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Banking, Commerce and Insurance Committee
February 03, 2009

[LB152 LB157 LB432 LB528]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 3, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB152, LB157, LB432, and LB528. Senators present: Rich Pahls, Chairperson; Pete Pirsch, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Beau McCoy; Dave Pankonin; and Dennis Utter. Senators absent: None. []

SENATOR PAHLS: Okay. Thank you, Jan. Good afternoon. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls. I'm from Omaha and I represent the 31st District, sometimes called Millard. I serve as the Chair of the committee. The committee will take up the bills in the order posted. As you know, today our hearing is for public input into the process. This is your opportunity to express your opinion. The bills are LB152, LB157, LB432, and LB528. To better facilitate today's proceedings, I ask that you abide by some of the following procedures. If you take a look at the chart over here. I know you've heard some of this many times, but I'm asking you to turn off your cell phone. We have some reserved seats up here. We'd like, when you're ready to testify, to move to that. The order of testimony is...of course, the introducer, proponents, opponents, neutral, and closing. We're asking the testifiers to sign in and place your form in the box on the table. Again, we're asking you to spell your name because as we've indicated in the past, there are people who are recording our testimony, and it's nice for them to have a name that they can put with the words. We're asking you to be concise, so we don't...we can move the meeting right along. Also, if you have handouts that you'd like to give to the committee, if you do not have at least ten, like to have you wave your hand or something like that, and we'll have one of the pages run off the copies for us. To my immediate right is committee counsel, Bill Marienau, and all the way over there at the end is the committee clerk, Jan Foster. They are the people who keep us on the right path. And today I'm going to start with the introductions by senator. []

SENATOR UTTER: Thank you, Chairman Pahls. My name is Dennis Utter and I represent District 33 in Hastings, Adams County and part of Hall County. []

SENATOR PANKONIN: Good afternoon. I'm Senator Dave Pankonin, District 2. I live in Louisville. []

SENATOR LANGEMEIER: I'm Chris Langemeier. I represent District 23 at Schuyler. []

SENATOR PIRSCH: State Senator Pete Pirsch, representing District 4, Boys Town and west Omaha. []

SENATOR McCOY: Beau McCoy, District 39, Omaha. []

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SENATOR GLOOR: Mike Gloor, District 35, Grand Island. []

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial. []

SENATOR PAHLS: And our pages today, I think you see Jared Weikum sitting over there from Lincoln, and our other page is Rebecca Armstrong from Omaha. As I said, we will take up the bills in the order posted. The first bill is (LB)152 which is mine, and I will turn the meeting over to Senator Pirsch. []

SENATOR PIRSCH: Thank you very much, Chairman Pahls. Whenever you're ready to proceed on LB152. []

SENATOR PAHLS: Thank you, Senator Pirsch. My name is Rich Pahls, P-a-h-l-s. I represent District 31. LB152 would eliminate the basis of statute for two Nebraska Supreme Court cases which generated unintended results regarding the extent of coverages under the Uninsured and Underinsured Motorist Insurance Coverage Act. You're going to hear those two words an awful lot throughout this. First, the bill would amend section 44-6413 to provide that no policy subject to the act shall define insured for the purposes of uninsured and underinsured coverages, so as to exclude any person occupying the insured vehicle with the express or implied permission of an insured. These amendments would undo the basis for holding the case of Jones v. Shelter Mutual Insurance Companies decided in 2007. According to the courts in that case, in section 44-6408, persons insured for the purposes of uninsured and underinsured motorist coverages are only those persons insured under the liability provisions of a motor vehicle policy. Thus, passengers who are not, for example, relatives, related household members, or additional listed insureds, might not have uninsured or underinsured motorist coverage unless they have it under another motor vehicle liability policy pursuant to which they would be persons insured. This bill would change that. Second, the bill would amend subdivisions 1(b) of section 44-6413 to provide that uninsured and underinsured motorists coverages shall not apply to bodily injury, sickness, disease, or death of insured while occupying a vehicle instead of a motor vehicle owned by, but not insured by, the named insured or spouse or relative residing with the named insured. This amendment would undo the basis for a holding in the case of Steffen v. Progressive Northern Insurance Company decided in 2008. According to the court in that case, the owner of a farm tractor who sustained injuries while operating the tractor was entitled to underinsured motorist coverage under a motor vehicle liability policy on which he was the named insured even though the tractor was not listed on the declaration page of the policy. The court pointed out that the exemption of subdivision 1(b) of section 44-6413 is triggered by a motor vehicle which is owned by, but not insured by, the named insured or relative residing with the named insured. Section 44-6404 of the Uninsured and Underinsured Motor(ist) Insurance Coverage Act provides definitions for the act and for motor vehicle. It incorporates, by reference, the

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definition of a motor vehicle in section 60-501, any self-propelled vehicle which is designed for use upon a highway except a list of vehicles including farm tractors. Thus, for the purpose of the exemption in subdivision 1(b) of section 44-6413, a farm tractor is not a motor vehicle, and the exemption does not apply. As a result, the tractor had uninsured and underinsured motorist coverage in a motor vehicle liability policy on which it was not listed. Presumably, the same result could occur in the case of other vehicles except from the definition of motor vehicle in section 60-501. The bill would change this result. Also, because of similarity in provisions, the bill would amend subdivision 1(c) of section 44-6413 to provide that uninsured and underinsured motorist coverage shall not apply to bodily injury, sickness, disease, or death of insured while occupying an owned vehicle instead of an owned motor vehicle which is used as a public or livery conveyance which is not as such. The Jones case and the Steffens case produced results that were unintended by the Legislature and unexpected by the insurance industry. The Jones case opened a gap in the coverage. The Steffens case undid a generally accepted exception to coverage. This bill would undo those issues. Now, in all honesty, the individuals following me, they're going to give you probably a much clearer definition of the bill that I am proposing. I think we have several people who will probably bring some more clarity than the aforementioned coverage. Yes. [LB152]

SENATOR PIRSCH: Senator Langemeier. [LB152]

SENATOR LANGEMEIER: So you don't want our questions yet? [LB152]

SENATOR PAHLS: Well, I do have notes on the side (laugh). [LB152]

SENATOR LANGEMEIER: I think this just went phew. So... [LB152]

SENATOR PAHLS: Well, as I...to be honest with you, if you're an individual in one vehicle, the problem was who was covered. There's a crash. Who actually was covered by what policy? That was an issue. And the other issue is, the policy where the tractor was not on the list on the policy yet the courts ruled that they deserved. I think, to be honest with you, the people behind me would give you a much more... [LB152]

SENATOR LANGEMEIER: I thought I understood it, but now I feel like I got hit by an uninsured motorist (laughter). So one of the last questions in a minute. [LB152]

SENATOR PIRSCH: Any other questions for Senator Pahls? Seeing none, we'll move to the first proponent then. [LB152]

SENATOR PAHLS: Thank you. [LB152]

SENATOR PIRSCH: You bet. First proponent of LB152? Thank you for coming down

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here today. If you can just state your name and spell it and... [LB152]

JIM DOBLER: (Exhibit 1) Senator Pirsch, members of the committee, my name is Jim Dobler, D-o-b-l-e-r. I'm executive vice president and general counsel with Farmers Mutual of Nebraska. I'm also a registered lobbyist, and I appear today on behalf of Nebraska Insurance Information Service. And this is a trade organization in Nebraska composed of property and casualty liability insurance companies that do business here in the state of Nebraska. Our member companies as a group write the majority of automobile insurance...personal automobile insurance in this state. And you can see our member companies listed in the handout that I've provided. We appear in support of LB152. As Senator Pahls mentioned, this bill is in response to several Nebraska Supreme Court cases. This is not to suggest that the court did anything wrong, but it's just that the outcomes in those cases were kind of surprising, and they resulted in things that really I don't think reflect the common everyday experience or custom in the automobile insurance industry. After we saw this, we approached Senator Pahls and his staff; they were already well aware of what had gone on. And from that point on, we had the opportunity to provide some input on the drafting of the bill for which we really appreciate the senator and his staff for visiting with us about it. This subject involves the Nebraska Uninsured and Underinsured Motorist Insurance Coverage Act. This is an act that mandates that automobile policies provide uninsured motorist coverage and underinsured motorist coverage. Now, as I go along, I may refer to these as UM or UIM, and I apologize, but it's just simply easier for me to describe them that way. Some of the committee members I see are new, and I don't know how much opportunity you have had to deal with UM and UIM coverage issues, so I wanted to take just a moment to describe a little bit how that works in an auto policy. To begin with, I think you all, of course, realize that an auto policy, one of the main things it provides is liability coverage. But liability coverage is purchased to protect your own assets against the possibility of a monetary judgment being entered against you that you have to pay. The liability insurance limits go to other people that are hurt; they don't go to you. UM and UIM coverage works differently. This is a coverage that you purchase that pays you benefits. Here's how it would work. If you're driving down the street in your car, and another driver blows a stop sign and runs into your car, the other driver is negligent and liable for your injuries. But if the driver that ran into you and blew the stop sign doesn't have an auto policy, your uninsured motorist coverage that you bought stands in the shoes of the driver that ran into you and pays benefits to you for your damages sustained in that accident. So UM and UIM is something paid to you, whereas liability insurance is paid to others. Let's go to the first issue addressed in the bill, and it centers around the case of Jones v. Shelter. And the concept we'll be working with here involves the issue of how multiple auto policies each apply to an automobile accident, because really, if you and I are in my car driving along, my auto policy applies as I'm driving my car. But just because you're an occupant in my car doesn't mean yours vanishes; it's there, too. So what happens when you're in an accident, and you have multiple policies that may provide benefits? Well, the basic rule in Nebraska, it's a

