total loss on my vehicle. So we're going to have a decision to make once that information is brought forward to us about the vehicle. And if it is declared a total loss and we decide we want to turn that over to the insurance company, I will sign over my title to them. And then the insurance company can use that title to apply for a salvage title and then sell the vehicle or send it to the junk yard. However, in many instances, this simple process is complicated when the owner fails to sign over the title for whatever reason. Without a title, the insurance company is stuck with a vehicle they cannot sell or dispose of. In some cases, companies have been sending such vehicles out of state, to Missouri for example, where they have such laws that...similar to what LB701 proposes. This bill merely gives insurance companies a legal alternative to dispose of totaled vehicles. In order to obtain such a salvaged title, the insurance company must file an application with the DMV and submit an affidavit to the department that they have been unable to obtain the original title, along with evidence of a total loss settlement. Also, the company must wait 30 days to ensure the title is not given prematurely. I believe this bill creates a fair alternative for disposing of totaled vehicles. Testifying behind me will be insurance companies who would like to use such a process. And I'm sure they will be able to give you some specific examples and answer your questions about current practices and why this bill will help them with their business as well. So I would attempt to answer any questions, but as I said, there will be the experts coming behind me. [LB701]

SENATOR SMITH: Are there questions for Senator Dubas? I see none. Thank you. We

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now open public testimony on LB701 by hearing from opponents of the bill...I'm sorry, proponents of the bill. Welcome. Welcome. [LB701]

LEE WRIGHT: (Exhibit 1) Thank you. Thank you, Madam Chair, members of the committee. My name is Lee Wright, spelled L-e-e W-r-i-g-h-t. Thank you for this opportunity today to speak as a proponent of this bill. I am the government and industry affairs manager for Farmers Insurance in Nebraska. Tell you a little bit about Farmers Insurance. We're a property and casualty insurance company with 65 exclusive agents operating in the state, and we have approximately 59,000 auto policies as well. Again, thank you for the opportunity to appear here today in support of LB701. The purpose of this bill, as described earlier by the Chairperson, is to provide an alternative process in obtaining a salvage-branded title on a total loss claim settlement after the settlement has been made. With me today is...I'm fortunate to have Mark Binder; he is our national salvage director. He came from Oklahoma City just to be with us. And Mark will better explain the legislation in more detail and provide you additional reasons why we're seeking the passage of the bill. But I would tell the committee, before you hear from Mark, I'd like to mention the insurance industry has worked with the DMV director on this bill, Rhonda Lahm, and her staff as well, to craft the language that you now have in LB701, and the DMV is supportive of the bill. I can also tell you this type of legislation has passed in a number of states including Oklahoma, Missouri, Texas, Arizona, and California. And it's pending in Michigan right now and will be pending in Kansas shortly. With that...with your permission, Madam Chair, I would go ahead and turn it over to Mark, and he would be the expert to ask questions of. [LB701]

SENATOR SMITH: All right, thank you for your testimony. Do we have any questions for Mr. Wright? I see none. Thank you. [LB701]

LEE WRIGHT: Thank you. [LB701]

SENATOR SMITH: We will continue on with proponents of LB701. Welcome. [LB701]

MARK BINDER: (Exhibit 2) Thank you, Sir. Madam Chair, Mr. Vice Chair, the members of the committee, my name is Mark Binder; it's M-a-r-k B-i-n-d-e-r, and I'm the national salvage manager for Farmers Insurance. Thank you for the opportunity to speak to you today in support of LB701. The proposed bill would create an alternative salvage certificate of title, thereby allowing insurers to sell total loss salvage vehicles which they have paid for through the claim settlement process, but they currently cannot dispose of due to document errors and no current statutory remedy. In many cases involving insurer retained total loss vehicles, the insurer is not able to obtain the certificate of ownership from the vehicle's owner. This is despite the fact that the insurance claim has been paid, and the possession is...and the vehicle is in the possession of the insurance company or their agent. You may be wondering why this happens. Well, some of the reasons why insurers have difficulty obtaining title certificates are: there may be a

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fatality or a severe injury, and the family members are too upset to complete or have no knowledge of the location of the title transfer documents. A lienholder may have made errors in the title when they sent it to the insurance company. And the financial institution will not provide assistance in obtaining a new title. The customer may not respond to calls or is moved after the payment is made and the errors are discovered, or the...and the customer just has lost the title documents and just refuses to assist as well. And then there's times when the errors are made by the insurance company or their agent and perfecting the documents prior to the submission to the DMV. Then also is a situation is a hostile divorce occurred, and one person refuses to sign and assist the other in perfecting the needed documents. Currently in Nebraska, the industry's only option is to abandon the vehicle to the salvage vendor. And this pushes the problem onto the salvage pool itself, and it gives up any potential in recouping any indemnity costs that we've paid. This alternative is not in the best interest of the policyholders due to the financial credits not being made back to the policy after the salvage sale. This proposal would allow an insurance company that is unable to obtain a certificate of ownership or other evidence of ownership within 30 days following a total loss settlement on a form prescribed by the DMV to request the department to issue a salvage certificate of title. It also will require the DMV to issue a salvage certificate upon receipt to properly execute a request and pay the required fees. Thank you for your time. And I ask you for your consideration to approve this bill out of committee and for its ultimate passage and implementation. Please let me know if you have any questions or need clarification. [LB701]

SENATOR SMITH: Thank you, Mr. Binder, appreciate your testimony. [LB701]

MARK BINDER: Thank you. [LB701]

SENATOR SMITH: Senator Hadley. [LB701]

SENATOR HADLEY: Vice Chair. Mr. Binder, just to clarify it, this is common in other states, then, this process? [LB701]

MARK BINDER: Yes, it is. It's common in 9 or 10 other states. There's actually 3 states that it's being introduced in this year: Colorado, Kansas, as well as Michigan. [LB701]

SENATOR HADLEY: And the alternative, if you don't have this, is to try and take it...either abandon the vehicle or take it to another state that you can get this type of... [LB701]

MARK BINDER: Correct. And if we take it to another state, there's an additional expense incurred by the insurance company. And if we abandon it, we just have to walk away, and the customer doesn't get the benefit on their financial policy by selling the vehicle because whenever we sell a vehicle, it goes towards our reserves which credits

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to the policy itself. [LB701]

SENATOR HADLEY: Okay, thank you. [LB701]

MARK BINDER: Yes, sir. [LB701]

SENATOR SMITH: Do we have additional questions? Senator McCoy. [LB701]

SENATOR McCOY: Thank you, Senator Smith. Thank you, Mr. Binder. A couple quick questions. It occurred to me when Senator Hadley's questioning. I'm trying to understand that...and I know this may not be your department at your respective insurance company, but I would assume that in the states where you have been able to resolve this, this would, hopefully, positively affect overall broadly premiums for insureds, I would hope, based on individual driving records and whatnot. But I would imagine that would make things a little more cost efficient on the premium side of things, would that be correct? [LB701]

MARK BINDER: That is not my department, you are correct, but I do know...I have been advised by our company that a lot of factors, go into making premiums. And the amount of lost cost paid is a factor and when we sell the salvage, you reduce that lost cost. So it would have an impact on premiums. But I can't say how much or to what extent. That's beyond my expertise. [LB701]

SENATOR McCOY: Sure, and my next question would be, would it not also be possible to go about this in a way that, maybe, you can explain, if you can, why there wouldn't be a process in place by which the claim wouldn't be paid unless this was executed at the same time. [LB701]

MARK BINDER: And that's a great point. And that's what we strive to do. There are times, though, where we have to make payments on the claim because of...just to be blunt, for customer service reasons. You have a situation where a person may be leaving town in a hurry and they need to get paid, or there's also times when we just make errors. I mean, we...the amount of...we sell nationally 120,000 cars a year through total loss process at salvage pools. And through that process, we do make errors, and our vendors make errors, and the DMVs make errors. We've had DMVs that actually lose the titles we send in. And not in Nebraska, but in other states where we send in a batch of titles, and they're destroyed or damaged. And at that point we have to...we're given the responsibility to come back and get new documents. And one thing about an insurance plan post settlement, after the money is paid, it's very difficult to get the customer to participate in the process anymore, because the easy solution would be to go to the customer and ask them to provide the documents, and we do do that, but the results are not always positive. [LB701]

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SENATOR McCOY: Are there any states that you're aware of that there is such a requirement in place that in order for that claim to be paid there has to be a...I'm thinking my process with homeowners insurance, obviously, a lien waiver has to be completed, in the case of mortgage companies, not insurance companies, in order for funds to be released, a similar process, are there any states that in order for that claim to be paid, that...this process that we're seeking to undertake here has to be done at the same time? Are there any states that do that? [LB701]

MARK BINDER: No, there's not. The only requirements we have on the actual payment is to ensure that we pay the proper owner and that we...who is listed on the DMV records as well as the lienholder. [LB701]

