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Judiciary Committee
February 25, 2016

[LB1072]

SENATOR HAAR: (Exhibit 1) Chairman Seiler and the members of the committee, the concept behind LB1072 was brought to me by a constituent. Modern farm machinery such as tractors and combines, like much of modern life, operates on software. The intent of LB1072 is to provide a mechanism for farmers to be able to work on their own tractors and machinery and for independent repair people to work on such machinery. I do not intend to have LB1072 apply to other electronic items such as computers, cell phones, or tablets. Because of the fact the bill did not clearly spell this out, I'm offering an amendment to make it clear that it's only intended to apply to farm machinery and equipment and not to these other electronic devices and you'll get a copy of that amendment. I understand that LB1072 won't advance this session because it's not a priority bill and would need considerable amendment, however, I hope the committee will study this issue in order to determine whether a legislative mechanism may be established to allow farmers and independent repair people to work on farm equipment that is governed by software. It's my understanding that others who will follow me will address technical issues related to the bill. Frankly, it's not something I know much about, but it's very interesting and that's why I decided to bring LB1072 to the committee. [LB1072]

SENATOR SEILER: Just for the record, Ken, would you say your name and spell it, please.
[LB1072]

SENATOR HAAR: I'm sorry. [LB1072]

SENATOR SEILER: That's fine. [LB1072]

SENATOR HAAR: Ken, K-e-n, Haar, H-a-a-r. [LB1072]

SENATOR SEILER: Thank you. Any questions? Thank you very much. First proponent.
[LB1072]

DANNY KLUTHE: Hi, Senator Seiler and the rest of the committee. Thank you very much for allowing us to present our case here. I'm Danny Kluthe, D-a-n-n-y K-l-u-t-h-e. I'm a farmer from

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Dodge, Nebraska. And farm equipment to farmers, they're very valuable and to keep that equipment running, they take great pride in their farm shop and great pride in doing the necessary mechanic work that needs to be done for the most part. And if they do need help, in a lot of cases, they have...down the road, they've got independent repair shops that do a lot of their repair work. However, now the equipment companies, manufacturers want to monopolize their equipment meaning that with most equipment is labeled with a lot of sensors and electronic components that they want to keep control of and are unwilling to download them and give the farmers the opportunity to work on it. And that's kind of unfortunate. And I'll give you a good example. I farm out there by Dodge and have a livestock operation where I take the hog waste and run it through a methane digester and capture the methane and run it through a 3306 Cat engine that makes electricity 24/7. A couple years ago I learned to compress the methane and I modified my three-quarter ton Chevy Duramax diesel pickup to run on 80 percent methane and 20 percent diesel. And I'm getting probably 2.5 times the mileage out of my diesel pickup on diesel. And I modified my tractor to run on 90 percent methane and 10 percent diesel. And that equipment just purrs. Methane is methane whether it comes from the oil fields as natural gas, so we've been working on expanding natural gas fill-up stations. Omaha has got two or three. Lincoln has got a couple, three. Columbus just put one in. Norfolk and a bunch of other cities are talking about it. And now we are unable to modify our equipment so it's a shame because, you know, it's clean running and all together this entire bill--I'm running out of time here--this entire bill is really important to the farm industry. It's costing the farm industry a ton of money if the manufacturers are the only ones that we can work our equipment with. [LB1072]

SENATOR SEILER: Is there anything else you wanted to add? [LB1072]

DANNY KLUTHE: Yes. It would be a shame if we were limited to only the manufacturers working on our equipment. It would be expensive. There would be no reason for them, since they've got a monopoly on it, for them to excel on their timeliness, on their quality of work. There wouldn't be no competition. And that's what makes America great is competition. So... [LB1072]

SENATOR SEILER: Okay. Thank you very much. [LB1072]

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DANNY KLUTHE: Yes. [LB1072]

SENATOR SEILER: Any questions? Senator Coash. [LB1072]

SENATOR COASH: Thank you, Senator Seiler. Mr. Kluthe, could you explain to me exactly what it is that an independent repair person wants to do that they're unable to do right now. [LB1072]

DANNY KLUTHE: Yes, Senator. What they would like to be able to do--and we need this--is to get the download on the software because without that, if you can't get the software to work on equipment, it's probably pretty much prohibited. You can't work on it. We need to have that downloaded. And see, the Equipment Dealers Association wants to hold that and keep it for themselves. They don't want us to have that. So without that, independent repair shops are not going to be much good. [LB1072]

SENATOR COASH: So it's some software that you need to be able to download in order to repair your own...is that download available...could you...are you able to purchase that from the manufacturer or the dealer? [LB1072]

DANNY KLUTHE: It would be nice if we could. I'm under the understanding that what they want is their company shops to do all the work. And so in other words, instead of like I modified my equipment, when they do the work there won't be no...it would be stock. There won't be no aftermarket parts. They're going to be their parts. And we're kind of held hostage there. [LB1072]

SENATOR COASH: Okay. I think I understand. Thank you. [LB1072]

SENATOR SEILER: Any further questions? Thank you for your testimony. Excuse me, Senator Williams. [LB1072]

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SENATOR WILLIAMS: Thank you, Senator Seiler, and thank you for being here. Quick question, you were able to modify both your pickup and your tractor without this legislation. Can you explain that to me? [LB1072]

DANNY KLUTHE: Well, they're earlier equipment. This bill I think is going to take place here in the near future. And so from this point on, they're going to...all your newer equipment they're going to hold the rights to the software. See, and prior to this we had all the rights. And when you pay that kind of money for equipment you should be able to have the rights to that. [LB1072]

SENATOR WILLIAMS: If a farmer had the ability to change everything on their piece of equipment, what would prevent them from going in and changing the emission controls and settings like that? [LB1072]

DANNY KLUTHE: The software. [LB1072]

