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Transportation and Telecommunications Committee
February 17, 2015

[LB311 LB568 LB579]

The Committee on Transportation and Telecommunications met at 1:30 p.m. on Tuesday, February 17, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB311, LB568, and LB579. Senators present: Jim Smith, Chairperson; Lydia Brasch, Vice Chairperson; Al Davis; Curt Friesen; Tommy Garrett; John Murante; and Les Seiler. Senators absent: Beau McCoy.

SENATOR SMITH: Good afternoon and welcome to the Transportation and Telecommunications Committee hearing. I am Jim Smith and I am Chair of the committee. I'd like to introduce you to other committee members. We have a few senators that are currently not with us, but they will be joining us here shortly. To the far left will be Senator Tommy Garrett from Bellevue. Present with us, next to Senator Garrett, is Senator Les Seiler from Hastings. Senator Beau McCoy is going to be absent from the committee today. To the far right is Senator Curt Friesen from Henderson. Here shortly will be Senator Al Davis. And joining us also shortly will be Senator John Murante. Vice Chair of the committee is Senator Lydia Brasch from Bancroft. Committee staff--normally to my immediate right is Mike Hybl; he is sitting at the testifier table currently and will be presenting the first bill. On my left is Paul Henderson, committee clerk. Mike Hybl is legal counsel to the committee. Pages today--we have with us J.T. Beck from Centreville, Virginia, and J.T. is a senior at UNL. We will be hearing the bills in the order listed on the agenda. Those wishing to testify on a bill should come to the front of the room and be ready to testify in order to keep the hearing moving. If you're testifying, please complete the sign-in sheet so it's ready to hand in to the page once you approach the testifier table. And for the record, at the beginning of your testimony, please state and spell your name. Please keep your testimony concise and try not to repeat what has already been covered. I believe we will forego the light system today; we do not have a lot of folks that are in attendance so far in the committee hearing room. If you do not wish to testify, but want to voice your support or opposition to a bill, you can indicate so on the sheet that's provided at the table as you came into the room. This will be part of the official record of the hearing. If you do not choose to testify, you may submit comments in writing and have them read into the official record. I ask that you please silence your cell phones. We are an electronics-equipped committee and information is provided electronically, as well as in paper form, therefore you may see committee members referencing information on their electronic devices. Always be assured that your presence today and in the future, your testimony, are important to us and is critical to the operation of our state government. And with that we will begin the hearing today with the introduction of LB311.

MIKE HYBL: (Exhibits 1 and 2) Thank you, Senator Smith. Senator Smith, members of the committee, for the record my name is Mike Hybl, it's spelled M-i-k-e H-y-b-l. I am the Transportation and Telecommunications legal counsel, introducing LB311 on the behalf of the

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committee. LB311 is legislation that was brought to the committee by the Department of Motor Vehicles and the bill is designed three...three things. First, it conforms the defined terms "gross vehicle weight rating" and "gross combination weight rating" to the applicable federal regulations. Both of these terms are utilized by both the Department of Motor Vehicles and the Nebraska State Patrol-Carrier Enforcement Division. The Department of Motor Vehicles, these terms are important in the issuance and administration of the commercial driver's license program and for the Nebraska State Patrol, the terms are necessary and used in the administration of the Motor Carrier Safety Assistance Program. The second thing the bill does is amend provisions related to the commercial learner's permit. And this is the learner's permit that is acquired to learn and test for the commercial driver's license. Current law provides that the commercial learner's permit is valued for a period of 180 days and may be renewed once during a two-year period following the initial issuance. The bill removes the two-year period and states that following original issuance, a commercial learner's permit, after it expires after 180 days, may be renewed for an additional 180-day period. Upon renewal, the individual renewing the permit is not required to retake the general or knowledge...excuse me, the general and endorsement knowledge test. Third thing the bill does for both the application for a commercial driver's license and the commercial learner's permit, there is specific statutory language added that requires on the application that the applicant by oath affirmation or declaration state that the information provided on the application is true and correct. I would just note for your reference that the bill does add the emergency clause. And with that, Senator Smith, that would conclude my opening and I'd be happy to take any questions, but I believe the Department of Motor Vehicles is also standing by behind me. [LB311]

SENATOR SMITH: Thank you. Do we have questions for Mr. Hybl? I see no questions from the committee. Thank you. We now continue the hearing on LB311 with proponents, those wishing to testify in support of LB311. Welcome. [LB311]

RHONDA LAHM: (Exhibit 3) Thank you. Chairman Smith and members of the Transportation and Telecommunications Committee, I am Rhonda Lahm, R-h-o-n-d-a L-a-h-m, Director for the Department of Motor Vehicles. I am appearing before you today to offer testimony in support of LB311. I would like to thank the committee for introducing LB311 on behalf of the Department of Motor Vehicles. This is a bill to harmonize provisions of Nebraska law with federal regulations dealing with the issuance of commercial driver's license and enforcement standards for commercial motor vehicles. The new federal definition of gross combination weight rating, or GCWR, is amended into the bill in two separate sections. The definition is used to determine if the combined weight of a power unit and towed unit exceed safety standards. The GCWR also affects the kind of vehicle a driver applying for a commercial driver's license must use to earn a specific endorsement to operate a specific type of commercial motor vehicle. It should be noted on the green copy of LB311 contains some sections that affect the safety enforcement statutes for the State Patrol. An amendment, which has been prepared, I believe the committee counsel

has, addresses changes made on pages 21, lines 4-12, which are not necessary to be in compliance with federal law. Additionally, the amendment formats the definition of Gross Vehicle Weight Rating on page 2, Section 3 to the definition of Gross Vehicle Weight Rating on Section 8, subsection 21 on page 20, lines 18-26. Last year, the Legislature enacted LB661, a motor voter bill which allows the Secretary of State's office to use the social security numbers of persons applying for driver's licenses and state identification cards for on-line voter registration. However, LB661 was not harmonized into the sections of law amended by LB983, in the 2014 legislative session, relating to the issuance of commercial driver's licenses. On pages 5, lines 3 and 4 there is a technical correction to allow the Secretary of State access to social security numbers of applicants for CDLs and commercial learner permits to complete the intent of last year's motor voter bill. The rest of the bill contains changes related to LB983, passed last year, which contained a new federal issuance rules for commercial driver's licenses and commercial learner's permits. In Section 5 of LB311, the new language clarifies that a commercial learner's permit may be renewed one time before the applicant has to retake the required general knowledge and endorsement knowledge test. The changes on page 8, lines 27 and 28 of the green copy, clarify requirements for issuance of non-domiciled commercial driver's licenses and commercial learner's permits. The new federal law requires states to issued nondomiciled licenses. LB983, last year, amended into Nebraska Revised Statute 60-4,131 and adopted definitions of nondomiciled and foreign that govern eligibility for nondomiciled commercial learner's permits and CDL licenses. The federal rules created two kinds of nondomiciled CDLs and CLPs. One is for persons from foreign countries and the other is for persons who may reside in another state but whose home state is barred from issuing a CDL or a CLP. LB311 makes it clear that the foreign applicant may keep their driver's license, but applicants from other states will have to surrender their home state driver's license to get a Nebraska CDL or CLP just as any resident of Nebraska would have to surrender their driver's license before being issued a commercial driver's license or commercial learner's permit. The final change is found on page 9, lines 14-17 to accommodate all the federal rule changes relating to the application and issuance of CDLs and CLPs. LB983, 2014, created a separate license application section for CDLs and CLPs. The oath and affirmation language found in the original driver's license application section, Nebraska Revised Statute 60-484, was inadvertently dropped from this section. LB311 repairs that omission. Chairman Smith, at this time I would be happy to answer any questions that the committee may have. [LB311]