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common law rule, and I think it's the rule all over the nation, is that the auto policy insuring the vehicle goes first, and the auto policy insuring the occupant applies as second or as excess to the first policy. So let's look at UM and UIM coverage and see how that might work. Again, let's take the example of you and I are in my car, and you're a passenger, and we're going down the street, and somebody negligently blows a stop sign and runs into us. Let's assume again that that other driver didn't have an auto policy. That will trigger your uninsured motorist coverage under your policy, and it also triggers my uninsured motorist coverage under my policy. Assume that each of us have \$100,000 in uninsured motorist benefits. Assume that my injuries and damages total \$100,000. Assume yours total \$150,000. Well, I go to my policy on my car and I collect my \$100,000. You as a passenger in my car will go to my policy first and collect \$100,000, and then you turn to your own policy and collect the additional \$50,000 from your policy. Generally, that's how it works; that's how most auto insurers write this coverage. However, in the Jones v. Shelter case, it was a little different. The policy on the automobile that I have was written in a way that said my uninsured motorist coverage only applies to me and my family. Other occupants, it doesn't apply. So you need to go to your own policy to get your uninsured motorist benefits. You can't get anything first from mine. Well, in that situation, the most you're going to collect is \$100,000. The additional \$50,000 isn't collectable anywhere because you only had \$100,000 in coverage, and you can't get anything under my policy. Now, that was the way the court decided the case, and there was nothing wrong with that, but it's...I can tell you, all of our member companies don't write it that way, all of them. They all write it where you get UM under the policy on the car, and another limit of UM with your own insurance policy. But not every company does it that way. What does this all mean? Well, number one, as a result of Jones v. Shelter, it will have a tendency to make a smaller bucket of UM/UIM benefits available because you've only got one policy to get it from as an occupant instead of two. The other issue is, what about occupants that don't own any cars, don't drive, and don't have an auto policy? Suppose it's an elderly person in a nursing home, relative, you take them out in your car to go have lunch, you get hit by the guy that runs the stop sign again. You've got coverage, but what about the occupant? Under Jones v. Shelter, that occupant can't go to your policy; they never bought a policy, so they don't have any uninsured motorist coverage anywhere. LB157 (sic: 152) closes that loophole; it increases the pot of UM/UIM benefits that are available for occupants, and from at least our organization's perspective, it reflects what most companies do. I want to point out too, it's not to say either that the way the company...the way that Shelter wrote it was wrong or bad; it wasn't. It's another way you can do it and it's perfectly acceptable, but I didn't know it was done that way. But for some, it is. Let's move now to the second issue involved with the case of Steffen v. Progressive. This is a different thing, and it centers around the question of, how should we deal with insuring off-road vehicles? As a result of Steffen, off-road vehicles are automatically insured under an auto policy for uninsured motorist benefits and underinsured motorist benefits. They're automatically covered even though they are not listed on that policy anywhere, and even though the owner has never paid any premium

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for the coverage. They're just there; they get it. And it's really kind of strange, too, in that when you think about it, those off-road vehicles get that one piece of coverage in the auto policy that relates to UM and UIM. But when it comes to all the other benefits in an auto policy, the off-road vehicles get nothing; they're not covered at all which is unusual from an industry standpoint. So, even though you might have a free component of coverage in an auto policy, you still have to go out and buy coverage for your off-road vehicles because you don't have any liability coverage unless you buy a policy, and you don't have any physical damage coverage for those types of vehicles either. We don't believe that's how the Nebraska Uninsured and Underinsured Motorist Coverage Act was intended to apply. Bill Marienau will have a more detailed recollection than I, but I remember it was sometime in the mid-nineties or early nineties that this coverage was made mandatory. And when that was set up, it was...we used a definition of motor vehicle which limited the act to cars and trucks, and we intentionally left out off-road vehicles. Now, why would you do that? Well, as you can appreciate, they're a different risk exposure for one thing, and plus, a lot of those things never get on a road, so why would you mandate people that own that stuff, but never put it on a road to have to buy it? Now, it is available; you can buy the coverage, if you want it, but it just isn't in the mandatory...but in the past, has not been in the mandatory category. Related to that, keep in mind too that the state's financial responsibility law doesn't extend to off-road vehicles. The state's compulsory automobile liability insurance law doesn't extend to off-road vehicles. We don't think the mandatory UM/UIM law should extend to those vehicles either. The coverage...UM/UIM coverage is available. It's insured a lot of different ways. Some do it under an RV policy; some a motorcycle policy; some even cover it under an auto policy. So it's out there. The marketplace provides it, and the insurance consumer can get it if he or she would like it. That concludes my testimony, and I'd be happy to answer any questions. [LB152]

SENATOR PIRSCH: Very good. Are there any questions? Yes, Senator Langemeier. [LB152]

SENATOR LANGEMEIER: Thank you, Mr. Dobler, thank you, Chairman. In reading the green copy, I guess I do understand this now that you explained it. I don't see the provision in here that it talks about the off-road. I just see the subsection 5, and maybe you have an amendment coming to do with the off-road? [LB152]

JIM DOBLER: No. Where are you referring to? [LB152]

SENATOR LANGEMEIER: On page 3,... [LB152]

JIM DOBLER: Okay. [LB152]

SENATOR LANGEMEIER: ...Section 5, line 18. [LB152]

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JIM DOBLER: Um-hum. [LB152]

SENATOR LANGEMEIER: That's all there is in this bill is that paragraph... [LB152]

JIM DOBLER: No,... [LB152]

SENATOR LANGEMEIER: ...other than striking on the previous...striking the word motor out. [LB152]

JIM DOBLER: Well, that's the key. [LB152]

SENATOR PIRSCH: That's it. [LB152]

SENATOR LANGEMEIER: That one word is the key. [LB152]

JIM DOBLER: Yes. [LB152]

SENATOR LANGEMEIER: Yes. Page 2, line 17. [LB152]

JIM DOBLER: Yeah, that is the change... [LB152]

SENATOR LANGEMEIER: That's the key word, huh? [LB152]

JIM DOBLER: ...that is the change that would remove the mandatory coverage for off-road vehicles, and make the exclusion apply to those vehicles. And here...let me...I'll try to describe that to you. If you go to the front of the...it's not in the bill, but in the UM...the front of the UM/UIM Act (Uninsured and Underinsured Motorist Insurance Coverage Act), there is a definition of motor vehicle there. And the reference is to the definition of motor vehicle in the state financial responsibility law. And in that definition of motor vehicle, excepted from the term, motor vehicle, are all off-road vehicles. So when you get to this exclusion on page 2, item (b), it's saying, if you own a motor vehicle, but you don't insure it under your auto policy, it's not covered. But since the exclusion uses the term, motor vehicle, that is a defined term, and it doesn't include off-road vehicles. So the exclusion only applies to autos and trucks. So if you have autos and trucks that you own, but don't insure under your policy, this exclusion applies. But if you have off-road vehicles that you own but don't insure under the policy, the exclusion doesn't apply, because it used the term motor vehicle. So by removing the word, motor, it takes that term outside of the definition, and now it's a broad term that we believe would include off-road vehicles in that exclusion. [LB152]

SENATOR LANGEMEIER: Okay. What a difference a word makes, huh? Thank you. [LB152]

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SENATOR PIRSCH: Senator Pankonin. [LB152]

SENATOR PANKONIN: Thank you, Senator Pirsch. Just appreciate you coming and it has helped explain; your testimony has been very helpful. Question. I mean, I understand the reason why...folks in your...in the information service would be interested in this because, obviously, these court cases have opened up more exposure. Would that be a fair statement, more potential risk? [LB152]

JIM DOBLER: I think... [LB152]

SENATOR PANKONIN: Or... [LB152]

JIM DOBLER: ...the Jones case actually would reduce exposure. [LB152]

SENATOR PANKONIN: It reduces it. Okay. [LB152]

JIM DOBLER: And in the Steffen case, yes, it would be additional exposure because every off-road vehicle would have the coverage and prior to Steffen, there could be people who wouldn't buy that coverage. [LB152]

SENATOR PANKONIN: So, basically, this is just technical to try to clean up. Does it have any strong...if this bill didn't pass, what would be the financial consequences for these companies, consumers, how do you judge this? [LB152]

JIM DOBLER: Good question, Senator, and I would say it isn't real significant, no. If you look at the Jones v. Shelter situation, maybe you don't cover the occupants, maybe you do. Companies can be on both sides of that issue. I don't see it as a big thing. On the Steffen issue and including the off-road vehicles in UM and UIM coverage, well, I think all of you appreciate...you're just not going to get a lot of those kinds of accidents. You just don't. It happens; it's not real frequent. It's just that more than anything, it's just an oddball situation to me, the way they're automatically on this policy, and they've never really done anything to accomplish that. [LB152]

SENATOR PANKONIN: So, my last question would be, so do you...if it is passed, will there be any financial consequences for insurance buyers that you see in changing pricing strategies or from just a...your best idea? [LB152]

JIM DOBLER: I would be...it wouldn't be much, no, in terms of pricing. One thing to keep in mind, I'd point out on the pricing end of things. And it's with regard to automatically insuring off-road vehicles in the auto policy. The pricing is really essentially nothing more than adding up your loss costs at the end of the year, seeing what that is, and then setting a rate to cover those costs. So, if you've automatically now added off-road vehicles to your UM/UIM coverage, whatever loss costs result from

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doing that go into the bucket of loss costs for the coverage and the rate adjusts accordingly. Well, if everyone over here owns no off-road vehicles and everyone over here does, as that price goes up for providing that automatic coverage, what benefit have you gotten from that? You're paying some more because the costs are in there, but you never want...you don't...you never will use it. On the other hand, over here, they've never had to do anything, and initially, never paid anything, but they're going to get the benefit. And it gets to an issue that's fundamental to insurance underwriting, and there's no answer, and you can argue to the end of the day. But how do you group risk exposures, what do you put in the group, and what do you put in a separate group? So if you leave things alone, pricing-wise, there will be some impact in particular to some policyholders that don't need it, won't be huge. Philosophically, is that good or bad? I guess that's for the committee. [LB152]

SENATOR PANKONIN: Thank you. [LB152]

SENATOR PIRSCH: Good. Any other questions? So, Mr. Dobler, the...with respect to the Steffen case, the policy argument for...as far as the insurance companies, are they...it's neither a loss nor gain. They'll shift the paradigm to meet their costs, whatever those are, and pass those along accordingly to policyholders. The... [LB152]

JIM DOBLER: Yes. [LB152]

SENATOR PIRSCH: ...substantive fairness argument deals with those who are insured who fall into two categories essentially; those who have these off-road vehicles that will, therefore, gain automatic coverage in which the whole group, whether you have off-road vehicles or not, will have to subsid...those who don't have off-road vehicles will have to pay into the kitty a little extra to cover those who don't. And so the argument for this is just internalizing the costs of insurance to those who are actually utilizing those insurance products. Is that fair to say? [LB152]

JIM DOBLER: Yes, that's one point to consider, yes. [LB152]

SENATOR PIRSCH: Okay. Are there any other points, or is that...I mean...? [LB152]

JIM DOBLER: Well, I think one other thing that maybe to clarify too with you is if you put it back the way it was, I think as you can see, obviously, the mandatory coverage is no longer there, and people have to buy it. So in that sense, if you don't go out and buy it, and you get in an accident, you're not going to have any benefit there. So that...I think that's something the committee has to weigh too. But having said that, a lot of people if they don't take the off-road vehicle onto a road, are never going to have a claim, so do you want to keep it out there even though some won't ever use it? That's all part of why it was never included in this act to begin with. We didn't want to make them have to buy it. What do you do about that? So I think, you know, that needs to be considered, too.