SENATOR McCOY: Okay. Thank you. [LB701]

SENATOR SMITH: Additional questions for Mr. Binder? I see none. Thank you. [LB701]

MARK BINDER: Thank you. [LB701]

SENATOR SMITH: Appreciate your testimony. We continue with proponents of LB701. [LB701]

COLEEN NIELSEN: Good afternoon, Senator Smith, and members of the Transportation and Telecommunications Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for State Farm Insurance and the Nebraska Insurance Information Service, testifying in support of this bill. I don't have a lot to add, but I did want to encourage the committee to advance this bill. It is a thing where it really does, in a way, fill in a gap, because we want that wrecked car or that...what's left of it, at least to have a title of some sort, a salvage title. And so when we were unable to get the title before, it literally was unbranded. And this way it does...it actually fills in that gap. So again, we would ask you to advance this bill. And I'd be happy to answer any questions. [LB701]

SENATOR SMITH: Are there questions for Ms. Nielsen? I see none. Thank you. [LB701]

COLEEN NIELSEN: Thank you. [LB701]

SENATOR SMITH: Additional proponents of LB701. [LB701]

TAD FRAIZER: Good afternoon, Senator Dubas, members of the committee, my name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r. I'm local counsel for the American Insurance Association, a national trade association of over 300 property and casualty insurance companies. Don't want to take too much time, but just wanted to add that we support

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the intent of this bill. As Ms. Nielsen noted, it does fill in a gap when you get these odd situations where it's hard to get the title that allows the processing of a salvaged vehicle. And we would encourage you to act favorably on this bill. And I'd be happy to try to answer any questions you might have. [LB701]

SENATOR SMITH: Thank you, Mr. Fraizer. Any questions? I see none. Oh, Senator Dubas. [LB701]

SENATOR DUBAS: Thank you, Senator Smith. Do you have any idea how many times this happens with the company that you represent? [LB701]

TAD FRAIZER: Well, we have over 300 members, so as was previously noted, when one company had 59,000 policies in the state alone, so I imagine it's...on a national level it's in the thousands among all our many companies. I can't give you what a figure would be in Nebraska. Maybe I could find that for you. [LB701]

SENATOR DUBAS: That may be helpful. But I guess what I'm trying to find is...these aren't just rare occurrences. This is something that...it's raised to the level of needing some rectification. [LB701]

TAD FRAIZER: Yes. It's not common, but it happens enough that it is problematic for insurance companies. [LB701]

SENATOR DUBAS: Thank you. [LB701]

SENATOR SMITH: Additional questions? I see none. Thank you. [LB701]

SENATOR SMITH: (Exhibit 3) All right, we'll continue with proponents of LB701. I see none. Now we move to opponents of LB701. I see none. We do have a letter to put into the record. And this is from the Nebraska Auctioneers Association. We'll now move to those that want to testify in a neutral position. Seeing none, we will now go to closing. Senator Dubas waives closing, and that concludes our public hearing on LB701. [LB701]

SENATOR DUBAS: Thank you, Senator Smith. We'll now move to LB727. Senator Harms, welcome back. You said you weren't going to come see us again, but here you are. [LB727]

SENATOR HARMS: Oh, I owe you an apology. (Laughter) [LB727]

SENATOR DUBAS: We're glad to have you back. [LB727]

SENATOR HARMS: I thought I wasn't coming back. I don't pay a lot of attention to

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where I go until we just get our testimony put together, and I figure out what committee I'm coming to. Senator Dubas, thank you very much, and members of the Transportation and Telecommunications Committee. My name is John N. Harms, H-a-r-m-s. I represent the 48th District in Scotts Bluff County. Today I'm here to introduce LB727. First, as usual, Senator Dubas, thank you for giving me the opportunity to be here and to have the opportunity to visit with you. I'd like to just kind of set the stages for this legislation. As we go through it, I will then cover each of these particular areas. There's just two things we're really looking at here. One is that we're going to require...we're asking to require in an affirmative yes or no when they fill out their driver's license on whether they'd like to have...be an organ donor. Today it's optional, okay. And also, second thing we're doing, is there's some...correct some inconsistencies in the statutes with the Anatomical Gift Act and that's, basically, what this is about. So there's only two things that we'll be looking at as we go through this. So with that, Madam Chair, I'll start my formal comments. LB727 is designed to increase the number of Nebraskans who have volunteered to make lifesaving organ and tissue donations available upon their death. Kyle Herber of the Nebraska Organ Recovery System will detail this in a few moments. But the Nebraska Legislature has repeatedly and overwhelmingly passed education designed to encourage Nebraskans to promote life in our state. Colleagues, there's no greater gift than the gift of life especially to those who are suffering, for those who are facing the prospect of death due to a failure of an organ or a tissue. To be an organ donor demonstrates, I think, the greatest gift of all. However, despite the great strides made by this Legislature over the past four decades in explaining the...examining the availability of organ or tissue donors in our state, approximately there are 500 each year of Nebraskans who continue to wait. At any given time, as the Nebraska Organ Recovery System and other similar organizations race against time or against the clock to match what their need is with a lifesaving donation. Tragically, there are some who will endure years of dialysis; other procedures until a donated organ or tissue is found, and the tragedy is while some of them are waiting, they simply die. For those who are waiting for an organ or a tissue, the greatest source of hope...the greatest source of single hope in being matched to a Nebraska donor through the application process of the driver's license or the identification card. Ninety-eight, point five percent of all the donors enrolled in Nebraska Organ Donor's Registry join the registry by responding affirmatively to the question printed on the application for the driver's license or the identification card that asks whether the applicant wishes to be an organ donor and a tissue donor. Approximately in this great state, there are 691,421 Nebraskans that are registered to...as an organ donor or a tissue donor through the application process. I was really surprised by that number as we began to look at that, and we still have a long ways to go to compare to other states, but I think it's...we've come a long ways in regard to getting people to understand that they can have the gift of life. While more Nebraskans become a registered organ and tissue donor through the application process rather than through the other methods, the existing law undercuts the number of applicants who can become a registered donor by failing to make the question required as an affirmative yes or no on the answer when

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you fill out the information for your driver's license. What it is, is currently it is just optional. As a result, 10.5 percent of all applicants in 2012 did not provide any response at all when they completed their driver's license. This amounts to 47,415 lost opportunities in 2012 to increase the number of organ and tissue donors in Nebraska. LB727 would place Nebraska among the list of nearby states which include Arkansas, Colorado, Missouri, Ohio, Oklahoma, and Wyoming, that require applicants to indicate whether they wish to become a donor. Only 52 percent of the people who have license...who are licensed drivers in Nebraska are registered as donors, as opposed to the following states that require a response: 56 percent in Arkansas; 67 percent in Colorado; 64 percent in Missouri; 58 percent in Ohio; and 60 percent in Wyoming. Additionally, LB727 corrects some inconsistencies in the statutes within the Revised Uniform Anatomical Gift Act. The law currently provides that the donor's status does not change by the suspension, cancellations, revocation, or impoundment of a driver's license or ID card. However, the law does not provide similar continuity for the expiration of the driver's license or ID card. And LB727, just provides that the term expiration be included in the list of revocation, the suspension, cancellation, and impoundment. And this is merely a technical adjustment or component. The application process is an expeditious way to gain access to potential organ and tissue donors, and any punitive action on the driver's license or ID should not have any affect on the donor registry. LB727 harmonizes these provisions by clarifying that expiration of a driver's license or ID card shall not affect the status of an organ or tissue donor. LB727 also requires that donors need to not renew their registry status upon renewal of the driver's license or ID card. Under this legislation, the status remains the same until revoked by the donor upon their own discretion. And I will tell you, as I review this entire law, it's about a tight as a law, I think, I've ever seen. Everything is spelled out completely, even the process of deciding to revoke as a donor, is clearly identified. Everything is defined, and I'd have to say that our previous colleagues over the several decades that we've had this law did an awful good job in making sure that things were correct and that there would be no questions. Ultimately the enactment of LB727 will result in an increase in a number of Nebraskans registered as an organ and tissue donor, and this increase will save lives and life-enriching benefits. Indeed organ donation may directly benefit as many as eight people, while up to 50 people may benefit from a single tissue donor. Madam Chair, this completes my formal testimony. I would urge you to give this some serious thought in regard to this. I do have people who will be following me who have been involved in organ donation for a long...longer than I have been involved in...just this particular thought, I am an organ donor, and they can probably be more specific if you have questions, but I will try to answer any questions you'd like to have. [LB727]

SENATOR DUBAS: Thank you, Senator Harms. Are there questions? Seeing none... [LB727]

SENATOR HARMS: Madam Chair, I will not be here to close, sorry about that. [LB727]

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SENATOR DUBAS: All right, well, thank you very much, Senator Harms. [LB727]

SENATOR HARMS: Okay. Thank you very much. [LB727]

SENATOR DUBAS: We have our first proponent. Welcome. [LB727]