SENATOR SMITH: Thank you, Director Lahm. Do we have questions from the committee?
Senator Davis. [LB311]

SENATOR DAVIS: I just have one or two which talks about something that you just said, Miss Lahm, and was dealing with people from other states who are not domiciled in Nebraska, but they can't get a license in their home state, is that...? [LB311]

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RHONDA LAHM: Right. If for some reason another state had been restricted from issuing commercial driver's license or commercial learner permits from the federal government, that hasn't happened yet, but if the state were found out of compliance and they said--you can't issue commercial driver's licenses in your state anymore, then they could come to Nebraska and test and get a Nebraska CDL, but they would have to surrender their home state license. So that was what we would call somebody that is non-domicile to Nebraska, but yet here in the United States. And then the other category of nondomiciled people from another country. [LB311]

SENATOR DAVIS: And that one I understand. Why would we...why would a state be prohibited from issuing a CDL license? [LB311]

RHONDA LAHM: Like I said, it hasn't happened yet, but the types of things that we were told are possibilities are if they were to audit them or find out in many states there's third parties that do all of their testing and if there was fraud or corruption or something and they said, you know, this is just to such a degree that you can no longer issue until you get this cleaned up. That's a possibility that could happen. To my knowledge, it hasn't happened anywhere yet. [LB311]

SENATOR DAVIS: So if that were to happen in a state, they could come to Nebraska and get the driver's license here? Would we know that they had gone through the proper training and protocol? Or would that license just... [LB311]

RHONDA LAHM: They would have to do our testing here. [LB311]

SENATOR DAVIS: They would have to...okay. [LB311]

RHONDA LAHM: They would have to complete the testing here, yes. [LB311]

SENATOR DAVIS: Thank you. [LB311]

RHONDA LAHM: You're welcome. [LB311]

SENATOR SMITH: Further questions from the committee? Seeing none, thank you, Director Lahm. We continue with proponents, those wishing to testify in support of LB311. Seeing no further proponents, we now move to opponents, those wishing to testify in opposition to LB311. Seeing none, we now move to those wishing to testify in a neutral capacity. Seeing none, we waive closing and that concludes hearings on LB311. We now move to LB568. And LB568 will be introduced by Senator Brasch. Welcome. [LB311]

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SENATOR BRASCH: Thank you, Chairman Smith. And good afternoon, fellow members of the Transportation and Telecommunications Committee. I am Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. I am here to introduce LB568 which I have brought to you at the request of the Transportation and Telecommunications Committee. LB568 addresses a finding of noncompliance with the Nebraska Commercial Driver's License Act issued by the Federal Motor Carrier Safety Administration. Currently, an individual who has lost their operator's license impounded by a law enforcement officer following an arrest for driving while intoxicated or an implied consent violation will have their operator's license restored if the prosecuting attorney declines to file a criminal charge for the underlying DWI or implied consent offense. This is known as "judicial bypass" and is part of Nebraska's Administrative License Revocation, or the ALR, program which was established in 1992. In 2014, there were roughly 7,200 total ALR hearings. About 300 of these dealt with CDL holders with only 24 of the CDL holders utilizing the judicial bypass. Since 2005, the Federal Motor Carrier Safety Administration asserted that the ALR bypass, as it applies to holders of a commercial driver's license, known as CDL, violates federal minimum standards for state compliance. The safety administration contends the Nebraska bypass provision allows CDL holders to remove violation records from the federal driver database. At this time, there is discussion between the state of Nebraska via petition from then Governor Heineman and the federal Secretary of Transportation to find a current Nebraska law as substantially complying with the federal law. However, a federal finding of noncompliance could result in the loss of federal aid highway funding the state is otherwise eligible to receive. In the first year of noncompliance, this would result in a loss of 4 percent of funding, or \$9 million. In the second and subsequent years, this would result in a loss of 8 percent of funding, or \$18 million. LB568 resolves the finding of noncompliance by amending provisions related to Nebraska's commercial driver's licenses and administrative license revocation. The changes provide that in the case of a holder of a CDL who has lost their operator's license impounded by a law enforcement officer under ALR, the judicial bypass procedure shall be available to restore their operating privileges only if that individual is found not guilty by the court for the underlying DWI or implied consent violation. The ALR revocation will remain in place if the prosecuting attorney declines to file or files and then dismisses the underlying criminal charge. With that said, LB570 has a positive fiscal impact. The DMV indicates there are an average of 26 persons holding a CDL each year who will no longer be able to avoid the revocation of their CDL if the bill is enacted. The CDL holders would have to pay a \$125 reinstatement fee leading to an annual increase of \$3,250, with a little over half going to the General Fund and the rest going to the DMV Cash Fund. Also, as I have mentioned earlier, if this bill is enacted, it would bring Nebraska into compliance with the safety administration requirements thereby securing millions of dollars in federal aid highway funding. As I conclude, I would like to thank the committee counsel, Mike Hybl, for his background work on this bill, as well as the Department of Motor Vehicles for additional figures and the numbers as to the effect of compliance. Again, I thank you for your time and I would be happy to answer any questions. [LB568]

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SENATOR SMITH: Thank you, Senator Brasch, for your opening on LB568. Do we have questions from the committee? I see Senator Seiler has a question for you. [LB568]

SENATOR SEILER: I'm not quite sure I understand this last part of the bill. If the county attorney files the DWI and goes to jury trial, he's found not guilty, he gets his license back. But if the county attorney files the DWI and sees that it's going to cost the county \$10,000 to try this case with jury costs and everything, witness fees, and he says--I'm not sure I can get a conviction and dismisses it, then you ride in on your white horse and say--ah ha, the ALR still applies. That doesn't make any sense. [LB568]

SENATOR BRASCH: Thank you, Senator Seiler. And if it doesn't make any sense to you, then I think we do need to explain this further. And what I'd like to do is find the answer between now and closing...or later. And I believe there's testimony behind me that, perhaps, could clarify this. [LB568]

SENATOR SEILER: Okay. I'd be interested to hear it. [LB568]

SENATOR SMITH: Very good. Further questions from the committee? I see none. Thank you, Senator Brasch, for opening on LB568. We now will move to proponents, those wishing to testify in support of LB568. [LB568]

SENATOR DAVIS: Senator Smith, before Director Lahm comes up, I think I've said before, sometimes it's hard to hear in here, so if everybody could speak up a little maybe. [LB568]

SENATOR SMITH: Okay. Very good. And also for the transcribers, if the committee members can move those mikes closer to you that would be helpful. Thank you. And welcome, Director Lahm. [LB568]

RHONDA LAHM: (Exhibit 1) Thank you. Chairman Smith and members of the Transportation and Telecommunications Committee, I am Rhonda Lahm, R-h-o-n-d-a L-a-h-m, Director of the Department of Motor Vehicles. I'm appearing before you today to offer testimony in support of LB568. I would like to thank Senator Brasch for introducing LB568 on behalf of the Department of Motor Vehicles. LB568 is introduced to deal with a long-standing compliance issue between the Department of Motor Vehicles and the Federal Motor Carrier Safety Administration over Nebraska's judicial bypass provision for administrative license revocations and federal requirements for commercial driver's licenses which could jeopardize Nebraska's eligibility for federal highway funds and funding for the State Patrol's Motor Carrier Safety Assistance Program. I would like to take a few moments to provide some background to explain the