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[LB152]

SENATOR PIRSCH: Is...and thank you for that testimony. With regards to the first issue, the Jones case problem which you point out would tend to limit the exposure of the...at least the first insurance company then, and overall, I think the effect would be then less insurance for under...the way it is now, under this court case, the total amounts that are available for victims perhaps are lessons because you can't get at one of the insurers that you used to be able to get to as a victim. Is that fair to say, is that...? [LB152]

JIM DOBLER: Yes. [LB152]

SENATOR PIRSCH: Is...from your perspective as an insurer, is this an attractive change to come here to the Legislature to make one of the things compelling you because you have actuarial type of experience and know what to expect with the current system, or what compels you here today, you know, and makes you favor this...keeping the system the way it was, not under the Jones paradigm? Or what are...is there anything about this that's attractive, or are you just calling our attention to it as a legislative body to, you know, kind of weigh the different policy perspectives and make our own decision? [LB152]

JIM DOBLER: It's attractive to us in one sense because we just feel that if you were involved in an accident, and you found out you couldn't get anything from the policy on the vehicle, some people might not like that. Some people might not understand that, and that doesn't do us any good. Now, related to that, as I mentioned, all of the companies in our group already write it, so that both policies provide it. So from an actuarial standpoint, sure, we don't have to change anything; we already write it that way. To somehow reduce the potential benefits in that situation just strikes us as creating potential for trouble and public misunderstanding. And beyond that, just from my own personal standpoint, and I know, I suspect you'll all feel the same way, if you're driving your car and you've got your buddies with you, and you're in an accident, and they're hurt, wouldn't you want your...the benefits you bought on your policy to apply to your friends, too? I would. If I found out, well, gee whiz, I got a couple of guys that are hurt real bad, and here my UM and UIM only covers me and my family, it doesn't extend to my buddies. Well, I wouldn't...I would expect that it would, I think. [LB152]

SENATOR PIRSCH: Well, that's a good point. If you...I guess are you...part of the argument in doing it the manner in which you are a proponent of the Jones, changing it back. Is part of that the moral hazard that exists then? Say, me and Senator Langemeier in the car, and I am...we get into an accident, and no longer can Senator Langemeier go after my policy, but only his own policy which, if inadequate then, might there tend to be some more collusion between Senator Langemeier and myself to make sure that he's covered, that type of a moral hazard over and above where I might tend

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to state in a way I wouldn't otherwise that I'm somehow negligent or contributorily negligent in the accident. Is that one of the fears or? [LB152]

JIM DOBLER: You know, I don't think so, no. I don't see a moral hazard as having any part of it, no. [LB152]

SENATOR PIRSCH: Okay, okay. Well, thank you for answering that question for me. Any other questions? Okay, great. Well, thank you... [LB152]

JIM DOBLER: Thank you. [LB152]

SENATOR PIRSCH: ...for coming down here today. And we'll take up if there's any other proponents of this measure? [LB152]

MATT LATHROP: Good afternoon. Senator Pirsch, members of the committee, my name is Matt Lathrop. I'm an attorney from Omaha, Nebraska, and I'm here on behalf of Nebraska Association of Trial Attorneys, in support of LB152. I think Mr. Dobler did an excellent job of explaining the situation, so I'm going to move past the educational part of my presentation to just, I suppose, the trial lawyers' position on this. And I would probably start by asking the members of the committee who believes they have under...an uninsured motorist coverage on their vehicle that they drive to and from this Capitol building, and how many of you can sit here today and tell me that your coverage of underinsured and uninsured coverage applies to friends who are riding in the vehicle with you? It is under the Jones v. Shelter case; it is a surprise that the result was something other than the insurance that I've been paying for since I started with this insurance company covers me differently than my friend in the seat next to me. One might argue that, well, you know, that's the deal you struck when you sat down with your agent, but I would hazard to guess that most of us don't strike deals with our agents. We call our agent; we ask, what kind of insurance do I need? He puts a package together, and you go in with the check, and you sign. So there's a bit of a surprise there, and that surprise is accentuated if you start thinking about your son or your daughter in college, driving that vehicle, who had no idea what deal you struck with your agent; and is riding with a friend, and is involved in an accident, not because your son or daughter is a wild college student, but because there's somebody out there without insurance that causes the wreck. So the result in the Jones v. Shelter case, I think, is a shock to anybody who has been engaged in a negotiation for insurance with their insurance provider. And as Mr. Dobler said, it really isn't the way most insurance companies do business here in Nebraska. And so I think the legislation as proposed by Senator Pahls corrects that problem so that when we go to our agent who is generally somebody we've dealt with and becomes a friend, he isn't in a position where he's trying to explain later how he gave you bad coverage or she gave you bad coverage, and you aren't in a position of explaining to your friends or worse, to your friends'...your child's friends' parents, why your coverage doesn't help that person out. So it is not the way we do business in

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Nebraska. We've heard that from Mr. Dobler. And then with respect to the amendments in the Steffen case, I could start my discussion in almost the exact same manner. How many of you have off-road vehicles and probably few or none of you, but how many of you have sat down with an agent and said...and the agent immediately says, do you have off-road vehicles? Do you have anything you drive around in the hills that you want to insure? We've got that kind of coverage, and we'll be glad to cover you. We have policies for that. Most people make that choice with those kinds of questions. They don't think of, during the process of that interview, what about my ATV? They probably bring it up, and the agent will say, well, we have special coverage for that. And even you're seeing commercials on TV for those kinds of coverages. When, as Mr. Dobler pointed out, when that underinsured/uninsured coverage applies to an off-road or nonroad use vehicle, is rare. You would have to have, for instance, an ATV that instead of driving in the hills and through the woods where it's fun, you're out on a highway going half the speed of everything else out there which doesn't sound like fun at all to me. So the opportunity to employ that coverage would be rare, indeed. Obviously, the trial lawyer's focus is on the Jones case where insurance was written, and we are the people who have the clients come in and sit down and talk to us and say, I thought I had coverage. I thought this was going to take care of these people. Help me out, what can I do? So we think that the amendments to the statutes by LB152 correct those problems and bring, as the testimony and the questioning here has suggested, brings us back to a point of equilibrium where everybody's on somewhat equal footing when it comes to insurance and insurance coverage. So we are in support of (LB)152 as offered by Senator Pahls. [LB152]

SENATOR PIRSCH: All right, thank you very much for your testimony. Are there any questions here of Mr. Lathrop? Seeing none, thank you very much. [LB152]

MATT LATHROP: Thank you. [LB152]

SENATOR PIRSCH: Are there any other proponents of this bill? Thank you very much. If you can just state your name and spell it. [LB152]

TAD FRAIZER: Good afternoon, Mr. Chairman, members of the committee. My name is Tad Fraizer. That's T-a-d F-r-a-i-z-e-r. I'm here as a local counsel and lobbyist for the American Insurance Association which is a national trade association of property/casualty insurers. I think following the two gentlemen before me, anything I say is probably gilding the lily here, but I would like to say that the AIA supports this bill. I think it vindicates the expectations of both insureds and insurers in that, under the Jones case, most insurers and probably all insureds expect the vehicle involved in the accident to provide coverage to passengers. And especially as Mr. Dobler pointed out, there is that situation where you might have the cliché, little old lady who no longer drives, and does not have their own auto coverage in place, who could slip through the cracks in the event that the vehicle's policy does not provide coverage...UM/UIM

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coverage for the passenger. And I think that's a significant consumer impact that I think Senator Pankonin was inquiring about. And I think as far as the Steffen case, the off-road vehicle situation, again, I think the expectation of most companies, at least prior to the Steffen case and most insureds, is that you've got coverage on the vehicles that you schedule on your policy, and if you want coverage on other vehicles, you schedule them either on an auto policy or a farm policy or an off-roads policy. And it's just the...the odd result of the definitional borrowing in the Steffen case. I'll just expand on that a little at the risk of, hopefully, shedding a little more light but maybe confusing the issue. I'll take that risk. The financial responsibility act (Motor Vehicle Financial Responsibility Act) requires, obviously, insurance coverage on "motor vehicles" and in an odd way, instead of exempting off-road vehicles by name, saying you don't have to have insurance coverage on farm tractors. I think there are things like off-road construction equipment, things like that. Instead of simply providing a list of exemptions, it says, these vehicles do not constitute "motor vehicles" under the statute. So I suppose that's one way to do it, but that caused the weird result in this case where when you borrow the definition of "motor vehicle" for the uninsured statute, you are in a kind of a double negative, excluding these other vehicles which don't constitute a motor vehicle. And that's kind of how this odd situation came about, and how, as Senator Langemeier noted, if you strike out the word motor from the definition, you no longer have that kind of term definition of "motor vehicle" that caused the problem. And it's going to be a continuing issue going forward. It's not falling in front of this committee, but I believe there are three bills before this session of the Legislature, dealing with so-called low-speed vehicles or minitrucks that may be allowed on the highways. And some of those bills, I believe, exempt the minitrucks from the typical financial responsibility act because they're supposedly to be used only on acreages or farms or things. So I think that's a continuing expanding problem, and is probably best dealt with as part of this bill, so again, we would definitely support the advancement of this bill. And I'd be pleased to entertain any questions. [LB152]

