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Agriculture Committee  
January 24, 2017

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[LB135 LB276 CONFIRMATION]

The Committee on Agriculture met at 1:30 p.m. on Tuesday, January 24, 2017, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments, LB135 and LB276. Senators present: Lydia Brasch, Chairperson; Joni Albrecht; Ernie Chambers; Steve Halloran; Burke Harr; Bob Krist; and John Lowe. Senators absent: Carol Blood.

SENATOR BRASCH: Is it okay to just get started with introductions? We'll go with the low technology right now. Courtney has offered to proceed, writing in hand, so speak slowly. All right. First of all, I do want to welcome you to the Agriculture Committee. I am Chairman Lydia Brasch. Before we start with the agenda today, I would like the members that are here to introduce themselves. We do have Senator Carol Blood from District 3 who will not be here this afternoon. We'll start with Senator Lowe.

SENATOR LOWE: John Lowe, representing District 37.

SENATOR BRASCH: Senator Krist.

SENATOR KRIST: Bob Krist, District 10.

SENATOR HARR: Burke Harr, Legislative District 8.

SENATOR ALBRECHT: Senator Joni Albrecht, District 17.

SENATOR HALLORAN: Steve Halloran, District 33, which is Adams County and part of Hall County.

SENATOR BRASCH: Then to my right is Rick Leonard, who is the research analyst for the committee; to my left is the committee clerk, Courtney McClellan; and we have our page--she changed places--Kaylee Hartman from Syracuse. She's a student at UNL. And today the committee will be hearing first an appointment to the State Fair Board. We have Dennis Hoffman who will speak on...who is on a conference call on speaker. And then we will proceed to LB135 and LB276. If you are going to testify today, we'll do the proponents, opponents, then neutral. If you're testifying, please fill out the green sheet that's in the room and turn it in to the page. And you will move forward from there. We do ask that you be respectful of all the witnesses and each other. Please keep any conversations that you have within this room to a minimum. If necessary, do move your conversations out to the hallway. Please refrain from any expressions of support or

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objection to the testimony. No one may address the committee, except as a witness, while seated at the testifier's table. This is written as witness, but you're here as a testifier. And please do turn off your cell phones and any electronic devices. Put them on silent or vibrate. Any phone conversations should be taken out in the hallway. If you do not plan to testify on a bill but would like to record your position, there's a yellow sheet that will be circulated and please fill that out. And these will be a part of the hearing record. However, only the persons who will testify will be included in the committee statement. As you come forward to testify, please say and spell your name into the microphone. The microphone is used for recording purposes and it's not an amplifier. So if you are in the back of the room and you cannot hear, please indicate so and we will try to speak up. You will...it looks like we...how many people are here to testify? We won't use the light system today, but try to keep your testimony to about five minutes. And we're getting very close to having our recording equipment enabled here. And I'd like to start off with the gubernatorial appointment of Dennis Hoffman who is here remote. Dennis, are you there? [CONFIRMATION]

DENNIS HOFFMAN: Yes, I am. [CONFIRMATION]

SENATOR BRASCH: Thank you. We have a room that's pretty full of individuals listening and first of all, I do want to thank you for making an effort to start driving in to Lincoln, and I understand the weather turned you around and you're expecting more bad weather. And would you please tell those who are here about your willingness to be an appointment on the State Fair Board and a little bit about yourself and then we'll open it up to questions. [CONFIRMATION]

DENNIS HOFFMAN: (Exhibit 1) Okay. Well, my name is Dennis Hoffman. I live in Thedford, Nebraska. That's Thomas County. I've been involved in fairs most of my life. I think I started as an exhibitor probably when I was ten years old. I've always been very passionate about that. We're trying to plan...in 2008, we moved our cattle operation, which is registered seedstock Hereford, Angus and Semi-Angus. We moved from California to the state of Nebraska here in 2008. Prior to that, I spent 17 years managing state fair and total fair facilities in California. Not a big facility, our annual attendance would have been about 35,000. Annual budget of about \$600,000. In the time I was there, I put over \$2 million in grants into the facility. We were the first California fair to ever receive a grant from a private foundation and basically was able to renovate that fairgrounds through grant money, which was a little new at that time. I think one of my assets would be management position of a fair of that size. I only had two full-time employees. So that meant that I was involved in nearly everything that happens. I think that gave me a good background and a good knowledge of how a fair works and you might say California is different, but when it comes to running one of these facilities, it's really not that much different. The first three years of 2010 to 2012 when the fairground was moved to Grand Island, I served as the Beef Superintendent there. Got to know a lot of the staff, got to know a lot of the exhibitors, and a lot of the people...the directors that were on the board at that time. I feel this

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is...not boastfully, but I think this gives me a chance to kind of hit the ground running because I've got a good basic overall knowledge of the fair business. And I think I've been in Nebraska long enough now to understand the people and know what their wants, needs, and desires are. That's kind of my district. I might note, too, one of the big things that...I don't think very many people realize what a state-of-the-art facility is in Grand Island. I have exhibited all over the United States and I've never been on a facility that's as state of the art and as good as what that one is. And due to that, that's brought a lot of Junior Nationals in. The Junior National is a breed show of junior exhibitors that come from the nation. When I was touring the facility just not too far from the point of completion, I was amazed. I had no idea that it would be of this magnitude. As I left there that day...I'll give you a little background. I spent four years on the American Hereford Association Board. I called as I left and talked to our junior director, Amy Cowan, and told her, I just thought of that facility, I knew of anywhere for a Junior National. She immediately booked it for the following year; and in 2018, the American Hereford Junior...American Junior Hereford Association will have its third Junior National there. Angus has been there and multiple breeds. I would say there's been ten-plus Junior Nationals held there, due to the central location, the facility being what it is, in the city of Grand Island. People are amazed they can go to a city of 48,000 and find a facility of that magnitude. Their kids are safe, their trips from the motels close-by. It's the best I know. So I hope that gives you a little background and kind of what I'm all about. I've been in agriculture all my life. I've had cattle all my life. I'm very passionate about agriculture as well as the fair industry and so.  
[CONFIRMATION]