interrelation of the federal CDL program compliance requirements and the Federal Motor Carrier Safety Administration's determination that Nebraska's ARL bypass is in violation of federal rule. Administrative license revocation, or ALR, was enacted in 1992. ALR is a program that initially brought Federal Highway Safety dollars to Nebraska for its adoption and helped Nebraska to qualify for highway funding and MSCAP funds for many years. At its heart, ALR deters drunk driving by having an officer confiscate the driver's license of any person arrested for drunk driving. The confiscated license and a sworn report of the arrest are sent to the DMV. The DMV reviews the sworn report and if the report of the arrest meets the jurisdictional requirements of case law in statute, the DMV is required to revoke the driver's license automatically for a specific period of time set out in statute. The aspect of Nebraska's ALR program that concerns the Federal Motor Carrier Safety Administration is a provision often referred to as the judicial bypass which allows an ALR revocation to be dismissed based upon the outcome of the criminal DUI prosecution arising from that same arrest. In 2005, during the Federal Motor Carrier Safety Administration audit of Nebraska's CDL program, the federal auditors became aware that CDL holders with ALR revocations could have his or her license restored through court action pursuant to the judicial bypass provision. At that time, the Federal Motor Carrier Safety Administration auditors issued a finding that Nebraska ALR judicial bypass has applied to CDL holders puts Nebraska out of substantial compliance with federal CDL rules. The audit finding is still outstanding at this time. With respect to this specific federal CDL regulations, 49 CFR, 383.55 requires CDL holders to be disqualified from holding a CDL for convictions for DUI and other serious offenses. The word "conviction" is specifically defined in the federal rule and includes administrative adjudications such as the ALR. Nebraska has adopted the federal CDL disqualification rules and the federal definition of "conviction" in Nebraska statute, 60-4,168 which provides for disqualification of CDLs. When a CDL holder has an ALR for drunk driving in a noncommercial vehicles, he or she has her driver's license revoked unless they win an appeal. Pursuant to the federal rules, the CDL holder with an ALR is disqualified from operating a commercial motor vehicle for one year for the first alcohol offense. A second alcohol offense is a lifetime CDL disqualification. Under current Nebraska law, if a person's ALR is dismissed under the judicial bypass provision, that also dismisses the disqualification of the person's CDL based on the ALR or the administrative adjudication. Federal Motor Carrier Safety Administration holds that dismissal of the CDL disqualification pursuant to a judicial bypass provision violates the federal anti-masking rule in 49 CFR 384.226. This federal rule provides that any moving violation by a CDL holder cannot be masked and must be reported to the Commercial Driver's License Information System. Nebraska has adopted the federal anti-masking rule into Nebraska statute, 60-4,147.01. Federal CDL law generally requires states to keep complete records on CDL holders' convictions for major and serious traffic violations, and requires states to disqualify drivers convicted for violations set out in the federal rules. DMV has been dealing with the Federal Motor Carrier Safety Administration about the bypass finding for ten years. At this point, DMV has exhausted all avenues to eliminate the outstanding finding except for two. The first is a letter written by former Governor Heineman to

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the Secretary of Transportation asking the Secretary to review the Federal Motor Carrier Safety Administration's finding and set it aside because a judicial bypass affects a miniscule number of CDL holders when compared to the total number of CDL holders in Nebraska. When compared to the total number of driver's license holders in the state, the percentage of CDL holders who have been...who have employed the bypass provision to eliminate disqualifications is smaller still. The remaining avenue is LB568 which will change Nebraska's law to eliminate nearly any connection between what happens in the DUI prosecution and a CDL disqualification, except if the CDL holder has a criminal DUI trial and is found not guilty, the disqualification may still be dismissed. The draft of LB568 was reviewed by the Federal Motor Carrier Safety Administration in 2014 and DMV has an e-mail providing that LB568 is an acceptable solution to the outstanding finding that Nebraska law violates the anti-masking rule. The DMV asks the committee to take time and carefully consider sending LB568 to the full Legislature. Chairman Smith, at this time I would be happy to answer any questions the committee may have. Thank you for the opportunity. [LB568]

SENATOR SMITH: Okay. Thank you, Director Lahm, for your testimony. Do we have questions from the committee? Senator Seiler. [LB568]

SENATOR SEILER: I have a question on that, it doesn't make sense to me that if a county attorney tries a case and it loses, he gets his license back. But if the county attorney looks at the case and said--I'm not going to spend \$10,000 on this because I can't prove it, the jury is not going to come back with me. He dismisses it. And you ride in on your white horse and say--we're taking your license anyway. Makes no sense. [LB568]

RHONDA LAHM: We've made that exact argument with the Federal Motor Carrier Safety Administration and they believe by their laws that the way our provisions are in our laws right now still put us out of compliance which is one of the reasons that we brought the bill is that we believe it's a policy decision that the Legislature needs to make whether or not they want to take a chance of losing federal money and being out of compliance or if they want to amend the law to comply with what the Federal Motor Carrier Safety Administration says we have to do. We've had several correspondence and we've quoted some case law that we've even had in Nebraska, which I'm happy to bring those to you and show you... [LB568]

SENATOR SEILER: Yeah, I'm familiar with those cases. [LB568]

RHONDA LAHM: ...and show you exactly...yeah, and their opinion is still that we are out of compliance. [LB568]

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SENATOR SEILER: If they told you to go stand on your head in a corner or we're going to take your license money away from you, would you? [LB568]

RHONDA LAHM: Well, what our...that's why I said that's our position is we believe that it should be a decision that's made by the policy makers which is the Legislature and not us to just say we're not going to do it and we're going to lose money. We believe that's a decision that belongs in the hands of the Legislature. [LB568]

SENATOR SEILER: So we get blamed for losing the money for a crazy law. [LB568]

RHONDA LAHM: Well, not necessarily. Well, not necessarily, but I just think that unilaterally that's not our position to make that call. [LB568]

SENATOR SEILER: I probably agree with you on that point. [LB568]

RHONDA LAHM: We've made a lot of attempts and we believe we've made some good arguments and they're still...we haven't heard...we've not gotten a response back yet from former Governor Heineman's letter. So maybe we'll get a response back from that that will be favorable, then that will be helpful. [LB568]

SENATOR SEILER: I wouldn't put you on the spot by saying--doesn't that sound crazy to you? Thank you, I have nothing further. [LB568]

RHONDA LAHM: Well, not being a practicing attorney, that's probably a little...but there are provisions for that for regular license holders that if there are dismissals and whatnots, there are other provisions, but we can't apply those to CDL for some reason. [LB568]

SENATOR SEILER: Thank you. [LB568]

SENATOR SMITH: Senator Friesen. [LB568]

SENATOR FRIESEN: Director Lahm... [LB568]

RHONDA LAHM: Yes. [LB568]

SENATOR FRIESEN: ...to me, yeah, this sounds like you're guilty until proven innocent. Walk me through...I'm a CDL holder and let's just say I'm driving my personal vehicle along and I get

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stopped and the officer decides that I'm driving under the influence. So, at that point if he tests me and I fail the test or I don't...at what point does he take the license? Is it only if I'm driving the commercial vehicle or can I be in my personal vehicle? [LB568]

RHONDA LAHM: It does...either vehicle, if you're driving your personal vehicle or your commercial vehicle and you're stopped and placed under arrest for driving under the influence, the officer then will take the license and fill out what's called a sworn report. The sworn report and the license comes to the Department of Motor Vehicles and then there's a notice on the back of the sworn report the person has 15 days to request a hearing. And they can have a hearing in front of a hearing officer to determine whether or not the administrative license revocation is valid. If it is determined by the hearing officer to be, then the license is administratively revoked. If it's determined not, then there wouldn't be a conviction of an administrative adjudication if the hearing officer says it is not a valid administrative revocation. [LB568]

SENATOR FRIESEN: Does this just happen to a CDL license? [LB568]

RHONDA LAHM: No. That's the same process for... [LB568]

SENATOR FRIESEN: Anyone? [LB568]

RHONDA LAHM: ...that's the same process that's followed for anybody that's stopped for driving under the influence. [LB568]

