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Judiciary Committee
January 25, 2018

[LB688 LB729 LB757 LB780 LB849]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 25, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB780, LB849, LB729, LB757, and LB688. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Okay. Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete, representing Legislative District 32, and I'm the Chair of the Judiciary Committee. Like to start off by asking my colleagues to introduce themselves, starting with Senator Baker.

SENATOR BAKER: Roy Baker, District 30, Gage County, southern Lancaster County.

SENATOR KRIST: Bob Krist, District 10, and really glad I'm on Judiciary and not Revenue today. (Laughter)

SENATOR PANSING BROOKS: Yeah.

SENATOR HANSEN: Matt Hansen, District 26, northeast Lincoln.

SENATOR HALLORAN: Steve Halloran, District 33, Adams County and parts of Hall County.

SENATOR PANSING BROOKS: And I'm Patty Pansing Brooks, District 28.

SENATOR EBKE: And we will be joined, I think, in a little bit by Senator Morfeld and Senator Chambers. Assisting our committee today are Laurie Vollertsen, our committee clerk, and Tim Hruza, one of our two legal counsels; and the committee pages today are Rebecca Daugherty and Sam Baird. On the table over there you will find some yellow testifier sheets. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There is also a white sheet on the table if you

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

do not wish to testify but would like to record your position on a bill. Also, for future reference, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing to take written testimony. We will begin bill testimony with the introducer's opening statement. Following the opening we will hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your name, your first name and last name and spell them for the record. If you're going to testify, I ask that we keep the on-deck chair filled, which are the two chairs at the front there with the yellow signs on them. If you have any handouts, please bring up at least 12 copies and give them to the page. If you don't have enough copies, the page can help you to make more. We'll be using a three-minute light system. The Judiciary Committee has a lot of bills this year, so we've moved to a three-minute light system. So at three minutes, the light goes on, the green light goes on. When you have one minute remaining, it turns yellow. And then when it turns red, we ask you to wrap up. At three minutes and 30 seconds, a beeper will go off, an audible beep, and that is your absolute time to finish. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allow during the public hearings. Senators may use them to take notes, to stay in contact with staff in the office. At this time I'd ask everybody to take a look at your cell phones, make sure that they're on pause or on vibrate or silent mode. Also, verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing room. One more thing, you may notice committee members kind of coming and going. That has nothing to do with the importance of the bills being heard but, rather, senators may have bills to introduce in other committees or other meetings that they had to get scheduled at some point during the day. So with that in mind, Senator Pansing Brooks, let's open on LB780. [LB780]

SENATOR PANSING BROOKS: (Exhibits 2-4) Thank you, Chair Ebke and fellow members of the Judiciary Committee. I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here to introduce LB780 today because I believe citizens need greater protections against mass shootings. LB780 as written would ban the manufacture, import, sale, gifting, lending, or possessing of any multiburst activator, more commonly understood as a bump stock. LB780 would also ban firearm silencers

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Rough Draft

Judiciary Committee
January 25, 2018

as defined by the Bureau of Alcohol, Tobacco, and Firearms. Some call them suppressors. The ATF calls them silencers, so it's the same device. Meanwhile, I am introducing an amendment today, AM1545, which removes silencers entirely from the bill. To be sure, my constituents who have called support LB780 as written, but I have received many calls and e-mails from citizens in other parts of the state voicing strong opposition to a ban on silencers. But they do support the ban on multiburst activators. So I thought it made sense to narrow the focus of this bill a little bit more in order to advance a commonsense bump stock ban. In the summer of 2016, I received an e-mail from a constituent, an 84-year-old lifelong Lincoln resident and also lifelong member of the National Rifle Association. He had read some comments I had made previously in the press about the prevalence of mass shootings and the need to do something about them. This was after the mass shooting in Orlando. And while there was no evidence that a bump stock was used in the Orlando massacre, this constituent suggested that bump stocks were a loophole that needed to be closed because they make weapons like an AR-15, which are commonly used in many mass shootings, capable of firing at a far greater rate that is similar to the continuous rate of a fully automatic weapon. I decided that this was an avenue worth pursuing but opted to wait a year to bring this bill. Then the Las Vegas mass shooting happened on October 1 of last year, and we learned the shooter used bump stocks. Fifty-eight people were slaughtered and more than 500 were wounded when the gunman opened fire on the 32nd floor of the Mandalay Bay Hotel and Casino. As a mother and a legislator, I decided I had to do something to work to counteract some of the violence. I've had many e-mails and calls from people outside of my district, mainly outside of our state, who are lambasting me for attempting to make any kind of commonsense change in our gun laws. They claim I have no concern for their Second Amendment right to bear arms, a totally baseless claim. The issue of gun rights was perfectly stated by conservative Justice Antonin Scalia before he died. In District of Columbia v. Heller, Justice Scalia said, "Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone," another case, "through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," again, not an absolute "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." Therein lies the rub. If this reasoning holds true for guns themselves, it would clearly hold true for an accessory that attempts to circumvent gun laws pertaining to automatic weapons. The National Rifle Association has even acknowledged their own discomfort with bump stocks. In the aftermath of

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

Judiciary Committee
January 25, 2018

the Las Vegas shooting, they issued a statement saying, "The NRA believes that devices designed to allow semi-automatic rifles to function like fully-automatic rifles should be subject to additional regulations." People...and I've included an article where that has been quoted. People who did not support banning silencers but support banning bump stocks have actually told me that these are toys that nobody needs; they aren't necessary for self-defense; they aren't necessary for hunting. Their only useful purpose is for fun...oh, and mass destruction. LB780 doesn't purport that banning bump stocks will eliminate the problem of mass shootings. It suggests that controlling the rapidness of fire will produce fewer bullets. It suggests that controlling the rapidness will produce fewer bullets in short succession and, therefore, give the targets of a mass shooting a better chance to survive or escape unwounded. Shouldn't we all want that? What if just a few more people had survived in the Las Vegas massacre? What if just a few more people were allowed and able to have Thanksgiving dinner with their families the month after that shooting? What if even one more person had survived? Given a chance to escape by outlawing bump stocks, a chance to survive, that is the ultimate goal here. This bill is about making good decisions as legislators to keep our communities safe. I have been asked about those who may already be in possession of bump stocks and would they have to get rid of those devices to comply with the law. I spoke with Lincoln Chief of Police Jeffrey Bliemeister about amnesty programs whereby individuals could relinquish possession of unlawful items, and he assured me that he would work to address, to add these devices to amnesty programs here in Lincoln if the bill should pass. He also indicated he was confident that law enforcement in other parts of the state would do the same. If we need more time for the bill to go into effect and for people to come into compliance with the law, I'm open to that possibility of amending the effective date. In closing, I want to once again quote Justice Scalia in District of Columbia v. Heller. "Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms. We also recognize another important limitation on the right to keep and carry arms. Miller said, as we have explained, that the sorts of weapons protected were those 'in the common use at the time,'" the common use. "We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" They found that the carrying of "dangerous and unusual weapons" was key. So we know that the Supreme Court has limited the Second Amendment to not include unusual

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

Judiciary Committee
January 25, 2018

weapons, but here with these continuous-action devices, we have an accessory, not a weapon but an accessory that converts an already dangerous weapon into something more unusual and dangerous. In my opinion, there is no valid or legal argument which could extend our constitutionally protected rights under the Second Amendment to protect these unusual devices. How are bump stocks an unusual accessory to weapons? Because they speed up the rate at which a trigger is pulled, harnessing the recoil of a semiautomatic by mimicking and, thereby, mimicking an automatic gun. Bump stocks enable a shooter to shoot from...shoot between 400-800 rounds per minute, and a slide fire, which is also part of the multiburst activator group, allows 100 rounds in seven seconds. Traditional semiautomatics can fire 45-60 rounds per minute. So these devices allow the bump stock owners to shoot almost ten times, or definitely ten times more than without the bump stock and with our normal, legal semiautomatics. So clearly the bump stock is an accessory, making the weapon into a "dangerous and unusual" weapon which Justice Scalia said was not covered in the Second Amendment. I am submitting two statements of support from and information from Everytown for Gun Safety, because they couldn't be here with us today. I'm also passing out a Washington Post piece regarding the NRA's support for restricting bump stocks. So with that, I would urge you to advance LB780 to General File with AM1545 and I would happy to answer any questions you might have. [LB780]

SENATOR EBKE: Senator Krist. [LB780]

SENATOR KRIST: Just a technical question for the record: AM1545 is an amendment that replaces the green copy that's labeled LB780? [LB780]

SENATOR PANSING BROOKS: Thank you. [LB780]

SENATOR KRIST: No, I...it's a question... [LB780]

SENATOR PANSING BROOKS: Oh. [LB780]

SENATOR KRIST: ...just because I'm...I see that I think it does but... [LB780]

SENATOR PANSING BROOKS: Yes. [LB780]

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

Judiciary Committee
January 25, 2018

SENATOR KRIST: So the green copy is replaced by the amendment? [LB780]

SENATOR PANSING BROOKS: Yes, it's the whole. [LB780]

SENATOR KRIST: Okay. Okay, thank you very much. [LB780]

SENATOR PANSING BROOKS: But it removes the silencers/suppressors, whatever anybody...
[LB780]

SENATOR KRIST: Okay. [LB780]

SENATOR PANSING BROOKS: ...chooses to call them. [LB780]

SENATOR EBKE: Questions? [LB780]

SENATOR PANSING BROOKS: Thank you. [LB780]

SENATOR EBKE: Thanks. Okay, we'll go to proponents, first proponent, first person speaking
in favor of the bill. [LB780]

MELODY VACCARO: (Exhibit 5) Hi. My name is Melody Vaccaro, M-e-l-o-d-y V-a-c-c-a-r-o,
and I am here on behalf of Nebraskans Against Gun Violence. We support LB780. We think it's a
small step towards commonsense public safety outcomes. I would like to bring up an ethical
concern that the...I think the voice of citizens may be overshadowed on this policy area because a
former gun industry lobbyist now has a position with the Judiciary Committee as legal counsel.
Not only has Dick Clark been a passionate citizen lobbyist for gun and accessory legislation,
including bills still actively being considered by the Legislature, he's also been the voice of the
Platte Institute, the Governor's partisan think tank on at least 13 bills. I've included a list of the
bills where he is listed as a voice for the Nebraska Firearms Owners Association and the Platte
Institute. He's testified for nearly every committee in the Legislature. And while I support any
citizen to use their voice in the Legislature, as is the intent of the Unicameral structure, I think
we must have a higher bar for neutrality from those charged with providing legal counsel to

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

Judiciary Committee
January 25, 2018

policymakers representing a committee. And specifically on this bill, it must be mentioned that Mr. Clark has a financial interest in the policy area of silencers. It is a specialty of his law firm. I would ask that you send LB780 to General File. Thank you. [LB780]

SENATOR EBKE: Thank you, Ms. Vaccaro. Any questions, comments? Senator Krist. [LB780]

SENATOR KRIST: Ms. Vaccaro, I...you have a right to say anything you want to say when you're in that chair and I will...I would defend your right to do whatever you want to do. But I would make it a matter of public record that Mr. Clark is not the legal counsel that is working on this bill, rightfully so. I think the Chair has...Chairperson has taken care of that issue. We have two legal counsels in Judiciary because of the sensitivity of some of the things that we handle, Mr. Hruza and Mr. Clark. And so for the record, Mr. Clark is not part of this process at this time. Just to make it very clear, Mr. Hruza is running this from the legal counsel perspective. Thank you. [LB780]

SENATOR EBKE: Thank you, Senator Krist. Any other questions? Thank you for being here today. [LB780]

MELODY VACCARO: Thank you. [LB780]

SENATOR EBKE: Next proponent. [LB780]

RON MEYER: (Exhibit 6) Chairwoman Ebke and members of the Judiciary Committee, my name is Ron Todd-Meyer, R-o-n T-o-d-d, dash, M-e-y-e-r, and I am here to support LB780 on behalf of Nebraskans for Peace. We support LB780 that would prohibit the sale of bump stocks. And the gun silencers have been taken out of that, so. The use of all tools that create assault-style weapons should be limited to the military and law enforcement. The weapon...the mass slaughter of innocent lives by these weapons has no place in a civilized society. Cowardly and fearful people sell and encourage the civilian use of these tools. Gun violence is an issue in this country that we need to confront. The United States has more mass shootings than any other country on the planet that is not currently in a war zone. I served in a war zone 50 years ago and what is happening in my country with the proliferation, sale, and profiteering of assault-style weapons is

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

Judiciary Committee
January 25, 2018

sad and disturbing and does not reflect the values behind what I thought I was sent to war for. My wife has been teaching the last few years at a community college, at the community college here in Lincoln, and some of the students that she has are refugees and immigrants who have sought a new home and better life here, and they came from countries where war where...they came from war-torn countries. They do not understand why some Americans are so fearful that they feel they need to buy weapons, these refugees, the men, women who brought their families here to escape the violence of war. Most Americans are woefully ignorant of the consequences of war and what these weapons can do, so I urge this committee and the full Legislature to support this prohibition of the bump stocks. Thank you. [LB780]

SENATOR EBKE: Thank you for being here. Any questions? I see none. Thank you for being here today. [LB780]

RON MEYER: Thank you. [LB780]

SENATOR EBKE: Next proponent. I see no one making the move. Do we have any opponents? If you're speaking in opposition to the bill, move towards the front, to the on-deck chairs, please. [LB780]

BRIAN GOSCH: Good afternoon, Madam Chair and members of the Judiciary Committee. My name is Brian Gosch, B-r-i-a-n G-o-s-c-h. I'm a lawyer and registered lobbyist for the National Rifle Association. I'm here today in opposition of LB780, and it's my understanding right now the suppressor portion is still in the bill, Madam Chair, so I...may I testify about that and why I would like that out, with your permission? [LB780]

SENATOR EBKE: Well, the bill...okay. The original language has the suppressor language in it. The amendment doesn't. [LB780]

BRIAN GOSCH: Okay. [LB780]

SENATOR EBKE: So you're opposing that one. [LB780]

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

Judiciary Committee
January 25, 2018

BRIAN GOSCH: So of course we support that without the suppressors because it's often referred to as silencers but it's kind of a misnomer because it doesn't actually silence the firearm. It just reduces the noise level by about 20-35 decibels. That in most cases gets the noise level below the 140 decibel limit which causes irreparable hearing damage, tinnitus, and other hearing problems. It can be used for hunting purposes, training purposes. It's been a bipartisan effort nationwide. Forty-two states allow the use and possession of suppressors. Forty of those states also allow suppressors to be used for hunting. Using them for hunting can replace ear muffs or ear buds. That allows the hunters to be more aware of their surroundings, hear people moving, and be able to hunt more safely. So we, of course, support removing suppressors from this bill. As far as the second component of this bill regarding trigger-activated devices, sometimes these are referred to as bump stocks, and so in this case President Obama during his administration had twice, at least twice, authorized the sale of bump stocks. The language in this particular bill, LB780, has some concern for us because of the broad nature that it may be interpreted. And so a normal, usual use of trigger-actuated devices would be to modify a trigger for competition shooting purposes and--our concern--that list language as written may affect the normal and reasonable use in that sense. Also, for people with disabilities who have a physical impairment who need some assistance with actuating that trigger, normal and reasonable modifications of triggers are sometimes used to help them with their sporting, shooting, or hunting activities. So with that, Madam Chair and members of the committee, I would stand by for questions. Thank you. [LB780]

SENATOR EBKE: Senator Krist. [LB780]

SENATOR KRIST: So the reason that I made it very clear at the beginning of this that the amendment replaced the green copy was to make sure that we...that everyone understood that the silencer/suppressor, whatever terminology you want to use, is out of the bill. That's what's being offered, so it's kind of tough having a hearing where you're talking about the green copy that you've studied and there's already been a change, but that's the change. So we would appreciate, in the interest of time, we don't need to hear that testimony again. We got it. We understand that. But for a question for you, sir, you are...you're representing the NRA. [LB780]

BRIAN GOSCH: Correct. [LB780]

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

Judiciary Committee
January 25, 2018

SENATOR KRIST: So what we see here is the PowerPost, Washington Post, whatever, saying that the NRA believes that devices designed to allow semi-automatic weapons to function like fully automatic weapons "should be subject to additional regulations," and then their statement is within. And as far as reference to presidential prerogative and/or any other: The White House Press Secretary Sarah Huckabee Sanders welcomed the NRA's position, which is the one I just read, and said President Trump wants to be part of a conversation on cracking down on bump stocks. We're open to having a conversation, Sanders said during Thursday's White House press conference. We think we should have that conversation, and we should be part of it moving forward. So would you like to comment on either the NRA's position and/or the presidential position currently? [LB780]

BRIAN GOSCH: Sure. Thank you, Senator Krist. I can't comment on the President's position, of course, but I can comment on the NRA's. So previous to the quote you read from the statement was also the quote that the NRA is calling on the Bureau of Alcohol, Tobacco, Firearms and Explosives to immediately review whether these devices comply with federal law. So that was the NRA position. We don't support bump stock bans. We support the ATF doing their job. So they're in charge of that. They should review that and determine if that is in compliance with federal law. And we think that's the appropriate place to do it and not necessarily in the state legislatures. [LB780]

SENATOR KRIST: Okay, so my opinion on that matter would be, as a state legislator, if I waited for ICE to take all the action they needed to with immigration and I waited for the federal government to tell us we could use CBD oils and I waited and I waited and I waited, the state of Nebraska would not be acting appropriately. So I do think it's a prerogative of State Legislatures to review what's good within the state of Nebraska. And I think that the statement that was made earlier is basically saying we're going to wait for the federal government to tell us what to do and I don't think that's necessarily appropriate, so, but anyway... [LB780]

BRIAN GOSCH: Thank you, Senator Krist, and fair enough, and my focus on this legislation is also the nature of the language, the potential for broad interpretation, how it may affect competition shooting and helping people with disabilities and things like that. Our position

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

Judiciary Committee
January 25, 2018

would be you don't want to...we wouldn't like to see that ruled out so that it could still be used for those purposes as well. [LB780]

SENATOR KRIST: Have you brought your alternative language or your concerns to Senator Pansing Brooks? [LB780]

BRIAN GOSCH: I have not, nor did I see her amendment that's being offered, so I don't know... [LB780]