KYLE HERBER: (Exhibit 4) Thank you. Senator Dubas, fellow committee members, my name is Kyle Herber, K-y-l-e H-e-r-b-e-r, and I'm executive director of Nebraska Organ Recovery System, also known as NORS. Since 1977, NORS has been the federally designated organ procurement organization, or OPO, for Nebraska. As Nebraska's designated OPO, NORS evaluates, recovers and distributes all donated organs and tissues in Nebraska. Unfortunately, the demand for lifesaving organ transplants is greater than the supply of organs available for transplant. More than 121,000 Americans, including nearly 500 Nebraskans, currently await an organ transplant. Organ donors save lives, increase life expectancies and improve the quality of life for Nebraskans. LB727 is the next step in the Nebraska Unicameral's more than 43-year history working with NORS to promote organ and tissue donation and to increase the availability of lifesaving organs and life-enhancing tissues for Nebraskans. In 1971, the Legislature adopted the Uniform Anatomical Gift Act when it passed LB799. The Legislature has authorized first person consent, enabling Nebraskans to choose to give the gift of life by becoming organ and tissue donors. They also created the Donor Registry of Nebraska, which identifies Nebraskans desiring to be organ and tissue donors and incorporated donation-related questions into Nebraska's driver's license and state identification card application process. Most recently, in 2010, the Legislature adopted LB1036, the Revised Uniform Anatomical Gift Act, with the stated goal of increasing donation and the availability of organs and tissues. LB727 seeks to revise portions of the Motor Vehicles License Act, which enables Nebraskans to enroll in the Donor Registry of Nebraska. Donor Registry of Nebraska lists Nebraskans who have agreed to give the greatest gift of all, the gift of life, by identifying themselves as organ and tissue donors. Currently, the Motor Vehicles License Act requires that the Department of Motor Vehicles to include on its applications for a driver's license regarding whether the applicant desires to be an organ and tissue donor. However, those questions are optional. Applicants are not required to answer the organ and tissue donation-related questions. As a result, many applicants do not respond to these questions, and only 52 percent of Nebraskans issued a driver's license are registered donors. Conversely, neighboring states, including Colorado and Missouri require applicants to respond to similar organ and tissue donor-related questions. As Senator Harms mentioned, a few of those examples are 67 percent in Colorado and 64 percent in Missouri. By requiring a mandatory response, LB727 seeks to increase the percentage of Nebraskans with driver's licenses to enroll in the Donor Registry of Nebraska. Additionally, LB727 seeks to clarify conflicting provisions of the Motor Vehicles License Act. Currently, there is a section of the act that provides that a donor's status as a member of the registry is not changed by the suspension, cancellation,

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revocation, or impoundment of the license or such card. However, this same section provides that a donor's status terminates upon the expiration of his or her driver's license. This termination upon expiration is in conflict with a section of the Revised Uniform Anatomical Gift Act which includes the word "expiration" so that the expiration does not cancel out one's gift. LB727 corrects this inconsistency. NORS and myself appreciate your thoughtful consideration and ask that you support LB727. Please vote yes to advance this bill to the floor and empower Nebraskans to continue to make the greatest gift of all, the gift of life. Do you have any questions? [LB727]

SENATOR DUBAS: Thank you, Mr. Herber. Are there questions? Seeing none, thank you very much for your testimony, appreciate it. Next proponent. [LB727]

TIM NEAL: My name is Tim Neal, T-i-m N-e-a-l. I am the chief executive officer for the Nebraska Kidney Association. I think Senator Harms and Kyle Herber did a great job in their testimony, so my comments will be brief. I came to testify in favor of LB727. As the CEO for the Nebraska Kidney Association, we promote organ, eye, and tissue donation as a part of our mission. We don't stop at just kidney's, but rather all organs. Since nearly 50 percent of those patients listed on the transplant list are awaiting a kidney or kidney/pancreas transplant, we have a vested interest in this legislation. Currently, there are 432 awaiting a lifesaving transplant in Nebraska: 212...or breaking it down, 198 are awaiting a kidney transplant, and 14 a kidney/pancreas transplant. Are there any questions that I...that you have for me? [LB727]

SENATOR DUBAS: Thank you, Mr. Neal, for that information. Are there questions? Seeing none, thank you. Next proponent. [LB727]

CURT COUGHLIN: Madam Chair and members of the committee, my name is Curt, C-u-r-t, Coughlin, C-o-u-g-h-l-i-n. I am the operations and compliance director for the Lions Eye Bank of Nebraska, and I'm here to speak in support of LB727. The Lions Eye Bank of Nebraska is a Nebraska 501(c)(3) organization established in 1961 as a joint commitment to the preservation and restoration of sight by the University of Nebraska Medical Center and the Lions Clubs of Nebraska. For more than 50 years, the Nebraska eye bank has served as the link between those individuals desiring to leave a legacy of sight after their death and those who are visually impaired. As the Nebraska's eye bank, we coordinate, recover, evaluate, process, and distribute donated corneal tissue to eye surgeons in Nebraska for sight saving and restoring procedures such as corneal transplant. The cornea is the clear front portion of the eye that allows light to enter the eye and because of its curved shape also provides the majority of the focusing ability of the eye. The only hope of restored vision for a person with corneal blindness is to replace the damaged or diseased cells of their own cornea with healthy cells from a donor eye. Approximately, 300 Nebraskans receive this precious sight-restoring gift each year while helping to treat vision loss associated with corneal blindness is an important part of our mission. We also distribute ocular tissue for valuable education of

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medical professionals, as well as advancement of important research studies both locally and nationally. As the success of corneal transplant has continued to advance, so has the demand. Currently, only 65 percent to 70 percent of the patients on the corneal transplant waiting list in Nebraska are receiving treatment from Nebraska eye donations. This gap leads to delayed treatment for many in our state. We believe the language provisions in LB727 will have a positive impact on the number of Nebraskans who will make their wishes known regarding donation and therefore continue to improve access to life saving and enhancing procedures for the citizens of our state. As has been stated already, the Nebraska Legislature's support of organ, eye, and tissue donation has been paramount to the success of the donation and transplant process. And on behalf of the Lions Eye Bank of Nebraska, I would ask for your support of LB727. Thank you. [LB727]

SENATOR DUBAS: Thank you very much, Mr. Coughlin. Are there questions? Seeing none, thank you so much for your testimony. Welcome. [LB727]

DOUGLAS BREMERS: (Exhibit 5) Good afternoon, Madam Chair, members of the Transportation and Telecommunications Committee. My name is Douglas Bremers, D-o-u-g-l-a-s B-r-e-m-e-r-s. I am here today as a representative and employee of the Nebraska Medical Center. The Nebraska Medical Center is a well-known, nationally transplant program and nationally known and worldwide for our intestinal transplant program as well. Currently, there's over 120,000 people waiting in the country for an organ transplant. At our center alone there are 433 people waiting for a transplant, and about 58 percent of those patients that are waiting for a transplant are residents of the state of Nebraska. This last year, we did 307 transplant procedures with 352 organs. And so we...I think LB727 is in their best interest that you guys would favorably consider this legislation. I know when I go to the Department of Motor Vehicles, last time I renewed my driver's license, of course it's well on my mind, I work in this all the time, and of course I wanted to make sure that my intentions were well-known on my driver's license and that I have the red heart on the license and that my wishes are known. But not everyone is aware of this, and this became more apparent to me a couple of years ago when I was at a donor recognition ceremony, and I was visiting with a gentleman that had a liver transplant. Don was a retired Air Force person and was wearing a name badge indicating he was a recipient of a liver transplant. And we had a gentleman that came up to us and in tears said you have to come over and meet my family. My son was an organ donor, and we've communicated anonymously with some of their recipients, but to see people like you first hand, we all want to hug you and just thank you. You know, my son meant the world to me; he was a handyman; he did a lot of work at our house; he did electrical work and plumbing work and so we miss him a great deal. But I don't know if we could have agreed to organ donation, but he made that decision for us. He put it on his driver's license; it was there so we didn't have to make the decision; he made that for us. And now having time to see this and to see recipients that have benefited from that, we're grateful that that is what had happened. And so for

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him, for our patients that are on the waiting list, for about the 350 people each year that we will list in the future for an organ transplant who are depending on this. So I would ask you to favorably consider LB727 for your consideration and thank you very much. [LB727]

SENATOR DUBAS: (Exhibits 6 and 7) Thank you, Mr. Bremers. Are there questions? Seeing none, thank you so much for bringing your information forward, appreciate it. Next proponent. We do have one letter to read into the record in support of LB727 from the Nebraska Hospital Association. With that we will move to opponents; are there any opponents to LB727? Anyone in the neutral? We do have one letter to read into the record on LB727 in the neutral capacity from Rhonda Lahm with the Department of Motor Vehicles. With that, Senator Harms did waive his closing on LB727, so we will close LB727 and move on to LB816, Senator Murante. [LB727]