SENATOR WILLIAMS: But if they had the software, they could go in and change emissions to exceed EPA requirements and other federal regulations. [LB1072]

DANNY KLUTHE: Okay, to answer that, whenever a farmer or anybody modifies any equipment, they're taking responsibility. If they're doing something they shouldn't be, they're responsible. And so what I'm saying is if they're doing something that they shouldn't be, they're taking that responsibility. [LB1072]

SENATOR WILLIAMS: I guess my question is, is that possible if they had the code to be doing things like that, do you know? You may not know? [LB1072]

DANNY KLUTHE: Well, they could possibly do that. [LB1072]

SENATOR WILLIAMS: Thank you. [LB1072]

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SENATOR SEILER: Any further questions? Thank you very much for your testimony.
[LB1072]

DANNY KLUTHE: Thank you. [LB1072]

SENATOR SEILER: Next proponent. [LB1072]

KENNY ROELOFSEN: Good afternoon, Senator Seiler and Judiciary Committee. Thank you for having me. My name is Kenneth Roelofsen, K-e-n-n-e-t-h, Roelofsen, R-o-e-l-o-f-s-e-n. I am here on behalf of Abilene Machine, Incorporated. We are an ag replacement company. We've been selling parts since 1980 for tractors and combines. What this bill is going to do for us is it's going to allow us to progress into the future and to be able to offer product offering that will comply with basically any tractor made after 2004 into the 2008. Basically what the OEMs have done is they've put three computers on every tractor. You have one in the cab, you have one in the transmission, you have one on the engine. If all three of these computers do not communicate, the tractor shuts down. So the biggest problem with this and what the OEMs are doing is that if one of those doesn't comply, the tractor goes into limp mode. That causes a problem for a farmer. If they're down for one to two days during planting season or during harvest season, they're wasting money. And where I'm going to get with this is if the only person who can repair that equipment is the OEM, then if they have a tech that's already out, they don't have another tech to get out there and essentially plug in a USB port and fix their tractor, then they're out. So they're essentially tying up all the market into a monopoly to themselves not allowing competition which drives prices up. Point is, is if they're going to have...if you're going to sell a piece of property like a tractor or a combine, anybody should be able to work on it. If you own it, you should be allowed to dictate who works on it. So by getting this bill passed, it's going to allow this software and the rights to be able to at least diagnose the problems and fix the problems. It has nothing to do with modification, on my end anyway. That's my first component. And then I guess what I would say next is that Abilene Machine prospered in the 1980s. And if you remembered the 1980s, it was a crucial time in the farming industry. If same laws like this had existed in 1980s prohibiting markets like mine to be able to come into the market, we wouldn't be an industry. We got over 300 companies that do the same thing I do. You got thousands of independent repair shops that rely on being able to repair tractors and combines

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essentially. If we keep this into play, we're going to cut out a lot of jobs and a lot of money. Competition is going to go down, quality is going to go down, and prices are going to go up. And we all know the ag community cannot take another hit like that, especially with grain prices the way they are. I fully support this bill to ensure that the farming community and farmers themselves, repair shops, and dealers like me can stay in business and stay alive. I don't see a future for me and the future of all my employees unless I can get a bill that allows me to sell future technology. And this law, you know, the laws that they have in place are prohibiting me to do that. That's it. [LB1072]

SENATOR SEILER: Senator Krist. [LB1072]

SENATOR KRIST: I think you're the right person for me to ask these questions and to get this on the record. Mr. Kluthe was talking about when things changed. We're talking about a piece of federal regulation change in the last few years that prohibits you from getting I'll just call it the data of a product, is that correct? [LB1072]

KENNY ROELOFSEN: Yes. [LB1072]

SENATOR KRIST: And the reason that I think it's important is that there aren't very often, not a whole lot of times, when I get calls from Washington, D.C., knowing that we're going to hear a bill, and that's happened on this one. The consumer is not protected in the kind of calls that I got. Those calls were to allow me to understand that you shouldn't be monkeying around with their products. Now on the flip side that I have to say that if...once you do have the information and you do, in some cases, modify in any way, or fix the equipment, we do have a warranty issue, do we not? I mean is there going to come a time...you want to be able to plug USB port in, analyze what's going on, and if you can, fix it on the spot to restore the equipment. That's great. But once you do that, if it's not a certified mechanic or...we run into this with cars these days where you try to mess something up and it's no longer under warranty. Can you talk to me about that for just a minute. [LB1072]

KENNY ROELOFSEN: Well, let me say this. If your car runs out of oil in Omaha and you live in Lincoln and you go get the oil changed at an independent repair shop, that's not going to void

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your warranty. They're not changing the statutes of the warranty. The warranty only says as long as you don't modify the equipment, the warranty shall stay in play. Repair shops aren't modifying. That's not what they're going to be doing. [LB1072]

SENATOR KRIST: That's not where I'm going. I guess let me just cut to the chase. Where I'm getting at here is that under any warranty that I've ever seen on any piece of equipment that I've ever owned including airplanes, it's under warranty until you void the warranty which is that point at which you potentially interfere with or maintain the airplane, other than a certified mechanic to do that kind of work. So I get it. You want to buy a million dollar combine and if it shuts down you want to plug in the USB and change it. But is there a risk that now it's no longer under warranty? [LB1072]

KENNY ROELOFSEN: You know, I can't accurately give you an answer on that. [LB1072]

SENATOR KRIST: Okay. All right. I appreciate it. Thank you. [LB1072]

SENATOR SEILER: Any further questions? I have one. You use a term, OEM. Would you explain that for just the record. [LB1072]

KENNY ROELOFSEN: Original equipment manufacturer. [LB1072]

SENATOR SEILER: Okay. Any other questions? Thank you very much. [LB1072]

KENNY ROELOFSEN: Thank you. [LB1072]