SENATOR KRIST: Okay, well, again, it's precarious when we have a green copy that has an amendment to it. [LB780]

BRIAN GOSCH: Right. [LB780]

SENATOR KRIST: But I think she'd appreciate any conversation. She's a pretty understanding lady. [LB780]

BRIAN GOSCH: Certainly. [LB780]

SENATOR KRIST: She can deal with the objections, so I hope that you do that. Thank you. [LB780]

BRIAN GOSCH: Thank you, Senator. [LB780]

SENATOR EBKE: Other questions? Senator Morfeld. Hang on. Yeah. [LB780]

SENATOR MORFELD: So trying to follow what's going on here, so I thought I heard at the beginning of your statement, though, that if the silencers are taken off, you don't have any objection to the legislation, but you would prefer that the bump stock issue be dealt with on the...by the ATF. I just want to understand your position fully. [LB780]

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

Judiciary Committee
January 25, 2018

BRIAN GOSCH: Sure. No problem. Thank you, Senator Morfeld. So, yeah, we would still object to the legislation. We don't support bump stock bans. [LB780]

SENATOR MORFELD: Okay. I misheard you then. Okay. Thank you. [LB780]

BRIAN GOSCH: All right. Thank you. [LB780]

SENATOR EBKE: Anything else? Thanks for being here. Next opponent. [LB780]

MATT PERSON: Hi. I'm Matt Person, P-e-r-s-o-n. I own a suppressor manufacturer company and do so in York, Nebraska. I won't speak on the suppressors but I will say that I also do research for the military through the SBIR program and what you're possibly doing here is by...the rate of fire is not changed with bump stock. It's just pulling the trigger faster than you might be able to with your finger alone. But I do research such that it could actually increase the rate of fire on a weapons system. And you would...this would be banning me from doing my research in the state of Nebraska. So if, unless you intend to keep me from doing business in Nebraska, I encourage you to reject this. [LB780]

SENATOR EBKE: Okay. Thank you. Any...Senator Morfeld. [LB780]

SENATOR MORFELD: If we provide a research exception, would you be in favor of the bill then? [LB780]

MATT PERSON: Certainly not. [LB780]

SENATOR MORFELD: Okay. [LB780]

MATT PERSON: I mean it's just another... [LB780]

SENATOR MORFELD: That's not a great bargaining position on your part but, okay, (inaudible). [LB780]

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

Judiciary Committee
January 25, 2018

MATT PERSON: It's just another step closer in my opinion. [LB780]

SENATOR MORFELD: Okay. Thank you. [LB780]

SENATOR EBKE: Any other questions? Okay. Thanks. [LB780]

MATT PERSON: Thank you. [LB780]

SENATOR EBKE: And given the number of people we have testifying in opposition, it appears, if you don't take up all the time, that's okay. (Laughter) [LB780]

PATRICIA HARROLD: Yeah. I've edited. [LB780]

SENATOR EBKE: (Laugh) Yeah, that's fine. [LB780]

PATRICIA HARROLD: Good afternoon. My name is Patricia Harrold, P-a-t-r-i-c-i-a H-a-r-r-o-l-d, and today I'm speaking on behalf of the members of the Nebraska Firearms Owners Association. Our members fundamentally oppose this bill on the grounds that legislation should serve an achievable purpose that serves the common good, and we do not believe that this bill with the amendment even would accomplish that. We also feel that in some ways it's an attempt to build some political clout or gain some sense of achievement with relation to addressing a very serious issue, which is violence and crime and murder and mass murders. But feel-good legislation doesn't result in any tangible results. We're also concerned or curious why we have not banned pressure cookers. We haven't made illegal vehicles that can dramatically exceed all legal speed limits. And are we going to ban belt loops and thumbs and individuals with a mastery of marksmanship that can achieve the same rate of fire without the accessory? We oppose this banning of bump fire and accelerating accessories because these tools simply provide another means for performing literally the same rate of fire on semiautomatic firearms. All you need to do is do a YouTube search and you can see some of these exceptional marksmen who can accomplish the same rate of fire with a semiautomatic rifle. We are also concerned as members that a ban on one accessory opens the door to banning other accessories that are used to facilitate the use and safe handling of firearms, especially for people with disabilities such as arthritis and

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

Judiciary Committee
January 25, 2018

other issues where the handling of a firearm is difficult because they're losing an appendage or that kind of thing. I appreciate any questions. [LB780]

SENATOR EBKE: Okay, thank you, Ms. Harrold. Senator Morfeld. [LB780]

SENATOR MORFELD: Thank you for testifying today. Can you provide me an instance where a pressure cooker killed 50 people and injured 489 people within the course of 30 minutes? [LB780]

PATRICIA HARROLD: Well, the pressure cooker example comes from the Boston Marathon bombing. In my work... [LB780]

SENATOR MORFELD: And how many people did it kill? [LB780]

PATRICIA HARROLD: I don't have that right off the top of my head. [LB780]

SENATOR MORFELD: Probably not 50... [LB780]

PATRICIA HARROLD: No. [LB780]

SENATOR MORFELD: ...and injuring 480 (inaudible). [LB780]

PATRICIA HARROLD: However, the potential is. So given my role in my previous job in the Air Force, which was against the global war on terror and the use of pressure cookers in the Middle East, they were quite successful in killing hundreds of people. [LB780]

SENATOR MORFELD: At one time in 30 minutes? [LB780]

PATRICIA HARROLD: At a market in the Middle East, in Iraq, yes. [LB780]

SENATOR MORFELD: Fifty people, 489 injured? [LB780]

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

Judiciary Committee
January 25, 2018

PATRICIA HARROLD: It was like close to 100 people and many injuries and there were multiple, multiple, two or three pressure cookers involved, so not just one, but that was achieved and can be achieved. It's just all depending on how successful that particular person might be in setting that up in a crowded location. [LB780]

SENATOR MORFELD: Okay. If you can send me that example, I'd be interested in seeing that. [LB780]

PATRICIA HARROLD: I would, however, that's some information I'm not longer privy to because I no longer work in that role. [LB780]

SENATOR MORFELD: Okay, thank you. [LB780]

SENATOR EBKE: Other questions? Thank you for being here. [LB780]

PATRICIA HARROLD: Thank you. [LB780]

SENATOR EBKE: Next opponent. [LB780]

ROD MOELLER: Chairman Ebke, members of the Judiciary, my name is Rod Moeller, R-o-d M-o-e-l-l-e-r. I'm here on behalf of the Nebraska Firearms Owners Association and I'm...we are strongly opposed to this bill. I was prepared mostly to talk about suppressors. I don't know that I...don't know if I really trust that an amendment is going to be adopted until it's actually done, but I'll respect the request to not talk about suppressors. The claim of firing at a rate of ten times a normal semiautomatic is false. If you take a look at videos of Jerry Miculek, you will see competitions between him with a regular semiautomatic rifle and people with a bump-fire stock, and more often than not he wins. He's a great competition, well-known competition shooter. He's been in Nebraska a few times out at Grand Island for some three-gun, multigun competitions. Bump fire is actually a technique, not a product. You can ban the product of a bump-fire stock if you like, but I don't know if you've seen the video that we recently produced that demonstrates the difference between the technique on a regular, standard semiautomatic rifle and that of a bump-fire stock, but you get a similar rate. But of them are kind of cumbersome to use, takes

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

Judiciary Committee
January 25, 2018

some time to develop that technique and become really proficient at it. There is a difference also, and I didn't write down the numbers that the senator mentioned for rate of fire, but I want to call attention to the difference between a rate of fire and sustained fire. We're generally talking about magazines that hold 20, 30, or 40 rounds, and once you've fired however many rounds are in that magazine, you're no longer firing the weapon, then you have to replace that magazine. So you're probably not going to be able to take...you're probably not going to be able to fire off 700 rounds in a minute even if briefly it could fire at that rate. The sustained rate is going to be considerably less because of the necessity to change magazines. We're particularly concerned about the language that was introduced here because it would affect or apply to anyone, most anyone who has altered the trigger in a production firearm, whether it be a rifle or a pistol. Anybody who is in competition generally will do some trigger work in order to make it easier to compete in whatever level of competition they're using. Sometimes it's common with carry guns, duty guns, whatever, because honestly triggers are an area that manufacturers generally are a little deficient in. Sometimes, to save a few bucks, they put a real crappy trigger in there, so triggers and sights are the two things that are most commonly replaced on a handgun. The same with a rifle, sometimes you get a crappy trigger and, you know, for \$100 or less you might be able to get a good, quality trigger to make it better for your specific use. I will respond to any question.

[LB780]

SENATOR EBKE: Questions for Mr. Moeller? Senator Chambers. [LB780]

ROD MOELLER: Yes, sir. [LB780]

SENATOR CHAMBERS: We've encountered each other on a number of occasions on these bills, correct? [LB780]

ROD MOELLER: I do remember a few exchanges with you, yes, sir. [LB780]

SENATOR CHAMBERS: And I've never let you go without asking you one, at least one question, correct, to date? [LB780]

ROD MOELLER: Usually, yes. [LB780]

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

Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: How do you feel? [LB780]

ROD MOELLER: I feel great. Thank you. [LB780]

SENATOR CHAMBERS: Me too. [LB780]

ROD MOELLER: How do you feel, Senator? [LB780]

SENATOR CHAMBERS: Fine, thank you. [LB780]

SENATOR EBKE: Any other questions? Okay. Thank you. Next opponent. Go right ahead.
[LB780]

GREGG LANIK: My name is Gregg Lanik, G-r-e-g-g L-a-n-i-k. Senators, I am here today to oppose LB780. Let me quote for you from our State Constitution, which I believe you've all sworn to uphold and defend. Article I, Section 1 in part states, "...the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof." LB780 proposes to prohibit manufacture, import, transfer, and possession of multiburst trigger activators. The silencers have been removed, so I won't go into that. LB780 should not move beyond this committee simply because it proposes to restrict activities protected under Article I, Section 1 of the State Constitution. I should be able to conclude my arguments solely on those grounds, however, since there are some here that would disregard the sanctity of the constitution, I will continue. LB780 wording is vague and unenforceable. It provides no enforceable definition for what constitutes a multiburst trigger activator. Is a rubber band considered on? If I'm in possession of a rubber band and a firearm, will I be in violation of this law? Is a finger a multiburst trigger activator? Where do you draw the line? Will the state compensate owners of these accessories or is this going to be an example of the state confiscating private property without compensation? There has been no rash of crimes in Nebraska using these firearm accessories necessitating the passage of LB780. It is an attempt at gun control by a thousand cuts. In conclusion, if it is the purpose of those promoting LB780 to discourage these firearm accessories from being used in the commission of

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

Judiciary Committee
January 25, 2018

crimes, rather than simply infringing on the rights of law-abiding citizens, I would recommend and support making it an additional charge for using them in the commission of a crime, thus not treading on the rights of law-abiding citizens. Thank you. [LB780]

SENATOR EBKE: Thank you. Any questions? Senator Chambers. [LB780]

SENATOR CHAMBERS: Do you really think that a court would say that a finger violates the law or you were just making a point? [LB780]

GREGG LANIK: No, sir, a finger can be used in doing the bump type of firing, so it doesn't take an actual device to achieve what you're trying to outlaw. [LB780]

SENATOR CHAMBERS: What I'm asking you, do you believe a court would rule that a finger violates the law? [LB780]

GREGG LANIK: No. What I'm implying is that it's an unenforceable and rather ridiculous law and so it was sarcasm on my part. [LB780]

SENATOR CHAMBERS: In order to speak in general terms, are you contending that only when a weapon has been used in an unlawful manner itself or to harm somebody, that's the only time it should be banned? [LB780]

GREGG LANIK: Well, my contention is according to our part of state constitution recreational use of firearms is protected under the constitution. [LB780]

SENATOR CHAMBERS: Has a machine gun ever been used in Nebraska, to your actual knowledge, to kill anybody? [LB780]

GREGG LANIK: Not to my knowledge, no. [LB780]

SENATOR CHAMBERS: So then the state shouldn't be able to ban machine guns, should it? [LB780]

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

Judiciary Committee
January 25, 2018

GREGG LANIK: The state does not ban machine guns. They are only regulated under the ATF. [LB780]

SENATOR CHAMBERS: In Nebraska you can't own a machine gun legally. I see people saying, yes, you can, but they can make that argument. [LB780]

GREGG LANIK: I haven't seen legislation to that, but I'm... [LB780]

SENATOR CHAMBERS: Do you happen to know what the Third Amendment to the constitution says? [LB780]

GREGG LANIK: I'm sorry, could you repeat? [LB780]

SENATOR CHAMBERS: Do you happen to know what the Third Amendment to the constitution says? [LB780]

GREGG LANIK: I don't have that with me right at the moment, no, sir. [LB780]

SENATOR CHAMBERS: Okay, that's all I have. Thank you. [LB780]

SENATOR EBKE: Next opponent. [LB780]

JERRY DEAN KARLOFF: Thank you. My name is Jerry Dean Karloff, J-e-r-r-y D-e-a-n K-a-r-l-o-f-f, and I mainly came here today to object to the silencer ban, which that's good that's off. But I am a national competitor with a high-powered rifle. I travel all over the nation to do it. I use a suppressor and I use highly modified triggers in all of my guns, and they're not modified to increase the rate of fire, but they are modified to make the gun shoot easier. It's easier for me to pull the trigger, to be accurate. Now I'm worried about the wording of this also that it does not cover...I'm worried that it could cover those types of trigger modifications that I do to my firearms. And I think if you are looking at any type of a bill, it should be something with the cycling rate. If it has a cycling rate of a military machine gun, then, yes, you know, you...maybe...I'm not saying you should pass a law, but to do it for an accessory that can possibly

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

Judiciary Committee
January 25, 2018

increase the rate of fire, that covers...it's too broad and it might suck me into it when I'm completely innocent and have no interest in increasing my rate of fire at all. I do know it is legal to own a machine gun in Nebraska if you have a permit from the ATF. The permit takes a long time to get and they're quite expensive to buy, but it is legal, you can do that. It's the same thing as getting a permit for a silence from the ATF. You get a tax stamp. It costs \$200 and it takes maybe a year or so to get the permit, and then you can own it. So it is legal. I do not know of any crimes in Nebraska that have been committed with a machine gun, so, but like I said, I basically came here to object against the silencer ban, but I am worried about this bump stock ban because it's so vague. I think if you're going to ban something, you should ban like some type of a cyclic rate that an average person can induce. If an average person can make this shoot like a machine gun in the military, we don't want it. But that would be my opinion. I don't have much further because I was mainly here to talk about the silencers, so. [LB780]

SENATOR EBKE: Okay. Thank you. Questions? Senator Chambers. [LB780]

SENATOR CHAMBERS: I'm not sure if I understand what you're really saying. [LB780]

JERRY DEAN KARLOFF: Okay. [LB780]

SENATOR CHAMBERS: If...I understand you mentioning the language itself. [LB780]

JERRY DEAN KARLOFF: Yes. [LB780]

SENATOR CHAMBERS: But if what is commonly understood a bump stock to be, including by the NRA, you say that that should not be banned. That's what you're saying? [LB780]

JERRY DEAN KARLOFF: I'm saying that an accessory to a gun should not be banned. I think it should go by the cyclic rate of fire because there's so many different accessories you can put on a gun and maybe some of them could be misused, you know, however, and I'm afraid that, you know, for the average person to improve a weapon to compete with it could fall into that area when it's never intended to be that way or used that way, so. [LB780]

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

Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: Would you say the guy who used the weapons in Nevada was an ordinary person? [LB780]

JERRY DEAN KARLOFF: I think he was, yes. [LB780]

SENATOR CHAMBERS: And do you think that his use of the gun was okay? [LB780]

JERRY DEAN KARLOFF: I don't. However, so if the bump stock he used made the gun cycle like a military weapon to that rate, then it would fall under the cyclic rate that could be banned. [LB780]

SENATOR CHAMBERS: So you're really looking at the definitional language rather than... [LB780]

JERRY DEAN KARLOFF: Yes. [LB780]

SENATOR CHAMBERS: Okay. [LB780]

JERRY DEAN KARLOFF: Yes, yes. [LB780]

SENATOR CHAMBERS: Okay. [LB780]

JERRY DEAN KARLOFF: So if it's a high cyclic rate, like a military weapon, then I can understand maybe regulating it. [LB780]

SENATOR CHAMBERS: When I say okay, it doesn't mean I agree with you on the bill. [LB780]

JERRY DEAN KARLOFF: Okay. [LB780]

SENATOR CHAMBERS: But it's clear, I think, in the record now exactly what you were referring to. [LB780]

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

Judiciary Committee
January 25, 2018

JERRY DEAN KARLOFF: Sure, okay. [LB780]

SENATOR CHAMBERS: Okay. [LB780]

SENATOR EBKE: I wonder if you could help us understand some things with respect to modifying triggers. [LB780]

JERRY DEAN KARLOFF: Okay. [LB780]

SENATOR EBKE: What are some of the different ways that triggers can be modified? Why are they modified? Why are we...why is this a part of the...why is this a problem with the language? [LB780]

JERRY DEAN KARLOFF: Okay. So when you go to, say, Walmart or somewhere and buy a rifle, due to the lawsuits and the way the courts are now, companies like, say, Remington, Winchester, things like this, they have a very heavy trigger pull, it's very hard to pull so there's no accidental discharges, so it would leave them open to lawsuits, things like that. So basically it would be in the maybe seven-, eight-pound pull range, which is quite stiff, and so when we compete with them, we get them down in like the one-pound pull range. So basically what they do is they go in and they file the trigger mechanisms down and replace trigger springs in them so they pull easier. Now on handguns it's basically the same way. A handgun, if it's semiautomatic, or a rifle semiautomatic, when you release the trigger to go to pull it, again, it has to travel a certain amount out before it will recock to where you can pull it again. So what they'll do is they'll file the parts in the trigger so instead of maybe moving out a half an inch, maybe it moves out an eighth of an inch so you can pull it again quicker. And that's completely a competition thing but it could fall under the cyclic rate, which it will never fire close to what a military automatic weapon would fire, but with the vague wording of this it could suck that into it because if it's a short reset trigger, it could be cycled quicker than factory. So that's what...all of my competitions guns are set up with a short reset trigger and they're all set up with about a one- or two-pound trigger pull, so that's what I'm really worried about. But none of them have the cyclic rate of a military weapon, so that would be, you know, the gray area that could be worked on maybe inaudible). [LB780]