SENATOR PIRSCH: Thank you. Are there any questions for Mr. Fraizer? I have one. Now, we passed an ATV bill within the last couple of years, right? [LB152]

TAD FRAIZER: Yes, there was a... [LB152]

SENATOR PIRSCH: If you're familiar, that allows for them to be used in a...I believe it allows political subdivisions to authorize the use within city or village limits. Is that...are you familiar with that? [LB152]

TAD FRAIZER: I'm aware there was a bill allowing all-terrain vehicles in... [LB152]

SENATOR PIRSCH: Would that have any application? How would that affect this if they are utilized on the highways, then they would be required to have insurance, the insurance policy that our motor vehicles would have. Is that right, or is that an issue with

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respect to this? [LB152]

TAD FRAIZER: That's...I want to be a little careful here because I'm not thoroughly familiar with the bill. I believe the bill that was passed, I believe the last session that authorized all-terrain vehicles talks in terms of insurance, but doesn't define which type of insurance. I don't believe it is expressly brought under the...what we typically consider the automobile or typical Motor Vehicle Financial Responsibility Act. So that insurance coverage that's required could be provided by say, a farm policy, or a comprehensive general liability policy. That's my general understanding. I'd want to research it a little more to give you an absolutely block answer on that. But, again, in the current situation under the Steffen case, there is the possibility that an all-terrain vehicle could be pulled in for UM/UIM coverage, but not liability coverage. [LB152]

SENATOR PIRSCH: Hmm. [LB152]

TAD FRAIZER: It's kind of a...the Steffen case has a very strange backdoor effect. It'll back door these off-road vehicles into UM and UIM coverage because of the term of art definition of a "motor vehicle", but it won't pull in any other forms of the insurance, so you've got a little bit of insurance. But I don't think it indicates the real intent of that ATV bill of last year. [LB152]

SENATOR PIRSCH: Very good. Well, thank you. Are there any other questions? Seeing none, we'll move on to our next proponent if we have one. Good afternoon. [LB152]

JAN MCKENZIE: Good afternoon. Senator Pirsch, members of the Banking, Commerce and Insurance Committee, for the record my name is Jan McKenzie, M-c-K-e-n-z-i-e. I'm here to also lend the Nebraska Insurance Federation's support for LB152. We particularly want to thank Senator Pahls and Bill Marienau for involving us in the wordsmithing of this bill this year, as we've looked at it a couple of years trying to figure out the best way to clarify the statute so that there's a clear intent regarding the UM/UMI. With that, I'd answer any questions you might have. [LB152]

SENATOR PIRSCH: Any questions for Ms. McKenzie? A lot of love in the room for the bill so thank you very much. [LB152]

JAN MCKENZIE: Thank you. [LB152]

SENATOR PIRSCH: And we'll move on to any other proponents of this bill who have not yet testified. Seeing none, we'll move to opponents. Are there anyone...is there anyone here testifying in opposition to LB152? Seeing none, is there anyone interested in testifying in a neutral capacity? Very good. Senator Pahls, would you like to close? [LB152]

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SENATOR PAHLS: Yeah, just for a little clarity on LB...no, no, I'm just...it was very interesting. When these first occurred, I had a nice conversation with Senator Chambers. And, of course, he totally supports this type of legislation. I just thought that was interesting it has taken us a little bit of time to hopefully get this up and running. Thank you. [LB152]

SENATOR PIRSCH: Very good. That concludes the hearing on LB152. We'll proceed to LB157 next, and I'll turn over the Chair back to Senator Pahls. [LB152]

SENATOR PAHLS: Good afternoon again. It looks like we are ready for LB157 by Senator McCoy. When you're ready, Senator. [LB157]

SENATOR McCOY: Thank you, Chairman Pahls and members of the committee. For the record, my name is Beau McCoy, B-e-a-u M-c-C-o-y, representing the 39th District, here this afternoon to introduce LB157. This legislation seeks to amend sections 44-6408 and 81-8,239.07 of the Revised Statutes of Nebraska to exempt state vehicles from carrying uninsured and underinsured motorist coverage. Nebraska law provides workers' compensation protections for all employees who are involved in an automobile accident while in a state vehicle. The intent of this bill is to remove inequities that stem from the increased compensation a state employee receives should the driver of the other automobile be uninsured or underinsured. In no way does this bill alter the legal requirement of the state to provide all entitled medical and work-related benefits for state employees through workers' compensation. The provision of coverage for state employees in a state vehicle to protect against uninsured or underinsured drivers is unnecessary coverage that the state should no longer be required to pay in its automobile insurance premiums. LB157 also intends to amend Nebraska law authorizing the Risk Manager, as outlined in the referenced state statutes, to purchase insurance coverage that results in greater protection for state employees and state property should the Risk Manager deem such a purchase appropriate. Current statute does not give such flexibility to the Risk Manager to purchase the most appropriate insurance coverage. And there will be testimony behind me to provide some of the specifics, additional specifics I should say. Additional incidents where a state employee receives extra compensation from the uninsured/underinsured provision are rare, the costs to the state could be and sometimes are unnecessary expenses since workers' compensation provides coverage already and higher costs due to the state paying premiums that include uninsured/underinsured coverage. And also premiums may increase if past attempts to raise the \$50,000 cap are successful. And that would be currently a state employee involved in an accident involving an individual who is either uninsured or underinsured may receive up to \$50,000 more compensation than a state employee who is involved in an accident when the other individual has adequate automobile insurance. And with that, I would conclude and take any questions if there may be any. [LB157]

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SENATOR PAHLS: Seeing no questions, thank you, Senator. [LB157]

SENATOR McCOY: Thank you. [LB157]

SENATOR PAHLS: Just for a show of hands just so I have a feel how many proponents do we have? One. How many opponents? Two. Neutral? And I'm just doing that sort of to get a feel of the next...senator (inaudible). Proponents. [LB157]

LAURA PETERSON: Good afternoon, Senator Pahls, members of the Banking, Commerce and Insurance Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm the state Risk Manager and general counsel for the Department of Administrative Services. I'm here in support of LB157, which was introduced by Senator McCoy at the request of the department. As you heard, Nebraska Revised Statute 44-6408 prohibits insurance carriers from issuing auto liability policies without coverage of \$25,000 per person and \$50,000 per accident for uninsured and underinsured motorist coverage. This coverage is intended to protect the insured in the case they, their vehicle, or their passengers are injured because of the actions of an uninsured or underinsured driver. The state purchases auto liability insurance, but the state's policy has a self-insured retention of \$300,000 per accident. So even though the \$25,000 or \$50,000 in coverage for uninsured and underinsured motorists falls within the amount the state has to pay in any accident, rather than in the layer that would be paid by our insurance carrier, the carrier is required to include the uninsured or underinsured motorist language in the policy the carrier issues to the state. The result of this is to require the state to pay from the state insurance fund, not from carrier money, up to an additional \$25,000 to an employee who is injured in an auto accident with an uninsured or underinsured motorist. This payment is above and beyond what the employee may collect from workers' compensation. Therefore, we can have a situation where two employees of the state have an identical injury but one was injured as a result of an accident in their office or another office and the other was injured as a result of an accident with an uninsured or underinsured driver. Both workers received medical and wage replacement benefits which are due under workers' compensation and are paid by the state from the state's self-insured workers' compensation fund. The employee who is injured as a result of a driver without insurance, however, can also seek up to \$25,000 from the state's self-insured insurance fund as a result of the language in our insurance policy covering uninsured or underinsured motorists. Because of the current law, two similarly injured employees of the state are entitled to different monetary benefits from the state because of the source of their work-related injury. To correct this inequity, we're asking that you, through LB157, amend the statute to authorize issuance of an automobile liability policy to the state without uninsured or underinsured motorist coverage. That concludes my testimony, but I'll be happy to try to answer any other questions. [LB157]

SENATOR PAHLS: Yes, Senator Gloor. [LB157]

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SENATOR GLOOR: Thank you, Mr. Chairman. Ms. Peterson, are there copays or deductibles that the employee would be responsible for or are those paid for out of that pool that you referenced? [LB157]

LAURA PETERSON: If they are injured, workers' compensation pays all of their medical costs, all of their wage replacement. Well, it's two-thirds of their weekly salary under workers' compensation, but there would be no out-of-pocket expenses to them, for example, for medical coverage or... [LB157]

SENATOR GLOOR: For as long as they're determined to be under appropriate workers' compensation care. [LB157]

LAURA PETERSON: Absolutely. If they're working for us at the time that they are injured, workers' compensation benefits kick in. There's a waiting period under workers' compensation, of course, but the state of Nebraska actually pays five days of injury leave in addition to workers' compensation so that wait period is also covered. [LB157]

SENATOR GLOOR: Okay. Thank you. [LB157]

SENATOR PAHLS: Senator Pankonin. [LB157]

SENATOR PANKONIN: Thank you, Chairman Pahls. Ms. Peterson, the fiscal note really doesn't have much information that I can see. But obviously there's the issue of some people getting more out of a particular claim. But the state...does it self-insure for the uninsured motorist coverage as well? [LB157]

LAURA PETERSON: Essentially, and we have in our insurance policies, in our insurance policy for auto the first \$300,000 is self-insured by the state of a regular auto accident; the first \$1 million of a vehicular pursuit, which would mostly cover Patrol and a few other entities that have pursuit authority. So the \$25,000 or \$50,000 that is for uninsured or underinsured motorist comes directly out of state money because it falls within that self-insured retention layer so, yes. [LB157]