SENATOR BRASCH: Very good. That is a very strong background. I want to see if the committee has any questions. Yes, Senator Krist. [CONFIRMATION]

SENATOR KRIST: You have to forgive me, I like cows, but I also like horses. Do you like horses? [CONFIRMATION]

DENNIS HOFFMAN: Yes, I do. They're a part of our operation. [CONFIRMATION]

SENATOR KRIST: I really wish we could put Fonner Park to use and expose the children in the state of Nebraska to some horse racing as a family event. [CONFIRMATION]

DENNIS HOFFMAN: I'm sorry, I couldn't hear that. [CONFIRMATION]

SENATOR KRIST: I really hope that...I've been here for several years and when we moved the State Fair, we also did away with horse racing at the State Fair. [CONFIRMATION]

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DENNIS HOFFMAN: Uh-huh. [CONFIRMATION]

SENATOR KRIST: My hope is that you will look at potentially bringing horse racing back to the State Fair because I think there are children in this state will never have an opportunity to see a live racehorse unless it's at the State Fair. [CONFIRMATION]

DENNIS HOFFMAN: I would like to be...I would like to be instrumental in making that happen. [CONFIRMATION]

SENATOR KRIST: Maybe we should talk. [CONFIRMATION]

DENNIS HOFFMAN: Pardon me? [CONFIRMATION]

SENATOR KRIST: I said, maybe we should talk. [CONFIRMATION]

DENNIS HOFFMAN: Okay. We'll do that. [CONFIRMATION]

SENATOR KRIST: Thank you. [CONFIRMATION]

SENATOR BRASCH: Thank you, Senator Krist. Any other questions from the committee? There are no other questions. I just wanted to ask you, what do you see as the next step moving forward, the potential of the State Fair? Go ahead. [CONFIRMATION]

DENNIS HOFFMAN: Well, I think the main course of the State Fair needs to be to serve the people in Nebraska and all of the people in Nebraska, and I think that's the importance of a fair. I don't think...I don't think the fair was designed to just help one facet of society. I think everybody deserves to be a part of the fair system. And at this time, it looks like it's going to be relatively equitable. It's going to give the State Fair more opportunity to build more facilities, and I think in that area we will cover the needs of more people. So I would just say, not only is it very important that we get all these Junior Nationals, and all of these National shows across the United States, to bring, rather than Lincoln, Nebraska, bring it into Grand Island. But I think we need to remember first and foremost, we need to serve as many of the needs of the Nebraskans as we can accommodate. [CONFIRMATION]

SENATOR BRASCH: Thank you and those are events that the Nationals take place not during the State Fair, but during another time, correct? [CONFIRMATION]

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DENNIS HOFFMAN: You bet. That's correct. It would be generally June and July are the two big months of the Junior Nationals. [CONFIRMATION]

SENATOR BRASCH: And when the State Fair was located in Lincoln here, they also had revenue from space rental. Many organizations would host home shows, different expositions, and rent various buildings and the grounds all year long as well as storage. [CONFIRMATION]

DENNIS HOFFMAN: Yes. [CONFIRMATION]

SENATOR BRASCH: Is that also true in Grand Island? [CONFIRMATION]

DENNIS HOFFMAN: I'm sure it is. It was definitely true to a large extent in the fair I ran in California. That was a big part of our revenue as well as helping the people of the community. And I think that gets right back to what we were discussing here earlier. You need to provide...or you are paying for all the people of the state even if they're storing their boat. You know, I think we need to take care of everyone. [CONFIRMATION]

SENATOR BRASCH: Very good. Are there any other questions from the committee? I see there are none. I'm going to ask individuals in the group, is there anyone here who would like to come forward as a proponent? Seeing there are none, any opponents? Seeing there are none, anyone in the neutral? There is no one coming forward today. I do want to thank you for your introduction and we will have an Executive Session and then take this after Executive Session, move it to the floor. Thank you so much and stay safe and warm. [CONFIRMATION]

DENNIS HOFFMAN: Thank you very much. I appreciate all your time. [CONFIRMATION]

SENATOR BRASCH: Thank you. [CONFIRMATION]

DENNIS HOFFMAN: Goodbye now. [CONFIRMATION]

SENATOR BRASCH: And we'll proceed with the legislation today in the order that we have here. Coming forward will be Senator Lowe with LB135 that will change and eliminate Department of Agriculture provision relating to publicity, publications, and personnel. Welcome, Senator. Please say and spell your name. [LB135]

SENATOR LOWE: Thank you, Chairperson Brasch and fellow members of the Agriculture Committee. I am Senator John Lowe, J-o-h-n L-o-w-e. I represent District 37 in Kearney and I

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am here today to introduce LB135. This bill is pretty straightforward and was brought on the request of the Department of Agriculture. LB135 updates outdated language and repeals irrelevant and repetitive elements. This bill helps streamline government which is something I always support. I ask for your support for LB135. I would be happy to answer any questions and I am sure officials from the Department of Agriculture would also be more than happy to answer questions as well. [LB135]

SENATOR BRASCH: Are there any questions from the committee? Seeing there are none, we'll ask for proponents. And will you...you'll be here to close, correct? You're not planning on leaving. Will you like to close today? [LB135]

SENATOR LOWE: I'd like to close today, yes. [LB135]

SENATOR BRASCH: Very good. Thank you. All right, we'll ask for the first proponent to come forward, please. And did you hand in your sheet? Very good. Thank you. Welcome. [LB135]