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

Judiciary Committee
January 25, 2018

SENATOR EBKE: Okay. Thank you, appreciate that. Senator Chambers. [LB780]

SENATOR CHAMBERS: This man knows what he's talking about. That's not to cheese up to you. I always hear that slogan "law-abiding American citizen." I'm not a gambler. You're a gambler if you bet on something the outcome of which is strictly left to chance. I will bet you \$10 to a nickel that the average law-abiding American who owns a gun would have no idea what you're talking about if they listened to your explanation. Do you think I'd win the bet or you'd win it? [LB780]

JERRY DEAN KARLOFF: I...most Americans I run into probably would understand me. Maybe I'd have to explain a little better. [LB780]

SENATOR CHAMBERS: Well, the ones you run into are in...do with guns what you do with them. The ordinary person who has a gun...let me not put words in your mouth. Maybe you really believe that. You think the ordinary person who has a gun would understand what you were saying? They might if you said it and described the movement of the trigger, the amount of movement, what eight pounds of pressure means. They might could process that. But do you think they have that knowledge right now, without you giving it to them? [LB780]

JERRY DEAN KARLOFF: (Shakes head no.) [LB780]

SENATOR CHAMBERS: Then we put it in another form, and it's not to say that you are above everybody else in intelligence, although I think you probably are because I know a lot of average Americans. Do you acknowledge that the competitive activities you engage in, the type of weapons that you use and that others may use in various types of competition, would be an area of specialized knowledge that an ordinary gun owner would not have? [LB780]

JERRY DEAN KARLOFF: Well, I've only been competing nationally for the last five years and up until then I was an ordinary gun owner and I did have that knowledge just for reading things on the Internet, reading magazines, things like that. [LB780]

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

Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: And how did you acquire that knowledge, if you don't mind me asking? [LB780]

JERRY DEAN KARLOFF: Basically reading things on the Internet, magazines, things like that. [LB780]

SENATOR CHAMBERS: And you think the average gun-owning American reads the Internet before buying a gun or after buying a gun? [LB780]

JERRY DEAN KARLOFF: I think a lot of them probably do. I know if I buy something I'm unfamiliar with, I go and I look at the Internet, I get the ratings on it. If I'm going to buy a new car, I go to the Internet, I get the ratings on it, so. [LB780]

SENATOR CHAMBERS: And you think you're not out of the ordinary when it comes to how... [LB780]

JERRY DEAN KARLOFF: Well, I hope I'm out of the ordinary. I don't want to be alone (inaudible). [LB780]

SENATOR CHAMBERS: You're hoping? Look, (singing) wishing and hoping and thinking and praying...I've had a little fun with you, but here's the point I'm trying to get to. When people take...they can take any type of implement. It can be used for harm or not for harm... [LB780]

JERRY DEAN KARLOFF: Yes. [LB780]

SENATOR CHAMBERS: ...and can do anything they want to with it. [LB780]

JERRY DEAN KARLOFF: Yes. [LB780]

SENATOR CHAMBERS: It can be a very dangerous weapon or a dangerous implement inherently which, if you don't know how to handle it, can cause damage to you or somebody else. [LB780]

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

Judiciary Committee
January 25, 2018

JERRY DEAN KARLOFF: Yes. [LB780]

SENATOR CHAMBERS: You can take guns and most of the people in my view who carry these guns don't have any specialized knowledge; they're not carrying the guns for purposes of competition. I know gun owners who carry them because they say they're scared that ISIS or Al-Qaeda might come into a bar where they are and that's why they want to carry guns. And when I made a response to a comment like that in a hearing similar to this, it went all over the country when Fox News got ahold of it. Are you afraid that you're going to run into somebody from ISIS when you go into a bar? [LB780]

JERRY DEAN KARLOFF: Not at all, no. [LB780]

SENATOR CHAMBERS: Okay. See, you're not an ordinary American because that's why they carry guns. So I'm through. Thank you for indulging me. [LB780]

JERRY DEAN KARLOFF: All right. [LB780]

SENATOR EBKE: Senator Halloran. [LB780]

SENATOR HALLORAN: Thank you, Chair. Thanks for your testimony. And just to play along with what Senator Chambers was saying, I understood everything he said. But if I tried to do it, I'd have to bring the gun back to him to fix it. Thank you. [LB780]

JERRY DEAN KARLOFF: Okay. Thank you. [LB780]

SENATOR EBKE: Thanks, um-hum. Next opponent. [LB780]

SHANE KEPLER: Good afternoon. Shane Kepler, S-h-a-n-e K-e-p-l-e-r. I'm here to be really kind of a strong opposition to the bill. I've hunted all my life. I am a national competitive shooter, as well. I shoot a firearm four, five, six times a week, and I was really obviously here to play down the suppressor part of the bill, but the bump stock I feel is poor language. If...everybody in this room wants to save lives, keep our family safe, keep people in our

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

Judiciary Committee
January 25, 2018

community safe. There's no disputing that. However, banning a bump stock isn't going to amount to a squirt of difference and the reason is, is because anybody with an average skill set can fire a firearm fast enough to have mass destruction. In reference to Senator Brooks's rate of fire with a bump stock, I would highly question her numbers. She said something to the fact ten times faster than a semiautomatic weapon. I would take that bet with anybody. Secondly, anybody that wants to cause harm, they're going to find a way. As somebody already brought up, pressure cookers, cars, whatever it may be, they're going to find them, they're going to steal them, they're going to manufacture them, so putting this into legislation isn't going to help at all. But what I really don't like is the language of it. It's so broad that it is going to eventually trickle down into the other things, altering trigger, as the last testimony stated that, you know, a lot of us do alter triggers. I do it all the time. We buy triggers that can be altered easily. They are safe. When we say alter, I want to make that clear it's not something that's illegal or unsafe. It is very safe. We do it because it causes the firearm or it makes the firearm become more accurate and it also can make it function a little bit better. In regards to pistols, you can shorten the reset on it and you can lighten the trigger weight on it which will make it fire a little bit faster. Is it going to fire 1,000 rounds a minute? Absolutely not. But it's the language like that that is going to make this bill become very unpopular. And again, I don't feel like it's going to, you know, save any lives down the road because people can...anybody that has any kind of skill set would probably be able to manufacture something like this. I remember when I was a kid there was one that was a crank that was made for a 10/22 that you could fire fast, very simple device, so putting this into legislation I don't believe is going to save any lives. So that's all I have to say. [LB780]

SENATOR EBKE: Thank you. Senator Chambers. [LB780]

SENATOR CHAMBERS: Just a word of advice which you can take or leave. When I was in the army and we had tripod-mounted 30-caliber machine guns, do you know what a T&E mechanism is for a machine gun? [LB780]

SHANE KEPLER: I do not. [LB780]

SENATOR CHAMBERS: It's traversing and elevation. It was a knob. You had one that would...there was a rod that you used to traverse or make it move from side to side. The elevating

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

Judiciary Committee
January 25, 2018

was to turn it to raise up or down. You didn't just take a machine gun and hold it and do it like this and you didn't run with it like John Wayne. And so many rounds could come out of that barrel that if you held it you'd get burned. [LB780]

SHANE KEPLER: Correct. [LB780]

SENATOR CHAMBERS: So what you're taught to do is to set your T&E mechanism in such a way that if you leaned into that weapon, then you would make it stationary and that's where you wanted it to be. If you wanted it over here, you would use the weight of your body to lean into it. You had to put some pressure and weight on that machine gun and then it was not that accurate. That's why you shot a lot of rounds and you didn't know precisely where any single round would go. You know what a tracer bullet is, don't you? [LB780]

SHANE KEPLER: Sure, absolutely. [LB780]

SENATOR CHAMBERS: What is it? What does it do, I mean? [LB780]

SHANE KEPLER: The tracer round? Tracer round is an indicator, so every so many rounds in like a belt-fed or a clip-fed firearm will have a trace that it burns an element that you can see in the daylight and nighttime, usually most often red, sometimes green, but it's an indicator so you know how many rounds you have left or where your rounds are going. [LB780]

SENATOR CHAMBERS: At Fort Leonard Wood, when they would...that's where we took basic training. They would invite the public in and they had what they called the terrible 60 seconds. And they would have 50-caliber machine guns, 30-caliber machine guns, BAR--Browning Automatic Rifle,... [LB780]

SHANE KEPLER: Right. [LB780]

SENATOR CHAMBERS: ...which was not really a rifle,... [LB780]

SHANE KEPLER: Right. [LB780]

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

Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: ...it like an automatic weapon except it was very, very long--and all of the bullets used were tracers and they would fire this at night and they were positioned in a semicircle, not so any of the weapons fired would hit anybody else but so that you've covered the area of fire. And when they gave the signal, all of those weapons cut loose and it looked like just a sea of red because of the tracers, so many of them out there. And then when they got through and they turned on the lights, smoke like the fog in London, and then the sergeant would say with all of that shooting, if a person had laid flat on the ground, not one of those rounds would hit that person. It looked impressive but you have to know how to direct fire for it to be effective. It's effective if it's likely to be able to hit the target, but none of that would work. There are a lot of things that people say which would make somebody who genuinely understands weapons laugh. A military person would never compare a rifle to a pressure cooker, would never say that a car could do the damage of a 30-caliber machine gun. Certainly, different devices can take life. A boulder could take somebody's life. But to compare a rock that could take somebody's life with a gun to make a point, makes no point at all. So maybe if you're talking... [LB780]

SHANE KEPLER: Isn't a life a life? [LB780]

SENATOR CHAMBERS: ...to laypeople, it means something to say you can modify any kind of device to kill. [LB780]

SHANE KEPLER: Absolutely. [LB780]

SENATOR CHAMBERS: When people who profess to know something make those kind of statements, what they say from that point on means nothing to me. [LB780]

SHANE KEPLER: So you're saying everything I said means nothing to you because I've mentioned the previous testimony of a pressure cooker? Is that what you're saying? [LB780]

SENATOR CHAMBERS: I'm telling you that when somebody equates a pressure cooker to these kind of weapons that we're talking about, it mean...right, it means nothing to me whatsoever. [LB780]

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

Judiciary Committee
January 25, 2018

SHANE KEPLER: We're not talking about weapons. We're talking about an accessory that goes on a gun, correct? [LB780]

SENATOR CHAMBERS: Well, it means nothing to me if that makes you understand the point I'm trying to get across. [LB780]

SHANE KEPLER: Okay. Well, I was just making a point too. There's lots of things. I mean we could...I could go on and on about statistics if you want to because I'm pretty versed in them. [LB780]

SENATOR CHAMBERS: But not here today because you're limited in the amount of time you could speak. [LB780]

SHANE KEPLER: Okay. [LB780]

SENATOR CHAMBERS: But we can have a conversation somewhere else sometime... [LB780]

SHANE KEPLER: Okay. [LB780]

SENATOR CHAMBERS: ...and I'll hear you out. But this is a serious discussion. [LB780]

SHANE KEPLER: Absolutely. [LB780]

SENATOR CHAMBERS: And I know a lot of people come in. I hear that all the time. I hear it on television when people are trying to defend guns and it's preposterous. So there are people who will courteously listen, but it evades the issue. I have not seen one incident where they have these multiple killings in schools, even the recent one in Tennessee, the 15-year-old kid did not go in there with a pressure cooker. He did not go in there with a pocket full of rocks. He did not go in there with a knife. He went in there with guns. And for people to pretend that guns are not what they are is preposterous. Now I'm one person, but I have a vote and I have a voice. [LB780]

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

Judiciary Committee
January 25, 2018

SHANE KEPLER: So am I. [LB780]

SENATOR CHAMBERS: And maybe you people who are the gun experts will take a little different approach. There was a man who sat where you're sitting and there were some explanations he gave that were very, very valuable and led to a person being able to understand the distinctions that can be made between weapons, how one might seem to be like another but what would really make a difference in terms...well, you heard him testify, the trigger pull, the rate of fire, the kinds of things that would be informative and move forward a discussion. If somebody took the transcript of what he said and read it slowly, they would come away with some knowledge that they didn't have before, not propaganda but knowledge about the implements that are being discussed. And that's the point I'm trying to make, and I probably didn't make it with you, but at least in the transcript that we have it would be clear what I was saying. But I will say this and I hope you and everybody else would understand it. A pressure cooker is not the equivalent of a gun. Now if we were talking about improvised explosive devices, then we could talk about a suitcase, a boot, anything in which you could put explosives or detonate. You can say there's a kind of equivalency based on the amount of explosive power it has, the amount of pressure that must be exerted on the gun powder inside the pipe bomb to get the explosive reacting that you want to send the shredded metal a certain distance, whether you want it to cover a large distance, be focused, and things like that, if you're having a serious discussion. [LB780]

SHANE KEPLER: I don't think...you must have misunderstood me, Senator Chambers, because I was making a reference that outlawing or banning an accessory on a firearm is not going to save lives because they can still use a firearm to kill people. I don't know if you were paying attention or not, but it's...I absolutely take, you know, this as serious discussion. So I don't know what you're getting at, but anyway, any other questions? [LB780]

SENATOR EBKE: Okay. [LB780]

SHANE KEPLER: Okay. Good enough. [LB780]

SENATOR EBKE: Thank you. Next opponent. [LB780]

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

Judiciary Committee
January 25, 2018

CLIFFORD LEFFINGWELL: Good afternoon. My name is...I'll give you my formal name for the record: Dr. Clifford Leffingwell, that's C-l-i-f-f-o-r-d L-e-f-f-i-n-g-w-e-l-l. Most people know me by "Trey." If you want to buy me coffee later on, that's what you need to call me in the street. I'm here to testify on my own behalf in opposing this bill. And although for the record I am a board member of the Nebraska Firearms Owners Association, I am a longtime firearms instructor in the state of Nebraska, longtime hunter, 30-plus year member of the NRA, yada yada yada. Initially I did feel like I wanted to testify today, but I wanted to make some things clear for the record. We do not know for certain that a bump-fire stock or a bump-fire mechanism was used in the Las Vegas Massacre. Let me repeat that. We do not know that a bump-fire stock or the technique was used in the massacre. What we do know, we've seen pictures on the Internet of a modern sporting rifle with, in this particular case, the brand Slide Fire stock on it. We've been shown pictures of the person that was suspected of doing this killing, and we know a whole bunch of other things. Now I'm not an attorney but many of you are, and I believe that you call that hearsay evidence or circumstantial evidence. Again, I've watched a lot of Matlock to get myself in trouble. That's as far as I'll go with that. Sadly, many politicians from both parties, even the National Rifle Association, stumbled all over themselves before the bodies were even cold at the morgue or their families have time to mourn these deaths, just like a lot of these tragedies, and want to do something to prevent violence. Tupac Shakur and Elvis could have been involved in this massacre. We don't know. It's a sad, tragic event. I abhor gun violence. I'm not a member of the Nebraskans Against Gun Violence, but I'm against gun violence. The point of this is I would ask that we step back and consider. Are we banning a device or an accessory as a feel-good piece of legislation which really accomplishes nothing? If nothing else, I would ask that we wait until we hear the facts of what happened in Las Vegas to at least...to me, that would be a conversation starter. But when the sheriff and the undersheriff of the Las Vegas Metropolitan Police Department can't have consistent stories, when the FBI can't have consistent stories, I think we're making a lot of stretch trying to create a new law for something we might not have a problem with. And finally, in all the years Slide Fire stock has been available, and the bump-fire technique for aeons, I challenge anyone in this room or nationally to show me a mass murder, a robbery, a killing where one of those devices has been used. Thank you. [LB780]

SENATOR EBKE: Thank you, Dr. Leffingwell. Senator Chambers. [LB780]

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Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: You said you're a doctor? [LB780]

CLIFFORD LEFFINGWELL: I'm a retired one, yes, sir. [LB780]

SENATOR CHAMBERS: A medical doctor or an academic doctor? [LB780]

CLIFFORD LEFFINGWELL: I was a dentist, endodontist. [LB780]

SENATOR CHAMBERS: Say it again? [LB780]

CLIFFORD LEFFINGWELL: An endodontist. [LB780]

SENATOR CHAMBERS: I must have a hearing impediment. I can't understand what you said.
[LB780]

CLIFFORD LEFFINGWELL: Endodontist, e-n-d-o... [LB780]

SENATOR CHAMBERS: Oh, okay. [LB780]

CLIFFORD LEFFINGWELL: Yes. [LB780]

SENATOR CHAMBERS: Okay. [LB780]

CLIFFORD LEFFINGWELL: If you need a root canal, I'd be happy to see you in the hall.
[LB780]

SENATOR CHAMBERS: Have you heard of copycat crimes? [LB780]

CLIFFORD LEFFINGWELL: Yes, sir. [LB780]

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Rough Draft

Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: Are you aware that there must be a first time for most things? Sometimes it may happen simultaneously so you won't say there was a first time, but there may be a first event when something is done which hadn't been done before. [LB780]

CLIFFORD LEFFINGWELL: Sure. [LB780]

SENATOR CHAMBERS: And people get an idea and then it begins to be done on a more regular basis. [LB780]

CLIFFORD LEFFINGWELL: Sure. [LB780]

SENATOR CHAMBERS: Now whether it was a bump stock as such, the weapon behaved in the way that a bump stock would. Most people never heard the term. Most people didn't know what it does. [LB780]

CLIFFORD LEFFINGWELL: Correct. [LB780]

SENATOR CHAMBERS: Those who mention the term don't know what it does, but you know what it does. [LB780]

CLIFFORD LEFFINGWELL: I do. [LB780]

SENATOR CHAMBERS: And there are people who will become aware of things from watching the Internet and they will do it. There are people who engaged in some of these mass shootings, like the white kid who went into that black church and he got information off the Internet, which you may reject and you'll say, well, he said that but he didn't really mean it, he didn't really do that. And, look, I'm not trying to ridicule you or what you're saying. But I know that there are situations where if information is not made available to the public, they are not going to independently investigate or try to discover it. But once it is known, then they will try to do it. I know guys personally--I don't like guns--and they became aware that a certain caliber of pistol is available and that's what they went to get. They didn't even know about it before. And sometimes they say they liked the way it looked. After they've got it, they like the way it feels. That's