SENATOR PANKONIN: So do you have any idea how much that is costing the state, like last year, '07, or anything? [LB157]

LAURA PETERSON: Well, really from a premium perspective, it's not increasing the dollar amount of our premium by very much. It would be minimal considering the amount of premium that we pay every year. And we have paid up to the \$25,000 about every three years or so. If you go back ten or so years, it averages out to an employee who requests this who is injured as a result of an uninsured accident with an uninsured or underinsured motorist. Every three years or so you're talking about \$25,000. So in

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the scheme of the insurance fund, you know, I don't perceive this bill to be so much a dollar savings, although ultimately it would save us money. It's more about the inequity of two state employees identically injured, but one receives essentially an additional \$25,000 payment for that injury because we're required to have that language in our policy. [LB157]

SENATOR PANKONIN: Okay, thank you. [LB157]

SENATOR PAHLS: Senator Christensen. [LB157]

SENATOR CHRISTENSEN: Chairman Pahls, thank you. Is there other companies who would fall under this same thing of having double coverage that have workers' comp and also the vehicle insurance? [LB157]

LAURA PETERSON: I think there's a potential for that although, I mean, I would anticipate that there are very few entities that are self-insured for workers' compensation and have the level of self-insured retention that we do on our auto policy. Obviously, this bill would only cover the state of Nebraska, which means it would cover the auto pool that I handle, which covers everybody, including the state colleges. It would also potentially cover the University of Nebraska who has their own auto liability coverage and participates in the workers' compensation self-funded pool that is handled in Risk Management. [LB157]

SENATOR CHRISTENSEN: Okay. Thank you. [LB157]

SENATOR PAHLS: Seeing no more questions, thank you. [LB157]

LAURA PETERSON: Thank you. [LB157]

SENATOR PAHLS: Any more proponents? Seeing none, opponents? [LB157]

MATT LATHROP: Senator Pahls, members of the committee, thank you. My name is Matt Lathrop. I'm an attorney appearing on behalf of the Nebraska Association of Trial Attorneys, and that's Lathrop, L-a-t-h-r-o-p. We are here or I'm testifying on behalf of NATA in opposition to this bill. I want to pick up where the testifier on behalf of the state Risk Management left off. If I understand her testimony correctly, there is a minimal policy premium effect on the part of the state, and there have been very little payouts because of this feature in the uninsured/underinsured law as it affects the state. So then we come down to the question of why would we want to change the law? And her rationale or the state's rationale is that there are inequities which, when we measure identical injuries to two employees from different causes, we want to balance those inequities. I am a workers' compensation practitioner in Omaha. I deal with dozens of workers' compensation employees yearly to try and help them through their claims. And

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I will say if there are inequities that need to be resolved then they need to be resolved in the workers' compensation law, not through automobile insurance. And the point that I raise is that workers' compensation is not a statutory scheme that we devised to make employees whole. What we did with it is design a safety net so that valuable assets for any employer are rehabilitated after a work-related injury with the hope of returning them to work, not make them whole, not make their families whole after the injury, but allow them to get back to earning some kind of a useful wage. And if we don't do that, then at least provide them with some type of subsistence that will help them get through day to day. The design and scheme of underinsured and uninsured motorist coverage is the exact opposite. It was put together by state senators who decided that people are not being made whole by insurance claims in automobile accidents, and we want to offer this coverage to those people so that if the person who causes the accident doesn't have adequate insurance or any insurance, there is at least a safety net so we can help put their lives back together. And that comes in the form of wage replacement so you can make a lost wage claim, payment of out-of-pocket expenses, including copays and deductibles, and things like that. The uninsured and underinsured motorist coverage helps families get past these accidents. Workers' compensation doesn't do that. As you heard the previous testifier, workers' compensation benefits, if I'm off of work, my salary, assuming I don't make more than is allowed by the state maximum, my salary is replaced or my wage is replaced at a two-thirds rate. So one-third of my income is lost to my family every week. And the fact that the state provides this minimum coverage of \$25,000 to its employees I think is a testament to how valuable state employees are. We put a lot of money into training them, to putting them on the roads, and to having them do a job and do a job well, and we value their service to the state. And to show that, we provide them with a little bit of extra coverage over and above workers' compensation. Workers' compensation pays bills. It pays two-thirds of your lost wages only for a total period of 300 weeks, and then your benefits run out. And it pays for vocational rehabilitation services if that's necessary, and there's no guarantee that voc rehab will put you back to work making the same amount of money that you were making before. So I think the example of the two employees with the exact same injury from different causes, once we flush out the reality, shows that work comp really results in the inequity in the situation that the person who is injured in the automobile accident is made whole and everybody in that person's work pool, I'm sure, would say that's the right outcome, while the coworker who doesn't have that opportunity only collects workers' compensation isn't made whole and those people that he works with probably would think that's not a great outcome. There are other points that I could make, but I think that that addresses the heart of why we're here, the reasons for it. And really when we balance those losses against a minimum premium reduction for the state and very little payouts being made, I just don't see that that would be something that we'd want to trade off when we're talking about valuable state employees. [LB157]

SENATOR PAHLS: Any questions? Senator Gloor. [LB157]

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SENATOR GLOOR: Thank you, Mr. Chairman. Mr. Lathrop, in your experience has this happened with state employees who have been injured and, in fact, this additional insurance coverage was necessary to make those employees whole, either by wages or with some out-of-pocket expense that wasn't otherwise covered? [LB157]

MATT LATHROP: I'm going to say in my practice I have not seen it with the state of Nebraska. There are two things I'd caveat. I have seen this in the situation with self-insured, usually trucking companies, where this has happened. Also I believe there was a case with a self-insured packing plant that had a vehicle. But I would also say that I am certain that it has happened. I practice in midtown Omaha, and the university has...the hospital has vehicles all over. You see them everywhere. And in the neighborhood where that hospital is, the roads are narrow and the lights change quick and I cannot fathom that this has not been something that has been taken advantage of in the past. We obviously know it has happened in the past because we heard testimony earlier that in the past three years there have been times when it's been used. So, yeah, I think I have to believe it's been accessed. [LB157]

SENATOR GLOOR: Okay, thank you. [LB157]

SENATOR PAHLS: Seeing no more questions. [LB157]

SENATOR PIRSCH: I might just clarify. [LB157]

SENATOR PAHLS: Yeah. [LB157]

SENATOR PIRSCH: A couple of arguments, one of them is better to attack this through different mechanism, through the workers' comp law. Is that one of your things that (inaudible)? [LB157]

MATT LATHROP: Well, I just...no, I don't think there's a way to resolve... [LB157]

SENATOR PIRSCH: ...the inequity argument. [LB157]

MATT LATHROP: Yeah, I don't think there's a way to resolve it in the work comp law without stripping it down and starting over. I guess my point was more that when you balance the two scenarios together, work comp leaves the worker shortchanged. And what we're doing to solve the inequity there is to take from the person who's adequately covered. [LB157]

SENATOR PIRSCH: In the limited circumstance that that is an accident involving a car, right, the worker in the factory still wouldn't... [LB157]

MATT LATHROP: That's correct. [LB157]

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SENATOR PIRSCH: Okay, thank you. [LB157]

MATT LATHROP: Thank you. [LB157]

SENATOR PAHLS: Seeing no more questions, thank you, Mr. Lathrop. [LB157]

MATT LATHROP: Thank you, Senator. [LB157]

SENATOR PAHLS: Appreciate it. Seeing no more in reserve, I'm assuming...oh. That's why we have the reserve chairs there, just as a hint. [LB157]

KORBY GILBERTSON: You know me. Good afternoon, Chairman Pahls, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the State Troopers Association of Nebraska in opposition to LB157. As you heard by the proponents, they would claim that the current status of the insurance makes something that is inequitable based on identical injuries. However, as the prior opponent testified, those injuries may be identical, however, the way that they were sustained is not identical. Furthermore, the state has always had a policy of requiring UM and UIM insurance and the troopers do not feel that it is equitable to exclude one group, being the state, from having to carry such coverage. If a person fell off their chair at their office and hurt their leg, they would only be covered by workers' compensation. However, if they got in a car accident, they might get both coverages also. So it is not unlike you would have in the private sector, but we're asking for the public sector to be treated differently. And for the men and women who are out there on the roads in Nebraska, the state troopers would very much ask that you oppose this legislation and kill it in committee. I'd be happy to try and answer any questions. [LB157]

SENATOR PAHLS: I have one question. You're saying this would treat the public sector different than the private sector? [LB157]

KORBY GILBERTSON: Right. You're saying that the state no longer has to carry UM and UIM insurance, but all other drivers in the state do have to have it. [LB157]

SENATOR PAHLS: (Exhibit 1) Okay. Seeing no more questions, thank you, appreciate it. I'm assuming there are no more testifiers. Thank you. I will read into the records we have opposition to this from the NAPE/AFSCME. Thank you. Senator. [LB157]

SENATOR McCOY: Thank you, Chairman Pahls. In closing, I guess I'd just clarify a couple of things. First would be workers' comp is intended to be the sole remedy against the employer, but the application of this law makes the state of Nebraska as an employer responsibility for work comp plus \$25,000. And secondly, unlike the private

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sector employers, the state of Nebraska allows state employees to use vacation and sick leave to supplement their two-thirds payment under work comp so they can get 100 percent of their salary during an injury. So those would be two clarifications that I would make in closing. With that, I'd take any questions if there are any. [LB157]

SENATOR PAHLS: Seeing none, thank you, Senator McCoy. That will close the hearing on LB157. I see we have Senator Nelson dealing with LB432. The floor is yours, Senator. [LB157]