MAT HABROCK: (Exhibit 1) Yes, thank you. Good afternoon. Senator Brasch and members of the Agriculture Committee, my name is Mat Habrock. That is M-a-t H-a-b-r-o-c-k. I'm the assistant director of the Nebraska Department of Agriculture. I'm here today to testify in favor of LB135. I'd like to thank Senator Lowe for introducing this bill on behalf of the Department of Agriculture. I have additional written testimony that I've asked to be placed on record for the bill. LB135 updates five different statutes which were enacted in 1919 and 1953. These sections relate to the agricultural publicity authority granted to the Department of Agriculture. The five statutes are consolidated into two sections by repealing three sections and amending the other two. The intent is to delete antiquated language and establish more relevant and applicable language related to disseminating agricultural information to the public. The first section of the bill will more broadly authorize the Department of Agriculture to provide material on Nebraska's agricultural resources, industries, and agricultural development, and it also allows the department to cooperate with other entities not expressly listed in these statutes. The second section allows funding to be obtained from other outside sources. These changes will give the department more flexibility in this area to meet new needs and to take on unforeseen opportunities. The written testimony provides a section-by-section analysis which explains the rationale for repealing three sections of the current law. The overall update of these five sections is overdue, and LB135 will eliminate statutes and language that are no longer necessary. LB135 has no fiscal impact and I ask for your support in enacting LB135 this year. And I'd be happy to take any questions. [LB135]

SENATOR BRASCH: Thank you, Mr. Habrock. Are there any questions from the committee? [LB135]

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SENATOR CHAMBERS: I just have one. [LB135]

SENATOR BRASCH: Welcome, Senator Chambers. [LB135]

SENATOR CHAMBERS: It's good to be here. Why didn't you make them wait until I got here? (Laughter) I don't really have any questions. [LB135]

SENATOR HALLORAN: Senator. [LB135]

SENATOR BRASCH: Yes, and Senator Halloran, you have a question? [LB135]

SENATOR HALLORAN: Thank you, Chairman Brasch. Clearly it does not have any fiscal impact. In layman terms, what impact does it have? [LB135]

MAT HABROCK: So in layman terms what this would allow the department to do is again kind of free up some of the opportunities that we would have to support the agricultural industry through the sharing of factual information. So a couple of examples of how we utilize the act currently would be, we annually publish the Nebraska Ag Fact Card, which is something that we do in conjunction with the Nebraska Bankers Association. So it's a listing of statistics that are relevant to the Nebraska ag industry, you know, the revenue generated from the industry, the number of jobs that are a direct impact of our industry, and so on and so forth. So it allows us that opportunity to publish that type of information. By opening up and making these changes, we feel this is an opportunity for us to look at new opportunities to provide research, education, market development, and publicity of the industry. As we look at some of the new and upcoming segments of the industry, some of the niche crops and things like that that we're seeing interest in, in Nebraska, that will allow us an opportunity to work with those industries to provide information relevant to them. [LB135]

SENATOR HALLORAN: And you don't have that authority now? [LB135]

MAT HABROCK: I would have to look back through, I'm...not necessarily we wouldn't have that authority. I feel this really clarifies our ability to do that and also again, this hadn't been...this was, you know, 1919, 1953, I believe are the two years that were kind of the last times this has kind of been taken a look at. So just an opportunity for us to update that antiquated language and make sure that the act truly meets the needs of the industry. [LB135]

SENATOR HALLORAN: Thank you. [LB135]

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SENATOR BRASCH: Thank you. Any other questions from the committee? I have a couple of questions here. How many employees are employed by that division and what other functions do they perform? [LB135]

MAT HABROCK: Our ag promotions division...doing some quick counting of office spaces. It's roughly six or seven employees in total, so a lot of their work is going to...it's just some of the efforts the department has on international trade working on behalf of expansion of livestock in the state of Nebraska. We've got the Mediation and Beginning Farmer program, you know, broadly placed under our ag promotion and development division as well. [LB135]

SENATOR BRASCH: Very good. And I'm curious, I have seen the department currently publish promotional materials. This little fact sheet and other...you're trying to advocate that others issue the promotional materials or is this something that the department wants to do? Is it through your public information office? How do you see this working? [LB135]

MAT HABROCK: Yeah, so how I see this working is within the existing law, you know, there are some specific opportunities for us to partner with different entities. This opens it up to make sure that we have the authority to work with other parts of the industry that may not currently be expressly stated within the act. So, for instance, like the Ag Fact Card that I referenced earlier, we compile the information, we do all the layout and the design and the printing essentially, and then are reimbursed for the printing cost from the Nebraska Bankers Association as they help us with the distribution of those cards. So similar types of programs to that is what we could do, just making sure that we are recognizing some of the entities that we would potentially be able to work with under that are not expressly stated in the current act. [LB135]

SENATOR BRASCH: Okay, very good. Any other questions? Senator Krist. [LB135]

SENATOR KRIST: Thanks for coming. Could you tell me generally why the out-and-out repeal of Sections 81-2,164, 164.01 and 164.02? Is there nothing in that language that allows you to continue doing what you were doing, or is it encumbering the way that you want to have it? [LB135]

MAT HABROCK: I'm sorry, you're mentioning section...okay. I would have to look more closely into this. As I reviewed this, you know the language, we tried to consolidate and make sure that we got rid of the antiquated language. I'd have to dig in specifically and follow up with that with you as far as why those specific areas are. We felt that by combining the five into the two, as we have referenced in the bill, it removes that antiquated language and just cleans up the overall language as a whole. So not necessarily that it's removing any of our abilities, but cleans the language up and makes things a little more consistent. [LB135]

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SENATOR KRIST: Okay. I'm going to ask you to do me a favor and get some specific answers into why or what that entails and then get with the legal counsel before we Exec, so. There's probably absolutely nothing wrong with it, but I'm one of those people that wants to make sure there's no unintended consequences from us taking action. [LB135]

MAT HABROCK: Understand. I appreciate that. We'll be sure to get in touch. [LB135]

SENATOR KRIST: Thank you. [LB135]