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

craziness to me. So you're in a realm where you can deal in the speculative and say, until you prove that this type of firepower, the number of rounds fired in a given period of time may have been through the agency of a bump stock, maybe not. I don't need to split hairs like that. If there is something like that available to civilians, I would want to ban it. I don't have to see it actually done. I had never seen what they call a bazooka in real life until I was in the army. There were a lot of weapons I had never seen in my life. You know they...well, a bazooka is that tube.
[LB780]

CLIFFORD LEFFINGWELL: I know, sir. [LB780]

SENATOR CHAMBERS: They call it a rocket...I mean not a rocket launcher. That's the...but anyway, and it's...you put the projectile in and you fire it and as much power comes out of the back as goes out the front. And they explained that to us, but you know how they demonstrated it? They took a big pile of wooden boxes and the person firing the rocket launcher did it and it demolished all those boxes. And that did more to make the people who might use it understand how dangerous it was than all of the oral or written explanations could do. But if somebody once saw that, then it might be something they'd like to have if they could get their hands on it. I said all that to ask you a question. Are you saying that until it's been established conclusively that a bump stock device, by whatever term it might be called, should not be considered for banning until that determination had been made conclusively? Is that what you're saying? And if not, what exactly are you saying? [LB780]

CLIFFORD LEFFINGWELL: I would say, period, whether we find one was used or not, personally I'm against the idea of it. But to your question, I see it no more of an issue than putting 95,000 people in Memorial Stadium on Saturday afternoon and having a building that has 32 floors. Is that what we need to ban next, because there's just that much, if you want to go down that road of logic. I'm from south Texas. I grew up. We call that shooting fish in a barrel and that's exactly what that was. It was 30 minutes of shooting. It was an hour and a half before the SWAT team ever invaded the room. And again, we don't know how many shooters and we can play conspiracy theory all day long. The point is we're looking at an accessory and trying to establish. Do we do something now? It may not have even be involved, could have been

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

Judiciary Committee
January 25, 2018

something else, and the question is why. Did it really? Is it going to prevent any violence in the future? Hope I answered your question, sir. [LB780]

SENATOR CHAMBERS: Have you ever heard of a guy named, his last name was Whitman? [LB780]

CLIFFORD LEFFINGWELL: Yes, sir. I'm very familiar with Charles Whitman. [LB780]

SENATOR CHAMBERS: And he...what state was he in? [LB780]

CLIFFORD LEFFINGWELL: In the state of Texas, sir. [LB780]

SENATOR CHAMBERS: What city was he in? [LB780]

CLIFFORD LEFFINGWELL: Austin. [LB780]

SENATOR CHAMBERS: What campus was he on? [LB780]

CLIFFORD LEFFINGWELL: On the University of Texas. [LB780]

SENATOR CHAMBERS: How many people did he kill? [LB780]

CLIFFORD LEFFINGWELL: That I'm not certain right now, but I think it was over in the teens. [LB780]

SENATOR CHAMBERS: I was in New York when that happened and I heard it on the news. I was giving a speech, not about guns. I'll never forget that incident. And you may take offense at this. People in Texas have an attitude about guns... [LB780]

CLIFFORD LEFFINGWELL: Yes, sir. [LB780]

SENATOR CHAMBERS: ...which I would say is peculiar to Texas. [LB780]

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

Judiciary Committee
January 25, 2018

CLIFFORD LEFFINGWELL: Yes, sir. [LB780]

SENATOR CHAMBERS: So I would never take the attitude that people in Texas have toward guns and say that's the attitude of people around the country, or it ought to be the attitude. I think it is an attitude that is not desirable. [LB780]

CLIFFORD LEFFINGWELL: I'm unclear. Are you saying that I have an attitude that's undesirable? [LB780]

SENATOR CHAMBERS: Not you, I said Texas. [LB780]

CLIFFORD LEFFINGWELL: Oh, okay. Okay, I follow you. [LB780]

SENATOR CHAMBERS: You pointed out you're from Texas. [LB780]

CLIFFORD LEFFINGWELL: Yes, sir. Okay. [LB780]

SENATOR CHAMBERS: And I was indicating that Texas has a reputation. [LB780]

CLIFFORD LEFFINGWELL: Right. [LB780]

SENATOR CHAMBERS: And you might be so familiar with it you're unaware of it, it's just natural. [LB780]

CLIFFORD LEFFINGWELL: Right. I would make a point that it was a number of armed citizens and Ranger "Ray" Martinez who actually killed Charles Whitman, because you could carry guns on campus at the time. But that's another time and place, sir. [LB780]

SENATOR CHAMBERS: And because you're a thoughtful man, I want to mention something about circumstantial evidence. In the legal realm, circumstantial evidence has the same validity and impact as objective evidence. [LB780]

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

CLIFFORD LEFFINGWELL: Okay. [LB780]

SENATOR CHAMBERS: Without...well, I'm not going to go into all of that. But circumstantial evidence does not mean what it might seem in the mind of an ordinary person of speculation, guessing, and so forth. So if something is circumstantial, that doesn't mean it doesn't have validity. [LB780]

CLIFFORD LEFFINGWELL: As I said, I've watched enough Matlock to be trouble, so don't come hire me. [LB780]

SENATOR CHAMBERS: I caught that, but I wanted a chance to say what I said. [LB780]

CLIFFORD LEFFINGWELL: Yes, sir. [LB780]

SENATOR CHAMBERS: And I appreciate your coming. Thank you. [LB780]

CLIFFORD LEFFINGWELL: Thank you. [LB780]

SENATOR EBKE: Any other questions? Thank you for being here. [LB780]

CLIFFORD LEFFINGWELL: Thank you. [LB780]

SENATOR EBKE: How many more opponents do we have that wish to speak? Okay. Two? Okay. We're just trying to time things, so come on up. [LB780]

MATTHEW SCHINZING: Hi. I'm Matthew Schinzing, M-a-t-t-h-e-w S-c-h-i-n-z-i-n-g, and I'm here to testify because of this bill. It's frankly very disturbing. The whole reason I moved back to Nebraska, even though I was born and raised here, was because Nebraska allowed me the freedoms to own suppressors, to own (inaudible), to own short-barrel rifles, where at the time I moved back, I was in Iowa, those devices were not legal. I find it very disturbing that you choose to try and ban such items, which is the whole reason I moved to this state. In all honesty, bump stocks, most people use them as a range toy. That's unfortunate. But most people have never had

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

any experience with them. They are for sale at very big sporting outfitters across the state of Nebraska. I've seen them commonly for sale on headers. They are common devices. But these devices are difficult to use. Not a normal person can actually use them. Even I, a very accomplished competition shooter, have issues using them because I have too much weapon control, because this weapon system, in order to work with a bump stock, you are literally losing control of the weapon, not controlling recoil. You have to let it bounce back and then move it forward again with tension from your arm, and, again, less accurate and less effective as an overall weapon. But there are reasons for this just beyond, hey, I want to have fun and waste a bunch of ammo at the range. Personally, I have a friend who owns one and we use it at a range here in Nebraska for testing. We are specifically testing the metallurgy of these weapons--how well do they stand up, how do different treatments work--because he works for a company manufacturing guns in the state of Iowa. And we use these devices to specifically test how well are their prototypes working out, how well are these devices working. It's a simple stress test of a weapon. It's not what you would expect the normal consumer to have. But this allows you to only shoot 1,000 rounds, instead of 10,000 rounds, in order to test the metallurgy of your products. [LB780]

SENATOR EBKE: Thank you. Questions? I see none. Thank you. Further opponents? If there are any other opponents, please move to the front; if there's anybody testifying in a neutral position, please move to the front. Go right ahead. [LB780]

DAVE WILTSHIRE: My name is Dave Wiltshire, D-a-v-e W-i-l-t-s-h-i-r-e, and I just wanted to...this morning I had got on the Internet and basically I just want to quote...it was quoted pretty much word earlier, as well, but just says, "We, the people, grateful to Almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government, as the Constitution of the State of Nebraska." And Article I: "Statement of rights. All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes, and such rights shall not be denied or infringed by the state or any subdivision thereof. To secure these rights, and the protection of property, governments are instituted among people, deriving their just powers from the consent of the governed." And

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

Judiciary Committee
January 25, 2018

basically, you know, I've been a Nebraskan for 54 years and it's the first time I actually had searched for it. And I believe what I had pulled up, this is true. It is active, this wording in the constitution. Is this correct or not? [LB780]

SENATOR EBKE: Yes. [LB780]

DAVE WILTSHIRE: Yes? Okay. I just wanted to make sure because where, you know, you do get things off the Internet, as well. So basically I wasn't even going to come back up, or come up here, since it was pretty much worded earlier. But I just thought I would go with it again and see if it was actually, you know, what was true in our Constitution of Nebraska. So that's all I have to say. [LB780]

SENATOR EBKE: Okay. Thanks. Senator Chambers, question? [LB780]

DAVE WILTSHIRE: Yes, sir. [LB780]

SENATOR CHAMBERS: Why do you oppose this bill? [LB780]

DAVE WILTSHIRE: Well, basically what I oppose is, for the most part, is that by what our constitution says is that it would be infringing on people's rights in order, you know, for their recreational use or, you know, their protection, so basically, for the most part, that's it. [LB780]

SENATOR CHAMBERS: Without asking you for a technical definition or even a description, you're familiar that what has been referred to as the bump stock is what this bill addresses. Are you aware of that? [LB780]

DAVE WILTSHIRE: Um-hum, yes, sir. [LB780]

SENATOR CHAMBERS: Have you ever used a device like that? [LB780]

DAVE WILTSHIRE: No. [LB780]

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: What recreational use that's legitimate can you think of that it would be used for? [LB780]

DAVE WILTSHIRE: The bump stock? [LB780]

SENATOR CHAMBERS: Yeah. Would it be used for target practice out in the woods? [LB780]

DAVE WILTSHIRE: You know, I imagine people, if they find it, you know, as a recreational use, you know, and the joy of shooting, if they want to shoot at a target, they would use it as that, so. [LB780]

SENATOR CHAMBERS: Where would they place such a target in order to use a device like this? [LB780]

DAVE WILTSHIRE: I imagine someplace that would have a bay or with a safe backstop to it so that they're able to shoot it, operate it safely, or... [LB780]

SENATOR CHAMBERS: Do you think it would be a device that people use for hunting? [LB780]

DAVE WILTSHIRE: For hunting? [LB780]

SENATOR CHAMBERS: Do you know what hunting is? [LB780]

DAVE WILTSHIRE: I don't hunt, myself, so... [LB780]

SENATOR CHAMBERS: Do you know what hunting is though, at least, from hearsay? [LB780]

DAVE WILTSHIRE: Oh, yeah. I hunt for fish and that's what I do is, you know... [LB780]

SENATOR CHAMBERS: You hunt for fish? [LB780]

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

DAVE WILTSHIRE: I hunt for fish. People... [LB780]

SENATOR CHAMBERS: So you... [LB780]

DAVE WILTSHIRE: Other people sit there and wait but I hunt for fish, so. [LB780]

SENATOR CHAMBERS: So you shoot fish? [LB780]

DAVE WILTSHIRE: No. [LB780]

SENATOR CHAMBERS: That's how you get them? [LB780]

DAVE WILTSHIRE: No, you have...well, I mean, you can track them. [LB780]

SENATOR CHAMBERS: Oh, so how do you hunt for fish? Because I don't understand.
[LB780]

DAVE WILTSHIRE: Well, I go around and I'll try to find them instead of waiting (inaudible).
[LB780]

SENATOR CHAMBERS: Oh, but you catch...if you go and fish, you catch it. You don't get your
fish by shooting them. Or do you? [LB780]

DAVE WILTSHIRE: No. [LB780]

SENATOR CHAMBERS: Okay, I... [LB780]

DAVE WILTSHIRE: I don't hunt either. You know, years back I did, with my wife's uncle, try it
back in 1994. I went out with him and bird hunt a couple times and that was it, but now I have...
[LB780]

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: That thing that...not quarreling with anything, but the thing that caught my attention was when I thought I heard you say, "I hunt for fish." [LB780]

DAVE WILTSHIRE: I do, yeah. There's T-shirts that say that, I'd imagine, also. [LB780]

SENATOR CHAMBERS: But you mean you're looking for. You mean hunting in the sense of searching for them or looking for them? [LB780]

DAVE WILTSHIRE: Yeah, definitely so. [LB780]

SENATOR CHAMBERS: Okay. [LB780]

DAVE WILTSHIRE: Yeah. [LB780]

SENATOR CHAMBERS: Okay. [LB780]

DAVE WILTSHIRE: Yeah, yep. And I...yeah. [LB780]

SENATOR EBKE: Okay. Questions? Other questions? Thanks for being here today. [LB780]

DAVE WILTSHIRE: I woke everybody up. [LB780]

SENATOR EBKE: Yep. [LB780]

DAVE WILTSHIRE: Okay. [LB780]

SENATOR EBKE: Thanks. [LB780]

DAVE WILTSHIRE: Thank you. [LB780]

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

SENATOR EBKE: Other opponents? And again, if anybody else is going to speak on this bill, please move up to the on-deck chair; otherwise, I'm going to assume that we're done. Go ahead. [LB780]

CARLOS RODRIGUEZ-SIERRA: Hi there. My name is Carlos Rodriguez Sierra, C-a-r-l-o-s R-o-d-r-i-g-u-e-z, hyphen, S-i-e-r-r-a. I wasn't going to get up here and talk because I'm a terrible public speaker, but I couldn't help but listen to all the arguments and I just really feel like this is...proposing a bill like this is answering a question that no one asked. Bump-fire stocks are a recreational tool, but they're really just facilitating a motion in the workings of a firearm that are in an easier manner that are already...someone without a bump-fire stock are already capable of. So that is an absolute...I just feel like it's a waste of our time. Also, suppressors are...I'm a huge opponent of that portion of the bill. We use suppressors quite often, me and my father, when we do go out. And one shot of a firearm can equal 140 decibels which, by OSHA standards, can cause permanent, instantaneous hearing loss. So more than ridiculous, someone saying it's just a ridiculous accessory, it is definitely a health...it addresses a health issue that comes with shooting, the shooting sports. As far as bump-fire stocks, once we start regulating accessories, I think we're going down a slippery slope as far as our Second Amendment rights. That clause, that "shall not be...infringed," is something that I hold extremely dear. I plan on going to the Marine Corps OCS program and firing actual machine guns here soon. Senator Chambers, I appreciate your service as well. And that's all I got. [LB780]

SENATOR EBKE: Okay. [LB780]

SENATOR CHAMBERS: Actually, you don't have to because I only went in, when I did, and got out so I could go into school without getting drafted because I didn't want to get drafted so I did it. But I wasn't fighting for anybody's right to speak or go to school or anything else. At the time that I went, they were drafting people. So nobody has to thank me for service because if they asked me did I want to go overseas I said no. You want to kill somebody? No. You want to somebody to shoot at you? No. So I'm not the typical. I don't even tell people I'm a veteran because they put too much stuff. America deals in symbols and the symbols mean nothing. I look at how misty eyed... [LB780]

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

Judiciary Committee
January 25, 2018

CARLOS-RODRIGUEZ SIERRA: I remember your opposition to... [LB780]

SENATOR CHAMBERS: ...they get when they talk about the National Anthem. [LB780]

CARLOS RODRIGUEZ-SIERRA: Yes, sir. [LB780]

SENATOR CHAMBERS: I'm glad the players knelt. But here's what I'm going to ask you.
[LB780]

CARLOS RODRIGUEZ-SIERRA: Yes, sir. [LB780]

SENATOR CHAMBERS: What were you objecting to in this bill? [LB780]

CARLOS RODRIGUEZ-SIERRA: I'm objecting to any regulation of firearm accessories.
[LB780]

SENATOR CHAMBERS: If ATF said that this is going to come within a ban that they put in
place, you'd be against the ATF doing that, correct? [LB780]

CARLOS RODRIGUEZ SIERRA: Absolutely, yes. [LB780]

SENATOR CHAMBERS: And you're against saying that a person has to be a certain age to own
a pistol? [LB780]

CARLOS RODRIGUEZ SIERRA: No, absolutely not. [LB780]

SENATOR CHAMBERS: That's regulation. [LB780]

CARLOS RODRIGUEZ SIERRA: I think having age restrictions is not the same as sensible...as
the same as regulation. [LB780]

SENATOR CHAMBERS: Okay. That's all I would ask. Thank you. [LB780]

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

Judiciary Committee
January 25, 2018

CARLOS RODRIGUEZ-SIERRA: No problem. [LB780]

SENATOR EBKE: Any other questions? Okay, thanks. [LB780]

CARLOS RODRIGUEZ-SIERRA: Thank you. [LB780]

SENATOR EBKE: Any other opponents? Any neutral testimony? Senator Pansing Brooks, would you like to close? Guess that means yes. [LB780]

SENATOR PANSING BROOKS: I do. I am closing. Thank you to each of you for sitting here through all of this. I appreciate all the testifiers that came to give their impassioned pleas about why this is unnecessary. I want to say, first of all, that there was a man who came up and correctly quoted the Second Amendment, which is good. But as I said previously in my testimony, that all is not an unlimited right and the Supreme Court has ruled in numerous cases-- Heller, Miller--and conservative Justice Antonin Scalia has said not every gun in every place at every time. So the Supreme Court takes our Second Amendment, of course, and then rules how it is to be applied. There is no Second Amendment right to an accessory. I am not fighting about an ability to have a gun, any kind of gun. I'm talking about an accessory. And there is no Second Amendment right, nor has there ever been a Supreme Court case claiming that there is a Second Amendment right to an accessory. There's been ongoing talk about whether or not using the word "bump stock" is correct. That's why we used the word "multiburst activator" because that's more broadly described and defined by the ATF and by various other states. So the intent is not...I agree with them that "bump stock" is limiting. I purposefully defined it in the bill as a "multiburst activator," which would be broader. Further, there was discussion about the fact that my statistics on the bump stock being able to allow a shooter to go from 400 to 800 rounds per minute, the Slide Fire to allow 100 rounds in seven seconds. That all came from the information that you have before you from the national organization named Everytown...Everytown National (sic) Gun Safety--I'm getting that confused--Everytown for Gun Safety, and it's a national organization. So that's where that information is coming from. I didn't just make this up. So the other thing is that I believe the NRA had it right the first time when they said, yes, regulation does have to occur on this kind of device, this accessory. Again, it's not about a gun; it's about an accessory. So the most recent testifier said that this is answering a question that no one has