SENATOR MURANTE: Good afternoon. Chairman Dubas, members of the Transportation and Telecommunications Committee, my name is John Murante, spelled M-u-r-a-n-t-e; I represent the 49th Legislative District in the Nebraska Legislature which consists of Sarpy County, Gretna, Chalco, and portions of Papillion and La Vista, and I'm here today to present LB816. As our society continues to move further along the road of doing business electronically, LB816 adds an additional method for consumers to show proof of automobile insurance when licensing their vehicles or providing proof of insurance to law enforcement officers. There are already 29 states that have passed similar legislation, and it is pending in a number of other states. LB816 makes it clear that the decision to show electronic proof is the choice of the policyholders, and those who wish to continue to use the paper card as is currently in use may continue to do so. Policyholders who choose to use an electronic form of proof assume the liability for any damage to the electronic device, and LB816 makes it clear that the use of electronic proof of insurance does not constitute consent for law enforcement to access other data on the electronic device. I introduce this...I should mention that the Independent Insurance Agents of Nebraska have indicated to me that they are in support of this legislation and will be sending a letter to the committee in short order if it hasn't been received already. But I would encourage you to support this; I think it...these sorts of bills are the wave of the future. I think that we're going to find that as technology develops, state law is going to have to keep pace in a number of different regards, and this is just one step in that direction. So, I encourage your support of LB816. I'd be happy to answer any questions you have, but I suspect that there are a number of testifiers behind me who would be happy to contribute as well. [LB816]

SENATOR DUBAS: Thank you, Senator Murante. Are there questions? Seeing none, thank you. [LB816]

SENATOR MURANTE: Thank you. [LB816]

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SENATOR DUBAS: We will begin with our first proponent. [LB816]

KORBY GILBERTSON: (Exhibit 8) Good afternoon, Madam Chair, members of the committee. For the record my name is Korby Gilbertson; it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist and local counsel for the Property Casualty Insurers Association of America; it's a mouthful. PCI has over a thousand member-companies, and they write approximately, right now, 46 percent of automobile policies in the country to just give you an idea. They have been working for the last several years to...on this legislation and another piece of legislation which is going to be heard in the Banking Committee next week. But this bill...and I'm not sure if you got the table from Senator Murante that has...there's some columns that show the number of states that have already passed this legislation, and you'll have...and it's coming around to you right now. On this, it talks about 28 states have passed it; since this was printed three weeks ago, it has actually passed in two more states, Oklahoma...and, I'm sorry I wrote it down, and I just can't read without my glasses on...Oklahoma and Pennsylvania have both passed it since this was made a few weeks ago. I've had a few questions asked about what does the proof of insurance look like on your phone. Since we don't have it here in Nebraska, they couldn't send me something to my phone that would look like it, so I made a call to another state where they do allow it, and two people made copies of their...or took pictures of their screens, and so I've included that as a handout also. So it depends on which company you deal with, but some companies...on the opposite side of the pictures, you'll see that there's an ad for GEICO. They actually have their...an application that you download and provides all of your insurance information. And for those of you who were watching the Super Bowl or made it through the first quarter, there was a GEICO ad that talked...with the pig, that talked about having the electronic proof of insurance. So that's what this is about. In the states that it has passed, there have not been any issues. I provided you with two newspaper articles, one from Ohio and one out of The New York Times, to just give you some information about what's going on in other states. And finally, Senator Murante talked about two provisions that we added to our legislation for here in Nebraska which isn't necessarily added in all the other states. But number one would be the privacy issues so that if you decide to use your electronic device for proof of insurance, law enforcement cannot then go, thumb through your iPhone and use any of the other information they find against you. And secondly, to protect law enforcement, if you decide to use your iPhone, and you hand it to them, and they drop it, it's your problem, not theirs. So you're assuming the liability of your device getting broken. I would be happy to try to answer any questions. It's a pretty straightforward piece of legislation. [LB816]

SENATOR DUBAS: Thank you, Ms. Gilbertson. Are there questions? Senator Smith. [LB816]

SENATOR SMITH: Thank you, Senator Dubas. So the provisions in the proposed

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bill...proposed language talks about assuming the liability for damage to the device.
[LB816]

KORBY GILBERTSON: Right. [LB816]

SENATOR SMITH: Is that whenever they present it to the officer is that what...so if it's dropped on the concrete or the roadway? [LB816]

KORBY GILBERTSON: Right. Um-hum. You assume the liability, because, obviously, in some other states early on in the process of getting this passed, there was concerns about, well, if somebody hands me the iPhone, and I don't quite get it in my hand, and it breaks, then all of a sudden the State Patrol or whoever is liable for a \$500 piece of equipment. And so that's why this language was added. [LB816]

SENATOR SMITH: Okay. And is there any concern about the timeliness of the presentation of that electronic information. So I assume that the thought is it would be readily available; it's saved as an imagine or something on the phone, but otherwise...I mean it's a matter of receiving it on a text, attachment, or an e-mail because they don't readily have it available? [LB816]

KORBY GILBERTSON: The majority of the time it's an application or you'll have...if you have an iPhone or a Windows phone that have the little icons, that's where it will be so you'll just...you would click... [LB816]

SENATOR SMITH: Oh. [LB816]

KORBY GILBERTSON: Like I have State Farm, and I think I included a picture of the State Farm card. You literally click on the State Farm icon on your phone, and that pops up. [LB816]

SENATOR SMITH: Okay. So it would have to be readily available at that time. [LB816]

KORBY GILBERTSON: Um-hum. Yep. [LB816]

SENATOR SMITH: Okay, thank you. [LB816]

SENATOR DUBAS: Other questions? Senator Brasch. [LB816]

SENATOR BRASCH: Thank you, Madam Chairman, and thank you, Korby. I really like technology. And...but my...sometimes I'm in a vehicle...I'm a passenger; I don't have a car charger or something, or I'm even in my own vehicle without a charger, and so you have a dead phone, what does the officer do then? [LB816]

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KORBY GILBERTSON: You can...and that's the...you don't have to do this. [LB816]

SENATOR BRASCH: Okay. [LB816]

KORBY GILBERTSON: This is an option, this is an option for the insured. I get to request of the company that I am insured through to allow me to do it. So if you're more comfortable with it and, frankly, I probably just keep the paper ones myself because, yeah, I've dealt with the dead phone thing before too. So it's completely up to you. The real issue is, I...now I can say this, people that are younger than I am literally don't want paper in their lives. They don't carry a wallet; they don't carry...and, you know, everything they do is on their iPhone or iPad, and they bank that way and everything else. So this is really, as Senator Murante said, the wave of the future; this is what everybody is asking for. So, but for those of us who prefer to just have the regular paper card, you can still do it that way too. [LB816]

SENATOR BRASCH: Very good. I have no other questions. [LB816]

SENATOR DUBAS: Senator Hadley. [LB816]

SENATOR HADLEY: Thank you, Chair Dubas. Ms. Gilbertson, am I correct that this, basically, not only would be for law officers, but if I go to the courthouse to get my plates, I would no longer have to take up a paper evidence of insurance? [LB816]

KORBY GILBERTSON: Um-hum. Yep. Exactly. [LB816]

SENATOR HADLEY: I could show them...and so any time a paper would be acceptable in Nebraska that this would be acceptable. [LB816]

KORBY GILBERTSON: This is...exactly. [LB816]

SENATOR HADLEY: Okay. [LB816]

SENATOR DUBAS: Further questions? None? Thank you very much. [LB816]

KORBY GILBERTSON: Okay, thank you. [LB816]

COLEEN NIELSEN: (Exhibit 9) Good afternoon, Chairman Dubas and members of the Transportation and Telecommunications Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n. I am the registered lobbyist for State Farm Insurance and the Nebraska Insurance Information Service, testifying in support of LB816. I did not set this up at all. I realized that as I was reading my testimony over that I had printed out the wrong one. So fortunately, I had my trusty iPad along and brought up the appropriate testimony for today, just giving an example of how we can just use

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technology in our lives. I won't read it to you because Korby did such a good job of explaining this bill. But we are in support of this, and I agree with Korby, if people still want to continue with paper, and I probably would too, because I'm more of a paper person, you can do that. But it would be a handy thing to have, particularly for young people. And I'd be happy to answer any questions. [LB816]

SENATOR DUBAS: Thank you very much. Are there questions? Seeing none, thank you. [LB816]

TAD FRAIZER: Good afternoon, Senator Dubas, members of the committee. Again, my name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r. I'm local counsel for the American Insurance Association, a national trade association of some 300 property and casualty insurers. And not to belabor the point that's been made by the prior proponents, but we believe this is an additional option for insured. If they wish to use their e-device to display proof of insurance, it gives them one more option, and it just provides some flexibility going forward into the future. So we would hope you would look favorably upon the bill and advance it. And I'll try to answer any questions you might have. [LB816]