SENATOR FRIESEN: Okay. [LB568]

RHONDA LAHM: The difference that happens with the CDL holders is that under rules and regulations, we have promulgated rules and regulations for the administrative license revocation process. There's other provisions, some of which Senator Seiler referred to, that if you have a passenger license, like I have a regular passenger license and there's certain dismissals or refileing from the county attorney, then the administrative license revocation can be lifted. But none of those can apply for a CDL holder, according to federal law, with the exception of a dismissal at trial. [LB568]

SENATOR FRIESEN: So if you're innocent, you really want to be taken to trial no matter what happens because that's the only way. [LB568]

RHONDA LAHM: Well, I can't make that, you know, judgment or decision. I'm just...it's been a...as you can tell, it's been a longstanding issue because we were originally found out of

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compliance in 2005. We've been corresponding with them and trying other options since then. And their last initial thing is we're out of compliance and need to change the law. [LB568]

SENATOR FRIESEN: Wow. Okay, thank you. [LB568]

SENATOR SMITH: Senator Davis. [LB568]

SENATOR DAVIS: Thank you, Senator Smith. Ms. Lahm, has this bill been brought before? Since it's been ten years since this first came up, do you know if this bill has been brought to this committee? [LB568]

RHONDA LAHM: This particular bill in this format, no. But throughout that ten years of time, we've been addressing it...we've had some letters back and forth and if we made a minor change here or some changes here would that help? And we thought that that was making progress. But it, ultimately, hasn't resulted in satisfying them. [LB568]

SENATOR DAVIS: But that's with the federal government? [LB568]

RHONDA LAHM: Right. [LB568]

SENATOR DAVIS: But as to the Legislature, this is the first time in the ten years that this bill has every come up? [LB568]

RHONDA LAHM: Yes, in this format, that's correct. [LB568]

SENATOR DAVIS: Now when you say "in this format", what do you mean by that? Do you mean it's been brought in another format before to deal with this federal issue? [LB568]

RHONDA LAHM: No, no, not to deal with the commercial judicial bypass. But there's been several bills that have dealt with the administrative license revocation process. [LB568]

SENATOR DAVIS: Well, I share the same kind of perplexed notion that Senator Seiler and Senator Friesen do. This doesn't make any sense to me that you lose your privileges without being prosecuted for something. [LB568]

RHONDA LAHM: There is an...I mean, there's two distinct processes; one is an administrative process and one is a criminal process. And some parts of them are interrelated. And what this

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just does for commercial vehicles is it pretty much separates those two process completely with the exception of if you have a disqualified...or dismissed at trial or not continued. [LB568]

SENATOR DAVIS: When did Governor Heineman send this last request? [LB568]

RHONDA LAHM: It was at the end of his tenure. I don't remember. It was late December or just the first of January. [LB568]

SENATOR DAVIS: And how long does it normally take for responses to come back? [LB568]

RHONDA LAHM: I don't know, because I've never requested a response from them before. So we had some personnel that were just at a meeting last week that met with the federal departments regarding commercial driver's licensing and I just haven't had a chance to talk with them a lot this morning yet about what they found out to see if they found out anything new. But I don't suspect so or I think they would have let me know that right away. [LB568]

SENATOR DAVIS: Thank you. [LB568]

SENATOR SMITH: Senator Seiler. [LB568]

SENATOR SEILER: Maybe I heard you wrong, but you said they both been separated for CDLs. But if you're found not guilty by a jury or a court, then you get your license back. [LB568]

RHONDA LAHM: Yeah, with... [LB568]

SENATOR SEILER: But if the county attorney dismisses it, you don't get it back. [LB568]

RHONDA LAHM: Right. With...it's been pretty much separated, except for in that one instance for CDLs. [LB568]

SENATOR SEILER: Yeah, that's the part that's bothering me. [LB568]

RHONDA LAHM: Yeah. [LB568]

SENATOR SEILER: Okay. [LB568]

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RHONDA LAHM: But for regular passenger cars, there's more interrelation than just that one instance. [LB568]

SENATOR SEILER: That's true. Yeah. [LB568]

SENATOR SMITH: Senator Davis. [LB568]

SENATOR DAVIS: And I'm not trying to badger you, Ms. Lahm. [LB568]

RHONDA LAHM: No, I... [LB568]

SENATOR DAVIS: Surely, we're not the only state that's having these questions. Do you know if any other states' department of transportation are dealing with these issues? [LB568]

RHONDA LAHM: I'm not aware of any. And I'm not aware of the audit findings from other states, but I can look and see. I'm happy to check that out. [LB568]

SENATOR DAVIS: I think it would be worth knowing that. I wouldn't think that we're the only state that's out of compliance. And it sort of seems like an unreasonable...I think we all don't...none of us want drunken drivers on the road, but to lose your privileges and your livelihood without being convicted is very concerning to me. Thank you. [LB568]

SENATOR SMITH: Senator Friesen. [LB568]

SENATOR FRIESEN: Thank you, Chairman. Just one question, I guess, when they lose the privilege, is it just the CDL portion? Do they still retain the right to hold a driver's license then yet? Or is it just the commercial driver's license? [LB568]

RHONDA LAHM: They're disqualified from holding CDL. But they could apply to have a regular passenger operator's license. [LB568]

SENATOR FRIESEN: Okay. So we're still going to let them drive because they're innocent, but we just won't let them drive a truck. Okay. I'm clear now. Thank you. [LB568]

SENATOR SMITH: Thank you, Director Lahm. [LB568]

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RHONDA LAHM: Thank you. [LB568]

SENATOR SMITH: We continue with proponents, those wishing to testify in support of LB568. Seeing none, we now move to opposition, those wishing to testify in opposition to LB568. Seeing none, those wishing to testify in a neutral capacity to LB568. Seeing none, Senator Brasch, you're welcome to close. [LB568]

SENATOR BRASCH: Thank you, Chairman Smith and fellow colleagues on this committee. As I opened, I have brought this bill on behalf of the committee. There's a policy decision to be made here and further discussion from the committee in moving forward. Legal counsel may also be a person that we could use as a resource. With that said, I want to thank you and look forward to the decisions we have to make on this. Thank you, Chairman Smith. [LB568]

SENATOR SMITH: Thank you, Senator Brasch. That concludes the hearings on LB568. We now move to the introduction on LB579. Senator Murante, welcome. [LB568]

SENATOR MURANTE: (Exhibit 1) Thank you, Senator Smith. Members of the Transportation Committee, my name is John Murante, spelled J-o-h-n M-u-r-a-n-t-e. I represent the 49th District in the Nebraska State Legislature which includes Sarpy County, Gretna, Chalco, and a small portion of Papillion and La Vista. And I'm here today to introduce LB579. This bill was brought to me as part of a collaborative effort between the cities of Lincoln and Omaha, as well as the League of Municipalities. They did the brunt of the work here and they are here today and can help dig into some greater details as to their experiences in proposing this bill before you. LB579 makes several changes to Nebraska state statute regarding accident reports. Firstly, under current law, a police officer is required to investigate and file a report for any noninjury motor vehicle accident where the estimated property damage of a traffic accident is a thousand dollars. LB579 raises the threshold amount for these reports from \$1,000 to \$5,000 before a police officer is required to submit an accident report to the Department of Roads. And let me clarify that accidents resulting in injury or death would still be investigated and reported. LB579 also amends the law to clarify that a police department or law enforcement office can charge a fee of up to \$15 for a copy of a motor vehicle accident report made by a police officer. I do have an amendment which I'd like distributed. There you go. Which...it removes the...to remove a third change to the bill that would have changed the threshold for a driver's accident report, the amendment would restore the current language in statute, essentially the amendment takes that section out of the bill. The intent is to make changes only to the provisions that affect law enforcement. As I mentioned, Section 1 raises the threshold for law enforcement to file accident reports from \$1,000 to \$5,000. As you know, because of inflation and the cost of repairs, very few, if any, motor vehicle accidents are under a thousand dollars. This places a burden on law enforcement where officers are handling very minor accidents when they could be using their