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

Judiciary Committee
January 25, 2018

asked, and I will tell you that I am asking the question. I believe that every parent connected to Orlando or to Kentucky or to Las Vegas or to Newtown is asking that question. What can we do about the gun violence in the United States? What should we do about this proliferation of mass shootings? And my answer is this is barely anything, but this is something that we can do. So he may not be asking that question. I am asking that question, I've had constituents asking that question, and I will continue to ask the question. I am happy to talk to the man who spoke very knowledgeably with Senator Chambers about the cyclic rate versus where...versus increasing the rate of fire. I think that's a reasonable discussion. I'm happy to have that. I would have been happy, as Senator Krist said, to have had anybody come speak to me about this. But instead we've had an onslaught of out-of-state e-mails coming in. So anyway, again, I'm answering this question and I am bringing this bill on behalf of every mother who has lost a child to gun violence. So thank you for listening. [LB780]

SENATOR EBKE: (Exhibit 1) Thank you, Senator Pansing Brooks. Any questions? We have one letter in opposition that came in for the record from Knox Williams of the American Suppressor Association--did we have any others? that was it?--and multiple others that weren't asked to be part of the record. This closes the hearing on LB780. Thank you. [LB780]

SENATOR PANSING BROOKS: Thank you. [LB780]

SENATOR EBKE: My bill is the next one and I will turn the Chair over to Senator Pansing Brooks. Let me just make note for those who might be watching and wondering what the plan of action is. As soon as we get done with LB849, we will take about a five-minute break. So, Senator Wayne, Senator Morfeld, Senator Blood, you'll be up after that. [LB849]

SENATOR PANSING BROOKS: Welcome, Senator Ebke. [LB849]

SENATOR EBKE: Thank you, Senator Pansing Brooks. Members of the committee, for the record, my name is Laura Ebke; that's E-b-k-e. I represent Legislative District 32. Thank you for the hearing today on LB849. Let me say first of all the subject matter of this bill is marginally about guns. What this is really about is property rights and the return of a person's property. So current law provides for a concealed handgun permitholder's firearm to be retained by law

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

enforcement or other emergency responders when the permitholder is being transported for a medical emergency and in other similar circumstances. This bill would clarify the process by which the permitholder's property could, and should, be returned to the permitholder or the permitholders lawful designee after the emergency has passed. So let me tell you what this bill does not do. The bill does not interfere with police custody of evidence relating to a criminal investigation. It does not interfere with police authority to seize firearms from criminals, in other words, from prohibited persons in possession or where the firearm can be characterized as proceeds from drug trafficking, etcetera. This bill only addresses a narrow set of circumstances where a handgun is taken at the scene from a permitholder for safety reasons and cannot immediately be returned. The Concealed Handgun Permit Act provides that a permitholder has an affirmative duty to disclose when he or she is carrying a firearm when officially contacted by law enforcement or another emergency responder. Current law gives law enforcement officers and emergency service personnel the discretionary authority to secure the permitholder's concealed handgun if they determine that doing so is necessary for the safety of any person present. Now under current law, law enforcement officials are directed to return the handgun at the conclusion of the contact if the officer determines that the permitholder is not a threat to the safety of any person present. Emergency services personnel are similarly directed to return the handgun to the permitholder at the scene if it is safe to do so. Now if the permitholder is transported to another location for treatment, the emergency responder is required to turn over the handgun to any peace officer. It is then the officer's responsibility to provide a receipt with information identifying the handgun. This is where our current law goes silent. Okay, there's no process set out in law for the return of the handgun that is secured at the scene and then retained by law enforcement after the permitholder is transported, for instance, to the hospital. This bill would provide a clear process for the return of a firearm secured by a peace officer or emergency service personnel under such circumstances. Under the provisions of LB849, the permitholder would submit a written request to the law enforcement agency for the return of his or her handgun. After receiving such written request, the agency would then have the authority to confirm that the emergency circumstances have passed that previously justified their keeping possession of the handgun. After confirming that the permitholder is now capable of possessing the handgun, the agency would return the firearm to the permitholder. This return would not require a new background check because under Nebraska law a concealed handgun permit is proof of a background check for purposes of lawfully receiving a handgun. Injury, death, or

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

Judiciary Committee
January 25, 2018

disease may deprive a permitholder of the capacity to safely possess a firearm, especially death, I think. But under such circumstances, the permitholder or their family still has a property right in the firearm, even if he or she cannot possess it anymore. It is not right for a family to lose the value of that property simply because the permitholder is no longer capable of possessing it in the case of death. For this reason, my bill also provides that the guardian, power of attorney, or other lawful designee of the permitholder may submit a written request for the return of the secured handgun. In order for that designee to take possession, the law enforcement agency would confirm that the designee holds either a valid concealed handgun permit or a firearm purchase certificate; in other words, just because they are family members doesn't mean that they automatically get the firearm. This is consistent with the policy already set by the Legislature on who may receive transfer of a handgun in our state. If the written request of the permitholder or designee is denied, the law enforcement agency would be required to provide a written response explaining the reasons for the agency's adverse action. The permitholder or designee would then be able to appeal to the district court for the county where the permitholder resides or the district court for the county where the law enforcement agency is located. This procedure for this...the procedure for this appeal would be governed by the Administrative Procedures Act. To be sure, this bill neither expands nor diminishes anyone's right to keep and bear arms. It is narrowly tailored to ensure the due process and property rights of current permitholders while maintaining public safety protections already in law. It also affords law enforcement a clear process for how they can handle property that comes into their possession. I introduced this bill because I heard about a gentleman in Bellevue who had an emergency medical condition that caused him to lose consciousness while in a retail store. He holds a valid concealed handgun permit, but while he was being treated and transported emergency personnel properly secured his handgun and turned it over to police. Unfortunately, the police department did not seem to have a clear process for the return of this firearm. And while this gentleman's medical recovery was rapid, the recovery of his property turned into a months-long affair. I think we owe it to our citizens and our local law enforcement agencies to provide some clarity here, and I would be happy to try to answer any questions. [LB849]

SENATOR PANSING BROOKS: Thank you, Senator Ebke. Any questions? Yes, Senator Krist. [LB849]

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

Judiciary Committee
January 25, 2018

SENATOR KRIST: Thank you, Vice Chair. This is...this bill deals with concealed carry and with handguns. [LB849]

SENATOR EBKE: Right. [LB849]

SENATOR KRIST: Are we doing the same, or is there a policy in place for rifles, anything other than a handgun? [LB849]

SENATOR EBKE: No, people wouldn't really be carrying rifles concealed. [LB849]

SENATOR KRIST: But if a police officer comes to your home and there is a safety issue and there's some other issue and guns are confiscated, is there a provision for those guns that are other than concealed carry they be returned to the rightful owner in a positive way? [LB849]

SENATOR EBKE: You, I don't know. It's not in this bill, obviously, This is very narrowly tailored in this instance. There may be some things out there that I don't know about though. [LB849]

SENATOR KRIST: Okay. I just wondered if... [LB849]

SENATOR EBKE: Yeah, that's a good point. [LB849]

SENATOR KRIST: ...if there was duplicity in terms of returning weapons... [LB849]

SENATOR EBKE: Yeah. [LB849]

SENATOR KRIST: ...and concealed carry is something completely different. I don't know if you'd researched that or not. [LB849]

SENATOR EBKE: Yeah. No, I haven't. [LB849]

SENATOR KRIST: So anyway, thank you. [LB849]

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

Judiciary Committee
January 25, 2018

SENATOR PANSING BROOKS: Go ahead. Yes, Senator Halloran. [LB849]

SENATOR HALLORAN: Thank you, Chair Pansing Brooks. Along the same line of Senator Krist's question, if it's an auto accident, for example,... [LB849]

SENATOR EBKE: Same thing. [LB849]

SENATOR HALLORAN: ...which is basically what you're...there could be a rifle or a shotgun in the trunk of the car... [LB849]

SENATOR EBKE: Sure, and so if we... [LB849]

SENATOR HALLORAN: ...and it's not immediately of danger to the emergency people, but... [LB849]

SENATOR EBKE: Sure. And I don't know what the...I mean obviously rifles, long guns are a little different beast in terms of your ability to receive transfer of them, you know, as opposed to handguns. So I don't know if that would affect the processes in place for law enforcement agencies or not. [LB849]

SENATOR HALLORAN: I see. Okay, thank you. [LB849]

SENATOR PANSING BROOKS: Senator Chambers. [LB849]

SENATOR CHAMBERS: I think most people who carry, who have long rifles, have longer brains, too, and they don't be carting them around where they're going to be in a traffic accident and somebody has to confiscate the rifle, so we're mostly dealing with those who carry the short guns or by people who have short tempers, short brains, but they're not necessarily short. [LB849]

SENATOR EBKE: Okay. [LB849]

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

Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: Okay. [LB849]

SENATOR EBKE: Not taking the bait. (Laughter) [LB849]

SENATOR PANSING BROOKS: Okay. Any other questions? Yes, Senator. [LB849]

SENATOR HALLORAN: Well, I guess, to expand on my question in a car accident, a lot of things happen to the car that could open a trunk up and the long rifle or the shotgun or short shotgun could be, you know, could have flown out of the vehicle, right? [LB849]

SENATOR EBKE: Um-hum. [LB849]

SENATOR HALLORAN: But this wouldn't apply. This couldn't be amended to apply to that, something. [LB849]

SENATOR EBKE: Well, I suppose it could be amended, you know, if there's not already a process in place, and I just don't know. [LB849]

SENATOR HALLORAN: Okay. [LB849]

SENATOR EBKE: We'll need to talk to legal counsel... [LB849]

SENATOR HALLORAN: Sure, that's fine. [LB849]

SENATOR EBKE: ...and have him take a look at it. [LB849]

SENATOR PANSING BROOKS: Thank you, Senator Ebke and Senator Halloran. Okay, let's go with the first proponent. And just so we have a feel, can you raise your hands how many are here to testify today? Thank you. Welcome. [LB849]

WILLIAM KLINE: Thank you. My name is William Kline, W-i-l-l-i-a-m, Kline, K-l-i-n-e. I am the unfortunate individual that Senator Ebke is referring to. I did not know I was going to speak

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

Judiciary Committee
January 25, 2018

today, so if I make any missteps, please forgive me ahead of time. I'm speaking from personal experience, recent personal experience. It began on November 1. December, a year ago, I was diagnosed as being diabetic and had been reasonably well regulating everything. I had a hypoglycemic seizure at Walmart. The officer, and that was on November 1, the officer did his duty, took my firearm, secured it, absolutely should have done that. On November 2...by the way, I was released later that very same day. it was something they gave me some saline solution and I was back on top of the world. I went to retrieve my handgun the very next morning, on November 2, and they told me that the only individual able to release my firearm to me would not be available till the following Monday, which was November 6. Only one person in that whole building had the authority to give me my firearm back. I was told on November 6 that I would have to wait for their process to go through. I asked how long would this process take. They said, oh, it could be 5 days, 10 days, 20 days, 30 days, even 50 days. And I asked him at that time, well, what do I do to protect myself in the meantime? And the captain said, well, if you don't have another firearm you'll just have to wait. I thought that was a very cavalier response but, you know, that was his response. So it was November 6...I'm sorry, January 6, two months later, that I receive a certified letter in the mail saying, hey, you can come pick up your gun but you can only do it by appointment. That was on the 6th. They said I had 40 days to take my firearm back or they would destroy it. So it took from January 6 to January 11 for them to set the appointment for me. Then they canceled it because of the snow storm. On the next day I was able to pick up my handgun, 73 days after this began. The three things that I was told that I had to have was a picture ID, a Nebraska purchase permit, and proof of ownership. Fortunately, I know the folks who I bought the gun from and they were able to send me a copy of my receipt because I don't keep receipts for that long. So--and I will finish it up real fast--I picked it up. He refused to take my concealed handgun permit, which in state law does state that it serves in lieu of a purchase permit. He said, well, if you need to get another purchase permit, you can go down to the Sarpy County Sheriff's Office. I had my permit, fortunately--it had not expired--so I gave that to him instead. This violates my Fourth Amendment against unreasonable search and seizure because, you know, he called it a transfer. You can call it by anything else you...you know, a rose by anything else you want, it would still be a rose. It was seized from me and there was no due process because there was, in my opinion, no time table, which is a part of due process. I welcome any question. [LB849]

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

Judiciary Committee
January 25, 2018

SENATOR PANSING BROOKS: Thank you, Mr. Kline. Does anyone have any questions for Mr. Kline? Thank you for coming today. [LB849]

WILLIAM KLINE: Thank you. [LB849]

SENATOR PANSING BROOKS: Next proponent. [LB849]

ROD MOELLER: Good afternoon. Again, my name is Rod Moeller, R-o-d M-o-e-l-l-e-r. I'm speaking on behalf of the Nebraska Firearms Owners Association. We're in support of this bill. We have seen numerous issues that have been reported to us by our members and nonmembers about situations where law enforcement has taken possession of a member's firearms. Sometimes it's a CHP holder; sometimes it's not. Sometimes it's a handgun; sometimes it's not. And they should be able to get their property back and they have been jerked around by, quote, process or some bureaucracy has whatever rules in place that make it very difficult. We've had a number of bills that were introduced in the past specifically to address some of the issues that Omaha residents have had, because nobody wants to take accountability, nobody wants to be the one that, quote, returned a firearm to somebody without a judge's court order. And if it wasn't a criminal case, there was no judge involved. So it makes it particularly difficult, in some cases needing to retain an attorney to go through a process and we end up spending more on an attorney than what the value of the firearm was. This is a much more narrow approach but it's an important step. This is very narrowly focused to concealed handgun permit holders because it is a modification to the Concealed Handgun Permit Act, so of course it would not apply to anyone outside of that CHP process that's defend in the CHP Act, so it wouldn't apply to the person that had the long guns. But I think that it's important to illustrate that we do have a need to ensure that there is a process for law enforcement to follow because they fear giving property back to somebody when that property is a firearm, even when they can show that, you know, they are the legal owner and there is no prohibiting factor for that individual. I think it's important to bring clarity to that process. And even though I don't want to hold up this bill, I do appreciate Senator Krist's question and would like to see us at some point try to address, not as an amendment to this bill but in another attempt, for broader restoration of firearms property. I'm open to any questions. [LB849]

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

Judiciary Committee
January 25, 2018

SENATOR PANSING BROOKS: Thank you, Mr. Moeller. Any questions? Thank you for coming today. Next proponent. [LB849]

_____: I don't want to go again. Thank you. (Inaudible.) [LB849]

SENATOR PANSING BROOKS: Okay. Well, you're welcome to come. [LB849]

_____: Thank you but (inaudible). [LB849]

SENATOR PANSING BROOKS: Okay, any other proponents? Okay, what about opponents? And if people could come up and if anybody is going to speak more as an opponent or in the neutral, there are two open chairs. We're trying to just keep this moving along. Thank you. Welcome. [LB849]

AMANDA GAILEY: Hi. My name is Amanda Gailey, A-m-a-n-d-a G-a-i-l-e-y, and I'm testifying on behalf of Nebraskans Against Gun Violence. I disagree with the premise of this bill. I don't think we're hearing broader guidelines on how to return property in general. Dogs might be seized when someone is having a medical event, but this bill doesn't address how to adequately give someone their dog back. It specifically focuses on guns and, you know, our primary concern are those cases when law enforcement makes contact with a family during a domestic violence dispute. A gun could be seized by law enforcement at that time and then later, if the victim is uncooperative or other things occur, there would be perhaps nothing on the record to prevent law enforcement from at that moment returning the gun. And the bill as written gives law enforcement no mechanism to check to see whether or not there are charges outstanding or whether some kind of violent mental health crisis has passed before giving that person their firearm back. And, in fact, it empowers a friend of a potential domestic abuser to get the gun back on behalf of his abusive acquaintance. And I had been planning to speak to the committee today about my friend, Kate Ranta, whose husband, a formerly upstanding citizen, intimidated and threatened her for years with his firearms until she finally left him with their young son, at which point he stormed into her apartment and shot her and her father in front of the four-year-old boy. I had hoped that an example of one of the countless ways in which supposedly upstanding citizens terrorize women and children with firearms would be persuasive that we

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

Judiciary Committee
January 25, 2018

really don't need legislation helping to get these men their firearms back. Btu I'm frankly disheartened by the entire bill and process here because it truly seems unfathomable to me that someone charged with creating policy to better our society would look out at a country with tens of thousands of firearm fatalities a year, that just on Tuesday witnessed its 11th school shooting of the young year, and even as those parents prepare their children for the grave, would conclude that what is needed is legislation making it easier for people who had their guns confiscated by law enforcement during a crisis to get them back. This is not legislation designed to improve our world. It is legislation designed to serve an ideology blind to the world's problems, and I'm hopeful that others on the committee will see it as such. Thank you. [LB849]

SENATOR PANSING BROOKS: Thank you, Ms. Gailey. Any questions for Ms. Gailey? Thank you for coming. [LB849]

AMANDA GAILEY: Thanks. [LB849]

SENATOR PANSING BROOKS: Any further opponents? Anybody in the neutral? Okay, Senator Ebke, would you like to close? [LB849]

SENATOR EBKE: Thank you, Senator Pansing Brooks. Members of the committee, I just want to clarify a few things here. This really has nothing to do with a crisis situation or a violent situation occurring and the police have confiscated a gun. What this has to do with is a situation where either in an interaction with police officers, a traffic stop, for instance, that the officer has secured the weapon, or in a...in the situation where you have somebody who has had a medical emergency, a car accident or whatever, and the weapon has been secured, that they have decided...the police officers have taken possession of the firearm. That's all it has to do with. It's a process by which to return a firearm. By definition, and we can...you know, this is something that we can change, but by definition a concealed handgun permit provides for a...provides for the authority for transfer of firearms without further inquiry or inquiry into the past, so you have to renew your firearm owner's or your concealed handgun permit from time to time. I'd be happy to take any questions. [LB849]