SENATOR SEILER: Next proponent. [LB1072]

JASON DeWATER: Good afternoon. My name is Jason DeWater; it's spelled J-a-s-o-n D-e-W-a-t-e-r. I own a business called iFix Omaha and we actually are in the business of repairing smartphones and tablets. So with all due respect, I'd like to at least speak for my support of the bill as I saw it. For the past several years, we have repaired smartphones and tablets for thousands and thousands of Nebraskans, local school districts, corporations, businesses big and

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small, nonprofits. They come to my business because they trust us to offer honest, fast, and reliable service, and also they're going to save a lot of time and a lot of money by bringing their broken devices to us. So our team is well-trained, professional, and our staff can fix anything you put in front of it essentially so long as we have the right tool available for the job, as with any sort of service. And in our industry, in our repair industry, there are a few critical tools that we are missing inexplicably and we desperately need that because it's in the best interest of the consumer. These tools are not tools we can hold in our hand. They're diagnostic digital tools. And what we need is the ability to plug in, for instance, an iPhone or an iPad into a system and find the fault quickly. Just like a car auto mechanic can find a fault very quickly, that saves him or her time and it saves the consumer money. Well, we need that same ability. We need to be able to come in and diagnose the problems of these devices. Right now, those tools are available but not to us. They're available only within the manufacturer. And so for instance, as bad as we need that tool, we can't access for any price. What's even worse is that the devices are locked in a certain way where we cannot even develop software ourselves to diagnose these problems because the phone will only work with the diagnostic tools made by the manufacturer. So that's a huge problem. The next step to this problem if we look into the future is that we're seeing now that the manufacturers of these smartphones are coupling and locking down the actual hardware components of a phone to the hardware of that phone and the device itself, which means if your button goes out two years down the line, which that happens all the time, or your camera stops working, in the future very near we will not be able to repair that. We will not be able to save you money. You will be locked into probably buying a brand new device and going the route that the manufacturer has you. So we...right now, we're hoping to continue to save people time and money years down the road like we've done the past several years. But things are starting to change and I think it's time to make action on behalf of the consumer right now. [LB1072]

SENATOR SEILER: Questions? Thank you very much for your testimony. [LB1072]

JASON DeWATER: Yes, thank you. [LB1072]

SENATOR SEILER: Next proponent. [LB1072]

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GAY GORDON-BYRNE: (Exhibit 2) Hello. Thank you all, Senators. Thank you, Mr. Chairman. Really appreciate the opportunity to come and speak to you about this. My name is Gay Gordon-Byrne; it's spelled G-a-y G-o-r-d-o-n-B-y-r-n-e. I'm the executive director of The Repair Association and I'm here as a representative of the industry of repair, particularly the independent repair industry. Most of our members...we're a fairly new organization. We were only founded three years ago. Most of our members are in the business of repair or resale or reuse or recycling of digital electronic materials. So I don't disagree that tractors are a huge problem and we need to work on that. But I did want to thank Senator Haar for bringing this bill and also add some of my comments about the problems of repair in general, which you may want to take into consideration, you know, as the bill...as you would logically do. One of the things I wanted to address right away, Senator Krist, is your question about warranty. The bill as it's shown does not do anything about warranty. There's no interference with warranty. And in fact, a lot of manufacturers infer that there's...you know, things are going to fall out of warranty if you use nonoriginal parts or maybe nonoriginal oil or an independent mechanic touches that equipment. But that's actually illegal under current federal law. There's a Magnuson-Moss Warranty Act of 1975 that protects consumers from those kinds of conditions. So the bill doesn't touch warranty and if you have questions about that I'd be happy to answer it. But what I wanted to speak to was really the overall problem of repair and what happens in the digital world. It's just flatly easy for a manufacturer to stop helping consumers repair the property. And they just don't...they no longer publish manuals. You can't get a manual and if the manufacturer doesn't put one up on-line and let you access it, you really don't have access to that. So you can't get...if the manufacturer doesn't publish a schematic, you can't get it. And this is a problem throughout everything with a digital electronic component. So it applies to the largest mainframes in the largest tractors down to the smallest coffee machines. There's a level of information that you must have in order to be able to repair the product and we never needed that before because there was no mystery about repair. But as soon as you put a little computer chip in a product, it becomes something that needs help from the manufacturer that we never needed before for the business of repair. So consumers can't get it, owners can't get it, certainly independent repair shops can't get it unless the manufacturer is cooperating. So that's the number one problem and it's not really directed in any particular industry or particular manufacturer, but I can tell you it's absolutely everywhere. This problem is permeating the entire electronics industry and we're going to need to deal with this or we're never going to be able to fix our stuff. [LB1072]

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SENATOR SEILER: Any questions? Seeing none, thank you very much for your testimony.
[LB1072]

GAY GORDON-BYRNE: Oh. Thank you very much. [LB1072]

SENATOR SEILER: Further proponents. [LB1072]

BEN GOTSCHALL: (Exhibit 3) Good afternoon, Senators. Thank you. My name is Ben Gotschall; that's B-e-n G-o-t-s-c-h-a-l-l, and I'm the agricultural and local food director for Bold Nebraska as well as a farmer myself. And I've heard some of the testimony that came before so I'm not going to repeat a lot of the things that have been said, especially about the tractors although I do have a lot of memories of growing up, you know, working in the hay field or feeding cows in the winter time. And when something broke down it was always in our best interest to be able to fix it ourselves. We were 20 miles from the nearest town and that town didn't have a repair shop or a dealer. It would have been considerable time and money if we had to, every time something broke down, take it to the nearest dealer. So there's a lot of folks in Nebraska that have that same situation of remote location. And I know we're not talking about the 3020s and 4020s that I grew up with anymore. So that's what I see this bill as kind of bringing us forward into the digital age that we now live in, and not just in tractors but in a lot of other everyday items like cell phones and some of the things that have been discussed. And one of the other things that we appreciate about this bill that we support as Bold Nebraska, that I support as myself is that it is kind of an umbrella bill. It's not picking apart one industry after another after another and having to refight the same battle, so to speak, over and over again. It says if it has a computer chip, if it needs fixed, people should be able to fix it whether that's the owner of the product or an independent repair person. I also see this as an economic development issue. Like I mentioned, in small-town Nebraska, for example, folks that I know that I went to high school with, they go to say maybe a community college and learn about diesel mechanic repair or something like that. They don't really have the option of starting their own tractor repair shop if they aren't affiliated with a dealer...with a company. So I see that as something that would help young people in rural areas. The waste issue is also one that has been touched on. When it becomes more cost effective to throw something away than fix it, I think