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time more wisely in responding to higher-priority situations. In 1973, this threshold was set at \$250 when the law was initially enacted. In 1985, it was raised from \$250 to \$500. In 2003, it was raised from \$500 to \$1,000. And I believe it is time to raise it again. That concludes my testimony. I'd be happy to answer any questions, but as I had mentioned, the folks who live and breath this stuff every day are behind me and they'd be happy to answer any questions that you have. [LB579]

SENATOR SMITH: Thank you, Senator Murante, for your opening. Do we have questions from the committee? I see Senator Friesen has a question for you. [LB579]

SENATOR FRIESEN: Thank you, Chairman. Senator Murante, would you say that up until now police departments could not charge for an accident report? [LB579]

SENATOR MURANTE: I think it's a matter capable of question, and without specifically authorizing it, it's questionable as to whether they have the authority to do anything that's not explicitly authorized in statute. [LB579]

SENATOR FRIESEN: Okay. Thank you. [LB579]

SENATOR SMITH: Senator Davis. [LB579]

SENATOR DAVIS: So, Senator Murante, the officer has to write the accident report anyway, right? If it's over \$5,000 in your bill. [LB579]

SENATOR MURANTE: If the bill passes, then, yeah, the threshold for filing the report with the Department of Roads would be \$5,000...estimated damage. [LB579]

SENATOR DAVIS: So that being the case then, when somebody asks for an accident report, what does the process they...they go through and they get that report? [LB579]

SENATOR MURANTE: I would defer that to the people who get those requests. [LB579]

SENATOR DAVIS: Can I assume that they probably make a photocopy of it and... [LB579]

SENATOR MURANTE: Sounds reason...they may...I know there are...I know that in Douglas County, for example, there are...their accident reports are posted on-line, various other documents are reported on-line. I don't know this for a fact, I would be surprised if all 93

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counties did that. They may do that, but if...based on our experience in the Government Committee and county clerks offices, there's a wide disparity of what is available on-line and accessible on-line, in...especially matters related to county clerks offices. So this may be different. They may handle it differently and be a little more accessible on-line. But I would, again, defer that largely. [LB579]

SENATOR DAVIS: Okay, I'll ask the questions to the following witnesses. [LB579]

SENATOR SMITH: Senator Seiler. [LB579]

SENATOR SEILER: Senator Murante, are we going to lose three more days of legislative time because of \$15 on (inaudible) prices? (Laughter) [LB579]

SENATOR MURANTE: That's not up to me, Senator Seiler. [LB579]

SENATOR SEILER: Well, yeah, you're proposing the bill. [LB579]

SENATOR MURANTE: Well, I will make the guarantee that if this bill gets to the floor, I will not filibuster it. [LB579]

SENATOR SEILER: Well, you didn't filibuster last time. [LB579]

SENATOR MURANTE: I can only promise what I am capable...what it is in my power to give, Senator Seiler. [LB579]

SENATOR SMITH: Very generous offer, Senator Murante. Any further questions from the committee? Seeing none, thank you. We now move to proponents, those wishing to testify in support of LB579. Welcome. [LB579]

MARTY BILEK: (Exhibit 2) Good afternoon, Senators. My name is Marty Bilek, M-a-r-t-y B-i-l-e-k. I'm the chief of staff for Mayor Jean Stothert. And since we're talking about traffic accident reporting, a law enforcement function, I should also add that I'm a 38-year veteran of the Douglas County Sheriff's Office before I started working for the mayor's office. And the reason this...there's two aspects to this bill, as Senator Murante pointed out, there's a fee aspect and also the threshold. I'll be speaking mostly to the threshold. The reason that came up is last year during budget time, myself and the mayor along with the police chief were talking about ways to make the police department more efficient. That's particularly important to us in Omaha because we do

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have a gang problem; we do have high incidents of violent crime, gun crimes, and we'd really like to figure out a way to put the officers on the street where they do us the most good. And that's when it dawned on us that maybe they spend too much time working property damage accidents. What I've done here is I've given you a photograph. This is a fender bender. And, coincidentally, this a mayor's staffer that recently got into a car accident, you could hardly see the damage, that's \$1,200, that was the damage estimate for that fender bender on that particular car. So the thought was that if our officers are spending maybe 45 minutes completing an accident report on something that minor that maybe we should rethink this and maybe they could be spending their time better patrolling other parts of the city or providing other services to the public. So what we did is figured out ways to free the officers up a little bit. And the threshold was where we focused as a place to give us some relief. The \$5,000 threshold, I think, would exclude a lot of minor property damage accidents, but as the senator said, the serious accidents, the personal injury accidents, fatality car accidents would still be handled the same way they do now. And, basically, what that means is, as most of you know, if you get into a minor fender-bender accident and make a 9-1-1 call, the law enforcement officer responds. The first thing he does...or she does is make sure that everybody is all right, no body is hurt, call an ambulance if needed. The other thing is they'll clear the intersection so there's no longer a hazardous situation there. The officer might also look to see whether or not one of the drivers has, obviously, committed a traffic violation or is intoxicated and needs to be charged with that offense. None of that changes; the officer will still respond. They'll still review the accident scene, inspect the drivers. If it's determined by the officer's judgment that the \$5,000 threshold has not been met, then he'll simply...he or she will just simply give an accident report to the two drivers who then will report the accident the same threshold that they do now, that means that the Department of Motor Vehicle still gets all the accident information that they do now. They need it for statistical purposes and to make decisions about the safety of the road surface. They still get all of that information; it's just that the officer themselves do not report the accident; do not spend a half hour to 45 minutes, depending on whether a diagram is necessary. They won't spend their time reporting this accident because it's already been reported by two other people, the drivers that are involved. It frees that officer's time up to do something that we feel would be more important in most cases. When the officer is investigating minor car accidents, basically, what he's doing, or she's doing is working as an investigator for the insurance companies. And we felt like, in some cases, that's certainly warranted if it's a serious accident, the objectivity is necessary, minor car accidents it's not. There's about...just to give you some idea what we're talking about, in Omaha there's about 8,600, I believe, car accidents in 2012. If you applied this \$5,000 threshold, I think we could have, maybe, cut that back in half; there would be 4,000 accidents that would have to be investigated. But that would mean there would be 4,000 accidents the officer wouldn't have to report, would save a lot of time. So for purposes of...and we also see this...this might be important for other jurisdictions, we see this as enabling legislation. So if there's a police department or a city or a mayor who felt like, you know, we still want to provide that service to our constituents; we feel like that \$1,000 threshold is about right or maybe even lower it to \$500

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if they want. They can still have the officer investigate that accident at whatever level they want. All we're doing here is just simply saying that it's not going to be required until you reach that \$5,000 threshold. So cities now have discretion they didn't have before. I think I'll stop right there and answer any questions. Thank you. [LB579]

SENATOR SMITH: Thank you, Mr. Bilek. Do we have questions from the committee? Senator Seiler. [LB579]

SENATOR SEILER: I thought I heard that Lincoln was also involved. [LB579]

MARTY BILEK: Lincoln is involved with the other aspect of this bill. [LB579]

SENATOR SEILER: Oh, not the metro... [LB579]

MARTY BILEK: And they have an interest in this as well, the fee part of it. [LB579]

SENATOR SEILER: ...because it says "metropolitan class" and Lincoln is not metropolitan. Are they? [LB579]