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

Judiciary Committee
January 25, 2018

SENATOR PANSING BROOKS: Any questions of Senator Ebke? No? Thank you. And that closes hearing number LB849. We're going to now take a quick five-minute . Thank you.
[LB849]

BREAK

SENATOR EBKE: Okay. Welcome back. We're ready to start on LB729. Senator Wayne,...
[LB729]

SENATOR WAYNE: Thank you. [LB729]

SENATOR EBKE: ...welcome to the Judiciary Committee. [LB729]

SENATOR WAYNE: Thank you for having me. This is one of my favorite committees to hang out in, so thank you. [LB729]

SENATOR MORFELD: Do you tell every committee that? [LB729]

SENATOR WAYNE: No, I don't. I just testified in front of Government and said I don't want to be there, so. (Laughter) [LB729]

SENATOR KRIST: There will be an opening here next year, just to let you know. [LB729]

SENATOR WAYNE: (Exhibits 6 and 7) I wouldn't go that far, but...(laugh) no, I'm...my name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and north Douglas County, Nebraska. This bill is a simple bill, and I'm sorry I did not bring my amendment that I already attached to the bill. I put an amendment on two days ago. The amendment was the Burke Harr withdrawal...a motion...he withdrew his bill. That amendment basically limits deceit and misrepresentation to DHHS, and this amendment deals with, specifically, sexual abuse. So what you have in front of you is a World-Herald article and the case Opinion where the Nebraska Supreme Court said that the state is not liable when a foster care worker, case worker, intentionally misrepresents facts and was deceitful to the family,

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

Judiciary Committee
January 25, 2018

because currently under state statute they fall underneath immunity from the liability under the political (State) Tort Claims Act. This would strike that. And as I drafted Senator Harr's amendment to just include only DHHS when it came to asexual assaults, I began to think, when is it okay, ever, when dealing with kids, whether juvenile, foster care, and families, to lie about anything, beyond sexual abuse? So what happened in this case is parents wanted to adopt somebody. They went on and was about to adopt him when that young kid sexually assaulted another person, another kid in their house. And the reason the deceit and misrepresentation comes into is because those parents specifically asked that caseworker, was there any sexual abuse or any sexual assaults background with this kid? And the caseworker intentionally did not give that answer as, yes, that there was, because maybe that family could have took different precautions to make sure another child would not be left alone. That didn't happen. They sued and it went to the Supreme Court and that decision came down saying, even with intentional lies and deceit, the state is immune. I don't think that's right, and I don't think this body should allow the state to lie and get away with it without some kind of action. So I also included a Supreme Court decision, which is very long, but they were pretty clear that the legislative body needs to do something about that and, in fact, Judge William Cassel suggested the Legislature may want to change...to consider changing this section of the law as it protects the state in this case. And he goes on to say, from this..."From the perspective of the parents," the court said, "immunity 'adds insult to injury.'" So I believe it's our duty to correct this. But maybe the amendment I added isn't the best amendment because it only applies to this case. But I think of juvenile law, I think of all the times we're dealing with juveniles in general--when is it okay for the state to lie and be deceitful? And if that happens, they should be punished, and the only way you punish the state is through a lawsuit. So when I initially wrote this, I got a lot of push back from counties and cities and other people, because some of their policies and some of the things, so I was looking at Burke's amendment. But I'm really concentrating, and I would ask this committee to maybe strike the last little language as it relates to sexual abuse and just say, you know, anytime we're dealing with juveniles or kids in our system it's not okay for the state to lie and, if they do, they should be called out and they should have to pay for it. And with that, I'll end my opening to ask any questions. [LB729]

SENATOR EBKE: Senator Krist. [LB729]

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

Judiciary Committee
January 25, 2018

SENATOR KRIST: Point to the place in the bill where it calls for "the state." [LB729]

SENATOR WAYNE: Well, it's...my bill is too...was very broad. The amendment that's not in your book--and that's why I apologized--it's Burke Harr's old bill and it limits. It basically says the political (State) Tort Claims Act will not apply to DHHS when dealing with kids regarding sexual abuse. I think it maybe just needs to be with juveniles and kids in general in their custody that we should never lie as a state about that. [LB729]

SENATOR KRIST: So I'm following through your logic, though, and, knowing a little bit about juvenile justice and the structure that we have, sometimes we have state employees, sometimes we have county employees, sometimes we have folks who are working for nonprofits who are obviously either advising or formally testifying on behalf of. It's almost as if your argument, and I'm trying to get behind it because I do think it's important, is, why limit just "the state"? And then if you're not going to limit the state, do we call it any employee of a political subdivision, da-da-da-da-da-da-da, or how do we capture that? [LB729]

SENATOR WAYNE: Well, so typically...or in this case, the particular case--this was the issue I was trying to resolve, but the more I keep thinking about it, I'm thinking broader, too--the issue is, in this case, it was a state case worker because it was outside of Douglas and Sarpy County, Douglas NFC. But I will tell you, if it's a private individual or a nonprofit, they could be sued and they could have damages. But in this particular case, it was a state employee, and that's what I'm trying to solve. I think there's some language in the contract with NFC that allows (inaudible) that I have concern with, but I think if a kid is in our system, we have to be honest with everybody around who is involved in that kid. And if they're not, I mean, you can't go back and take away the sexual abuse, or then you can do a suit. So... [LB729]

SENATOR KRIST: Right. The reason I bring it up is that some of our years ago, a few of the folks who helped pass some of the juvenile justice legislation had an extensive background in child advocacy and in the definition of a caseworker and who could do what and where, and I argued vehemently that privatization of case work should, and could, happen. But there again, we get to that point of that's...is that...are they technically a caseworker because they are under...or a state employee because they're under contract to the state? I like the concept and I

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

Judiciary Committee
January 25, 2018

think we just need to broaden it as much as we can without launching a helium balloon, you know? [LB729]

SENATOR WAYNE: Right. [LB729]

SENATOR KRIST: I mean that's...obviously there's some legitimate end to this, but I'm with you. If you're...in the case of someone who, for example, is acting as a law enforcement officer, we had to specifically go back and say, if that person is...once that...once the person is in custody, anything that that person does, they are liable for because they've taken a personal freedom away. Same thing happens with our kids. [LB729]

SENATOR WAYNE: Right. And so that's how I'm looking at juveniles in DHHS's care, because they'll be the ones who have custody. And when I hear the word "custody" and "a child in custody of the state," that's exactly what that means. We hold parents liable all the time for their kids' actions with truancy laws and everything else, but we don't do the same for state because they're immune, and I think that's incorrect. [LB729]

SENATOR KRIST: I agree. [LB729]

SENATOR EBKE: Other questions? I have...did you have a question, Senator Morfeld? I have one or two. First of all, in trying to capture what Senator Krist is getting at, what about language that essentially says agent or contractor of the state? Would that work? [LB729]

SENATOR WAYNE: Yes. [LB729]

SENATOR EBKE: Something like that? [LB729]

SENATOR WAYNE: Yes. [LB729]

SENATOR EBKE: Okay. So maybe that's something for us to consider. Another question, do you think the state should only be held accountable for lying when it has to do with kids?
[LB729]

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

Judiciary Committee
January 25, 2018

SENATOR WAYNE: That's a broader discussion that I would love to have. I think there's some core principles that we all have and I think one of them is going to say we don't think government should ever be deceitful and intentionally misrepresent facts, whatever those is. I was trying to solve a particular issue in a particular case, but... [LB729]

SENATOR EBKE: I know. I'm just giving you... [LB729]

SENATOR WAYNE: I will introduce...I would be happy to have that conversation after this committee kicks it out and we can talk about that on the floor. [LB729]

SENATOR EBKE: Okay. [LB729]

SENATOR WAYNE: That was a hint to kick it out (inaudible). [LB729]

SENATOR EBKE: Thank you, Senator Wayne. Any other questions or comments? Okay. Thanks. First proponent. [LB729]

CHRISTI WHITE: (Exhibit 8) Good afternoon, Senators. My name is Christi White, C-h-r-i-s-t-i W-h-i-t-e, and I flew across the country to speak to you today on behalf of myself, my husband, Jeff, and our five children. Ten years ago, we adopted through foster care from the state of Nebraska--not our first time to adopt. We had adopted from foster care before, but this was different. We didn't know why; we just knew that it was. More than 15 years ago, you passed a law mandating the Department of Health and Human Services to disclose all available information on a child to their adopting parents, not some of it but all of it. That was a good law, it was right, it was just. However, last summer, the decision in the Jill B. case is clear that there are no repercussions to the department or its employees when they fail to follow this law. The same can't be said for the families and children. The repercussions to them, repercussions to my family, they're immeasurable. Our son was diagnosed with reactive attachment disorder, among other things, shortly after being placed in agency care at the age of two. By the time he was placed with us, four years later, he was regularly seeing a psychiatrist and mental health professionals, but we were told none of that. In fact, the only medical condition that was given to us at all was that they suspected our son had ADHD. We could handle ADHD. We could not

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

Judiciary Committee
January 25, 2018

handle reactive attachment disorder. We were not the right fit for our son and he was not the right fit for us. Had the department done that which they were legally obligated to do, our son would never have become ours. Instead, he would have been placed with a family who had the skills and the resources to help him, his care would have continued, and he would have had his best chance. Had DHHS done that which they were legally compelled to do, our children in our home would not have had their lives upended. Instead, they would have continued to grow up in a home that was peaceful and safe. Lacking in emotional and physical chaos, they would have their best chances. Had DHHS done the lawful thing, I would never have become a reactionary or depressed parent but, instead, I would have been proactive and I would have maintained my joy, I would have had my best chance. But because DHHS misrepresented and deceived our family, and because Nebraska law allowed them to do so without consequence, we all missed our best chances. Our son has not lived with us for more than four years. He is in residential care, struggling, on a path that could have, and should have, been avoided altogether. Our other children are growing up in our home without their brother; and my husband and I, we're raising four out of five kids. We have all grieved. We are still grieving because we have all experienced tremendous and tragic loss that's inexcusable and was completely avoidable. It's an injustice that has to stop. I'm here today with nothing to gain personally. The changes that would follow the approval of LB729 will never benefit me, they won't benefit my son, they won't benefit my other children, but there will be more foster children and there will be more families who come behind us whose lives will be irrevocably damaged, if not completely destroyed, if no one holds DHHS employees accountable for disclosing all the available information, not just the information on sexual abuse but all of it. It's morally reprehensible to do otherwise. I wish that someone had come to you 15 years ago and stood here on...sat here on my behalf to testify, but they didn't so I am. I'm here today for children and families like mine, asking you to approve this bill. It's a worthy first step towards a law that would require all medical diagnoses to be disclosed, because that would, again, be right and good and just. [LB729]

SENATOR EBKE: Thank you. Any questions? Thank you for sharing your story. [LB729]

CHRISTI WHITE: Thank you. [LB729]

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

SENATOR EBKE: Other proponents? I see none. Are there any opponents to this bill? Is there anyone speaking in a neutral capacity? Okay. We have a few letters of support: Teri Haefs on behalf of herself; Theresa White on behalf of herself; Laura Beth Rhodes on behalf of herself; Jeff White on behalf of himself; and Keira Woodham on behalf of herself. Senator Wayne... [LB729]

SENATOR WAYNE: I waive. [LB729]

SENATOR EBKE: ...waives. (Laughter) Stop while you're ahead, unless there's a question. Senator? [LB729]

SENATOR KRIST: Can you just jump up for a second, because I want to put it on the record. Legal counsel passed me a note. As drafted, it would apply to the state, to any political subdivision of the state, to any employee of...either acting within the scope of their employment with the state--that is the same as the amendment that you proposed--but would only...as regards to employees of DHHS acting within the scope of the employment. Thank you for coming from miles away. I'm interested in why that bill doesn't apply here and why that didn't in some way convince the Supreme Court that there's truthfulness and that needed to be applied there. And you don't have to take time now if you don't want to. [LB729]

SENATOR WAYNE: I can answer real quickly. They go through and talk about the duty to disclose, but at the end of the day there's another statutory provision that says they're immune. And so the court has said you...this is a nonpolitical question, but based off of the strict reading, deceit and misrepresentation are explicitly stated in the statute. So even though we have a statute says you have a duty, there's no penalty if you don't do it because you're...it's specifically in our statute. So by removing that, is what the Supreme Court basically has said, it's up to the legislative body to fix it. [LB729]

SENATOR KRIST: And that's the intent of your legislation is removing it? [LB729]

SENATOR WAYNE: Yes, to fix it. [LB729]

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

Judiciary Committee
January 25, 2018

SENATOR KRIST: Okay, good. Thank you again for coming. [LB729]

SENATOR WAYNE: Thank you. [LB729]

SENATOR EBKE: Okay. That closes the hearing on LB729. Senator Morfeld, LB757. Shall we wait? [LB729]

SENATOR MORFELD: Yeah, let's wait for Senator Halloran. [LB757]

SENATOR EBKE: No, we were just kidding you. [LB757]

SENATOR MORFELD: (Exhibits 1, 2) Senator Ebke, members of the Judiciary Committee, my name is Adam Morfeld, for the record, spelled A-d-a-m M-o-r-f-e-l-d, representing the 'Fighting 46th' Legislative District. Here today to introduce LB757, a bill to ban credit agencies from charging a fee for credit freezes and similar security services, and to strengthen the Attorney General's enforcement powers to enforce these important consumer protections. Before I go any further, I want to thank the Attorney General and his staff for their help in crafting this legislation. This past summer, following the massive Equifax data breach, I worked in partnership with the Attorney General to ensure that we have common sense consumer protection regulations, as well as to extend the Attorney General's authority to protect Nebraskans in the event another breach does occur. As most of us remember, last summer...I'll hand these out in just a moment. Thank you very much. As most of us remember, last summer saw one of the largest data breaches in American history. Approximately 145 million Americans had sensitive personal information compromised at the hands of Equifax, one of the nation's largest credit agencies. Social Security numbers, birth dates, and even driver's licenses were exposed. As a result, roughly 700,000 Nebraskans found themselves at risk of identify theft for their lifetime because their data was compromised, including my own. That's about one-third of our state's population. Equifax's response was irresponsible and insufficient. Nebraskans found themselves having to pay out of their pockets to unfreeze their accounts as a result of Equifax's ability to keep their information safe and secure. The legislation I have brought you today ensures that hard-earned dollars and the credit of every Nebraskan is put before consumer reporting agencies like Equifax. I find it disturbing and completely illogical that a company in an

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

Judiciary Committee
January 25, 2018

industry can lose our financial data and then turn around and make a profit off or even charge consumers minimal fees for simply trying to protect themselves from that loss of data that was no fault of their own. In addition, one of our colleagues, Senator Anna Wishart, brought up the point to me last night that none of us as consumers have chosen to give any of our personal information to any of these reporting agencies, and yet they profit off it, even when they lose it. Now, I do think that there is a need to have credit scores in a credit reporting industry, completely agree on it. I think it's necessary, I think it's important for business owners, consumers to be able to weigh risks when they're investing into other individuals. I don't dispute that. That being said, given the staggering loss of information, and our need as consumers to now take additional measures to protect our financial livelihoods, we must act as a Legislature. Further, I would note that I significantly narrowed the scope of this legislation to strike a middle ground, which is why I only included credit freezes and substantially similar services, which the Attorney General's representative will talk today about the need for that. Personally, I do not think that anyone should be charged for any credit monitoring from here on out, given the scope of the data breach. However, I also know that the credit monitoring industry must have the resources to provide some of their services, and I believe that eliminating only the minimal fees for security freezes and other substantially related services is a good middle ground. This legislation's commonsense consumer protection regulations are implemented as follows: first, it mandates that individual or commercial entities in Nebraska that hold personal information must implement and maintain reasonable security procedures and practices; second, LB757 guarantees that if a consumer reporting agencies provide personal information to a third party, that third party maintains the same security procedures and practices; finally, the legislation assures that if a security breach does occur, the consumer reporting agency shall not charge any fee for placing, temporarily lifting, or removing a security freeze. If a breach does occur, the Attorney General, under this bill, will now have increased powers to issue subpoenas and, likewise, to seek and recover economic damages done to any Nebraskan. It is important now for Nebraska to follow the lead of other states who have begun to implement these consumer protection regulations as a result of the massive Equifax data breach. States like Kentucky, Michigan, and Illinois have all begun the process to protect their citizens from data breaches and fees for credit freezes. For example, in Illinois, a piece of legislation similar to the one before you today has passed unanimously out of their house, with a 109 to 0 vote. I again want to thank the Attorney General, and I am happy to continue to work with him on this important issue. And I remain open to any

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

Judiciary Committee
January 25, 2018

suggestions or amendments that may make this bill better. I do have a clarifying amendment, that the pages can hand out now, to offer to the committee, that came out as a result of suggestions by the Nebraska Bankers Association, Blue Cross Blue Shield, and some other stakeholders for your review. A representative from the Attorney General's Office is here to testify and to answer any questions that you might have. I would also note that I did sit down with the industry, the credit reporting industry, which I appreciated them taking the time to sit down with me, and they do have concerns with the "substantially similar products" language. However, the Attorney General's Office I think has some good rationale behind why we need to keep that in there, because of the changing nature of some of these credit freeze products and the changing nature of some of the credit breaches. I urge your favorable consideration of LB757, and I look forward to taking the steps necessary to protect all Nebraskans' financial data. And I would be happy to answer any questions. [LB757]

SENATOR EBKE: Questions for Senator Morfeld? [LB757]

SENATOR MORFELD: I would like to also note that the fiscal note is \$0. [LB757]

SENATOR EBKE: Bravo. First proponent. [LB757]

MEGHAN STOPPEL: Good afternoon, my name is Meghan Stoppel, M-e-g-h-a-n S-t-o-p-p-e-l, appearing on behalf of the Attorney General's Office. I'm an Assistant Attorney General and the chief of our consumer protection division. Thank you, Senator Morfeld, for inviting us here today to discuss LB757. As summarized well in your remarks, the purpose of this bill is to establish a baseline information security requirement for any person engaged in the business of collecting, transmitting, maintaining, or even disposing of personal information about a Nebraska resident. The use of a reasonableness standard is not only deliberate, but critical, to providing the Attorney General and those subject to this law with much-needed flexibility. It's indisputable from our perspective in law enforcement that reasonable security practices for a large, multi-national corporation will look very different than those deployed by a small business. Not only because of their size, but also because of the very type of information that they may collect on a regular basis. At the same time, those subject to this law need much flexibility to address emerging threats and to deploy evolving technologies without the fear of