SENATOR NELSON: Good afternoon, Chairman Pahls and members of the Banking, Commerce and Insurance Commission...or Committee, rather. For the record, my name is John E. Nelson, spelled N-e-l-s-o-n, and I represent District 6 in Omaha. I am here today to introduce LB432. LB432 better enables the State Treasurer to return unclaimed property to Nebraskans in a timely manner. LB432 allows the State Treasurer to actively pursue the locating of individuals who have unclaimed property in the possession of the State Treasurer's Office. At the present time, unclaimed property is not always returned to Nebraskans unless the individuals owning the unclaimed property contact the State Treasurer's Office. LB432 also limits personal information formerly available to companies that charge people a fee for finding unclaimed property, and would require those companies to advise the prospective owners in writing that the property can be claimed and returned from the State Treasurer at no cost. This provision helps prevent the exploitation of elderly citizens by companies who will charge individuals for services that the State Treasurer's Office offers free of charge. I should advise you that an amendment is being drafted to ensure that the State Auditor's Office is able to access personal information, otherwise protected by this provision in LB432. LB432 will also require that records for all outstanding unclaimed property be delivered by the issuing agency to the State Treasurer. Due to objections from the Department of Administrative Services, an amendment will be offered to remove this section of the bill. That amendment satisfies the concerns of all interested parties. Representatives of the State Treasurer's Office will be testifying in support of this bill. They can speak in greater detail of specific examples of the need for LB432. And I would like to thank State Treasurer Osborn and his staff for their ongoing efforts to reconnect Nebraskans with their unclaimed property. I urge your support of LB432 and will answer any questions that you might have at this time. [LB432]

SENATOR PAHLS: Senator Pirsch. [LB432]

SENATOR PIRSCH: Thank you, appreciate that, Senator Nelson. So there's a provision in here that would...did you say allow for kind of proactively searching out owners of unclaimed property? Is that...? [LB432]

SENATOR NELSON: I said it will better enable the Treasurer to do that. They are already doing that to the extent that they possibly can. [LB432]

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SENATOR PIRSCH: What...on page 6 of the green copy of the bill, how does that...could you explain how that functions, then that particular language? [LB432]

SENATOR NELSON: This is the language that the DAS is objecting to, and I think there will be further testimony as to explain what the objections are. But what the Treasurer was hoping to do here, we have a situation where... [LB432]

SENATOR PIRSCH: Were you going to eliminate this language...? [LB432]

SENATOR NELSON: It's...right, right, um-hum. [LB432]

SENATOR PIRSCH: ...so it's really irrelevant from looking at that, is it. So, basically, there's only really two areas of existing statute that would be affected by new language on...on page 3... [LB432]

SENATOR NELSON: That would be on page 3, Senator Pirsch, yes. [LB432]

SENATOR PIRSCH: And one seems to be of the initial language, line 5 through 8, seems to be protective language, nondisclosure, is that right? [LB432]

SENATOR NELSON: Nondisclosure of Social Security numbers, dates of birth, last known address. [LB432]

SENATOR PIRSCH: To...whom currently has access to that information who we are concerned about should not be having access? [LB432]

SENATOR NELSON: That, at request, I think, can be disclosed to anyone that wants to write in and request it. And so,... [LB432]

SENATOR PIRSCH: So I could garner Social Security number information? [LB432]

SENATOR NELSON: Yes, yes. [LB432]

SENATOR PIRSCH: Okay. With respect to then the second paragraph there, what...okay, that's a mandatory posting that certain companies have kind of sprung up and made a living off unclaimed property by looking at the lists of which...how many names, tens of thousands? Thousands in many cases? [LB432]

SENATOR NELSON: Tens of thousands of names. [LB432]

SENATOR PIRSCH: Of unclaimed property owners, some who never...within the state and will confine those individuals, send a notice then that say, I'm with ABC Company,

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and I can...I'm aware of funds that you could...that are being held in your name, and if you pay us a fee of \$50 we'll help you get those funds. Is that basically...? [LB432]

SENATOR NELSON: That's...and they do provide a service because they go to the time and effort of locating individuals through various sources and contacting them. The State Treasurer just wants to be certain that in their communication with these...call them pitiable or probable owners, you know, that they are aware of the fact that there may be funds in the State Treasurer's Office that belong to them, and they can go ahead on their own. They don't have to depend on these finders to locate that property and get it for them at a cost of...I think there's a cap of 10 percent of the amount of money involved. [LB432]

SENATOR PIRSCH: Currently, a cap of 10 percent they can collect. [LB432]

SENATOR NELSON: Yes, um-hum, um-hum. [LB432]

SENATOR PIRSCH: Is it... [LB432]

SENATOR NELSON: And I should say that that's for funds that are already in the hands of the State Treasurer. Now, generally, insurance companies and other outfits that are holding unclaimed property, they will wait until about seven years sometimes, because they draw interest on that money before they turn it over to the Treasurer's Office. And there are ways for these finders to discover a little earlier than that that those are going to be turned in to the State Treasurer. So some outfits now...I shouldn't call them outfits...firms, finders are going out ahead of time and saying, we think there's going to be property that's going to be turned over to the State Treasurer, and we can handle this for you. And under the present statute, they can charge higher fees for that. [LB432]

SENATOR PIRSCH: I see. So they...you can...that's only with fee...that's only with monies there within the control and purview of the State Treasurer. [LB432]

SENATOR NELSON: That's right. [LB432]

SENATOR PIRSCH: Some of these companies are actually going down...or going upstream finding, making private agreements with companies that are.... [LB432]

SENATOR NELSON: Yes, that's correct. [LB432]

SENATOR PIRSCH: ...year six into year seven, and saying, before you turn those over to the Treasurer's Office, we'll pay you X amount for every recovered, and we can charge... [LB432]

SENATOR NELSON: I can't speak to that... [LB432]

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SENATOR PIRSCH: ...we're no longer held to the 10 percent? [LB432]

SENATOR NELSON: ...for sure. I don't know that that may happen under the table so to speak. I'm only talking about the fact that once those finders are aware... [LB432]

SENATOR PIRSCH: Right. [LB432]

SENATOR NELSON: ...that there are going to be funds turned over to the Treasurer that then they contact the individuals who own that property and... [LB432]

SENATOR PIRSCH: Well,... [LB432]

SENATOR NELSON: ...they can charge a higher fee if they make arrangements... [LB432]

SENATOR PIRSCH: ...I'm, and I don't mean to say that's underhanded, there's nothing necessarily illegal about that by law. [LB432]

SENATOR NELSON: Yeah, um-hum. [LB432]

SENATOR PIRSCH: But if...I can't see how they would glean that information from private companies without the knowledge or awareness of those companies saying I'm in year six of holding funds and a year from now will be turning over and... [LB432]

SENATOR NELSON: I have an idea that...that the Treasurer's Office probably is better aware than I am of how they manage that, yeah. [LB432]

SENATOR PIRSCH: Yeah, yeah. Well, I'd be interested in that, but in any event, this would then...is there...how many of these individuals who have monies that are being held by it would discover that they had money over the course of the year in due time had not they been approached by these companies that are...specifically look for them? [LB432]

SENATOR NELSON: You know, I can't tell you that. I don't have statistics on that, but I would say, if you've ever tried to go through the list that comes out in the World-Herald page after page after page, you give up after awhile and... [LB432]

SENATOR PIRSCH: Yeah. [LB432]

SENATOR NELSON: ...so I would say the Treasurer can probably testify as to the amount of funds that they have that nobody has ever claimed, yeah, and escheated to the state. [LB432]

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SENATOR PIRSCH: And that's why I'd like to have testimony to. [LB432]

SENATOR NELSON: Sure. [LB432]

SENATOR PIRSCH: Is...are these companies, even though they're charging, you know, a 10 percent fee, do they... [LB432]

SENATOR NELSON: Um-hum. [LB432]

SENATOR PIRSCH: ...play a...are they playing a useful role in finding individuals to whom property, monies are owed who would ordinarily never be found? [LB432]

SENATOR NELSON: I think the Treasurer can better address that as... [LB432]

SENATOR PIRSCH: Yeah, and... [LB432]

SENATOR NELSON: ...to what their findings are there, yeah. [LB432]

SENATOR PIRSCH: Great. Thank you, Senator. [LB432]

SENATOR PAHLS: Are you going to stick around for closing? [LB432]

SENATOR NELSON: Yes, certainly. [LB432]

SENATOR PAHLS: Okay. Just so I have a feel, how many proponents? I see two. Opponents? Neutral? Okay. We are ready for proponents. [LB432]

JASON HAYES: (Exhibits 1 and 2) Hello Chairman Pahls and members of the Banking Committee. My name is Jason Hayes spelled J-a-s-o-n H-a-y-e-s, and I serve as Deputy State Treasurer. LB432 protects Nebraskans' personal account information from danger of fraud or identity theft, and preserves their right to make informed decisions when claiming unclaimed property. The State Treasurer is responsible for the return of unclaimed property, and we appreciate Senator Nelson introducing this bill. Under this bill, Social Security numbers, last known addresses, and account amounts would be held confidential, and professional finders will be required to disclose information about unclaimed property. Also, the bill will limit the percentage charged by pre-escheat finders. There are currently no restrictions on the type of individuals who may purchase lists of unclaimed property from the Treasurer's Office. The Treasurer receives many requests from individuals of questionable repute including a recent handwritten request from a felon in a Texas penitentiary. There is a significant risk that the finders who do obtain a copy of the list will use it fraudulently. Many unclaimed property owners are elderly, and in many instances, lack the knowledge to differentiate between legitimate