MARTY BILEK: But for purposes of the \$15 fee, I think that would apply to them, would it not? [LB579]

SENATOR SEILER: I'm not...I'm just looking at the accidents inside the city limits of the city of a metropolitan class. [LB579]

MARTY BILEK: I was...I don't necessarily... [LB579]

SENATOR SEILER: Aren't they a primary class? [LB579]

MARTY BILEK: I don't necessarily want the word "metropolitan class" in this legislation. I would like to have it apply to the whole state and then the different communities could make their own decision. That might be an amendment we need to make. [LB579]

SENATOR SEILER: Okay. Thank you. That clarifies it. [LB579]

MARTY BILEK: You're welcome. [LB579]

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SENATOR SMITH: Thank you, Mr. Bilek. Further questions? Seeing none, thank you. [LB579]

MARTY BILEK: Thank you. [LB579]

SENATOR SEILER: We continue with proponents, those wishing to testify in support of LB579. Welcome. [LB579]

JIM PESCHONG: Good afternoon. I am Police Chief Jim Peschong, Jim, J-i-m; Peschong, P-e-s-c-h-o-n-g, and I'm here on behalf of the city of Lincoln and the League of Municipalities to testify in favor of LB579. And more specifically, the new language on page 3 of the bill that would allow law enforcement to charge a reasonable fee for accident reports. Before I begin, I want to thank Senator Murante for introducing this bill, and also thank the committee for the opportunity to testify. Like many other cities across the state, Lincoln has faced significant budget challenges resulting from a flat tax revenue. During those challenging economic times, Mayor Beutler introduced outcome-based budgeting in Lincoln as a way of prioritizing services which we continue to use. Each city program is evaluated in light of its contribution to the city's overarching goals and assigned to one of three tiers. The highest tier program receives priority in a budget, while the lowest is considered for possible cuts. These decisions are made in consultation with citizens who participate in surveys, focus groups, and forums to help us prioritize our limited dollars. A few years ago, one of the cuts considered was police investigations of non-injury traffic accidents on public streets. The function was ranked at the bottom tier of city services. To be clear, we considered eliminating the service of investigating non-injury traffic accidents. With this proposal, police officers would not ignore accidents, they would respond to these accidents, unsnarl traffic, help people exchange information with one another, but the officers would not complete the investigative steps such as the interviews, the diagrams, the measurements, and doing the investigative reports. We estimated that this change would save about 45 minutes of an officers time per crash. During the budget deliberations, we heard some mixed opinions on this. It was our impression that people realized the value of a police investigation and that even though it was of a lower priority than other city services, it could certainly help resolve matters when fault was in dispute. Several citizens and city council members were asked if the service could be retained with a fee. We believe that charging a fee for a copy of an accident report in order to recover a portion of our cost is reasonable, especially since these investigations contribute little to public safety. They are primarily a service that helps citizens and insurance companies in settling insurance claims. After much consideration, including consultation with the insurance industry, Lincoln decided to retain this service by establishing a \$15 fee for each copy of a police officer's traffic accident report. At the time, we understood that many Nebraska cities charged a flat fee ranging from \$5 to \$15. We also understood that the Department of Roads was charging \$15 as well. We chose \$15, that was the same price for a report charged by the state at that time and because we projected that a fee of this amount would come close to offsetting the cost of the investigation and the preparation of

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the report. As Senator Murante noted, the state's public records act was amended in 2013. We interpreted the new law as preventing us from charging the \$15 flat fee and we, therefore, no longer charge for these accident reports. This has resulted in about \$114,000 hole in our public safety budget that we were forced to deal with during the last budget cycle. So again at this point, here in Lincoln our officers respond when called to a traffic accident; they conduct an investigation of the accident in almost all circumstances; and complete the accident report and then make the report available free of charge to attorneys, insurance companies, and anyone else who requests it. I note that if we are able to reinstate the fee, no one would have to buy an accident report if they did not wish to do so. These reports could still be inspected at police headquarters at no cost. With that, I would like to thank Senator Murante for introducing the bill and I would be happy to answer any questions that the committee may have. [LB579]

SENATOR SMITH: Thank you, Mr. Peschong, for your testimony. Do we have questions? Senator Davis. [LB579]

SENATOR DAVIS: Just a couple. And thank you, Senator Smith and Officer. So, I just want to make sure that I've got this straight. So you're still do the reports and they'll be available for \$15. Correct? [LB579]

JIM PESCHONG: Yes, we'll still do...we'll still respond; we'll still do an investigation. We'll still do a report. And if a citizen or an attorney or an insurance company would like a copy of it, we would charge a fee, although it would still be available at no charge if someone wants to come to police headquarters and view it. [LB579]

SENATOR DAVIS: Right. And I think you said that you thought \$15 would recover the cost, but did you say it was 45 minutes in time for the officer to do their investigation. [LB579]

JIM PESCHONG: We estimate that it takes about 45 minutes for the officer to conduct an investigation. This is an average; some would be a little longer, maybe some would be a little shorter, but about 45 minutes for the officer to conduct the investigation and do the report. [LB579]

SENATOR DAVIS: So it sounds like your officers are working pretty cheap to me. (Laughter) [LB579]

JIM PESCHONG: Yeah, I think so. [LB579]

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SENATOR DAVIS: I guess my...leading into that then, the primary people that are going to buy these reports are probably the insurance companies, would that be correct? [LB579]

JIM PESCHONG: Generally insurance companies and attorneys are the ones who generally do it. [LB579]

SENATOR DAVIS: So is that fee enough? [LB579]

JIM PESCHONG: Well, I guess that's... [LB579]

SENATOR DAVIS: Perhaps that's enough. [LB579]

JIM PESCHONG: When we were really looking at this a few years ago and budget cuts were a reality to us, we thought that potentially we could potentially reduce our authorized strength in the department by a couple of officers if we no longer responded to injury...not that we didn't respond, but that we would respond, but that we wouldn't do an investigation and that the cost of two officers would be about \$150,000. How I got the \$114,000 is we started to charge \$15 for our accident reports. And when we did that, we did actually generate that \$114,000 and then when the law changed then we started to give them...provide them to the public for free because we didn't feel that we could charge it any longer. [LB579]

SENATOR DAVIS: Thank you. [LB579]

SENATOR SMITH: Further questions? Senator Brasch. [LB579]

SENATOR BRASCH: Thank you, Chairman Smith. And thank you...is it lieutenant Peschong? [LB579]

JIM PESCHONG: Chief. [LB579]

SENATOR BRASCH: Chief, Chief, excuse me. [LB579]

JIM PESCHONG: It doesn't matter, it's Jim. [LB579]

SENATOR BRASCH: Thank you, Chief. Okay. When an officer responds to an accident, that is a benefit of public safety for that purpose, not for the purpose of legal ends. Or when someone

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calls here, your purpose there is what? Is it for accident report? That report that you do... [LB579]

JIM PESCHONG: Well, we're required to, when filling out certain reports by the law, but we respond to the accidents...one of our main reasons is to make sure that an operator of a motor vehicle isn't intoxicated. It's to make sure that they really do have an operator's license. It's to make sure that they do have insurance. It's a matter to make sure that we can open the roadway so other motorists that are using the roadway can traverse the roadway as effectively as possible. And to assist in getting medical assistance to those who may wind up being injured. [LB579]

SENATOR BRASCH: So if, besides public safety, it's for the sake of a compliance. [LB579]

JIM PESCHONG: Yes. [LB579]

SENATOR BRASCH: And if it were a perfect world and there wasn't litigation surrounding it, you would do those reports regardless? Are they retained or are they filed are, you know, there's a numbering system that those reports are done as a matter of documentation? [LB579]