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

Judiciary Committee
January 25, 2018

running afoul of a state law that's too specific. Finally, the reasonableness standard is consistent with the legal theory that is routinely applied in our data breach investigations and settlements at both the state level and when working with other state attorney generals and our federal counterparts. In those cases, our legal theory is, and always has been, that unreasonable security is an unfair or deceptive trade practice prohibited by the Consumer Protection Act. The FTC uses this same theory under Section 5 of the FTC act. By explicitly establishing this standard in LB757, we make clear that the...Attorney General's expectations when it comes to information security. We clarify that a violation of this standard is a violation of the Consumer Protection Act and we give the Attorney General the authority to use his existing investigative powers under the act to address potential violations. Now, with respect to the security freeze fees, free is better, and security freezes are no exception to that rule, especially in the wake of the Equifax breach. The substantially similar language is important, because credit reporting agencies, especially Equifax, Experian, and TransUnion, are increasingly marketing credit lock services to consumers. From the AG's perspective, consumers shouldn't have to pay for a security freeze simply because a credit reporting agency is calling it a different name, and in some cases providing less protection to the consumer's credit file in exchange for the ease of merely swiping or clicking to unlock the freeze. The Equifax lock and alert product for example, debuting at the end of this month, while free, doesn't address a lot of the restrictions on sharing information with third parties that are currently prohibited under existing Nebraska law when a security freeze is in place. It's unclear exactly what consumers get when they sign up for these services. And by including the substantially similar language in our proposal of LB757, we are attempting to address the fact that the market is moving in this direction. Thank you. [LB757]

SENATOR EBKE: Thank you. Any questions? I see none, thank you. Any other proponents? Do we have any opponents? [LB757]

JIM OTTO: (Exhibits 3, 4) Senator Ebke...excuse me, Chairperson Ebke and members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I'm president of the Nebraska Retail Federation, and appear today in opposition to LB757. However, I want to make it clear that we agree with Senator Morfeld that credit freezes are an important consumer protection and they should be available for consumers who are concerned with identity theft. Our opposition is not to the elimination of the fee, but to the broad language of the bill. I refer you to pages 3 and 4 of the

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

Judiciary Committee
January 25, 2018

bill, which I handed out, I have on each side here. The language objected to is highlighted on each page. As has been outlined by Senator Morfeld and the Attorney General's Office, the phrase--or any other type of substantially similar product--is too broad, and could eliminate many other consumer products. Consumers are best protected when they have choices that meet their circumstances. The blanket prohibition this language infers would not allow for consumer choice, and could prohibit existing services that many Nebraskans choose to protect their financial information. For example, identity theft protections that are built into existing consumer services could be prohibited in Nebraska by this broad language. The committee has also received letters of opposition from the Internet Coalition and from the Consumer Data Industry Association. I would point out that those letters also object to the "substantially similar" language. We urge the committee to amend LB757 to strike the provisions to prohibit fees for "substantially similar" services. With such an amendment, our opposition would go away. Glad to try to answer a question. [LB757]

SENATOR EBKE: Any questions for Mr. Otto? I see none, thank you. Next opponent. [LB757]

KATHY SIEFKEN: Chairman Ebke and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and registered lobbyist for the Nebraska Grocery Industry Association, in opposition to LB757. And the reason we are opposed is because the language is so broad. On page 5, the bill talks about, on line 13, it talks about "An individual or commercial entity." And we are as part of our association, one of the things that we do is we offer money orders to our grocery stores. So we are actually a money order company. So our opposition has nothing to do with what happened with the security breach, but since the language is so broad, we believe that we will get pulled into this. And I'm not sure that that was the intention. I called over to the Nebraska Department of Banking, and they agreed with me that we had reason to worry if this bill would pass in the current form, because the Nebraska Department of Banking requires our money order business to provide information to NMLS, the National Mortgage Lending System, which is a third party service that collects all of the information regarding money orders--who we sell, our agents that sell them, who's on our board of directors. And they require us to submit Social Security numbers, birthdates, home addresses, full legal names. If we don't submit that information, we lose our license in the state of Nebraska. And I believe that, because of the language that starts on line 13, that we would get

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

Judiciary Committee
January 25, 2018

pulled into requiring a contract between us and NMLS. And I'm pretty sure, without talking to anyone, that NMLS, a national company, is not going to have a contract or agree to a contract with a little old money order company in the middle of the nation that does a minimal amount of business. We're very small, but the business that we do have is very important to our small retailers. So with that, if you have any questions I would be happy to try to answer them. [LB757]

SENATOR EBKE: Questions? Senator Pansing Brooks. [LB757]

SENATOR PANSING BROOKS: Thank you. Thank you for coming, Ms. Siefken. Is...have you talked to...I mean, you've got some ideas on how you wanted it differently or things that could have been changed. Have you talked to Senator Morfeld about... [LB757]

KATHY SIEFKEN: I didn't find out about this until about 11:30 today. So no, I didn't. [LB757]

SENATOR PANSING BROOKS: Okay, well, I hope that you might because I bet he would be pretty amenable to helping you out, what your concerns are. [LB757]

KATHY SIEFKEN: And as long as we're not pulled into it, we have no issue with what you're attempting to do. We just don't want to be part of it, because we don't think that we can...we can't do what the bill would require us to do. [LB757]

SENATOR PANSING BROOKS: It's just that...so you would just have to talk to him, because he can make exceptions if it's reasonable, and the Attorney General's Office finds it acceptable as well. So, thank you. [LB757]

SENATOR EBKE: Okay. Any other questions? Thanks. [LB757]

KATHY SIEFKEN: Thank you. [LB757]

SENATOR EBKE: Next opponent. Neutral? [LB757]

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

Judiciary Committee
January 25, 2018

JERRY STILMOCK: (Exhibit 5) Madame Chair, members of the committee, my name is Jerry Stilmock, J-e-r-r-y S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska Bankers Association, in a neutral capacity. Thanks to Senator Morfeld. We were able to get to him, explain our concern, and you have that presented to you in the amendment that was submitted by Senator Morfeld, AM1648. It just addresses another component. As financial institutions, we are required by federal law to protect this information, and certain requirements are placed upon financial institutions. In addition, and the amendment goes specifically to this, when we have third party affiliates that also receive confidential information so that in both prongs of that responsibility and liability would be satisfied by complying, and that bank's financial institution complying with federal regulations. So we're most appreciative of the senator submitting that amendment and appreciate that opportunity to present that to him and the committee. Thank you. [LB757]

SENATOR EBKE: Stilmock, any questions? Okay, thank you. [LB757]

JERRY STILMOCK: Thank you. [LB757]

SENATOR EBKE: Any other testifiers? We have one letter in opposition from Sarah Ohs of the Consumer Data Inquiry (sic--Industry) Association. Senator Morfeld. [LB757]

SENATOR MORFELD: I'll make my closing remarks fairly brief. I just want to respond to a few things. I do want to appreciate Mr. Otto for coming and talking to me, along with the industry that he also represents. I just, you know, I think that I understand...you know, he made a statement that they feel as though the consumers are as protected when they have the choices that meet their circumstances. And while I would agree with that, I think they're also best protected when 145 million of their pieces of data haven't been lost in terms of Social Security numbers, bank accounts, you name it. The only security and comfort that we have is so much data has been lost that it's tough to steal all of our identities. And the bottom line is is that we need to remove as many barriers as possible to protect that data. I understand that they didn't just release this data of their own free will, it was stolen. But that being said, it is such a massive, massive breach that we have to give consumers as many options as possible, with as little resistance and little costs as possible, so they can protect their financial livelihoods. And personally, I think I

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

Judiciary Committee
January 25, 2018

struck a pretty good middle ground. I wanted to go much farther with this bill and provide free credit monitoring for life and all of those other things for free of the people whose data has been lost. But I also understand the industry serves a purpose, they have to be profitable to a certain extent. But it's a multi-billion dollar industry, and removing the \$3 credit freeze charge and then also making it so that the Attorney General has the power to regulate and provide for free substantially similar services...and remember, it's substantially similar services related to the credit freeze. So they can still sell their credit monitoring software that is enhanced and all those things, it's just substantially similar products related to the credit freeze. And I want to make that clear, and I'll put it on the record. And when this makes it to the floor, hopefully, I'll put it in the record then, too. But I think this is narrowly crafted and I think it's crafted to the circumstances and it's reasonable under the circumstances. And I would be happy to answer any questions.
[LB757]

SENATOR EBKE: Any questions for Senator Morfeld? Senator Halloran. [LB757]

SENATOR HALLORAN: Madam Chair, thank you. And thank you, Senator Morfeld. And there may not be a...this is probably common language, but you don't probably have the bill right in front of you. [LB757]

SENATOR MORFELD: I do. [LB757]

SENATOR HALLORAN: Do you? Okay, on page 4, line 29, and it's used several times, about a resident of Nebraska, it talks about "maintains data that includes personal information about a resident of Nebraska shall implement and maintain reasonable security procedures and practices..." I guess the word that I find kind of broad is the term "reasonable." And I don't have any suggestions as an alternative to that, but reasonable for any one of us has different (inaudible). [LB757]

SENATOR MORFELD: It's a great question, Senator. And actually, I have learned a lot about this since introducing this legislation. There are established industry standards for the term "reasonable" under these circumstances, and I can actually get those to you. But based on this

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

Judiciary Committee
January 25, 2018

type of data, there are very well established standards for that, for what constitutes "reasonable."
[LB757]

SENATOR HALLORAN: Can you put that...without making it cumbersome? Can you put that language in there? [LB757]

SENATOR MORFELD: I can talk to some folks, but I'll be honest with you, I don't think that that would be wise, because it changes with the technology. But it's well-known, widely accepted practices for anybody that maintains this data. Now, Equifax...well, it may change now, based on the data breach, what is reasonable and what's not, but...and there's still an investigation going. But my understanding is that Equifax did have some security measures, they were just breached. And I'm not blaming them for having a breach, but the fact of the matter is is we have to deal with the fallout. [LB757]

SENATOR HALLORAN: But that's my point, they decided at some level they thought it was reasonable. [LB757]

SENATOR MORFELD: Yeah. [LB757]

SENATOR HALLORAN: You know what I'm saying? [LB757]

SENATOR MORFELD: Yeah, I totally get what you're saying. The problem with spelling it out in here is that technology changes so rapidly that they standards change, but there are industry standards that are widely practiced on the state... [LB757]

SENATOR HALLORAN: Are there like industry agencies or certifying agencies that...I'm just throwing this out there that...how would you say, do some assurance that there's some standard for that kind of practice? [LB757]

SENATOR MORFELD: Yeah, there are. And I can get those to you, I don't have them with me. But I see what you're saying. But I'll tell you right now, there are established standards and

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

Judiciary Committee
January 25, 2018

practices on the federal level and I think putting them in here, while it would be well-intentioned, it would probably be obsolete within three or four years, if not sooner. [LB757]

SENATOR HALLORAN: Okay, thank you. [LB757]

SENATOR MORFELD: The other thing that I would say is I'm happy to work with the...I think it was the grocers, if money orders somehow kind of fall in and puts them in this in a way that makes it untenable. I would like to look into it a little bit more. I'll be honest with you, I would think that they also have to have a duty to maintain reasonable security measures if they're dealing with Social Security numbers and other things like that. But I'm happy to look into that down the road. [LB757]

SENATOR EBKE: Senator Pansing Brooks. [LB757]

SENATOR PANSING BROOKS: Thank you for bringing this, it's really important, Senator Morfeld. And also, I really like what Senator Halloran was asking and I just wondered if maybe it could be something like: maintain best practices for the industry, or something like that. Because that could allow change, but just so that they know for sure that you're not talking about just some nebulous standard, reasonableness standard. [LB757]

SENATOR MORFELD: Yeah. What I'll do is I will look into this today. I know that there are established standards and they're reasonable. So one of the amendments in here, actually, if you look at the amendment that I sent you, which is basically like a white copy of Section 6, we actually, on line 30, we added "to the nature and sensitivity..." Something to that effect. We added "and sensitivity" somewhere in there. I'm looking at the green copy right now. And quite frankly, the reason why we added that is because the telecommunications companies said there's a very well-established standard, reasonable and based on the sensitivity of the nature, that is widely accepted. And that's the industry standard and that's very clear to make it uniform. So they really wanted me to add "and sensitivity." So while these phrases seem broad to us, these key words like "reasonable" and "sensitivity" are actually well-established standards both on the administrative level and then also in the court system for this industry. [LB757]

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

Judiciary Committee
January 25, 2018

SENATOR HALLORAN: Thank you, Senator. [LB757]

SENATOR MORFELD: But I will definitely get back to you guys by tomorrow on this. [LB757]

SENATOR PANSING BROOKS: Yeah. You do have that...let me just jump in here. [LB757]

SENATOR EBKE: Go for it. [LB757]

SENATOR PANSING BROOKS: It says to the...well, basically it says: a resident of the state of Nebraska shall...and they "shall implement and maintain reasonable security procedures and practices that are appropriate to the nature and sensitivity of the personal information owned." Just trying to get that back in there. [LB757]

SENATOR MORFELD: There it is. Yeah. [LB757]

SENATOR PANSING BROOKS: So that's line 8 on page 1 of the amendment. [LB757]

SENATOR MORFELD: I see it here now. Yeah. Yeah, so again, while these things kind of seem nebulous and little bit broad, these key words mean very specific things for the industry. [LB757]

SENATOR PANSING BROOKS: Thank you, Senator. [LB757]

SENATOR EBKE: Any other questions? Okay, thank you. [LB757]

SENATOR MORFELD: Thank you. [LB757]

SENATOR EBKE: Do we have...did I read that already? Oh, I already read it. Okay, that closes the hearing on LB757. We will now proceed to LB688, Senator Blood. [LB757]

SENATOR BLOOD: Good afternoon. [LB688]

SENATOR EBKE: Good news--it's only 4:20 and this is our last bill for the day. [LB688]

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

Judiciary Committee
January 25, 2018

SENATOR BLOOD: This is going to be a short one, I think. [LB688]

SENATOR EBKE: Okay then. [LB688]

SENATOR BLOOD: I think. I have to say, I'm starting to feel like I belong on this committee because I'm in here more than Government Affairs lately. [LB688]

SENATOR HALLORAN: Senator, take your time. [LB688]

SENATOR BLOOD: Take my time? [LB688]

SENATOR HALLORAN: Yeah. We got like (inaudible). [LB688]

SENATOR BLOOD: I only have like 20 pages to read, so we should be good. (Laugh) So I want to thank you for the opportunity today to share LB688 with all of you. My name, again, is Senator Carol Blood; that's spelled C-a-r-o-l B-l-o-o-d, and I am the District 3 senator representing western Bellevue and southeastern Papillion, Nebraska. Today I bring forward a simple bill, possibly described as a "flush" bill by Senator Chambers, but it has the potential of saving lives here in our state. The bill's intent is to lessen the impact of sun exposure at Nebraska schools, recreation facilities, and youth camps operated by political or governmental subdivisions through the elimination of barriers and codifying a policy statewide in regards to the use of sun-protection products. It is my hope this legislation will result in reducing the risk of skin cancer and excessive UV exposure in our children through a common-sense approach. While researching this bill, my office found that different school districts and day-care centers have different or, in some places, no existing policy when it comes to whether kids can bring and use sunblock at school or during school-related activities. The problem with this is that a parent or guardian is going to have a hard time knowing whether or not they are going to be allowed to send a bottle of sunblock with little Johnny or Susie to their school or youth camp in the morning. The parent might not want to risk the facility seizing the bottle, so they opt not to send the protection along; and even bigger issues that we have found, that there are some school districts that use a strict reading of their medication guidelines. While some schools see sunblock as a hygiene product and, therefore, don't need to gather permission for use from a parent, other

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

Judiciary Committee
January 25, 2018

schools will classify it as an over-the-counter medication using Rule 59 from the NDE policy manual that states, "Medication shall mean any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans," which does require a note from the parents. LB688 seeks to remove any potential confusion that is caused by different school districts having different rules for students to possess over-the-counter sunscreen if the broad-spectrum topical sunscreen is in the original container and labeled as a broad-spectrum sunscreen by the manufacturer and has an expiration date printed or affixed to the container with the expiration date still deemed valid should parents choose--again, should parents choose--to have their child apply it prior to recess or a field trip for school, at camp, or part of a recreational programming. In addition to putting uniform rules for this in place, we wanted to make sure that if a child is a person with a disability or has special needs requiring assistance, staff is allowed to assist and apply sunblock with parental permission while releasing them from liability unless there is obvious criminal intent. Having said that, I want to be clear as I can possibly be that we are not requiring assistance from teachers, volunteers, or other employees. When talking to stakeholders about this bill, the only real opposition I've heard is that they feel we are creating a duty. Some have said they think it will take away from teaching time in order to apply sunscreen to 25 children. This bill does not require or even suggest teachers must do this. It would be entirely up to their discretion whether a child needed assistance in applying the sunblock. In the interest of keeping it simple, as opposed to other states that have regulated the wearing of special hats and clothes or asking for sun-safe curriculum, we make it clear that a student has the right to possess and use a topical sunscreen product while on school property or at a school-sponsored event, youth camp, or recreational activity for the purpose of limiting ultraviolet light-induced skin damaged. Unprotected sun exposure is dangerous and some studies would say that up to 80 percent of your total lifetime sun exposure occurs before the age of 19. Even if we receive only 25 percent of our exposure before the age of 19, we are now living longer and spending more leisure time outdoors as adults, so we can make healthier choices while we're young and improve our chances in the future. Clearly, this is an important time to practice safe sun. Any more than two blistering sunburns can actually increase a person's melanoma risk by as much as ten times later in life. Sunscreen can easily prevent sunburn, skin cancer, and other harmful sun damage, but one application before school isn't enough to protect a child's skin all day, especially if they go outside at recess. Nebraska Medicine has stated that skin cancer is the most common of all cancers and its prevalence is increasing. Melanoma, the most serious skin cancer, appears to be