SENATOR DUBAS: Thank you very much, Mr. Fraizer. Are there questions? Senator Hadley. [LB816]

SENATOR HADLEY: Yes, just one quick question. This would not relieve insurance companies of providing you with a hardcopy of your...? [LB816]

TAD FRAIZER: No, I believe the bill, as written, it gives the insured the option to either elect to go with an e-version or a hardcopy version. [LB816]

SENATOR HADLEY: The insured or the insurer? [LB816]

TAD FRAIZER: The insured, the customer. [LB816]

SENATOR HADLEY: The insured, the customer, okay. [LB816]

TAD FRAIZER: And I appreciate that, because I'm still kind of a hardcopy guy myself. [LB816]

SENATOR DUBAS: Further questions? Seeing none, thank you very much, Mr. Fraizer. [LB816]

JAN MCKENZIE: (Exhibit 10) Senator Dubas and members of the Transportation Committee, for the record my name is Jan McKenzie, spelled J-a-n M-c-K-e-n-z-i-e. I'm executive director and registered lobbyist for the Nebraska Insurance Federation. And since this is my first time testifying in front of many of you, Senator McCoy has heard

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my speech I'm going to give you here in a minute, many times. The Nebraska Insurance Federation is a federation of the Nebraska domestic state domiciled companies, and it includes property/casualty, life and health, work comp, title, and in fact, we've just added...hope to add another company that is going to be quite fun and unusual to have that does some quite interesting kinds of insurance for extreme television-type survival programs and adventures; so anxious to hear more about that. I gave you a copy of the directory just so you have some idea of who we are as we are your Nebraska companies and employ many Nebraska folks. State Farm, Farm Bureau, Farmers Mutual, and Great West Casualty are members that are property and casualty writers, along with a couple of indemnity companies in Omaha that, primarily, insure commercial fleets, and city and police and fire fleets. We are also in support of LB816 and wanted to be on the record as so. [LB816]

SENATOR DUBAS: Thank you very much. Are there questions for Ms. McKenzie? Thanks so much for coming. [LB816]

JAN MCKENZIE: Thank you. [LB816]

SENATOR DUBAS: (Exhibit 11) Further proponents for LB816? We do have a letter of support for LB816 from Dave McBride, Nebraska Association of Insurance and Financial Advisors. Is there any opposition to LB816? Any opposition? Anyone in the neutral? With that, Senator Murante. Senator Murante waives closing. That will close the hearing on LB816. And we will move to LB910, and I will turn the hearing back over to Senator Smith. [LB816]

SENATOR SMITH: Thank you, Senator Dubas. We now open the hearing on LB910, and Senator Dubas will open on that bill. [LB910]

SENATOR DUBAS: Thank you very much, Senator Smith, members of the committee. My name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s. I represent Legislative District 34. LB910 merely extends the notice requirements for abandoned vehicles to vehicles impounded by law enforcement for investigatory purposes. Testifiers that will come behind me have specific examples of the existing loophole that creates an injustice for lienholders. I've been contacted by car dealers who had liens on vehicles that were subsequently used in crimes, were impounded by law enforcement, held for months while incurring substantial storage fees, and the lienholder did not receive notice of the impoundment until five days prior to the sale of the vehicle at auction. The five-day notice begins to run when law enforcement drops the notice in the mailbox. Considering the state of our postal service, some lienholders may not receive that notification until actually the day of the auction. When this occurs, the lienholder, the car dealer, or a mechanic, for example, have very little time to make arrangements to recoup their losses and exercise their right to take ownership of the vehicle. The language added in LB910 mirrors the requirements for abandoned vehicles currently contained in 60-1903.

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Law enforcement currently uses the exact same process for sending notice when dealing with an abandoned vehicle. To address the concern of law enforcement personnel that they would incur added costs and workload in sending such a notice, the bill allows for the notice to be sent by the towing company or the impound lot. Further, the intent in drafting the portion on refunds for storage fees was to put the lienholder, who is taking possession of the vehicle after law enforcement is done investigating the crime, on par with the owner who is entitled to a refund of storage fees if they are not convicted of a crime. There may have been...the language may not be as clear as it needs to be in this instance, and so I'm definitely open to suggestions or potential amendments to make that clarification...to make that read the way it was intended. So with that, as I said, there are people coming behind me who will explain why this legislation will help them and some specific instances as to the issues we're dealing with. [LB910]

SENATOR SMITH: Thank you, Senator Dubas. Are there questions? I see none. Thank you. We now open public testimony on LB910, and we open this to proponents of LB910. Welcome. [LB910]

LOY TODD: Thank you, Senator Smith, members of the committee. My name is Loy Todd, L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association, trade association representing approximately 218 new car and truck dealers in the state. I want to thank Senator Dubas for introducing this legislation and trying to address this issue. I will tell you how we first became aware of the problem. I received a call from a dealer in, sort of, north central Nebraska who was quite concerned in that he had just received a notice regarding a vehicle that he had an interest in. He had gotten notice from law enforcement that the vehicle was going to be sold to satisfy towing and storage charges and that law enforcement had completed their investigation of the vehicle. Unfortunately, the investigation apparently took three years to do. There was \$9,000 in storage fees accumulated on a \$3,000 vehicle. As you can understand, he was quite concerned, and I was...I just assumed he had it wrong. And I said, well, that can't be; somebody has dropped the ball; let's look into it. And I got ahold of the towing company, and they were just delightful people. And I said, you know, what happened here? Well, I said, why didn't you let them know before this, before all these charges got there? Not our job; we don't know when law enforcement is finished with the vehicle, the notice comes from law enforcement. And so I checked the statute, and I'll be darned if everybody wasn't correct. Law enforcement had no requirement to notify the...any owner of the vehicle or any lienholder or anyone with an interest in the vehicle until five days before they were going to sell it or...there's even a statutory provision, or keep it after their investigation is completed. So I thought we ought to look harder at it and see about fixing it. Well, and then another...you know how these things sort of all come together. In October, an interesting thing happened, and you may have heard of it. In Fairbury, Nebraska, a local police officer apparently took off with a police car from the Fairbury Police Department and ended up being arrested in

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North Platte, kind of a peculiar problem. But I was noticing in the paper that...and realized then, because North Platte was holding the vehicle for investigation, they wouldn't give it back to the Fairbury Police Department. And in looking at the case and reading the newspaper articles on it, the North Platte law enforcement entity said, well, they're not going to get it back until we finished and maybe all the appeals are finished, and they've still got the storage and towing charges to pay. Now it's pretty easy for the Fairbury Police Department to find out about it, you know, it had Fairbury police on the side, so everybody knows about it. But then I found other circumstances where maybe someone's car was stolen, and nobody gave them notice. And so these things...I mean...and it seemed really simple to us that all we really needed was some kind of notice, just a mailed notice. I even at one point said, well, we'd be satisfied with a phone call if law enforcement that has the vehicle, either because it's been abandoned on the streets or because it's part of an investigation or arrest, would just simply let us know so we could take whatever steps might be appropriate under the circumstances. We didn't ask that they have to give it back. We didn't ask that they can't charge or that it can't be towed or...we've tried not to interfere in any way. We simply said, tell us. And it seems like such simple common sense. If the law enforcement agency charged with the duty of taking the vehicle into their possession executes that duty, they ought to tell somebody they did. And if the towing company ends up doing that task, because they're in the business of towing and storage, you know, they ought to be part of the loop. And so there's a provision in this legislation that does not, and I know you've been contacted by the towing industry, and I can't make them read it the way I read it, so, you know, we may need clarification. But our intent on saying the contractual agency can give the notice. Our intent on that was that if law enforcement did not want to do the job of giving the notice, since they're already hiring, in effect, the towing company to do that, that as part of that process they can also have the towing company assigned to that duty. But that would be voluntary. This bill does not intend in any way to require the towing company to give the notice; it just provides an alternative to law enforcement that if they choose not to do it themselves, that they can ask or compel the towing agency to do it in order to get the business. I can't imagine any towing company saying, no, we're not interested in towing a vehicle if we have to mail a letter to the owner. Now as far as getting the information, law enforcement can give that at any time, they can...that's available to them. And also the towing companies can legally get that; I think they have to pay a dollar to the DMV and if they did it independently that's how my dealers do it. So, I guess I'm somewhat surprised that there's opposition. The opposition seems to take two forms. One is, we don't want to do it; and the other is, we want somebody else to do it. And, unfortunately, under the circumstances that we're faced with, when there are entities who are involved in this process, necessarily, because the law says that's their job, and we have no way of knowing, we think somebody ought to give a notice. And again, we have no interest in interfering with anything. And if someone thinks that it's taking too long or whatever, they can go to the courts and address that privately, but you've...and I'm not here pretending, in any way, that the \$9,000 storage bill on a \$3,000 vehicle is the norm; it isn't. But these things can accumulate rather quickly. And