SENATOR BRASCH: Any other questions from the committee? I see there are none. Thank you, Mr. Habrock, for your testimony. Any other proponents? If so, please come forward. Seeing there are none, are there any opponents? If so, please come forward. Is there anyone in the room that wants to testify neutral? Seeing there are none, you waive...Senator Lowe waives closing. So that concludes the hearing on LB135. Thank you, Senator. We'll proceed to LB276. Senator Albrecht will introduce the bill and it is to change provisions relating to hybrid seed corn and provide enforcement powers and judicial remedies. Welcome, Senator. Will you please say and spell your name? [LB135 LB276]

SENATOR ALBRECHT: Yes, thank you, Madam Chair, and good afternoon, colleagues. My name is Senator Joni Albrecht, J-o-n-i, Albrecht, A-l-b-r-e-c-h-t. I proudly represent LD, Legislative District 17. This is my first bill before the Agriculture Committee. I want to state for the record that I appreciate the work that the Agriculture Committee staff and the staff with the Nebraska Department of Agriculture has done with the drafting of this bill and with the background material before us. I've introduced this bill on behalf of the Department of Agriculture. I want to thank assistant director Mat Habrock for attending today to testify in support of LB276. The intent of this bill is to update the statute sections first adopted in 1937 relating to hybrid seed corn, specifically to include modern processes of producing hybrid seed corn. Some of the methods listed in the current statute have fallen out of favor while others have emerged. The legislation before us today is the result of conversations between the Department of Agriculture and the industry leaders updating the statutes. Finally, this legislation updates the enforcement language in Section 3 to make it consistent with the enforcement provisions found in the number of laws and acts administered by the Department of Ag, including the Commercial Dog and Cat Operator Inspection Act, the Nebraska Food...Pure Food Act, and the Pesticide Act, and others that are outlined in our briefing materials. As I stated, assistant director Habrock will be testifying in support of this bill and can answer some of your more technical questions. With that I'll end my introduction and I would like to ask for your support of LB276 and will be happy to answer any questions that you might have. [LB276]

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SENATOR BRASCH: Thank you, Senator Albrecht. Are there any questions from the committee? Seeing there are none, we'll proceed to the first proponent. Please come forward. [LB276]

MAT HABROCK: (Exhibit 1) Again, Senator Brasch and members of the Agriculture Committee, thank you. My name is Mat Habrock, M-a-t H-a-b-r-o-c-k. I'm the assistant director of the Nebraska Department of Agriculture, and I'm here today to testify in favor of LB276. I'd like to thank Senator Albrecht for introducing this bill on behalf of the Department of Agriculture. I have additional written testimony that I've asked to be placed in the record for this bill. The Department of Agriculture last year reviewed several laws that were enacted in the past and put under the Department's jurisdiction. This review was to ascertain if there were laws that potentially needed amending to update the law or were candidates for repealing. LB276, which updates the statute sections adopted in 1937 relating to hybrid seed corn, Nebraska Revised Statute, Section 81-2,155, 81-2,156 and 81-2,157, is a proposal offered to the Legislature to update these statutes. The Department of Agriculture asked industry members if the statutes were still relevant and needed. The response was, yes, the statutes were still warranted; but they should be amended to include current processes of producing hybrid seed corn. Thus, the Department of Agriculture worked with Dr. Tom Hoegemeyer, an adjunct professor in agronomy and horticulture department of the University of Nebraska, in developing the proposed changes. He has done extensive research in crop breeding. The first two sections of the bill reflect Dr. Hoegemeyer's recommendations for the specific language regarding hybrid seed corn. The Department of Agriculture, as in the past when offering changes to statutes, especially ones originating as far back as 1937, considers updating language regarding enforcement of the provisions. Thus, the language changes regarding injunctive relief in Section 3 are offered to make it consistent with many other statutes under the department's jurisdiction. This language has been used by the Bill Drafter in similar form in the Commercial Dog and Cat Operator Inspection Act, the Agricultural Liming Materials Act, the Pesticide Act, the Milk Act, the Weights and Measures Act, and the Nebraska Poultry Disease Control Act to name a few. Injunctive relief has been helpful since such an action is often a more practical and useful enforcement option than a criminal penalty especially when there are no administrative enforcement remedies. The Nebraska Seed Advisory Committee agreed with the suggestions Dr. Hoegemeyer provided to the department and the department also sought input from representatives of affected industry stakeholders. The department sent these representatives a draft copy of the bill and received no objections and no requests for changes. There is no fiscal impact to the bill and I ask for your support in enacting LB276 this year. [LB276]

SENATOR BRASCH: Thank you, Mr. Habrock. Are there any questions? Yes, Senator Chambers. [LB276]

SENATOR CHAMBERS: Did you draft this bill? [LB276]

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MAT HABROCK: We worked with the department to determine what language needed to be done and ultimately worked with the Bill Drafter's Office. [LB276]

SENATOR CHAMBERS: Okay. Do you have a copy of the bill? [LB276]

MAT HABROCK: I do, yes. [LB276]

SENATOR CHAMBERS: Page 2. I read legislation. In line 27, what's the last word in that line in the version you have? [LB276]

MAT HABROCK: Misdemeanor. [LB276]

SENATOR CHAMBERS: Is there a period or any punctuation after the word "misdemeanor" in your copy? [LB276]

MAT HABROCK: It is left at the end of the existing language that is to be stricken. [LB276]

SENATOR CHAMBERS: Say it again. [LB276]

MAT HABROCK: It is left in the...on line 31, the existing language that is to be stricken, the period is left there. [LB276]

SENATOR CHAMBERS: Okay. Now, this does create new offenses, doesn't it? [LB276]

MAT HABROCK: It allows for injunctive relief, yes. [LB276]

SENATOR CHAMBERS: I mean, an actual offense, because it's an offense to threaten to violate, which is not the case now, isn't that correct? [LB276]

MAT HABROCK: I do not believe so. [LB276]

SENATOR CHAMBERS: Okay. Show me where in existing law the language "or threatens to violate" is found. [LB276]