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

increasing as well and, although it counts for a smaller percentage of skin cancer cases, it is responsible for the majority of skin cancer-related deaths. Melanoma has been steadily increasing, on average, by 1.4 percent each year over the last ten years. One of the most common risk factors for melanoma includes UV light exposure. I hope you will seriously consider how simply making this policy uniform across all public school districts throughout the state can ultimately save future Nebraskans from having to deal with skin cancer and its deadly results that kill more than 8,000 Americans per year. Consider, as well, the cost to our health system. We all know that with increased healthcare costs come increased premiums. We can be proactive in preventing unnecessary medical costs related to skin cancer in the future by placing in statute that it is our expectation that all children under the umbrella of this bill will be allowed to be skin safe should their families choose to participate, and we have the potential to save lives with this policy. I'm happy to answer any of your questions at this time, but would encourage you to save your more medical or science-based questions for those in the medical arena that have come to testify, if they're still here, in support of the bill today. I would also like to point out that, as you can see, we've received statewide support from Nebraska dermatologists and others who would support this cause. I believe you will find letters in support that have been sent on behalf of this bill in your packets. Again, thank you for the opportunity to share this bill with all of you today. I appreciate your time and I will stay for my closing. [LB688]

SENATOR EBKE: Thank you, Senator Blood. Any questions? I see none at this point. First proponent. [LB688]

ALISSA MARR: (Exhibit 12) Good afternoon, almost evening, Chairman Ebke, members of the committee. [LB688]

SENATOR EBKE: We aren't going to claim that yet. We're going to be done before it's evening. [LB688]

ALISSA MARR: (Laugh) All right. My name is Dr. Alissa Marr, A-l-i-s-s-a, last name M-a-r-r. I'm a physician and medical oncologist who works at the University of Nebraska Medical Center. I specialize in taking care of patients with cancer, but I have a subspecialty in that I primarily take care of patients with advanced skin cancer and, in particular, melanoma. So I'm here today

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

Judiciary Committee
January 25, 2018

really speaking on my own behalf. As a health professional, this is an area I'm very passionate about to testify in support of LB688. As Senator Blood mentioned, you know, skin cancer is, hands down, the number-one most common cancer diagnosed in the United States. Over 5...almost 5.5 million skin cancers will be diagnosed this year alone. And unfortunately, along with skin cancer, there is a very common misconception that it's just skin cancer, it doesn't matter, it's just something simple, but we know that the most common skin cancers--basal cell carcinoma, squamous cell carcinoma--can have a tremendous impact on a patient's quality of life. We also know it has tremendous impact on healthcare economics. I'm here because I take care of a different type of skin cancer: melanoma. Melanoma is the third most common cancer in the United States, and unfortunately it's the type of skin cancer that kills. Melanoma can spread to lymph nodes, it can get through the bloodstream, it can metastasize to other organs and, once it does, less than 20 percent of patients are alive five years later. The American Cancer Society estimates that about 91,000 new cases will be diagnosed this year in the United States. We know that over the last 30 years the incidence has risen and it continues to rise and we don't see it slowing down. It also affects our young folks, so melanoma is the third most common cancer diagnosed in women between the ages of 20 and 39 and the second most common in men of the same age group. The good news is we know what causes most of these skin cancers and we can do some things to modify that risk. We know that about 85-90 percent of skin cancers are caused by exposure to ultraviolet radiation. Both UVA and UVB rays reach the earth's surface and both have been linked to the development of skin cancer. We know that ultraviolet radiation will directly damage the DNA of our skin cells, causing those skin cells to occasionally continue to proliferate with uncontrolled growth or what we would term a cancer. We know that sunburns during childhood can significantly increase your risk of developing skin cancer--some note a doubling of risk with just five sunburns--and our childhood really seems to be when we are...have this very susceptible window for sustaining both the long-term harmful effects of ultraviolet exposure. We know that effective UV protection during childhood is necessary to reduce both the immediate and the long-term harmful effects of the sun. We also know that regular use of an appropriate type of sunscreen and regular application of this can reduce our skin cancer risk. Please note regular use. This is not in the morning and this is not just during the summertime. Sunscreen is absolute vital part of prevention for skin cancer and we really need to do more to protect our children from this potentially life-ending cancer. Each day in clinic I'm reminded of the devastating impact of skin cancer as I sit and have life-ending conversations

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

Judiciary Committee
January 25, 2018

with women, young women and their families, a 20-something-year-old boy and his mother just the other day. This is a cancer that is potentially preventable and this is something that we can do something to help modify the risk and help protect our children. LB688 would allow for sunscreen to be utilized more broadly to hopefully prevent some of these conversations that I'm having. Therefore, I strongly support LB688 and I ask that it be approved. I thank you for your time. And also I submitted just a brief summary of some of the literature of children and the use of sunscreen prepared by my colleague in the Department of Public Health, so thank you and be happy to answer any questions. [LB688]

SENATOR EBKE: Thank you, Doctor. Any questions? Thanks for being here today. [LB688]

ALISSA MARR: Thank you. [LB688]

SENATOR EBKE: Other proponents? I see nobody rising. Any opponents? [LB688]

JOHN LINDSAY: Chairman Ebke, members of the Judiciary Committee, my name is John Lindsay, J-o-h-n L-i-n-d-s-a-y, appearing in opposition to LB688. We have spoken with Senator Blood about this. We have no concern with the underlying goal of the bill, but the bill does include several provisions providing immunity from liability for any person with any...making...taking any action, any decision with respect to the sunscreen, which can be broad language. I think we have to remember when we're dealing with immunities from liability that when Senator Pansing Brooks and Senator Chambers and Senator Morfeld and Senator Hansen, committee counsel went to their first year of torts law, we never looked at a statute. We looked at it how tort law developed from over the last 1,000 years about how do we handle injuries to persons and property. So anytime we make...we address tort law in statute, we are abrogating common law, that law that's built on the wisdom and the cases and the predictability over years and years of decisions. So I think we have to be careful when we are going away from the common law and deciding, in effect, deciding cases before they ever arise. If I were to ask the committee, we have a case involving damage to a child based on application of sunscreen, how do you decide the case, your first question would say, I don't know, give me the facts. But we're deciding all of these cases right now saying you're not liable without knowing the facts. That's our concern with and that's why you see me up here so often talking about immunities from

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Transcriber's Office
Rough Draft

Judiciary Committee
January 25, 2018

liability. It's because it flies in the face of what's developed over hundreds of years. It's deciding cases like the one two bills ago that I don't think anybody in this Legislature intended to absolve the state of liability involving the case in Senator Wayne's bill, but when we make those broad statements that don't allow facts to be considered, we run into those problems. We would suggest deleting subsection (3) in each section of the bill which is the immunity from liability. And like I said, we have no position on the fundamental question of application and possession/use of sunscreen. [LB688]

SENATOR EBKE: Thank you, Mr. Lindsay. Senator Pansing Brooks. [LB688]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Lindsay. What...are you here representing a group? [LB688]

JOHN LINDSAY: I'm sorry, but it's on the sheet that I...I should know that after 25 years doing this. I'm representing the Nebraska Association of Trial Attorneys. [LB688]

SENATOR MORFELD: I thought he was just here for fun (laugh). [LB688]

SENATOR EBKE: I just hear it. You know, I hear he says "John Lindsay" and I hear the rest of it. [LB688]

JOHN LINDSAY: I'm just pleased somebody listened. [LB688]

SENATOR EBKE: Any other questions? Senator Chambers. [LB688]

SENATOR CHAMBERS: Mr. Lindsay, you said sub (3). Where, which page, because there's more than one. [LB688]

JOHN LINDSAY: Right, and all of them do the...each of these do roughly the same thing. On page 2, lines 18-24, page 3, lines 22-26, and then some of... [LB688]

SENATOR CHAMBERS: Right. I see the language. That's what I wanted to see. [LB688]

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

Judiciary Committee
January 25, 2018

JOHN LINDSAY: Right, similar language to that, yeah. [LB688]

SENATOR CHAMBERS: Now suppose gross negligence were eliminated, but then the way this is drafted, if there's gross negligence, if there's willful misconduct or intentional wrongdoing, so that would leave ordinary negligence then. [LB688]

JOHN LINDSAY: This excludes negligence. That's the effect of the language. [LB688]

SENATOR CHAMBERS: Right. The only thing excluded would be ordinary language...I meant ordinary negligence. [LB688]

JOHN LINDSAY: Right, that's correct. [LB688]

SENATOR CHAMBERS: The reason this doesn't trouble me as much, and I can be persuaded otherwise, there has not been evidence presented that the substance that's used is intrinsically or even likely to be harmful, and it has been shown to be used in a way that is actually helpful. So whereas I'm against, generally speaking, granting immunity, the circumstances described in this bill makes me willing to take a chance and depart from it in this instance. What about sunscreen makes the defense lawyers feel that there's a sufficient risk of harm so that similar situations where exemption from liability would exist in the use of sunscreen at various other facilities where children are, why should this one be different? [LB688]

JOHN LINDSAY: A couple of reasons. We start with a general policy that you should have access...people should have access to the courts and cases should not be predetermined. Right now, with respect to the sunscreen itself, I couldn't give you an example. But what I would call attention to is on page 2--excuse me, yeah, page 2--especially lines 23-24. It's not only immunity for the sunscreen itself, but for any decision made or any action taken that's based on a good-faith implementation of the section. As you know, in negligence law, good faith is irrelevant. What is relevant is violation of the reasonable and prudent person standard, and so would the...you can have, of course, a good-faith attempt at driving, but if you negligently run a red light you have a...there's a problem. So the good-faith language I don't think narrows the scope of the immunity. And there is no real description about what constitutes an action taken which, of

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

Judiciary Committee
January 25, 2018

course, could be skin-on-skin contact between the actor and the child. And from there, what is a negligent act, what is a grossly negligent act? A grossly negligent act is extremely high level. There's cases of drunk driving not being grossly negligent, and so the concern is when we're talking about interaction that is being approved between, I assume, an adult in that day-care facility or, on several pages later, in a summer camp with a teenage counselor. It's that interaction between the actor and the child that is also covered by these immunity sections. [LB688]

SENATOR CHAMBERS: I'm wondering if the language that you pointed out in lines 23 and 24, I hadn't had a chance to really look at the bill in detail, but the general presentation of what is involved here might erase the liability for gross negligence, willful misconduct, or intentional wrongdoing because any decision made or action taken that is based on a good-faith implementation, if the person had a good-faith intention to not harm the child but, in fact, the conduct rose to the level of gross negligence, then gross negligence would not...there would be no liability for gross negligence, either. There would be no liability for anything if a good-faith decision was made. [LB688]

JOHN LINDSAY: I see what you're saying. I had not thought of that. I see what you're saying and I think it could be interpreted that way. [LB688]

SENATOR CHAMBERS: Then that would give a blanket immunity no matter what was done. All it has to be is good faith. I've got to look at this bill. [LB688]

JOHN LINDSAY: And I make clear--I mean, I use sunscreen, I think it's a wise thing to do--and so the underlying principle, no objection to. But the concern is simply that especially broad language and immunity are undefined language in an immunity from liability results in cases that legislation comes back to you in future years trying to correct bad cases, and that's where the concern is. I just think the broad people going from, whether it's a recreational center facility to a school to a summer camp that deals with school-age children, I think it's just a...the potential for harm there is out there, and I don't think we should open the door so that they...that harm... [LB688]

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

Judiciary Committee
January 25, 2018

SENATOR CHAMBERS: I think when I first heard the bill being presented, I didn't read the bill itself, but that it involved a school situation... [LB688]

JOHN LINDSAY: Yes. [LB688]

SENATOR CHAMBERS: ...where kids going out for recess or whatever,... [LB688]

JOHN LINDSAY: Yes. [LB688]

SENATOR CHAMBERS: ...then sunscreen could be applied. But I hadn't looked at the bill to see this language that said "any decision made or action taken that is based on a good faith implementation." It could be like one of those situations where a parent said, my religion tells me to treat illnesses with prayer alone and, therefore, medication, medical treatment would be withheld, and there are children who have died. It's mainly with the Christian Scientists, and they're being charged and convicted around the country now of child abuse, some cases manslaughter. So I'm going to have to look at this in view of that light. Suppose that language about good faith, the decision, we were to remove it? [LB688]

JOHN LINDSAY: It's the last section in each of those subsection (3). The bill, as I read it, is set up with several sections dealing with several different situations. And the last subsection in each section deals with the immunity from liability. The last three lines, two lines of subsect...each subsection (3) are those dealing with "any decision made or action taken based on a good faith implementation of this section." [LB688]

SENATOR CHAMBERS: Yeah, I got to look at it more, more carefully. But I've never liked language that broad. There are too many times when adults make decisions about children that they wouldn't make for themselves, just like those people who shackled those 13 children to their beds, they wouldn't want that. I saw where a woman, she was sentenced to two years in jail, but she had this little girl and she was shaking her, she was beating her, and she only got two years. But if a grown person had done that to another grown person, that...and the grown person being beaten like that, there would have been more than a two-year sentence because of the brutality

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

Judiciary Committee
January 25, 2018

involved. This girl was maybe five years old and she was at home and you could hear her crying and the woman was shaking her, and I mean she was pounding her. [LB688]

JOHN LINDSAY: And that's... [LB688]

SENATOR CHAMBERS: So children don't have the protection they need. And despite what I may have said before having read the bill, I still am obliged to read all of the language and then take a decision, so I at this point can't say how I would vote on this bill and there probably are no changes which would satisfy the concerns of the defense lawyers, correct? [LB688]

JOHN LINDSAY: Oh, if you...just deleting those subsections still allows the application of sunscreen, the use of sunscreen, the possession of sunscreen without a note from a physician or a medical provider. It's still going to authorize all of that. It would just simply subject it to that fact-based decision that negligence law would provide. [LB688]

SENATOR CHAMBERS: So if ordinary negligence, because only...if a person uses due care, then there is no negligence. [LB688]

JOHN LINDSAY: Right. [LB688]

SENATOR CHAMBERS: So it's saying that when you're dealing with these children, if you fail to use due care, then you're going to be liable. [LB688]

JOHN LINDSAY: Right. [LB688]

SENATOR CHAMBERS: And that's the way it should be, in my opinion. [LB688]

JOHN LINDSAY: Yeah, I would agree with that. [LB688]

SENATOR CHAMBERS: So this is not the kind of bill that I could support, and it's way too broad with that "any decision" in good faith, so I got to do some thinking about it. See, don't think that when you come here, or other people, that my mind is all made up and that I won't

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

Judiciary Committee
January 25, 2018

change it. If my attention is called to something, I want it on the record that I haven't read the bill in its entirety; in fact, I hadn't read it at all before this minute, so... [LB688]

JOHN LINDSAY: I appreciate that. [LB688]

SENATOR CHAMBERS: Now that raise that they're going to give you, is it still one that I get 50 percent of it? I'm just kidding. I'd better make it clear I'm kidding with that statement. [LB688]

JOHN LINDSAY: You better put the kidding on the record too. [LB688]

SENATOR CHAMBERS: Right, yes. That's all that I have. [LB688]

SENATOR EBKE: Thank you, Senator Chambers. Any other questions for Mr. Lindsay? I see none. Thank you for being here today. [LB688]

JOHN LINDSAY: Thank you. [LB688]

SENATOR EBKE: (Exhibits 1-11) Any other opponents? Is there any neutral testimony? Senator Blood, would you like to close and I will read into the record that we have letters of support from Jenni Benson of the Nebraska State Education Association; Dr. Richard Azizkhan; and Liz Lyons of Children's Hospital and Medical Center; Nick Faustman of the Cancer Action Network; Robert Rhodes of the Nebraska Medical Association; Midwest Dermatology Clinic, P.C.; the SUNucate Coalition; Lyndsey Degenhardt; Indy Chabra; Daniel Mosel; Byron Barksdale; and Herschel Stoller, all in support. [LB688]

SENATOR BLOOD: Thank you, Senator Ebke. And I would like to point out that they're from across the state and made it a point of contacting from the east to the west and the north and the south. You know, I don't pretend in any fashion to be a lawyer, but I can tell you what my intent of the bill was and where this language came from and give you a little bit of history in a short window of time, because I know you'd like to go. So this is not a bill that's indigenous to Nebraska. This bill has been part of a movement, the SUNucate movement, which is made of up of I think 20 different organizations from across the United States to help make sure that our

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

Judiciary Committee
January 25, 2018

children's lives are protected. And so we utilized their template, made it fit into Nebraska, and one of the concerns that I had were the children with disabilities. Now the fact of the matter is that most of the children with disabilities that would not be able to apply their own sunblock, would probably have a school aide, somebody who already helps them perhaps on and off the toilet in the restroom, that may help them eat, may help them get their coats on and off, so there are people who already are applying their hands to the child to assist that child that has a disability, or perhaps if a child has a broken arm at the time and the parents feel that during that short window of time that they might need assistance. Some states chose to include liability clauses; some states chose not to. For me, my first thought was I wanted to make sure we protected the teachers, and the language that was shared from SUNucate and the language that was chosen in Nebraska through our Bill Drafters was this language. And for me, not being a lawyer, what I read is that, "Except in cases of gross negligence, willful misconduct, or intentional wrongdoing," so if the person is putting sunblock on a child's genitalia, they're going to be held accountable because they're not doing this with good faith. And I hate to use such an extreme example, but I just want to make it clear what my intentions were. We're not talking about, hey, he put it on in a striped position and now my child has white and red marks on their body because they got sunblock on some places and not on other places. It was clearly to protect the teachers from false accusations but yet also protect the children from being touched in an inappropriate fashion. And this was the language that the state came up with. Now with that said, I have absolutely no issue with the liability clause being removed in each section whatsoever. It does not change the intent of my bill. What it changes is protection that I had chosen to put in for our teachers. But again, I am not a lawyer and I certainly do not make as much money as a lawyer, but that is the intent behind that part of the bill and I hope that that clarifies it. And, Senator Chambers, I hope you read my bill. [LB688]

SENATOR EBKE: Questions for Senator Blood? I see none. Thank you, Senator Blood. This closes the hearing on LB688 and this closes our hearings for today. See you tomorrow. [LB688]

SENATOR BLOOD: Thank you. [LB688]