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that's a problem and I think that's something that should be addressed. So thank you for your time. [LB1072]

SENATOR SEILER: Any questions? I have one, Ben. And you may not know this. If I take my tractor to a Ford dealership, can they call say John Deere and get those codes? [LB1072]

BEN GOTSCHALL: I do not know that. I would say...I would venture to guess and I would say no unless they were licensed by...you said John Deere? [LB1072]

SENATOR SEILER: John Deere. [LB1072]

BEN GOTSCHALL: Yeah, I... [LB1072]

SENATOR SEILER: Okay. [LB1072]

BEN GOTSCHALL: But I don't know for sure. I'm not an expert on that. [LB1072]

SENATOR SEILER: Any further questions? Thank you. [LB1072]

BEN GOTSCHALL: Thank you. [LB1072]

SENATOR SEILER: Any further proponents? [LB1072]

CHAD LECHTENBERG: Hello, committee members, and thank you, Senator Haar, for bringing this forward. My name is Chad Lechtenberg, C-h-a-d L-e-c-h-t-e-n-b-e-r-g. I own and operate ASR, LLC, Alternative Service and Repair. My main work is on automotive pickups, diesel pickups and Class 8 over-the-road trucks and trailers. I deal firsthand on a daily basis with lots of different truck manufactures as well as different engine manufacturers. Doesn't matter if it's Cat, Cummins, or Deere, Case, whatever, nowadays if you don't have a computer to communicate with that engine, all you know is something is wrong. And the automotive and trucking industry has already gotten this far and have had to give up their rights to software to providers that either rewrite communication software that gives guys like me the opportunity and the tools which I

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have to spend a considerable amount of money for to communicate with these vehicles to either diagnose problems or monitor data to try and diagnose problems. And I don't even get that opportunity with a piece of ag equipment at this time because there's nothing out there. It's just not provided. And unless you have that specific software, you're hands are tied. A guy could call me wanting me to come repair something on site and I have to, as a repair tech master technician, I just have to pass him up and say I'm sorry, I can't help you. If a guy had the opportunity to get the tooling that he needs to make these repairs, it's no different than me or a farmer. We're not looking to modify or undermine any manufacturer. But if you look at the lifespan of a piece of equipment nowadays, how long is it going to be in warranty, which is I've heard some concerns of up here, versus the time it's going to be in operation out of warranty where they would have the opportunity to go to an independent shop and nobody cares nonetheless where they go at that point. It's going to be in service out of warranty a heck of a lot longer but yet he will still be having to go to a dealer if nobody like me can get the tooling to communicate with it just to solve a simple problem as easy as a bad injector or possibly clogged fuel filter. And if you have any questions? [LB1072]

SENATOR SEILER: Senator Krist. [LB1072]

SENATOR KRIST: Thanks for making that point. I would imagine a combine is many, many years and very few years is it under warranty. So we're talking about both sides of it. The only reason I brought that up is that it should be and is dealt with in the automotive area at a certain point when it's out of warranty (inaudible) magically becomes available that you can work on things. But great point, thanks for bringing it, and thanks for coming. I also want to compliment you because I know you wore a ball cap in here and you were raised the way I was. When you're indoors and you're doing this, you take your ball cap off and I appreciate that. [LB1072]

CHAD LECHTENBERG: Thank you, sir. [LB1072]

SENATOR SEILER: Any further questions? Thank you. Any further proponent? [LB1072]

JOHN HANSEN: Mr. Chairman, members of the committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union. We are in

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support of this legislation and we are in support of similar legislation and remedy at the federal level. I also serve as the vice chair of the National Farmers Union's legislative committee. This issue is certainly on our radar and we have been working at the federal level to address it. And we think that, in this case, this kind of legislation at the state level is also appropriate. But we see this through our eyes as a competition and captive supply issue, that we have a lot of very capable and competent local repair folks and they need to be able to have the technology that they need to be able to work on the equipment that we buy and pay for. So we're now in a situation that equipment not only costs a lot more money, but in a very strange kind of way, while we own it and we pay for it, we don't really control it. We can't fix our own stuff. And so I am the only...of the four boys in my family, I am the only one that is not a certified automotive diesel mechanic. But that doesn't mean I don't know how to overhaul and engine. But we did our own work. And so historically if you look at what the history is, we have some fantastic shops in the country and we have some great mechanics and we have some folks that are excellent welders and do all kinds of repair work, fabricate equipment, do all these kinds of things. If they're willing to take the risk, especially the local repair guys of which I have one brother that is, and they're willing to buy the tools and stay up with the technology to be able to do the repairs, it's a huge plus to us because when it comes harvest time or planting time service people are hard to come by. And if you'd known and followed what's been going on in the ag economy, our dealers are not just next door anymore. They're a long ways away. So this gets to be an issue, you pay all this money. Your time is worth a lot of money per hour and yet we're concentrating the technology and the ability to repair our own equipment in fewer and fewer hands. And it's structurally not a good policy. So with that, thank the committee for its consideration and thank Senator Haar for bringing this bill forward. [LB1072]