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and illegitimate heir finders. The Treasurer has received reports of finders making misleading statements to unclaimed property owners such as indicators that they must pay a percentage fee to the finder or the property will become unavailable. Also, the bill will help cap at 10 percent the rate charged by a new wave of pre-escheat finders who attempt to charge a 35 percent fee from owners shortly before the property is to be turned over to the state where it can then be collected without any fee. It is important to note that the Auditor of Public Accounts has requested amended language, ensuring that the Auditor's Office is exempted from any restrictions contained within the bill in order to properly conduct required audits of the Unclaimed Property Division, and the State Treasurer supports this request. Now, as was mentioned earlier, in addition, section 2 of the bill would have required state agencies to file a report of owners' information for uncashed warrants issued, and would have handled the return of these uncashed state warrants in a similar manner as to how unclaimed property is handled. However, the State Treasurer and Governor have agreed to work together on this issue to expedite the return of uncashed warrant money, and at this time, we believe no statutory change is needed to facilitate this process. AM160 which should be before you will remove section 2 of these provisions from the bill. The State Treasurer supports the provisions found in LB432, protecting personal information, and would respectfully ask the committee to advance the bill to General File. And thank you for your attention to this matter. [LB432]

SENATOR PAHLS: Any questions? Mr. Pirsch. [LB432]

SENATOR PIRSCH: Yes, just...and thank you very much, Mr. Hayes. [LB432]

JASON HAYES: Sure. [LB432]

SENATOR PIRSCH: So this does...this bill does, I think you mentioned, have an effect upon monies held by corporations before it becomes available to the State Treasurer and thereby free of charge to those who had claimed their unclaimed property. It would keep, say, a corporation or a company had...was holding some sort of monies or funds, and they couldn't locate the individual. As the previous testifier said, in year six into a seven-year, those corporations would be...or whoever was to contract with those, would be limited to a 10 percent by this bill then as well, is that right? [LB432]

JASON HAYES: That's correct. I mean, well, thank you, Senator Pirsch. What we're finding is with regard to the pre-escheat finder work which is kind of a newer, I guess, industry compared to just a regular finder that would come in two years after the process and obtain the list. What they do is they contract with holder companies to purchase a list of property about to be escheated to the state. They contact the owners and inform them of the property, often making ominous references to the fact that their money is about to be given to the state, and if they don't pay an exorbitant fee to recover it. And so, you know, we're very concerned by this change. One of the things

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that was mentioned earlier in the testimony was that, what can you do now to currently obtain the list? And after two years that the state has held it, and it's on the roles of the unclaimed property, then it can be obtained by a professional finder or company. And so what some of these finders have done is to get ahold of the holding companies before it's turned over to the state to obtain those lists. And they would be held to the same standard that those finders are held to when they receive the information and charge a finder's fee two years after they receive the information. [LB432]

SENATOR PIRSCH: I see. Okay. Well, thank you for explaining that. [LB432]

JASON HAYES: Sure. [LB432]

SENATOR PAHLS: Senator Gloor. [LB432]

SENATOR GLOOR: Thank you, Mr. Chairman. Mr. Hayes, 10 percent in today's economy strikes me as a nice number. I hope some day my savings accounts, retirement accounts, will see that kind of rate of return. But realistically, I'm trying to figure out how that number was arrived at by the Treasurer's Office. Is it an industry standard? Is it a number that's felt to be a fair rate of return for the work put into it? [LB432]

JASON HAYES: Yeah. Thank you, Senator Gloor. That 10 percent currently is in statute, and so, and is what is charged for the finders who obtain the information after two years. And so we...I guess the feeling was is to keep it at that same amount. However, it's important to note and we try to let unclaimed property owners know this is that if they go directly to the State Treasurer's Office that there is no fee. So we certainly do our efforts to advertise that fact and get the notices published, and to let people know across Nebraska that we're holding their money. But there are provisions, there is an industry that is established for, I guess, working, you know, acting as a finder in those cases. [LB432]

SENATOR PAHLS: Senator Utter. [LB432]

SENATOR UTTER: I'm just curious. Do you have any handle on how much of the money that is returned to the owners is then sold by some professional finder, notifying the...is that a big part of it? [LB432]

JASON HAYES: Well, I appreciate that, Senator, and certainly that was something that Senator Pirsch asked earlier. I, unfortunately, did not bring any statistics with me, but I would be happy to provide that to the committee after this hearing because I think that would certainly help in at least getting a handle in terms of how large the problem is. [LB432]

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SENATOR PAHLS: We need some more information or clarification. Bill. [LB432]

BILL MARIENAU: Yeah, Mr. Hayes, I was just assembling the amendments that have been suggested to the bill, and we've got AM160 and the auditor's confidentiality issue. Just for clarification and perhaps cleanup purposes, on page 3 in line 6, and this is in the language where we speak to the treatment of the records as confidential, would I be correct in seeing a need on line 6 there to change "holder" to "owner" because I think the Social Security number and such things, we're talking about the people who have lost the property but not the business that's holding it, right? [LB432]

JASON HAYES: Yes, and I appreciate you asking that question, and that it is true that the "holder" needs to be changed to "owner." [LB432]

BILL MARIENAU: Okay. [LB432]

JASON HAYES: And thank you for helping me get that on the record. [LB432]

BILL MARIENAU: Thanks, Jason. [LB432]

JASON HAYES: Sure. [LB432]

SENATOR PIRSCH: And just a thought, I just wanted to say with respect...I wasn't aware at the time that I was making inquiry of how many successful endeavors these companies had, that this isn't eliminating the company's outright ability to collect anything. It's just limiting it to 10 percent. So I really don't have that same concern. [LB432]

JASON HAYES: Correct. Okay, and what we're seeing in the industry right now is that that is up to 35 percent currently charged. [LB432]

SENATOR PIRSCH: Right. [LB432]

JASON HAYES: So even a better rate than you had mentioned earlier, Senator Gloor. [LB432]

SENATOR PIRSCH: So it's not eliminating it. It's just lowering it to what it already is with respect to at the Treasurer's Office. [LB432]

JASON HAYES: Correct. [LB432]

SENATOR PIRSCH: Very good. [LB432]

SENATOR PAHLS: Thank you, Mr. Hayes. Proponents? Opponents? Neutral? [LB432]

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LAURA PETERSON: Good afternoon, Senator Pahls, members of the Banking, Commerce and Insurance Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n. I'm general counsel for the Department of Administrative Services and the state risk manager. I'm here on behalf of the department in a neutral capacity on LB432. We appreciate the Treasurer offering you the amendment, and his willingness to work with us on our concerns about the bill. In LB432 as introduced, the concerns of the department relate to section 2 of the bill which would change the procedures for obtaining reissuance of a state warrant. Currently, when a warrant issued by the state expires, the funds revert to the General Fund, and any reissuance of the warrant can be obtained via the miscellaneous claims process. The miscellaneous claims process involves completing a claim form and filing it with risk management. As staff to the State Claims Board, when we obtain it in risk management, we send it to the agency that originally issued the warrant and ask them for a recommendation regarding reissuance. Generally, the agency responds that it's appropriate to reissue the expired warrant, although on occasion, we find through this investigation that it's not appropriate to reissue the warrant. Upon obtaining an agency recommendation, if the claim is \$5,000 or less, which most are, the risk manager can deny the claim or approve the reissuance of the warrant, obtain a release from the claimant, and the warrant is reissued from the General Fund. If the claim is \$50,000 or less, the claims board must approve or deny the claim, and if the claim exceeds \$50,000, it must be reviewed by the Legislature before payment is issued. Legislative review is completed as part of the annual claims bill which is handled by the Business and Labor Committee. This is a well-established process which works smoothly and efficiently to reissue warrants when it is appropriate to do so. My office has invested in technology to improve claims processing efficiency, and has worked over the last several years with the Business and Labor Committee which has jurisdiction over claims to increase dollar thresholds for review to ensure there are no unnecessary delays for claimants. Section 2 of LB432, as it was originally drafted, replaced this established process which includes the checks and balances of agency Risk Management Claims Board and legislative review with an undefined process whereby the State Treasurer could simply reissue warrants without contacting the state agency involved or any others. It further carves out one type of a claim against the state from all other claims against the state. To the extent the purpose of section 2 of the bill is to direct the State Treasurer to attempt to locate individuals who may have an outdated warrant available for reissue, we do not oppose the State Treasurer undertaking that activity. It is not the role of the Claims Board or the office of Risk Management to seek out claimants to file claims against the state of Nebraska. We have offered to work with the State Treasurer to process claims upon their location of individuals for reimbursement. It is our opinion that under the current state law, the State Treasurer could seek out those individuals who have valid claims as the result of an expired warrant and then refer them to risk management to complete the reissuance process that is currently in place, thus leaving the claims process in place, but potentially allowing more individuals to obtain funds that are rightfully theirs. I'm asking

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you to strike section 2 from the bill, and to leave intact the current claims process overseen by my office, the State Claims Board and the Legislature's Business and Labor Committee. Again, we support the treasurer's amendment and are willing to work with his office to continue using the claims process when his office locates the owner of an expired warrant. I also will try to answer one question that I can about finders' companies. It may be significantly different for unclaimed property than it is for expired warrants because I think they focus a little more on unclaimed property. But we pay an average of 214 or so expired warrants every year through the claims process, and somewhere between two and five of those every year are being handled by a finders' company. And I will be happy to answer any questions...other questions you have. [LB432]

SENATOR PAHLS: Seeing no questions, thank you. [LB432]

LAURA PETERSON: Thanks. [LB432]

SENATOR PAHLS: Senator...looks like it's yours to close. [LB432]

SENATOR NELSON: Thank you, Senator Pahls, members of the committee. I think that the intent of the bill is clear. As I indicated earlier, we have no objection to the removal of section 2. Things have been worked out in that respect. I think the remainder of the bill will be of assistance to the State Treasurer and better protect members of the public, and I want to thank you for your attention and interest, and encourage you to move LB432 out to General File. Thank you very much. [LB432]

SENATOR PAHLS: Seeing no questions, thank you, Senator. That closes the hearing on LB432. We are now ready for LB528. Senator Fulton, the floor is yours. Just for my own...how many proponents do we have for? One proponent. Any opponents? Neutral? Two neutral, okay, three. Thank you. Senator Fulton. [LB432]