JIM PESCHONG: Yes, yes, they are. I guess the real question is whether or not are we really required to wind up doing an accident report or not, you know, that's for others to debate on whether or not we're required to actually do a particular investigation if it's just a property damage accident. [LB579]

SENATOR BRASCH: So it's a compliance and safety check? [LB579]

JIM PESCHONG: That's what I would say. [LB579]

SENATOR BRASCH: And then past that point there is no need to retain information on that incident. [LB579]

JIM PESCHONG: For us other than...I believe Department of Motor Vehicles and the Roads Department, as well as city traffic engineers, officers use the report to help them do their jobs in regards to whether or not the roadway is correct or there could be some further engineer study to improve a particular roadway. [LB579]

SENATOR BRASCH: Very good. I have no other questions. Thank you. [LB579]

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SENATOR SMITH: Senator Friesen. [LB579]

SENATOR FRIESEN: Chief Peschong, so when you...would you say that a driver...they're supposed to fill out their own accident report down the road if it's underneath the...within the qualification of having to fill it out. [LB579]

JIM PESCHONG: Yes, yes. [LB579]

SENATOR FRIESEN: Would you say that they're accurate, generally? [LB579]

JIM PESCHONG: That the citizen does? [LB579]

SENATOR FRIESEN: Yes. [LB579]

JIM PESCHONG: Well, I can only speak from my wife's experience and that is, she's been involved in a couple of accidents that, generally, we've obtained the police officer's report to assist her in filling out the accident report. So, I would say in those cases...it was as accurate as the police officer had reported it. But I don't have a good feel for how many citizens do use law enforcement reports to assist them in filling out their state accident report form. From my perspective, that's what I would do. [LB579]

SENATOR FRIESEN: Well, I guess my train of thought here a little bit is if the Department of Roads is going to be using this for traffic studies or safety issues, from my experience, at least, I would not depend upon the drivers of the vehicle to come up with an accurate accident report. Now each one of them seems to look at it in their own little view of trying to make themselves innocent. [LB579]

JIM PESCHONG: Yeah. In the narrative, I would say that's probably right. Although, a lot of the boxes may...were you wearing a seat belt and things of that nature? [LB579]

SENATOR FRIESEN: So I guess from that standpoint, I like the accuracy of the officers. And down the road, I mean, there's always civil litigation, maybe, or something like that. And that's where these officer-filed reports, I think, do come in real handy from a public standpoint. [LB579]

JIM PESCHONG: Yes, I agree. I agree with you. [LB579]

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SENATOR FRIESEN: Thank you. [LB579]

SENATOR SMITH: Additional questions? Seeing none, thank you, sir. [LB579]

JIM PESCHONG: Thank you. [LB579]

SENATOR SMITH: We continue with proponents, those wishing to testify in support of LB579. Seeing no further proponents, we now move to opposition, those wishing to testify in opposition to LB579. Welcome. [LB579]

KORBY GILBERTSON: (Exhibit 3) Thank you, Chairman Smith, 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 on behalf of the Property Casualty Insurers Association of America or PCI. PCI is opposed to LB579 as we opposed the bill that was introduced last year and I believe two years ago also or three years ago also. There are a number of reasons, and I've passed out a chart for you. I'll hit the really easy ones first, which is the threshold for the accident report to be written overall. If you look at the little map that is on the front page, you'll notice that there...a majority of the states are a gray color and that would be states that have a thousand dollars as their threshold. There are only two states that have accident-reporting thresholds over a thousand dollars. And then there are a number of states, including the District of Columbia, that requires reports only when you have an injury. And I will tell you that if you look at what insurance rates are in areas like Washington, D.C., and Maryland, you understand that the fact that they have no accident report information leads to the increase in rates for drivers because they don't have information that they can attribute to specific drivers and therefore they have no choice but to spread those over all the drivers in that area. Secondly, I wanted to go back to some things about the city of Omaha and city of Lincoln said about having their officers be able to spend time on more pressing issues, or I believe the words were--more important issues. I would argue that for many teenagers or college kids who get in their first car accident, a fender bender for less than \$5,000 is a pretty major incident for them. It can be fairly flustered. You can have people refuse medical care and then discover a day later or a week later that they actually are hurt. That then causes a problem. When you discuss the fact that...I think it was said that numerous times that these reports are just done for the insurance companies. They're not done for the insurance companies. They're done for the insureds so that those people have an objective report regarding that accident so that they have someone that is at the accident looking at what happened objectively so that those people can then pull from the report that the officer did to give them some peace of mind and then help them down the road with settling their claims for the insurance that, obviously, they're legally required to have. One interesting thing I thought I'd mention is with the city of Lincoln. Right now, the city of Lincoln has the accident reports available on-line. When they were charging the \$15, you could get on-line, then you'd have to

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say if you wanted to buy the accident report and then have to pay the \$15. Now you can get on and just access all of those records. So, obviously, the city of Lincoln's plan must be then to not allow access to the records unless you then physically go down to the police department to then access those records. I think that, obviously, when you're talking about accessibility of records to the public, that is a giant step backwards and clearly proves that it does not cost them any more money to provide the service on-line for anyone rather than having to walk down into the police department and access that record. With that I'd be happy to try to answer any questions.
[LB579]

SENATOR SMITH: Thank you, Ms. Gilbertson. Do we have questions from the committee? Seeing none, thank you. [LB579]

KORBY GILBERTSON: Thank you. [LB579]

SENATOR SMITH: We continue with opponents, those wishing to testify in opposition to LB579. Welcome. [LB579]

GREG COFFEY: Thank you, Mr. Chairman, members of the committee. My name is Greg Coffey, that's spelled G-r-e-g C-o-f-f-e-y. I'm appearing on behalf of the Nebraska Association of Trial Attorneys. Information contained in an investigator's motor vehicle accident reports is very important. More than anything else, I suppose it's probably used by insurance companies to decide who is at fault and whose policy must pay, even when the amount of damage is less than \$5,000. That \$5,000 still matters to insurance carriers and the taxpayers that they insure. People involved in crashes also rely on them to prepare their own required reports to the Department of Roads, as Chief Peschong admitted, that his own wife had done. Having them done at the time of the crash by an investigating officer insures that important information is preserved that would otherwise be lost. As far as the issue of raising the threshold for performing an investigation or doing a report from \$1,000 to \$5,000...I've read a lot of investigators motor vehicle accident reports in relationship to cases that I've handled. And I can tell you invariably, I mean, Chief Peschong's officers are not trained as estimators. And invariably, the numbers that I see them estimate on accident reports are substantially below the actual damage that is done in many of these cases. I've seen them off by a factor of ten. Where, you know, they may estimate \$500 worth of damage to a car that actually had \$5,000 worth of damage to the car because they're not crawling underneath of it to see what's in the undercarriage or if the exhaust system has been shoved forward into the front part of the vehicle or something like that. They're not seeing all the damage necessarily. They may see some scratches on the bumper that makes them think that there wasn't a lot of damage when actually there was and they're not seeing that. So you're not going to get some accident reports done where clearly the amount of damage was done significantly above that \$5,000 threshold. And a lot of older cars are not worth \$5,000. So even