SENATOR SEILER: Senator Coash. [LB1072]

SENATOR COASH: Thank you, Senator. Mr. Hansen, not that we expect anything to get done in Washington, but you mentioned that this is being contemplated at the federal level. Where is it in the process? I mean what is being talked about, where is it being talked about? [LB1072]

JOHN HANSEN: The...we thought we were going to have a bill that represented some semblance of negotiated agreement out a while back. And something has gummed up the works

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and so that bill has not been introduced. We've been a part of those discussions with others. And so we were hopeful that we were going to get something done. And I know that from a practical standpoint, we should not be hopeful that Washington is going to do anything. But nevertheless, it is my job to be hopeful. And so we continue to work and we...we're aware that there's a problem. And so the treatment of ag and ag equipment is an issue. And so maybe it's one of those things where you have competing bills in the end: One goes one way, the other goes the way, and then you fight it out on the floor. But hopefully...we were hopeful that we could get some things done behind the scenes to avoid that kind of prospect and get something done. But that bill has not been introduced. [LB1072]

SENATOR COASH: Thank you. [LB1072]

SENATOR SEILER: Senator Ebke. [LB1072]

SENATOR EBKE: Thank you. Senator Hansen...Mr. Hansen, what would you...what do you say to the local dealer of whatever type of equipment who says, but wait a second, we pay effectively a franchise fee every year to maintain our dealership and our technicians go and have specialized training. And now you want to give this away for nothing. How do you respond to that? [LB1072]

JOHN HANSEN: Well, I think that if they pay a franchise fee, they should pay a franchise fee to get a dealership to be able to sell equipment and they should be able to service it. But I don't think that they should...you should be able to buy a franchise fee for a noncompetitive system so that nobody else can do it. And so at the end, competition is a good thing. It keeps the prices competitive, it keeps the services better. So you should not be able to buy a franchise for a system that allows no other competition, period, in the sector it seems to me. That kind of goes one step being able to just...the normal idea of being able to be a kind of dealer. [LB1072]

SENATOR EBKE: What about the brand-specific training and things like that? [LB1072]

JOHN HANSEN: Well, my understanding of what we're trying to do here is to have the technology to be able to repair, to diagnose and repair equipment. And we're still diagnosing or

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repairing their equipment. And the only difference is that you actually have other folks besides them who can do that. [LB1072]

SENATOR EBKE: Okay. Thank you. [LB1072]

SENATOR SEILER: Any further questions? Thank you very much for your testimony. [LB1072]

JOHN HANSEN: Thank you all very much. [LB1072]

SENATOR SEILER: Further proponent. Seeing nobody scrambling, opponent. [LB1072]

GEORGE WHITAKER: Mr. Chairman, thank you and, committee, thank you for the opportunity to testify. My name is George Whitaker, G-e-o-r-g-e W-h-i-t-a-k-e-r. I'm from Racine, Wisconsin, and I work for CNH Industrial. We're the manufacturers and marketers of Case IH and New Holland farm equipment throughout...through dealers throughout North America and globally as well. We have some of the best dealers with us today that you'll hear from later so I'm not going to step on their comments, talk about their particular business requirements but other than to say that we're in agreement with two key points that I think they'll raise and one is operator and public safety. So you may be familiar with recent issue that took place with a Chrysler vehicle where operator was able to take over...some enterprising fellows were able to take over the car and take over the computer system in the car and direct the car accordingly. The other issue, of course, is emissions. Our industry has invested hundreds of millions of dollars over the last ten years to comply with federal emissions standards. And to impact that...I think there was a comment about, well, the farmer will take on liability. Certainly the liability is not going to stop at the farmer's door. It's going to go all the way to the manufacturer and likely the dealer that sold the product. We think there's a couple of other particular issues with the bill, particularly around the discussion of parts, the discussion of immobilizer systems, the discussion of OEMs making the same diagnostic tools available to end users and repair facilities that our engineering staffs have. That's a real different apple and oranges-types of discussion. And I can talk to those in greater detail if you wish. We also think that this particular bill fails to address some key issues like telematics, licensing of users and tool manufacturers, dispute resolution,

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and just a wide variety of pricing approaches that different brands use in providing electronic service tools to their dealers. I'd like to jump over for a second because there was conversation about the auto market. And I think it's important to make dramatic distinctions. In 2015, the auto industry sold 18 million cars. The farm equipment industry for mobile powered equipment will be about 1.5 percent of that market. Cars are mobile. Cars are migratory. In the truck business, customers are migratory. In the farm equipment business I've heard...I've been in the business for 40 years. Customers have always told me I don't buy because it's Case IH or John Deere; I buy because it's the dealer relationship and I know that dealer will support me. So it's very important to us as a brand that we maintain this important piece of business for our dealers and the brand experience that customers enjoy. I see the red light is on, so I would be happy to answer any questions. [LB1072]

SENATOR SEILER: Questions? Thank you very much for your testimony. [LB1072]

GEORGE WHITAKER: Thank you. [LB1072]

SENATOR SEILER: Next opponent. [LB1072]

TIM CONRAD: (Exhibit 4) Good afternoon, Mr. Chairman, members of the committee. My name is Tim Conrad; that's C-o-n-r-a-d, and I represent CLAAS of America who's headquartered in Omaha, Nebraska. Appreciate this opportunity to share our views on this important bill and also our president of the region, Leif Magnusson, is serving as this year's chair of the Association of Equipment Manufacturers, a U.S.-based trade association representing nearly 900 members. As part of my statement, I would ask that AEM's statement of opposition be included in the hearing record. And what was mentioned earlier how valuable the equipment has gotten and I think that's an important fact. The agriculture equipment depends on complex on-board electronics and sensors for optimum performance and operational safety. Factory trained and authorized technicians not only diagnose needed repairs but work directly with the equipment manufacturer to determine the best solution for solving the problem. Manufacturers require our dealers' service technicians to receive weeks of training, which is essential in order to avoid unnecessary damage to the equipment. Service and repair work should only be performed by dealers with factory-certified technicians in order to protect customers' significant investments