MAT HABROCK: You would be correct, Senator. The injunctive relief language that is shared there is similar to what is in other bills which included that. [LB276]

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SENATOR CHAMBERS: I'm not talking about another bill. I'm talking about this one. We had some debates on the floor and I wanted to talk to somebody who was involved in drafting it. When there is...it is not an offense to threaten to do something, then you make it an offense not only to do it which is the law, but to threaten, that threatening becoming a violation is a new violation, isn't it? [LB276]

MAT HABROCK: I suppose. Again, this is consistent with some of the other bills that are under the jurisdiction of the department, so we asked for similar language here, ultimately, to be considered. [LB276]

SENATOR CHAMBERS: No, that's not what I'm asking you. We're dealing with this bill. [LB276]

MAT HABROCK: Yeah, and so with this.... [LB276]

SENATOR CHAMBERS: This language that you struck, you go down to...let's go to page 2, line 26: Any person who violates any of the provisions of these sections shall be guilty of a Class III misdemeanor. The only way you can be guilty is if you actually violate. Then you come to new language at the top. "In addition to the criminal penalty provided under subsection (1)" which is on the previous page, "a restraining order for a temporary, permanent, or mandatory injunction may be imposed against any person violating or threatening to violate." When you make the threat to violate a Class III misdemeanor and it's not such now, that's creating a new offense. It's a new Class III misdemeanor which currently does not exist. On the floor there were people saying, no, there's not a new violation being created. The language shows it. And if you disagree, then I would strike all the language about "or threatening to violate" and leave it just as it is now, and let the injunctions obtain only if a person is in violation. Because the injunction would then say, cease doing what you're doing. This makes it a crime when you haven't even done anything. So I don't know who advised Senator Brasch that no new crime is being committed was wrong. And the Ag Committee does not deal with legal issues such as this. I tried to get this bill to the appropriate committee. But since you helped draft it and you weren't even aware that a new violation is created, then you may be the one who advised them that no new crime was committed. Did you...are you the one who told them that? [LB276]

MAT HABROCK: I'm not quite sure exactly. Essentially we offered this language for the consideration...for policy decision to be made by the Legislature, so we clearly defer to the members of the body to make a decision as to whether or not this language should be included or adopted in some way, shape, or form. [LB276]

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SENATOR CHAMBERS: Who suggested that this language be included? Somebody had this bill drafted. [LB276]

MAT HABROCK: We requested this on behalf...or we requested the Bill Drafter to include this, which as I mentioned, is similar to other acts that fall under the jurisdiction of the department. [LB276]

SENATOR CHAMBERS: Doesn't matter. That's irrelevant. We're talking about this bill. Often language will be taken from another piece of legislation. But in this group of statutes in this provision we're talking about, one of the enforcement measures will deal with an actual violation. You submitted language to the Bill Drafter because the Bill Drafter wouldn't on their own create a new offense. Threatening to violate is not a crime without this bill. If this bill does not pass, threatening to violate the law is not a crime, is it? [LB276]

MAT HABROCK: I can't speak to that. I guess I'm not a criminal expert on that. As I mentioned... [LB276]

SENATOR CHAMBERS: Well, maybe some people who come up after you, but see it bothers me when I'm on the floor making a point and people give the impression that I don't know what I'm talking about and all you have to do is be able to read. Somebody told the Bill Drafter to put this language in. [LB276]

MAT HABROCK: We requested this language be put in as I mentioned as it is similar to the other acts that fall in our jurisdiction. [LB276]

SENATOR CHAMBERS: Did you intend to create a new violation when you put that language in or did you just say, put the language in and whatever it does is what we want? [LB276]

MAT HABROCK: We asked for similar language that has been introduced into other acts that fall in our jurisdiction to be included. [LB276]

SENATOR CHAMBERS: If it's in other acts...if it's in other parts of the law already, it's a crime already in those statutes to do something or threaten to do it. When you include now, in this enforcement scheme something which is not in this enforcement scheme, and what you include becomes a crime. This threatened...this threatening to do this is now a Class III misdemeanor under this bill. Without this bill, there's no offense with reference to this activity if a person threatens to do it. So let me ask you this. How would a person threaten to do whatever is

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prohibited here? What is it that they would threaten to do that would be something that you would prohibit by having an injunction entered? [LB276]

MAT HABROCK: I'm not 100 percent sure that I can speak specifically to what would be threatening. You know, clearly the intent of this bill is to make sure that we have a truth in labeling precedence in Nebraska so that when a producer buys a bag of seed corn, what they are...what is printed on the label of that bag of seed corn is truly what's in it. So making sure that those that breed and develop corn hybrids are following the definition of the law and making, you know, the injunctive relief allows us the opportunity to make sure that we're able to work with those selling seed that what is in the bag is truly what is published on the label. [LB276]

SENATOR CHAMBERS: I may be talking to the wrong person. Are you a lawyer? [LB276]

MAT HABROCK: I am not, no. [LB276]

SENATOR CHAMBERS: Oh, then, I'll...are you going to have a lawyer to testify? [LB276]

MAT HABROCK: I'm not sure who all is intending to testify behind me. [LB276]

SENATOR CHAMBERS: Well, I'll wait and see. [LB276]

MAT HABROCK: Okay. [LB276]

SENATOR CHAMBERS: I thought you were an attorney. [LB276]

MAT HABROCK: No, sorry. [LB276]

SENATOR CHAMBERS: Okay. [LB276]

MAT HABROCK: Thank you. [LB276]

SENATOR BRASCH: Are there other questions? Yes, Senator Halloran. [LB276]

SENATOR HALLORAN: Just to clarify, so I understand. So this is an effort to make sure that people that aren't authorized to grow seed, are...it is a new penalty and it is a new...to Senator

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Chambers' point, it's a violation if someone attempts to grow seed, but they aren't legally authorized to do it. Is that what this is? [LB276]