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there is at least some concern that when there isn't a compelled notice, there is an opportunity for those people who can accumulate storage charges to run up the bill. And it seems that this is just a commonsense answer. Somebody said 60 days was wonderful, and that will work. We don't care; we just think somebody ought to give timely notice to the lienholder who has an interest in the property. The other provision in the bill that says that, you know, because the current law says if the vehicle is taken into custody, and the person is not charged, or the owner of the vehicle is found not guilty, they can be reimbursed for the towing charges and that cost. And we drafted it so it would include the lienholder or the other interested owners as part of the people excused from paying it. It seems inappropriate that if the owner of the vehicle is...gets reimbursed for the towing charges, that the lienholder has to come and get it or the joint owner or some other interested party has to come get it, they also ought not have to pay for the charges for someone found not guilty or not charged. With that I would answer any questions. [LB910]

SENATOR DUBAS: Thank you, Mr. Todd, for your testimony. Are there questions?
Senator Hadley. [LB910]

SENATOR HADLEY: Thank you, Senator Smith. Mr. Todd, you represent the New Car and Truck Dealers Association, but the lienholder could, obviously, be a bank then also, is that correct? [LB910]

LOY TODD: Yes, and typically it would be either a captive finance company or a bank. And I know this is supported by both bankers associations with similar concerns that they just want to know. [LB910]

SENATOR HADLEY: If my car is, like Senator Lathrop's was one year, towed because we had a bill a number of years that he used to bring, does the towing company have to notify me that they have towed my vehicle? [LB910]

LOY TODD: If it's a private tow from a private property or something like that and enforcement or similar action, other statutes take care of this. But let's say your car was stolen or if your car was taken by some unauthorized person or even somebody that you...who...a family member, whoever, someone who just takes off that you just don't know about. I mean, you don't know where they went, and those kinds of things can happen. On this one with my dealer, the example, it was a customer, it was someone that he thought had...a contractual relationship with, but they just disappeared. He just figured it was a skip, he had...he thought the vehicle and the customer were just gone. Well, they weren't; they were actually pretty close, but nobody told him. So, you know, it's an odd circumstance, but it is when law enforcement has the vehicle, not when it's an arrangement from someone trespassing or something like that. [LB910]

SENATOR HADLEY: Trespassing or such as that, okay. Thank you, Senator Smith.

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[LB910]

SENATOR SMITH: Are there additional questions for Mr. Todd? Senator Dubas.
[LB910]

SENATOR DUBAS: Thank you, Senator Smith. So currently, the way the law reads now, if a car is abandoned, and it's picked up, there's a notification in place, is that correct? [LB910]

LOY TODD: I believe under current law two things can happen, either abandonment where law enforcement ends up...let's say it's abandoned on the streets, somebody leaves it in the middle of the road. If law enforcement is compelled to come and get it because of a circumstance where it is abandoned, or where it is in the custody of law enforcement because of some kind of arrest or confiscation, investigative purpose, either one of those would be under this legislation. And both of those, as we read the statutes, fit into this current five days from the day you're going to either sell it or keep it. The law also has a provision in there that they can just keep it after the five-day notice.
[LB910]

SENATOR DUBAS: Thank you. [LB910]

SENATOR SMITH: Additional questions for Mr. Todd? Mr. Todd, I have a couple of questions for you. So with your exchange with Senator Dubas just then, you said under the new...under the proposed legislation, they would be captured under this. But currently, they're not obligated to make contact. [LB910]

LOY TODD: That's correct. [LB910]

SENATOR SMITH: So a company that has a vehicle that is stolen, and they're trying to find it, and it doesn't get reported as abandoned...it gets towed; it's in storage, that company may not be made aware of that law enforcement found that vehicle, and they may not be made aware by the impound lot or the storage facility that they have that vehicle. That's a possibility, right? [LB910]

LOY TODD: That's correct, Senator. In fact, and what I realized from talking...my exchange with the actual tower in the case we're talking about, she couldn't send the notice because she didn't know...even if she had wanted to, she didn't know when law enforcement was finished with that vehicle. So she was unaware of how long it would take before they were finished. So, the notice comes from law enforcement. And if you take the Fairbury situation, if it hadn't been a police car, if it had simply been, as you indicated, a company car, something like that: someone took it, and it goes from Fairbury to North Platte or wherever, and it...nobody has to tell. And so it's...I was very surprised by the law. [LB910]

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SENATOR SMITH: All right, now what alternative is there if there is a recovery of that if...I mean, there's no alternative that...other than that cost of storage has to be paid in order to retrieve that vehicle. [LB910]

LOY TODD: Yes, that...somebody...the towing company deserves to be paid, and...for both the tow and for the storage. They've certainly done it at the request of law enforcement. Now current law has the provision in there that if...if it's an arrest and a confiscation by law enforcement, and they're not charged with the crime, or they're found not guilty, then they get that refunded, and it seems to be implied in the statute that that's the expense of the county or state or whatever agency is conducting the act. But we're not changing that in any way by this bill. That's already the law. I'm trying not to change anything; I'm trying to give them notice, that's all. [LB910]

SENATOR SMITH: And I'm trying to understand why is it that we would put the burden on law enforcement and not on the storage companies since the storage company is the one that is receiving a...receiving some amount of compensation. I assume it's probably a healthy amount of compensation, that why wouldn't they have to incur that additional time and expense of notifying the owner? [LB910]

LOY TODD: Well, we're trying hard not to change those relationships in the bill. Right now, all those tows are the result of law enforcement inviting the tower to do that or instructing them to do that. And so it's all initiated by law enforcement either because it's abandoned or because it's part of a legal proceeding. And what we did try to put in here is that law enforcement could voluntarily, along with the towing company, contract for the towing company to actually physically do the notice because the towing company doesn't initiate this. They aren't going around independently picking up these abandoned vehicles or working with law enforcement on the arrest procedure. On the private tows, like Senator Hadley referred to, where it's...where the landowner has the contractual relationship with the towing company to tow away the vehicles that are there illegally or without permission, those tows that is the responsibility of the towing company. On the kinds of tows covered by this bill and these particular statutes, those are only initiated by law enforcement, not by the towing company independently. [LB910]

SENATOR SMITH: Does the storage take place on the property of the people or the business doing the towing or is it the law enforcement property that it's...? [LB910]

LOY TODD: I think that...it's our experience that that can vary dependent upon who is involved. Some cities, some counties, some law enforcement agencies have their own facilities, as I understand it; others, they utilize the facility of the towing company. So it could be either place and just whatever their practices are; we just...that isn't dictated by the law either. [LB910]

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SENATOR SMITH: All right. Thank you. Seeing no further questions, thank you for your testimony. [LB910]

LOY TODD: Thank you. [LB910]

SENATOR SMITH: (Exhibits 12 and 13.) We continue with proponents of LB910. Seeing none, we now move to...oh, I'm sorry, we do have letters to read into the record, two letters of support, one from the Nebraska Bankers Association, and the other from Kurt Yost, Nebraska Independent Community Bankers. Now we move to opponents of LB910. Welcome. Welcome. [LB910]

ADAM KYLE: Good afternoon, Sir. Senators, thank you for allowing me to speak today. My name is Adam Kyle, K-y-l-e is the last name, A-d-a-m, first name. I'm a captain with the Omaha Police Department. I've been police officer about 26 years; I've been a captain for about five years. One of my responsibilities is to manage our police impound lot. And you'll have to forgive me for putting these on and taking them off because I can't read with them on, and I can't see you unless I have them on. I want to tell you a little bit about our operation and why I'm here today and how this law is going to detrimentally affect fiscally how the city manages our budgeted money. This bill just right off the top row is going to cost us about \$150,000 a year, and I'll explain how that works. We have about 800 cops in Omaha. About 400 of them are uniform patrol. Any one of them at any one time can tow a vehicle whether it's abandoned, whether it's involved in a crime, could be blocking, might be a ticketing situation. We also have civilians that tow cars that work for the city of Omaha. Generally, they tow cars in an area that is a parking issue that's, say, 4:00 to 6:00, you're not allowed to park because it's a thoroughfare. And so those guys will just drive around courthouse, other locations and just do nothing but tow cars. Generally, the Omaha Police average about 10,000 cars a year; that's how many we tow. The high in 2003 was about 16,000. This year we...just this last year we towed about 8,300. Our tows range, again, from...some of the things that we do tow for are accidents, last year 1,867 of those; stolen autos, 1,352; DWI, 510; illegal parking, 239; hit and runs, 401; suspended drivers, 245; and unregistered vehicles, 1,247. Those are just some of the 8,400 cars that we towed last year. This is the way it works for us as far as our policy and our contract goes with a vendor. Our contract goes out every three years; we get the lowest bidder. Our contract currently is for about a million dollars for a tow company to come in. They have a schedule of amounts that they charge for: towing a car, hooking a car up, how much wench time, how much time it takes them, if it's a semi, or if it's a pickup truck, or if it's a car, if they have to use a flatbed, if they have to use a dolly. I'm sorry that I'm boring you with...this stuff is just...there's a lot of details involved in this, and as a police captain, I never thought I'd be messing with tows like this, but anyway, so it's very detailed on costs. And we have to budget for this every year. When a car is towed...I'm going to give you a simple example of a simple tow: a car gets picked up by our tow company,