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and ensure continued compliance with emissions, operator safety, and other regulatory requirements. So as we mentioned, you know, I think the key focus for us, of course, is safety and continued compliance with the emissions which has become a major issue in our industry. The other area of concern for us is intellectual property and proprietary control. Through reverse engineering, many of our American products have been copied over the years. Requiring wide distribution of all the embedded data to unauthorized technicians will likely result in greatly simplified counterfeiting process for on-board controls, software, emissions, and digital technology. Allowing unlimited third-party access to electronic data will undermine manufacturers' intellectual property protection and provide numerous opportunities for data theft. We therefore oppose this bill. Any questions? [LB1072]

SENATOR SEILER: This is the handout that you had... [LB1072]

TIM CONRAD: Yes. [LB1072]

SENATOR SEILER: ...you wanted to be part of the transcript? [LB1072]

TIM CONRAD: Yes. [LB1072]

SENATOR SEILER: It will be made part of the transcript. Senator Krist. [LB1072]

SENATOR KRIST: So at what point would you allow the farmer to work on his own equipment? [LB1072]

TIM CONRAD: That's a difficult question. I think the...you know, in terms of routine repair, you know, we heard a comment earlier about oil changing on a car. You know, those type of things I don't see as a major issue. You know, when you get into the technology behind a lot of this equipment today, it's very sophisticated and the risk of safety and doing something that could be a problem is there. And of course, we have concerns about liability and that happens frequently today as well. So repair of the equipment, I think, is largely, depending on what type of circumstance we'd be talking about, if it's routine-type activities, probably not an issue. But

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something more complex definitely would be of better interest to look at the authorized repair centers. [LB1072]

SENATOR KRIST: Okay. So you heard the comment or the question that they're out in the middle of nowhere and it's going to be X number of miles to drive or take the equipment to have it repaired. So I'm going to give you my side of the analogy. Having spent a few year flying Boeing airplanes, I could run the diagnostic on the airplane, send it to Boeing, and they could send me a tech to be there the next morning to fix the airplane. Is there any such interface with the computer systems on board this equipment. You're talking about getting very sophisticated and having that technology. I think that the industry, if they're not pursuing that reign...or that run, should probably look at being more accommodating in terms of that kind of thing happening. [LB1072]

TIM CONRAD: Yes, the technology does exist to be able to do that. So there is remote diagnostic capabilities. And again, I think that comes back to some of the discussions about telematics and the overall legislation is related to that activity as well. But the technology does exist. [LB1072]

SENATOR KRIST: So when you sell a Case and...are you going to give them the USB and the technology to put in his computer to say it's not starting this morning so here's my problem? [LB1072]

TIM CONRAD: Not directly to the owner, no. [LB1072]

SENATOR KRIST: Why not? [LB1072]

TIM CONRAD: Because of the requirement for the safety and the training that's given to the service techs that we have. [LB1072]

SENATOR KRIST: I'm not talking about fixing it. We're talking about diagnostics... [LB1072]

TIM CONRAD: Diagnostics. [LB1072]

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SENATOR KRIST: ...the diagnostics that would get it fixed and back on the road. And you know, it's not...we've heard this discussion going on with cell phone and unlocking it and all that and proprietary and I get that. But you know there's got to be...you're getting to a point where there's got to be a happy medium. At what point can he work on, he or she, work on that piece of equipment? And what about the diagnostics? I mean there is a point at which being responsive as a dealer, particularly with farm equipment, may mean 100 miles away from wherever that product is. [LB1072]

TIM CONRAD: Um-hum, I think that's a valid point, but I do also think that, you know, as related to our equipment and my knowledge of it which is somewhat limited on the technical side, it depends on the format that that information is coming out as well and how it can be interpreted. [LB1072]

SENATOR KRIST: Okay. Thank you. [LB1072]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB1072]

TIM CONRAD: Thank you. [LB1072]

SENATOR SEILER: Next opponent. [LB1072]

MIKE KONGS: Good afternoon, Senators. My name is Mike Kongs, K-o-n-g-s. I represent LandMark Equipment in Nebraska and Kansas. We have dealerships in all of central Nebraska and northern part of Kansas. I am speaking, of course, in opposition to LB1072. You will hear from some of my counterparts this afternoon regarding the investments that we make as dealers across the state about the investment we have in plant and equipment and also the investment that we do in our employees. Our employees, as a general rule, a technician, we spend in excess of \$3,000 a year per technician just to keep them trained and current. That doesn't cover also the training that we are required by our manufacturers to send our technicians to and the tools and the parts that we have to keep on hand just in order to be able to order that piece of equipment from our manufacturers. One of the things though that I'd like to address is having to do with the modification and the liability thereof. Each piece of equipment has become much more

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technologically advanced than back when I started seeing tractors in the 3010 and 3020 days where a crescent wrench would suffice for being the tool of choice to do most of our daily repairs. Times have changed. Our products have changed. And because of that, the need to control that product and control the repair or the change of that product is becoming important. We've talked about the emissions controls as well as the safety standards. If the ability to change the code which communicates the engine to the transmission to the PTO, for example, on a tractor were to be changed and unknowingly we sent a technician out to work on an entirely different part of the tractor, for example. And the code that had been changed compromised the safety system and, God forbid, something should happen to the customer then who would be help responsible if say, for example, that code change caused the PTO to suddenly engage? There's sensors obviously and control units throughout the tractors that contain codes that are, let's face it, they are very sensitive to competition and also to the environment and the emissions standards. Any questions? [LB1072]