MAT HABROCK: The overall intent of LB276 is first and foremost to make sure that the definition of hybrid seed corn in law reflects current industry practices. That's why you'll see reference to male sterility. And Dr. Hoegemeyer, I believe, will be testifying after me and can speak to some of the technicalities behind seed corn breeding is first and foremost to make sure that the...we have express language that is reflective of current industry practices. The...as we've enforced this act in the past, as we consider, you know, a violation of this law would be back to that point of truth in labeling in that when a farmer buys a bag of seed, they're certain that what is on the label of that bag of seed is truly what's in it. So the enforcement authority comes from, you know, if we would find a violation of a...through our testing process and things like that, when we would find seed that does not match what is on the label, that would be where an enforcement action would come in. [LB276]

SENATOR HALLORAN: Or if you find someone in the process of growing seed corn that's basically pirating the process. [LB276]

MAT HABROCK: There certainly could be some opportunities there as we...again, yeah. [LB276]

SENATOR HALLORAN: Thank you. [LB276]

SENATOR BRASCH: Thank you. Senator Krist. [LB276]

SENATOR CHAMBERS: I can ask him this question. Suppose I say, this is really a truth in labeling bill that what the label says is in this bag has to be in the bag. And I say, I'm going to put some labels on these bags even though what the label says is not in the bag. That's a crime. I haven't done anything. Maybe I'm not going to do it, and yet it's a crime because I threatened to do it. It doesn't say you take steps toward doing it. You just threaten to do it and it's a crime. That's not the way I want to see crimes created and for the next one to come on page 3, in line 6, are the words "or is about to occur" where the violation is occurring or is about to occur. I want to know and the next person can tell me what this is we're talking about that is occurring or is about to occur. Is it to putting a false label, or is it undertaking action to breed in a different way from this definition? And if all somebody says is, I've laid out a way that I can get to the same result without doing it that way and that's what I'm going to do then that's a crime. It's one thing to say that you're going to have an injunction if certain steps toward the commission of something have been taken; but in this, no steps have to be taken at all. Threatening is applicable to a statement. You're making a statement a crime. That's what the language says. I tried to get

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my colleagues to understand on the floor, but they didn't, that certain things cannot be made criminal constitutionally. You can say it in the statute, the Governor can sign it, that's not what makes it constitutional. And you cannot punish somebody for a thought or an intention either. But anyway, I'll wait until the next person comes who probably knows more than you and I about this. [LB276]

SENATOR BRASCH: Thank you, Senator Chambers. I believe Senator Krist...do you have a question? [LB276]

SENATOR KRIST: Yeah, I'm not going to pile on. I'll just make a statement. In the statement of intent, the introducer clearly says Section 3 adds injunctive authority for violations of the hybrid seed corn sections. So you set up the intent to violate as a part of the injunctive reasoning and you authorize or you're asking the Attorney General or the county attorney to take action in the criminal codes. So it's pretty serious. You're saying at this point that...and whatever...I mean, you may have other areas that are under your jurisdiction that are more defined in terms of a criminal code. But I'm not sure that the way it's written that I can support it either just based upon creating. I don't see there's a need for creating a civil violation and a Class III misdemeanor, which is nothing to sneeze at, right? So I'm hoping that that makes my point. So it is...it's clear that both the introducer and you understood that you were creating a injunctive authority. [LB276]

MAT HABROCK: If I could share, as I mentioned, you know, as we reviewed this we tried to look at other acts that fall under our jurisdiction to make sure that the language is consistent there. So that injunctive authority language is included in several other acts that I mentioned in my oral testimony, and so it is simply a policy proposal for the Legislature to consider whether or not to continue to include that or how they want to proceed with that injunctive relief. [LB276]

SENATOR KRIST: In order to follow that logic through, I would again have to look at the other areas that are under your jurisdiction and the reason or the rationale for creating that injunctive authority. You understand what I'm saying? [LB276]

MAT HABROCK: Yes. [LB276]

SENATOR KRIST: Okay. All right. Thank you very much. [LB276]

SENATOR BRASCH: Thank you, Senator Krist, and thank you, Mr. Habrock. I will add one more comment as I'm looking here. Lines 28 through 31, as the bill was before that, it was every

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violation of these sections was a Class III misdemeanor. So it's been a misdemeanor in the past. [LB276]

MAT HABROCK: Um-hum, that's correct. [LB276]

SENATOR BRASCH: And in the past it says that the duly authorized agent or agents shall have...shall report this section to the proper county attorney or the Attorney General, so that was a part of its original structure. And could it be that it's being reworded and moved to other sections, but that would need re-review? I am not an attorney, but I...what I'm seeing here is it was every violation it has always been a crime to not accurately label. And this is making it very clear that when it comes to hybrid seed that it continues to be a crime as it was before this strike-out and it's rewritten in. I'm just curious, why was it...was it the format changed? Is it a format changing or why did you...? [LB276]

MAT HABROCK: I'm not a legal expert as well. I would have to consult on that. [LB276]

SENATOR BRASCH: Maybe someone else could clarify the need to...if it's just a matter of trying to be uniform and consistent or if it wasn't powerful enough in its original state. [LB276]

MAT HABROCK: Yeah, I would need a consult on that as well. [LB276]

SENATOR BRASCH: Yes, yes, Senator Chambers. [LB276]

SENATOR CHAMBERS: I'm going to clarify. [LB276]

SENATOR BRASCH: Yes, please. [LB276]

SENATOR CHAMBERS: When you say any violation of this statute is a Class III misdemeanor, you state in the statute what constitutes a violation. If the violation is labeling falsely, that is the Class III misdemeanor. It's a Class III misdemeanor only if you do it. That's the violation. This new language says if you threaten to do it. That's not a crime now. That's brand new language. And if this kind of language exists in another statute, the original or existing law is unconstitutional. I've had to make these points in the Judiciary Committee, but the new people don't understand it and they don't respect what I know. So I want it on the record and I want some of these people to show that I'm mistaken. And if I'm mistaken, you will have improved my education. But I'm going to say it again in view of what Senator Brasch, our Chairperson, stated. You lay out conduct which must be complied with; and if you fail to comply with that specified conduct, your failure is a Class III misdemeanor. But you must have stated what that is.