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takes it to the impound lot. We currently own about 11 to 12 acres inside the city limits. We have about 15 tow lot employees; they're all civilians, managed by a supervisor and a tow lot manager, 24/7. The tow company arrives; they drop the car off. Sometimes they put it where we want them; sometimes they don't. If they don't or if we have to move it for any reason, we have to get our end loader out or our tow truck and pull it into the lot somewhere. Sometimes the vehicle is put into a hands-off area where no one is supposed to touch it. But nonetheless, if it is a simple tow, it's taken into the parking lot. Every two weeks or so, we pay the tow company a large amount for all of the cars that they towed. They charge us \$93 per tow. We get that money back when the citizen comes to retrieve their car for whatever reason. We charge the citizen an additional \$52 administrative costs. We also charge \$20 a day for storage fees. We often waive costs. Last year, we waived approximately a half a million dollars in storage fees. The reason we do that is because, in our eyes, you know, sometimes the law is not exactly fair. We're not imposed by anything under the current law that says we have to do that, but we do it because it seems like it's the right thing to do. For example, let's say your son steals your car, and you're the registered owner. We recover the car. We arrest him. We charge him. He gets convicted. During that time frame, we have the car for five or six months, let's say it's a year. The tow fee and the administrative costs is \$145, but the storage continues to accumulate. And we can hold that vehicle for however long we need it until the investigation is over or until the case is adjudicated. Per the state law, we can charge you all of those storage fees. That doesn't seem right. We're holding it; we can charge you as long as we can hold it. So we generally waive those costs because it doesn't seem right. There's a lot of things that we waive, but the storage costs is probably the most that we waive. The tow though, because we put the money out, if we don't recover the cost, the taxpayer will be footing the bill in some fashion through our budgeting process or us requesting more money from the city of Omaha. Let me talk about this particular bill that you have written. One line is the one that we're concerned with that's going to impact us at the \$150,000 mark; it's line 14 on page 3. And this is in regards to a person being arrested, charged and convicted, and we towed the vehicle for investigation purposes. Let's take it the one...I'm only going to use one example, one line item here, of all these things that we tow for, there's one particular one that I can use to give this \$150,000 example--stolen cars. When police tow a car, particularly a stolen car, it's usually found along side the road; the column is busted; the window is broken; it's usually been trashed, sometimes it's involved in an accident, 99 percent of the time it's abandoned. If we get somebody in it, they usually run. Sometimes cops don't always catch those people. If we tow that car, put it in our impound lot and storage starts to accumulate. At some point, we have our crime lab come out, usually it's within the first 24 hours. They'll try and get fingerprints off any part of the vehicle which usually they're not successful. If you're driving, fingerprints don't come off a steering wheel very easily. We almost never charge somebody for a stolen auto; we almost never get a conviction for a stolen auto. With that in mind, if there are 1,352 stolen cars given back to the owners, based on this bill, line 14 says they would be able to...since we didn't charge or convict anybody of a stolen car and we took it for

investigation purposes, we would have to give them a car free. We don't necessarily care so much about the admin or the storage fee; we're concerned about what it costs us to pay the tow company to tow the car to our impound lot which at that number, 1,352, is approximately \$124,000. That's a low end; on other high years it could be as many as 2,000 cars. And so the money would start to accumulate year after year with the taxpayers footing the bill. In regards to the rest...part of the legislation, where it...the gentleman that testified before me, I kind of...I agree with him. Cops, law enforcement agencies and/or tow companies should notify registered owners. We already do that. We do it within the first 24 to 48 hours. There is a reason we do it. We want to get rid of the cars; we want the owners to come get their cars. We don't need the accumulation of the storage; we don't need the cars. Our cars are generally...when they're brought in, our policy is very clear, we, within...we usually don't send anything out within the first 24 to 48 hours because usually the owner shows up anyway, and the certified mail costs us money. In the Omaha Police Department, every penny to us is very valuable, and we cut costs every chance we get. And if that means that we can save a nickel instead of sending out a certified mailer to someone, we'll do it. And so we'll wait the 48 hours just so if the owner shows up, usually they will, and pick the car up before we have to mail out the certified mailer, then we'll do it. We usually spend about \$500 a year in certified mail notifying owners, lienholders, and so on and so forth. The tow company that we hire has absolutely nothing to do with this process, and they could care less because we're the one footing the bill. I could go on and on about some other items regarding this bill, but this one line in here is going to impact the city of Omaha just with one particular car, not to mention all the others, but this one particular car, the stolen auto that we tow, depending on how many we recover, is going to cost us a lot of money. What are your questions? [LB910]

SENATOR SMITH: Thank you, Mr. Kyle, for your testimony. Do we have questions? Senator Dubas. [LB910]

SENATOR DUBAS: Thank you, Senator Smith. And thank you, Captain Kyle; appreciate you sharing your personal experience. I guess just to help me understand the issue a little bit better, of the cars that you tow currently, or that you impound currently, how many of them are kept for investigations? If you can't give me a specific, can you give me a ballpark? [LB910]

ADAM KYLE: I can give you an extreme case. We had a car there for two years at one point. Generally, the cars don't stay there that long. Generally, cars are cycling in and out of there at a rapid rate. The cars that are generally kept for a long time are homicides, arsons, cars that have been chopped up where we can't find the VIN, and we have a guy that knows how to go...figure out how to get the VIN off particular parts of the car where we dismantle it. But generally speaking, cars don't spend a lot of time there. The ones that spend a lot of time there, end up getting auctioned. [LB910]

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SENATOR DUBAS: Okay. So this legislation is referencing custody of vehicles for investigatory purposes. [LB910]

ADAM KYLE: Correct. [LB910]

SENATOR DUBAS: So, you're saying that you don't have a lot that are kept for a very long period of time for that reason? Am I understanding correctly? [LB910]

ADAM KYLE: Your understanding...that is correct, but the way the language is the law. The only reason we pick up a stolen car is for investigative purposes. And per this law, and we all know how law sometimes take in some things that it shouldn't, and it's a broad deal, and the people that are affected by that, the unintended ones, are like me, come forward and go, hey wait a minute, this is going to affect us in a detrimental way. It probably could be worded a little bit different, but a stolen car, for practical purposes of language goes, it still in a investigative reason that we take it. It's evidence because it's stolen, stolen property. Number two, we can't just leave that property out there even if we've notified the owner and they haven't come and gotten it because the window is broken, column is busted, and you could start it with your finger. I mean, it doesn't take much when a column is broken to start a car. And so, we're obligated to recover that evidence. And so if anybody wants this...make a fit about whether or not what the language said or didn't say, we'd have to be obliged and give them the car at no cost. [LB910]

SENATOR DUBAS: Okay. So at any point now, the way...under your current practices, are you notifying anybody beyond who the car is registered to? Are you reaching out to lienholders or anybody else? [LB910]

ADAM KYLE: Yes, we are. The way we do it is, we have some letters...some form letters that we use. We use NCIC and NCIS and our impound manager figures out, (one) who the car is registered to, and (two) who the lienholder is, or lienholders. And simultaneous letters go out to those people. That's the first letter. If we don't hear back from them in five days, we send out a second letter and we say this, we say, your car is going to get auctioned in the next 30 days. Usually we get most of the people coming in by then. That doesn't happen by then, then car gets auctioned. We went to the extent...we have one car for...it was a stolen car; we had it for about six months and notified the registered owner, the lienholder, and the insurance company. And none of them wanted the car. It was brand new. The window was broken; the column wasn't broken; the guy left the key in it. It's a brand new car; it was a \$35,000 car. We notified the insurance company three times: certified mail, certified mail, e-mail. And I wasn't satisfied so I had our guy call him twice. They wouldn't come pick up the car. We kept it for six more months, notified them again. They said, it's salvage. We said, it's brand new. They're like, we don't care. So we took the car. By law, law enforcement agencies can use cars, and that's exactly what we did. We'll go and use cars to save the city

taxpayers so we don't have to purchase cars, use them for detective cars, narcotic cars, gang unit cars, or whatever, command cars. A year and a half later the insurance company came back and said, hey, we'd like our car. Per law they have to pay us \$20 a day storage fee. They didn't want their car back. So that's an extreme case. But we go out of our way if it seems common sense, like this seems like it's a reasonable vehicle, why isn't somebody coming and getting this? And so I believe the law is helpful. There are some things I probably would add to it to protect people because I'm not suggesting that every tow lot...or for that matter, law enforcement agency would be...I wouldn't say they're evil, but, you know, some people get complacent in their jobs and don't necessarily care one way or the other if "Joe Citizen" has to pay a \$50 or \$5,000 for the car to get it out. It might be some other language I would add. There was only a couple of incidents where we do not notify the lienholder or registered owner right away, and that is if we take a vehicle for investigative purposes and there is a hold on it. We're not willing to release it. So we don't notify them even if we've got their car because it's an investigation; it's a criminal act. But, generally, we never hold a car longer than 30 days anyway; it's usually within 40 hours. And after the 40 hours, the hold is off of it, and the hold means we don't release it, we don't touch it, we don't do anything to it until our investigators and our crime lab have processed the vehicle. [LB910]