SENATOR SEILER: Senator Krist. [LB1072]

SENATOR KRIST: This is probably the last time I'm going to talk about this bill today. I just wanted to get this on the record. Being brought up and working in the aviation industry as long as I have, I've found it almost ruthless that manufacturers of airplanes decide to put such a high price on their parts and on the actual modification to their parts that they run an airplane out of business and you have to buy a new one. I don't see any difference here. I see that there's a danger that you're so proud of what you have that you won't let the farmer work on it after a certain point. So my question to you is the same question I asked before. At what point can I work on my tractor? [LB1072]

MIKE KONGS: Actually, Senator, we encourage our customers to work on their equipment. Now, what I mean by that and I need to clarify, is that the portion of this bill that I am the largest opponent to is the modification of the software which controls that piece of equipment. We talked about automobiles, for example, being hacked. Can you imagine the problems involved with a large piece of equipment being operated without control? [LB1072]

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SENATOR KRIST: So if we define--not to interrupt you but just to get to the point--if we define that piece of software as diagnostic in nature to facilitate a farmer being able to work on this piece of equipment as opposed to enabling the modification to modify, actually modify it, you would be happy with that? [LB1072]

MIKE KONGS: We do work with our customers to allow them to repair their equipment. You mentioned earlier, one of your questions was about remote diagnostics. Today our tractors have remote diagnostics. My service manager can sit in front of his computer and read the diagnostic codes off of a tractor. And we are more than willing to help that customer with determining what that code means. And if it can help him get moving and get that tractor back in the field all the faster, we're in favor of that. [LB1072]

SENATOR KRIST: So in laymen's terms, if you are remote diagnostic...if you are enabling remote diagnostics and it's a filter that needs to be replaced, you're going to tell him to go buy the filter and put it on. [LB1072]

MIKE KONGS: Yes, and not only that but dealerships are becoming further apart. There are fewer over the years. By using that remote diagnostics, if that farmer cannot repair his piece of equipment, it also gives us the ability to know what needs to be addressed when we get there so that we have the right pieces and parts and the technology in place to handle that. [LB1072]

SENATOR KRIST: Okay. But my last point--and as I said, I will not talk on this bill again--but my last point is this. The question of when is he going to be able to work on his tractor? If I buy a brand new tractor this year, 2016, and that data is not available to me until after it's out of warranty, at what point can I download that data and work on my own tractor? [LB1072]

MIKE KONGS: I'm not quite sure that I understand exactly...we talk a lot about data and we're scattering around the edges of data. What piece of code do you need...? I guess what I'm referring to is what part of that data do you need to repair that that would not modify it that we cannot achieve through the remote diagnostics? [LB1072]

SENATOR KRIST: That's one of my questions. [LB1072]

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MIKE KONGS: Yeah, and... [LB1072]

SENATOR KRIST: If it's diagnostic in nature or is it modification in nature? [LB1072]

MIKE KONGS: It's modification in nature. The diagnostics you have available to you today. And they're...in fact in a lot of the owners manuals there is basic diagnostic codes and it will tell you how to bring that up on the tractor's dash, for example, to determine if that filter, for example, needed changed. The customer already has access to that. And all of our service departments are more than willing to work with our customers to try to avoid that call out into the field if at all possible. [LB1072]

SENATOR KRIST: Okay. Thanks. [LB1072]

MIKE KONGS: Okay. [LB1072]

SENATOR SEILER: Senator Williams. [LB1072]

SENATOR WILLIAMS: Thank you. Thank you for being here. A series of questions, we've had...well, first I'll start with the filter situation. If I understood your testimony correctly, most of these pieces of equipment--the combine, the tractor--already has the self-diagnostic equipment. You can bring it up, see what the codes are. You can call LandMark and determine I need to change this filter. [LB1072]

MIKE KONGS: All the basic codes, yes. There are some underlying codes that would get into much deeper than a customer would want to get into, but yes. [LB1072]

SENATOR WILLIAMS: We had a question earlier about modification as it has to do with emissions, which would be a very sensitive area I would think. At this point in time the farmer could not make those changes, would that be correct, that would allow them to get deep enough into the process to change emission? [LB1072]

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MIKE KONGS: That would be correct. And you know, when we talk about making those modifications, we've talked about the expense of the piece of equipment. If a piece of equipment is modified and that would directly affect emissions, for example, if that piece of equipment were to come back into our facilities to be resold and we were unaware that that modification had occurred, we could then be responsible and liable for selling that piece again to another customer. And emissions is one thing. Let's say that we get in and change the codes and we take a 150 horsepower tractor and boost it to a 200 horsepower tractor. Now that tractor comes back into my facility to be resold and it's resold unknowing that that modification has occurred. I could be held responsible if something were to happen. The piece of equipment was not designed to withstand that kind of horsepower. I could be liable...held responsible if...well, for example, let's say that there's a PTO-driven piece of equipment that is designed to run 1,000 RPMs and no more than 150 horsepower. And through the modification, and unit is running is running at 1,200 to 1,500 RPMs and putting out the 200 horsepower that we talked about. And the piece of equipment that I'm pulling cannot withstand that and something were to happen. Who is liable for that? [LB1072]

SENATOR WILLIAMS: Last question because we've had some discussion on warranties and length of warranties and the length of use of equipment. Would you take us through that on a typical tractor or combine, how long a warranty normally is for the kind of things we're talking about. [LB1072]

MIKE KONGS: Generally speaking, the manufacturers have a two-year warranty on a piece of equipment on engine and power train. John Deere does offer and other manufacturers do as well, an extended warranty program which is no different than the automobile industry. [LB1072]

SENATOR WILLIAMS: Thank you. [LB1072]