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Currently there's nothing in this section of the law that you're amending, nothing in that current language that makes the threat to do something a crime. If it's merely relocating the language, show me stricken language, language with a line drawn through it, that makes it a crime to threaten to violate the law. That's not in the existing law. It's all new language. New language is that which is underscored. But I'm not going to do all this. I'll wait until the bills get on the floor and then I'll amend them there or kill them. Because this...I didn't sign up for this. This is below my pay grade, but I'm vindicating what I said on the floor of the Legislature because I was told that people from the Department of Ag, they got legal counsel and they were involved in this and I want to talk to that person and have the discussion that I had with you. But if there is such a person, he will know where my areas of concern are and he can correct me or acknowledge that I am correct and they gave misinformation to the committee or whatever. But that's all I have with this gentleman. And I wouldn't have said anything else, Madam Chair, if you hadn't said what you said. [LB276]

SENATOR BRASCH: I appreciate your clarity. Thank you. And your patience in helping. [LB276]

SENATOR CHAMBERS: Well, no, it's not patience. I'm paid to do it. (Laughter) It's my duty. [LB276]

SENATOR BRASCH: Good job, Senator Chambers. So anyone else here would like to ask questions? I see none. Thank you, Mr. Habrock. [LB276]

MAT HABROCK: Thank you. [LB276]

SENATOR BRASCH: Will the next proponent please come forward. Welcome. Have a seat, say and spell your name. [LB276]

TOM HOEGEMEYER: Madam Chair and Senators, my name is Tom Hoegemeyer. That's T-o-m H-o-e-g-e-m-e-y-e-r. I am a native Nebraskan and got my bachelor's degree at UNL and Ph.D. at Iowa State. I owned and operated a seed business for 35 years, and I spent 4 or 5 years working for a multinational science and seed company. And the last six years of my career I was Professor of Practice at UNL teaching plant breeding. So that's kind of my background. Been involved in the seed industry a long time and some years ago was chairman of the American Seed Trade Association, corn and sorghum groups. So I have fought a lot of battles, both biological and legal, over the years and...but I know nothing about the law. I'm strictly a technical person. If you want to talk about plant breeding and genetics, I'm your guy. Other than that, I'm pretty ignorant. At any rate, I helped with some of the technical issues in this law. The copy I was shown originally of the law really alarmed me because obviously when this law was written,

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the only two ways to make hybrids were either through hand pollination or by detasselling, in corn at least. In some crops the male and female flowers are separated; and in most plants, the male and female parts of the flower are all part of the same flower. And so detasselling is almost impossible, although they do it with tomatoes and pluck out individual stamens and hand pollinate them. But we couldn't do that on agronomic crops because we need too much seed and it's just too expensive. In the 1950s, it was discovered that there were genes on the mitochondria as well as on the chromosomes of cells. And one of the genes that was discovered rendered the male flowers sterile so that a tassel wouldn't shed pollen and the female flower function. Well, the seed industry thought this was a wonderful thing because it helped reduce the detasseling load. We could decrease the production cost of seed, which benefited the consumer, plus it also had a side benefit of increasing the seed quality. These sterility systems allowed you to do a much better job of controlling the unwanted pollen sources than you could do naturally with detasseling or hand pollination. Well, that got to be widespread and has been used by the entire seed industry, certainly since the early 1960s. In the last 10 or 15 years, there have been other sterility systems discovered: genetic ones, some GMO techniques, some really interesting techniques that use GMOs to set up the sterility, but the GMOs are not transferred into the farmer's field in the resulting seed. So that's kind of a win in both cases. It keeps GMOs out of the food supply, but yet it allows, you know, technology to advance and be used. Well, at any rate because all these things are a reality in the world in which we live, I thought that we really needed to update this section and acknowledge these other systems that are being used, that are, you know, in the advantage of the consumer as well as the seed company, and should not be a misdemeanor under the law to use better technology. So that's pretty much what prompted me to get involved and suggested this language, "or by utilizing male sterility systems" in line 22 of Section 2. That's pretty much what I wanted to say and I'd be happy to take any questions. [LB276]

SENATOR BRASCH: Thank you, Dr. Hoegemeyer. Are there any questions from the committee? Yes, Senator Krist. [LB276]

SENATOR KRIST: The language that was--just for my information, obviously, you are the technical expert--but the language that's going to eliminate it...and do you have a copy of the bill? [LB276]

TOM HOEGEMEYER: I do. [LB276]

SENATOR KRIST: Is there any such thing anymore as a single cross, the first generation and three-way cross first generation, or a double cross? And is that taken into account when you...when you use a simple definition as you have of both? [LB276]

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TOM HOEGEMEYER: It is. It is effectively taken into account in the simplified definition of by "or their combinations." And that also anticipates that there are ways and may be ways that one can use the inbred lines to make hybrids that aren't clearly just traditional single crosses, three ways, or double crosses. But I thought that, you know, allowed for some new technologies as well. [LB276]

SENATOR KRIST: So in some ways as science progresses, this will allow different technologies to enter into that definition. [LB276]

TOM HOEGEMEYER: Yes, sir. And that's what I would urge the committee to think about as, you know, the world has changed and is changing at a very rapid pace. And what has been happening, you know, in the seed industry actually has been against Nebraska law for some time, even though what's been happening is in, you know, is an advantage to our seed consumers as well as the producers. [LB276]

SENATOR KRIST: Well, we never said we were using common sense (inaudible). Thank you, Dr. Hoegemeyer. [LB276]

SENATOR BRASCH: Thank you, Senator Krist. Any other questions from the committee? Seeing there are none, thank you for your testimony today. [LB276]

TOM HOEGEMEYER: Thank you. [LB276]