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though the damage to a 1972 Galaxy 500, which I used to drive, that the whole car may be worth \$500. I'm never going to get over that \$5,000 limit; never have an accident report done on my car...or the car that I used to drive. But that damage estimate doesn't necessarily reflect the severity of the crash. With respect to leaving it for injuries, but not for the property damage; in other words, you will still do it if there's an injury...if there's report of injury, but we're going to raise the limit to \$5,000. I would suggest that that's going to miss a lot because...I don't know about you, I've been knocked over a time or two and gotten up and dusted myself off and thought that I was fine, that I would walk it off and shake it off and I'm okay. And I think that that happens to a lot of people who are involved in car accidents. Right at the time of the accident, it is not uncommon for people to say--I'm not bleeding, there's no broken bones, I'm okay, and they feel really shaken up. I wish I had a dollar for every time that one of my clients had come to me and said that at the emergency room the emergency room staff told them--you're going to feel a whole lot worse tomorrow. I've had emergency room physicians tell me that sometimes injuries don't even show up for two to three days after the fact. So you might have an injury claim that develops out of a case where there was no accident report done because it fell below that threshold level, but it ends up being a claim that needs to be...needs to have an investigation done, but that's after the point where all the evidence relating to who was at fault may have disappeared. Any eye witnesses to the crash are already gone. If no names were obtained by an investigating officer, that's information you'll never have again. So going by injury at the time of the accident is not going to catch a lot of cases that do, in fact, result in injuries. I don't see a lot, frankly, motor vehicle accident reports that exceed the proposed threshold. Raising the property damage threshold to \$5,000 means that a lot of property damage collisions won't be investigated and average taxpaying citizens will end up with disputed liability cases where they're going to have to cover the cost of their own deductible, even when the collision wasn't their fault. Now as far as making people pay for a copy of their accident report, I'd only talk to people who are visiting with me because they're innocent victims in a circumstance not of their own choosing. And when the city of Lincoln had the policy of charging \$15 for accident reports, it never ceased to rub these people the wrong way that not only have I been placed in a position where I now have to go out and get my car fixed, where I'm without a vehicle for a day or two, where I'm missing time from work trying to run down all this information, but I'm being required to pay \$15 for a copy of my own accident report so I can see what the investigation reveals. You know, I...this is a function of government that the average citizen can't perform on their own. I understood some of the earlier testifiers to say that we're doing this in place of what an insurance investigator might do. Insurance investigators are not going to be there at the time of the accident. They're simply not going to show up. They're not going to know about the accident for a day or two or a week after the collision occurs. The only people that are going to know and have the opportunity objectively to get the parties together, to interview witnesses is an investigating police officer. And this is manifestly a function of government to do this. As far as cost, I guess I would take Chief Peschong's words a little more to heart if, you know, I didn't see a fire truck from the city of Lincoln with a crew of five or six people show up to every car

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accident where there was an injury. There is an ambulance with a driver and a paramedic in it. And then there's a fire truck with five or six other people on it. And I've never understood what that fire truck with the other five or six people are there for. You got the ambulance, that ought to be enough. If you need another ambulance, go get another ambulance. If you are talking about the cost of showing up, one officer's time for 45 minutes, it seems to me, is a lot less expensive than six firefighters for that same period of time that don't have an ambulance there to drive somebody to the hospital in the event that that was needed. In Lancaster County, I can access my property information on-line and find out that my assessed value of my house went up 28 percent and then compare it on-line to the assessed value of my neighbor's house that also went up 28 percent. I can find that on-line. I can find virtually any property in the city of Lincoln on-line free and not have to pay for it; any property in the county of Lancaster on-line free and not have to pay for it. I can access voter registration. You can access voter registration. In fact, if my senator was sitting in here, I would know that they did access my voter information and they did it for free to know that I vote nearly every election. I can access reports made to the Accountability and Disclosure Commissioner on-line for free. I don't have to pay for the opportunity to take advantage of that information. And I can see who has been charged or convicted of crimes, even if it doesn't involve me for free on-line. This is manifestly a role of government to take care of. It's something we private citizens can't do on our own. Changing the rules regarding preparation of and availability of investigators motor vehicle accident reports will result in loss of important information necessary to the resolution of claims; that will drive up the costs for the parties and it will increase the likelihood that I will wind up with my client standing in front of a judge arguing a case which will use up additional resources. So in one sense, you're saving money from Peter to take it away from Paul. You can save some money on police costs and end up spending it on judicial resources, if that's what you want to do. And believe me when we go to court, I'm going to spend \$20 to subpoena that police officer to be there to testify and that will take a lot more than 45 minutes of his time than what would have been saved if we would have just had an accident report that might have obviated the need for the litigation to begin with. So, if there are any questions, I'd be happy to try to answer them. [LB579]

SENATOR SMITH: Thank you, Mr. Coffey. Do we have questions from the committee? Seeing no questions, thank you for your testimony. We continue with opponents, those wishing to testify in opposition to LB579. Welcome. [LB579]

WALTER RADCLIFFE: Senator Smith and members of the Transportation Committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e. I'm appearing before you today as a registered lobbyist on behalf of Media of Nebraska. Media of Nebraska is a organization composed of the Lincoln Journal Star, the Omaha World-Herald, the broadcasters and the press association, along with the out-state dailies. In short, all the news media gathering groups in the state. Korby and I really weren't double teaming you today, because she was wearing her insurance hat and was speaking primarily at the first couple of section. And I wanted to address the public record

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section, the fee section at the end. Former Senator Loran Schmit...I don't know how many times I've heard Loran say--that you know if you drag that one-eyed bull through the ring often enough, somebody is going to buy it. Well, this is at least the third time for this bill. Now that doesn't mean it's bad. But what I would submit to you is that I think it requires some scrutiny and you should ask yourselves the questions--what's changed or do circumstances really warrant its passage? And I think you've heard sufficient testimony regarding the thousand-dollar threshold. But I'd like to speak for just a few moments about the \$15 fee. Clearly, the public records law today allows government to charge a fee for the records that anybody seeks to obtain. That's what applies, if you go down and get a record. Let me use an example. If I wanted this prison study, Senator Seiler, that was done for the corrections committee, I can go get a copy of it and I'll pay what the copying costs are, or whatever that is. I don't pay for the x-hundred thousands of dollars of work that went into compiling that study. If you want to charge for an officer to go out and investigate an accident, then have them take one of those little credit card deals and charge the people who are involved in the accident. The public records portion of this is a different and separate issue altogether. In fact, I think at one time we just had a bill that would have allowed the city of Lincoln...you know, it's the old legalize what we're already doing trick, which would have allowed them to charge the \$15, and that bill was defeated. This is a significant change in the public records law that, frankly, this Legislature has dealt with for years. And any changes in it have been very well thought out, worked on by all parties, and, in fact, I'm very hard pressed to come up with a change in the public records law that successfully passed in the Legislature that didn't have the acquiescence of all parties. So I would urge you to dispatch this old bull the same way that previous legislators have and don't let it out of the ring. I'd be happy to answer any questions. [LB579]

SENATOR SMITH: Thank you, Mr. Radcliffe. Do we have questions from the committee? Seeing none, oh, just a moment. Senator Seiler. [LB579]

SENATOR SEILER: Just a comment, you can get that report on-line free. [LB579]

WALT RADCLIFFE: Exactly. But it probably costs me more to print it, the way my printer works, than it would to come over here and buy it from the Clerk's Office. [LB579]

SENATOR SEILER: My next question was, do you have a gadget? [LB579]

WALT RADCLIFFE: I do have a gadget right here. I'm not very adept at its use. [LB579]

SENATOR SEILER: Thanks, Walt. [LB579]

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WALT RADCLIFFE: You bet. Thank you, Senator. [LB579]

SENATOR SMITH: (Exhibits 4 and 5) Thank you, Mr. Radcliffe. Further opposition to LB579; opposition to LB579? Seeing none, for the record we have a letter in opposition to LB579 from Theodore Fraizer representing the American Insurance Association. And another letter in opposition from Ann Parr representing the Nebraska Insurance Information Service. We now continue with those wishing to testify in a neutral capacity on LB579...neutral. Seeing none, Senator Murante, you're invited to close. And you waive. And that concludes the hearing on LB579 and the hearings for the day. (See also Exhibits 6 and 7 in the neutral capacity for LB579.) [LB579]