MIKE KONGS: Okay. [LB1072]

SENATOR SEILER: Further questions? Seeing none, thank you much for your appearance and your testimony. Next opponent. [LB1072]

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SCOTT RABER: Good afternoon, Senators, and thank you for having me here. My name is Scott Raber, S-c-o-t-t R-a-b-e-r, and I am here in opposition of LB1072. I represent Titan Machinery in the state of Nebraska. Our company has 91 agricultural and construction stores across the Midwest, Rockies, and southwest with 13 of those agricultural dealerships being in the state of Nebraska. A little bit of my background, I grew up on a dairy farm, worked for major OEMs for over 13 years, and now operate or manage two of the agriculture retail stores in Nebraska for Titan Machinery. I think what's being construed a little bit is our mission and I think every dealer's mission is to provide our dealers with the best-in-class solution or best-in-class experience. We want our machines to operate with as much uptime as humanly possible. And I can tell you that we go at great lengths to make sure that our facilities, our stores, our stops are managed and staffed and trained in the ability to do that. We want to make sure that our machines are serviced properly, are repaired properly, and we make a tremendous investment in that. With one of the stores I manage, I will tell you that we will spend no more than \$50,000 this year basically just in personnel training sending people to Case IH-sponsored certified training schools, which it doesn't mention are basically our facility costs, our service vehicle costs, etcetera, etcetera. I think that this machinery has become very highly technical and highly specialized. You know, it's something that we are contractually bound with our manufacturers that we're contracted with to make sure that those machines are operating as productively as possible, that emission standards, data management, and safety parameters are met. And we are contractually bound to make sure the integrity of those systems are sound. So while we want these machines to be repaired, repaired quickly, we most of all contractually want to make sure that they are repaired properly. I can tell you that our business does...that does operate and does thrive on our service and our parts business. At the end of the day, we are not in the business to make sure that we are gouging the customer. But we do want to make sure that our business is able to be there to provide equipment to customers. We want to provide service to customers and with some erosion to that type of revenue, I can tell you that the landscape of what our businesses would look like would be dramatically different in the long term. So again, I appreciate you listening to my testimony today and would be glad to answer any questions you may have. [LB1072]

SENATOR SEILER: Seeing none, thank you for coming and testifying. Next opponent.
[LB1072]

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ART GILFUS: Members of the committee, thank you for having us here this afternoon. My name is Art Gilfus, A-r-t G-i-l-f-u-s. I'm here in opposition to LB1072. I represent Platte Valley Equipment, a John Deere agricultural equipment dealer in eastern Nebraska, multiple locations. I also represent the Iowa-Nebraska (Equipment) Dealers Association. You've heard a lot of our comments here, so I'm going to jump around from what I had previously prepared and just state that this bill is extremely detrimental to our businesses, our dealerships, all of the training and technology and investment that we've made in them, and the training that we continue to make in our people. For example, our greatest source of technicians are 18-year-old kids right out of school. We spend \$20,000 putting them through a degree program, usually at Milford or some other programs around the state. While they're there they get a part-time job, on-the-job training with us. That's another \$15,000 each year. And after that, they're an entry-level technician. Over the course of the next two years, they'll work full time while their training continues in our shops. And we'll have all in \$75,000 to \$100,000 into these people. At that point, they're what we consider master level technicians or close to it. We try to make them masters in that time period. And there's no way that somebody out there who simply just gets our proprietary information that was...is tens of millions of dollars invested in it can ever compare to what these people can do. This would be a detriment to the industry that we serve, the greatest, most productive agricultural system the world has ever known. The reason this equipment is so big and so expensive is because the world demanded it. And contrary to earlier comments, there's not three controllers on a tractor. There may be as many as 20. So I see the red light is on... [LB1072]

SENATOR SEILER: That's your yellow light. [LB1072]

ART GILFUS: Oh, I'm sorry. [LB1072]

SENATOR SEILER: You've got the same problem I've got. We're both color blind. [LB1072]

ART GILFUS: (Laugh) Right. So, should we...letting this information out and just anybody do any type of repair, extremely dangerous. It's dangerous for safety emissions reasons. There...the equipment is designed for maximum optimal use by our customers. And there's tremendous on-board diagnostics. We sell our equipment on the basis of uptime availability and we service it

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accordingly. And we're dedicated to that business. I also heard testimony earlier that there's restriction of competition here. My competitors are right over there in opposition to this bill as well. So having said that, I'm open to questions. [LB1072]

SENATOR SEILER: Questions? Thank you very much for your testimony and your appearance. [LB1072]

ART GILFUS: Thank you. [LB1072]

SENATOR SEILER: Further opponent. Further opponent. Seeing nobody scrambling, anybody in the neutral? Senator Haar, you may come up to close. (Exhibits 5 and 6) I have two letters here, both opponents: one from Wells Implement, and one from CTIA, both in opposition. They will be made part of the record. Go ahead. You may close. [LB1072]

SENATOR HAAR: Yes, thank you. Well, after listening to the discussion today it makes me feel pretty old because I worked at my dad's filling station when I could just open the hood and change the spark plugs. They were sitting right there on the top of the engine, but I guess that doesn't happen anymore. First of all, it was mentioned a number of times the thing of modification, and this bill doesn't address modification at all. Again, since there's no priority, it's past that time and so on. You know, I know this won't go any further this year but it does seem to me listening to the consumers that this is a real problem that they face and I'm sure you're going to be hearing more about this in the future. And, Senator Krist, you're just going to have to keep your hands off the engine of airplanes you fly I guess. That might be a good thing, by the way. But anyway, I'd be happy to answer any questions you have. [LB1072]

SENATOR SEILER: Any questions? Thank you for your introducing the bill and closing. [LB1072]

SENATOR HAAR: Yeah, thank you so much. [LB1072]