SENATOR BRASCH: Are there any other proponents? Welcome. Please say and spell your name. [LB276]

SCOTT MERRITT: (Exhibit 2) Yes, my name is Scott Merritt, S-c-o-t-t M-e-r-r-i-t-t, currently the president of Nebraska Ag Business Association. We're here today in support of LB276. We are an agricultural trade association that represents manufacturers, distributors, transportation, and retailers that provide crop protection, products, and fertilizers, includes seed, retail, and manufacturers. As you've heard from Dr. Hoegemeyer, we feel that the bill has a lot of obsolete language in it. It does not reflect the current production of seed. And our second concern is that we have truth in labeling as the committee has already discussed. So we would support the bill. And some of the questions that Senator Chambers and Senator Krist brought up, I'm not an expert on, but we are very supportive of anything that has truth in labeling. Any questions? [LB276]

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SENATOR BRASCH: Thank you, Mr. Merritt. Is there any questions from the committee? Seeing there are none, thank you. Any other proponents? Please come forward. Welcome. Say and spell your name, please. [LB276]

ERIK HOEGEMEYER: Good afternoon. My name is Erik Hoegemeyer, E-r-i-k H-o-e-g-e-m-e-y-e-r, and I'm here on behalf of the Nebraska Seed Trade Association and its members. We're the state's trade group for seed companies, and I'm here to speak in favor of LB276. My membership has asked me to come speak specifically in favor of Section 2. Again, I have to apologize. I'm not a lawyer and have no comment on civil or criminal proceedings, but the seed industry is extremely important to the state of Nebraska, you know, major facilities in Kearney, in Hastings, in York, Doniphan, Waterloo, Nebraska, Hooper, Nebraska, Battle Creek, Nebraska, Fremont, Nebraska. Our state has really become the major hub of the corn seed industry for production in the United States and we've...my membership feels it's very important that we update this antiquated language and get it reconciled with current production practices. Again, consumer protection is of utmost concern to my membership and I'm here again, sorry to be reiterative, to speak on behalf of the...especially the updated Section 2. [LB276]

SENATOR BRASCH: Very good. Are there any questions from the committee? I may have a couple questions, but does the committee? All right. Now, first, does your association, the group, does it work with Innovation Campus? I know they in past...in the past have had research facilities or perhaps not. [LB276]

ERIK HOEGEMEYER: Well, we have an access to the Department of Agriculture. We're basically a cousin of the Nebraska Crop Improvement Association. In fact, last week we just had our joint annual meeting together with them. So the university's IANR and CASNR work closely with us, so while we don't have any direct projects going on with them, we absolutely have an access through personnel and membership with Nebraska Innovation Campus, yes, ma'am. [LB276]

SENATOR BRASCH: Very good. Second question because there are two Hoegemeyers in this room. Sue Hoegemeyer, is that a relation to...your daughter, wife, or sister? [LB276]

TOM HOEGEMEYER: My sister. [LB276]

SENATOR BRASCH: Sister, okay. [LB276]

ERIK HOEGEMEYER: Yes. Yes, ma'am. [LB276]

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SENATOR BRASCH: (Exhibits 3 and 4) Yeah, she's, I know worked very hard on...with the family business and over the years would commute from Lincoln to Hooper regardless of the weather to help the family. So it's a very good family-owned and run business. And I appreciate your testimony coming here today. I have no questions, and if there are none from the committee, are there any other proponents? I do have two letters of support to read into the record. The first is from the Nebraska Corn Growers Association and then the next is from the Nebraska Farm Bureau Federation. Are there any opponents to this bill? If so, please come forward. Seeing there are none, is there anyone here to testify in the neutral? Seeing there are none, that would conclude the hearing today for LB276. Oh, excuse me. Oh, closing, would you...I apologize. Are you waiving closing? Closing has been...oh, would you like to close? Yes. [LB276]

SENATOR ALBRECHT: Madam Chair and members of the committee, I'm certainly listening to some of the questions and if this bill was...is 80 years old and we need to correct some of the language in the...where you felt it should go to the Judiciary Committee, Senator Chambers, I certainly would like to find out as well about the threatening or attempting to do something. If that needs to be stricken and if it's agreeable to those who wrote this and your legal department or ours, I would absolutely entertain it. [LB276]

SENATOR CHAMBERS: And I'll talk to you, you know, away from here, but a generalized concern I have is the criminalization of some of these types of activities because it doesn't make just labeling. I'm not going to go into all of that, but there are other aspects of it which make me wonder if we ought to make these violations...they can be called that, but should we make it a crime? Even if you were going to fine a person, even if you could get an injunction to stop the person from continuing, that might be one thing. But I'm not in favor of creating criminal penalties for everything, because when there's a criminal penalty, what you do is a crime. [LB276]

SENATOR ALBRECHT: Understood. [LB276]

SENATOR CHAMBERS: Okay. [LB276]

SENATOR ALBRECHT: And again, one of the questions I had when I looked at the bill and I read through the bill and we talked about it on the floor, I simply asked, has anyone, you know, ever been convicted of that misdemeanor? And they went back to 1980 and there has not been. So if there is an intent to do something like that, I'm sure if the seed corn folks find out about it, they're going to be making some phone calls and stopping things from happening or talking about it. But if there's not actually been anyone who has actually had a misdemeanor, going back to 1980, what happened after that...or before that, I don't know. They don't know. They can't find

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anything. So if it's...it's truly just protecting the industry I'm quite certain. The people don't decide to harvest their corn and then decide to put that seed corn back in the ground or to sell it to their neighbor or whatever they want to do. And so, and mislabeling would and should be a crime. So by all means I would be happy to talk about that. But with that put aside, I'd certainly like your support of LB276. [LB276]

SENATOR BRASCH: Any questions from the committee? Seeing there are none, that will close the hearing today. Thank you, Senator Albrecht. Thank you to everyone who came forward today. [LB276]