SENATOR DUBAS: Well, I really appreciate you sharing this information; appreciate your point about the unintended consequences. That's a big reason why we have public hearings is to help us sift through proposed legislation. I think, maybe, we all kind of want the same thing, we're just looking at it from different perspectives. So I do appreciate the information you brought forward. Thank you very much. [LB910]

SENATOR SMITH: Thank you, Mr. Kyle. And we continue with opponents of LB910. Oh, yes. [LB910]

TERRY WAGNER: (Exhibit 14) Good afternoon, Senator Smith and members of the committee, thank you for allowing me to be here today. My name is Terry Wagner, T-e-r-r-y W-a-g-n-e-r; I'm the sheriff of Lancaster County. I'm here today on behalf of my office and the Nebraska Sheriffs' Association in opposition to LB910. I think currently the law requires when we have a vehicle being held for investigatory purposes, when the need for that hold is no longer present, we have 30 days in which to notify the owner or lienholder. I have attached with my testimony a copy of our form letter that we send out to the owner and/or lienholder that their vehicle is ready to be released and that they need to come get it within 30 days. The statute that LB910 seeks to amend does not contain any language at all about five days. I know there are other statutes within this group of statutes that talks about within five days, but 60-1903.01 does not mention five days anywhere. It is a 30-day notification to the lienholder or the owner. And they are notified that their vehicle is ready to be released. We conduct our towing a bit different than Captain Kyle in Omaha. We have a private company that both tows our vehicles and stores them for us. They also will hold them as evidence for us if we so desire, and

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at times we might move them to a different location. But for the most part, they hold them...in our contract they are not allowed to charge storage fees while the vehicle is being held as evidence. That's our contract with our towing company. So once the vehicle is no longer needed as evidence, then they can start assessing fees, but in the meantime they cannot. And so it's sort of the same comment that Captain Kyle made, it's just not fair, when we're holding the vehicle as evidence to charge the owner of that vehicle for our investigative purposes just doesn't seem fair. And so in the contract that we have our tow company, they don't tow...they don't charge for storage while the vehicle is being held for evidence. So that sort of clarifies that. But there's...as you will probably hear, there's really a hundred different ways to do this. Vehicles are towed for a variety of different reasons. If you look at the statute that immediately proceeds this one; in 1903, the definition of abandoned vehicle is lengthy. There's a number of criteria, and it gets really, really complicated as you can tell from the testimony. We try to make this as fair and as simple as possible. I can tell you that we dedicate a lot of staff time to keeping track of the vehicles we tow. We towed approximately 650 vehicles last year. And our office is quite small. And 75 of those were for purely for evidence. We also towed them for DWIs and under suspension cases and then some abandoned vehicles. So, even with the driving under suspension, which we hold for 30 days, it looks to me like we'd be required to notify the owner and the lienholder that we've got the vehicle, and it's going to be held for 30 days on a DUS charge. What that's going to require is for us to walk over to the jail with a certified letter to the person who is in jail who was arrested in the vehicle, letting them know we've got the car when he already knows we've got the car. That just doesn't seem to make sense to me. And it can get real expensive. I think certified letters are up to \$6.50 now, so it gets real expensive every time we send out notifications to owners and lienholders that we've got their vehicle. I think the other thing to consider, too, are out-of-state vehicles. We have a limited ability to find out if there is a lien on that vehicle and who holds it. So, out-of-state vehicles pose a whole different set of problems for us than vehicles in Nebraska. And I think that's something that's not addressed at all in this bill either. With that I won't repeat any other testimony. I'd be glad to answer any questions that you might have? [LB910]

SENATOR SMITH: Thank you, Sheriff Wagner. Are there questions? I see none. Thank you. [LB910]

TERRY WAGNER: Thank you. [LB910]

SENATOR SMITH: We continue with opponents to LB910. Welcome. [LB910]

JEFFREY DAVIS: Good afternoon, Madam Chair, members of the committee, my name is Jeff Davis, and I'm the sheriff in Sarpy County, also represent the Nebraska Sheriffs' Association. I don't want to be repetitious so I'll try and hit some things that I think also should be mentioned. One of the concerns we have, unlike Captain Kyle, we operate

our own tow lot facility. And in that process, we make every attempt to notify the owner of the vehicle, as well as the lienholder. And one of the problems is, and Terry mentioned it, but when you have outstate vehicles, that is very difficult. And so I would be interested in some language where we have made a valid attempt, even if the lienholder could not be found, to contact the lienholder. We would not be liable in those cases. We make every effort to notify them. I can tell you that not in every case those liens are filed properly and in a timely fashion. We're also dealing with people in some cases that aren't responsible. You can't watch TV for over an hour and not see one of those ads that say: no credit, bad credit, come see us; we'll sell you a car. And if that lien is not properly filed, how are we suppose to know, especially if it's from a different state, who the lienholder is. We pay \$10,000 a year for a computer program or for software that in a very short period of time after that vehicle is taken into our tow lot, we run through that program; we can only get the last known registered owner and any lienholders, if those liens have properly been filed. And after that, we have no place to go. And so we've made a good faith effort, and I would hope that legislatively that could be addressed, where those efforts have been made, we would not be held liable. And we still...and it's like Captain Kyle, the storage isn't a big thing; we try and, you know, make arrangements in some cases. We understand that some people can't pay that or weren't notified in a proper time. But the tow bill, we pay the tow company every time they drive into our lot. And again, that's going to be a burden on the taxpayer if we have to refund that money. Which brings me to one of the other things toward the end of the bill where you talk about somebody who is not convicted of a crime. I really don't agree with that, the way it was written. Before, they wanted to add the mortgagee and the lienholder to it. But in reality, especially in my county and other counties within the state, a great deal of work is being done for people not to be charged with a crime, and in some cases they are diverted and go through diversion. And technically speaking, the way this is written, in most cases we don't have a problem with it, the way it is written now, because they know they did something wrong. They went through diversion; they pay for their vehicle; they actually pay for their storage. But if they walk away from the vehicle and because they went through diversion, the lienholder is able to come in now and say, we don't have to pay anything the way it is written. So you take some consideration to...just because they aren't convicted, and in some cases not even charged if they go straight to diversion, but I would hope you would look at that and understand that...I know the implication is if they weren't convicted they weren't wrong, and that is not always the case. With that I'd answer any questions you would have. [LB910]

SENATOR SMITH: Thank you, Sheriff Davis. Further questions? Seeing none... [LB910]

JEFFREY DAVIS: Thank you, Senator. [LB910]

SENATOR SMITH: Thank you. Are there other opponents of LB910? Welcome. [LB910]

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AMY PRENDA: Good afternoon. Amy Prenda, A-m-y P-r-e-n-d-a. I'm with Nebraska Sheriffs' Association. I only want to clarify one thing. I hadn't planned on testifying. I would respectfully ask that the Transportation Committee not take into consideration Mr. Todd's discussion about the Fairbury Police. I will let you know that when that vehicle was taken, they...first night it was there, Fairbury Police were contacted, and it is my understanding they chose not to come get their vehicle. And then after the case was done, they still chose not to come get their vehicle, and therefore it was brought over to their company that they contract with for the towing--apples and oranges. So I would just ask specifically that if we're going to talk about this, we're willing to work with the committee on this, but the Fairbury Police incident and the Lincoln County Sheriff's Office is a completely different set of circumstances than what we're discussing here today. And I'd be happy to answer any questions if you would have them. [LB910]

SENATOR SMITH: (Exhibit 15) Thank you. Are there questions? I see none, thank you. Are there additional opponents to LB910? Seeing none, we do have a letter to read into the record. And this one is from Professional Towers Association of Nebraska. Are there any to testify in a neutral position on this bill? Seeing none, Senator Dubas for closing. [LB910]

SENATOR DUBAS: Thank you, Senator Smith. And I'd just like to take the opportunity to thank everybody who came out in this weather today to testify. And as I stated previously, we really appreciate the testimony. We want to avoid unintended consequences. If there is a problem here that we need to address, I'm very willing, as the Chair, to work with the interested parties to see where we need to move forward from here. But just wanted to be on the record thanking everybody for bringing their expertise to this discussion. [LB910]

SENATOR SMITH: Thank you. That closes our public hearing on LB910 and our hearings for the day. Thank you. (See also Exhibits 16 and 17.) [LB910]