SENATOR FULTON: Thank you, Chairman Pahls. I believe this is my first venture into this committee, and I'm pleased to be here. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29, and I introduce an idea to you in the form of LB528. This bill is intended to improve the efficiency capabilities of those companies who are now incorporated and those who will incorporate in our state, hopefully, in the future by allowing them to utilize existing technologies to take advantage of existing SEC rules. In 2007, the SEC adopted amendments to the proxy rules under the exchange act to allow corporations to benefit from the Internet by providing shareholders access to proxy materials electronically, referred to as the Notice and Access System. Under the Notice and Access rules, a company must send a notice of Internet availability of proxy materials to its shareholders at least 40 days before the shareholder meeting date. It is then determined by the volitional choice of the shareholder whether he or she would like to receive proxy materials electronically or by

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traditional mail delivery. These e-proxy rules enable public companies to "go green" and significantly reduce the costs of printing and mailing proxy materials and annual reports for shareholder meetings. Shareholders benefit by increased ease of access to proxy materials and a decreased risk of authorizing a proxy without having access to proxy materials. LB528 is necessary to enable Nebraska's public companies to take advantage of this advancement because the SEC's rules publication indicated that the e-proxy rules are not intended to supersede state law, requiring delivery of notice. To bring Nebraska law in line with the SEC rules, LB528 makes the following amendments to the Nebraska Business Corporation Act. Section 1 provides for delivery through electronic transmission which is defined as any process of communication not directly involving the physical transfer of paper such as by fax or e-mail. Section 2 provides that notice may be effectuated by electronic transmission or voice mail in addition to more traditional means. However, the shareholder must first authorize the transmission of electronic notice. And section 3 allows for a shareholder or his or her agent or attorney in fact, to appoint a proxy through a proxy form transmitted electronically. Concluding, LB528 allows Nebraska to be in line with new SEC rules by allowing public companies to go on-line, to provide their shareholders with proper notice and proxy materials. Advancement of this bill ensures that Nebraska, like Delaware and California, is at the forefront of the facilitation of greater efficiency for our public companies. With that, I ask you to respectfully move this forward to the floor, and if there are any questions, I would be glad to try to answer them. [LB528]

SENATOR PAHLS: Senator Pirsch. [LB528]

SENATOR PIRSCH: You said, it gives the shareholder the initial election to say, now I want the traditional paper method or give me, no, instead I elect the e-method. Right? [LB528]

SENATOR FULTON: Yeah, there remains volition on the part of the shareholder. [LB528]

SENATOR PIRSCH: How...are they given notice of that election opportunity, and how do they indicate...how do they confirm what their election is with...? [LB528]

SENATOR FULTON: Let's see, I believe it's section 2 of the bill, so let me get you to the...yeah. Okay, yeah, section 2 so the green copy of your bill, page 5, section 2, that is where we talk about the modes of communication from the company to the shareholder. And so there are some modes of...and I'm aware that there will be some testimony coming later which introduces a question as to the feasibility of say, voice mail or other electronic means as to whether, indeed, that's something that we can verify has been seen or understood, and that's legitimate, and, hopefully, we can work through that through the committee process. But that...this is where it's talked about, the means by which a company would communicate to its shareholder, and then the

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shareholders' ability to request that it not be done electronically or that they, indeed, utilize traditional paper means. [LB528]

SENATOR PIRSCH: Does it state anywhere the mechanism by which the shareholder must evidence his election? [LB528]

SENATOR FULTON: I don't... [LB528]

SENATOR PIRSCH: Or does it just talk about the notice which can be by a broad array of electronic and written means? [LB528]

SENATOR FULTON: I mean, if your question, Senator, is does it spell out how the shareholder is required to talk with a company? No, I don't believe that we've done that. [LB528]

SENATOR PIRSCH: In other words, if somebody disputes I'm a shareholder and I'm (inaudible) I never saw the notice, you know, is there something...I mean, right now there isn't necessarily anything with a mailing too that you've received, but I mean, is it...you said there's an election that's made. Is there anything that comments upon the manner in which the shareholder evidences that election in the bill? [LB528]

SENATOR FULTON: That, I think I'm understanding your question. Therein lies...there is some concern with whether or not the shareholder has, indeed, received notification that he or she is going to receive information electronically. And your question then is, is there some means by which we ensure that that communication has been understood by the shareholder? [LB528]

SENATOR PIRSCH: Well, I'm just trying to think, play devil's advocate, if there's a company looking to save costs, and to say, you know, it's a heck of a lot cheaper to shift things electronically even though there's a way I can...I mean, does that tend to induce...if I'm not required to a certain mechanism...just say well, we sent him notice electronic...you would have to, I would assume, give certain information or e-mail address or something like that if you're going to make the election. So I guess that's kind of a check on the company's claim that they were allowed to send electronically some sort of... [LB528]

SENATOR FULTON: Oh, okay. Yeah, this... [LB528]

SENATOR PIRSCH: via... [LB528]

SENATOR FULTON: ...yeah, Senator. I think maybe this might help to answer your question. There is communication from the company to the shareholder... [LB528]

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SENATOR PIRSCH: Um-hum. [LB528]

SENATOR FULTON: ...of the utilization of electronic means. So this doesn't just automatically happen. There has to be some communication, and then...so I guess, does that answer your question? It's not something that's assumed to happen. There is a communication, and that communication would have to take place because the company has an e-mail address or a phone number or what have you with which to communicate with the shareholder. [LB528]

SENATOR PIRSCH: Okay. Thank you. [LB528]

SENATOR FULTON: Okay. [LB528]

SENATOR PAHLS: Are you going to be here for closing? [LB528]

SENATOR FULTON: Probably not. [LB528]

SENATOR PAHLS: Okay. Thank you. [LB528]

SENATOR FULTON: Okay. [LB528]

SENATOR PAHLS: Proponents. [LB528]

JIM KRUGER: Good afternoon, Chairman Pahls and the members of the committee. I am Jim Kruger, K-r-u-g-e-r, executive director and controller for Nelnet. I am here in support of LB528, and would like to thank Senator Fulton for introducing this important legislation for publicly-traded companies incorporated in the state of Nebraska such as Nelnet, Warner Enterprises, and The Buckle. Nelnet is a leading education, planning, and financing company with almost 1,000 associates in Lincoln, and Lincoln is our corporate headquarters. Importantly, we also incorporate in the state of Nebraska and publicly trade on the New York Stock Exchange. LB528 amends the Nebraska Business Corporation Act to make it clearer that public companies incorporated in Nebraska can fully utilize the federal e-proxy rules if they choose to. In 2007, the Securities and Exchange Commission adopted new electronic proxy delivery rules to allow publicly-traded companies to provide shareholders with Internet access to proxy materials and annual reports in connection with shareholder meetings. To implement the e-proxy rules, a company must send to all shareholders a printed notice that the proxy materials are available on-line at least 40 days before a shareholder meeting. The notice must specify that shareholders may request a paper copy of the proxy materials without charge. Accordingly, a shareholder without access to the Internet or who prefers to receive traditional paper proxy materials can request these materials without charge. Essentially, the e-proxy rules provide shareholders a choice in how they would like to receive their proxy materials. Currently, the Nebraska Business Corporation Act leaves

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it unclear whether the notice of a shareholder meeting typically included and proxy materials can be furnished electronically, and if Nebraska corporations can authorize shareholder voting by proxy through telephone or Internet voting procedures. By contrast, most other states, including Delaware, clearly allow the electronic furnishing of the notice and voting. While Delaware corporate law is frequently used as a reference point for public companies, since the majority of U.S. companies with shares traded on the New York Stock Exchange and NASDAQ are incorporated under Delaware law. Recently, states such as Iowa, Minnesota, South Carolina, and California, have all updated their statutes to allow companies to use the e-proxy rules. I will describe three benefits to using the federal e-proxy rules. First, shareholders are given the choice on how they would like to receive proxy materials either paper or electronically. We believe investors prefer to receive proxy materials on-line and to be able to vote electronically when they are given the opportunity. Based on information from Nelnet's transfer agent, on average, companies using the e-proxy rules have had less than 2 percent of all shareholders requests printed materials. Second, the e-proxy rules save companies in printing and mailing costs. In fact, the SEC estimated that in total, public companies would save between \$48 million and \$241 million in paper, printing, and mailing related costs. Even a company the size of Nelnet would save tens of thousands of dollars annually in printing and mailing costs under the e-proxy rules. Finally, as more and more companies are able to use the e-proxy rules, it has a green benefit, less paper and printing ink, are used to print the proxy materials. For these reasons, we would encourage the passage of LB528. That concludes my testimony. Thank you for your time this afternoon in consideration of this proposed legislation. [LB528]

SENATOR PAHLS: Mr. Pirsch. [LB528]

SENATOR PIRSCH: Well, thanks so much for coming down here today and testifying. I think that there...as new technologies come on-line, develop that we should be always looking at implementing them. Just kind of a...a little bit more clarification with respect to the duties. There's 40 days before the meeting, the shareholder has to receive a printed copy sent via the mail. Is that right then or this notice that...? The only thing on this printed copy is there's a shareholder meeting coming up, and you're entitled to have a copy of certain things, and do you want to receive them via electronic or in paper format? Is that right? [LB528]

JIM KRUGER: Thank you, Senator Pirsch. That's correct. Forty days before the meeting we would send out via mail a notice of the meeting with the information on it. If they want to contact the company to get the written materials, we'll send them without charge or if not, they can vote and submit their proxy on-line. [LB528]

SENATOR PIRSCH: So you have to mail this notice by document, by written format to everyone anyhow. Is it considerably more expensive to send this notice as opposed to the forms that you're thinking about? [LB528]

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JIM KRUGER: Yeah, I think the notice can be sent for, you know, a few pennies... [LB528]

SENATOR PIRSCH: Okay. [LB528]

JIM KRUGER: ...whereas the actual full-flown materials including the 10-K, the proxy cards, and so forth would be, you know, several times more expensive than just sending the postcard. [LB528]

SENATOR PIRSCH: Okay. So therein lies the potential then. With regards to the...so you get in the mail a notice. It's in the regular mail, is the possibility with sending it in the regular that somebody doesn't...but, again, even if you send the...the full thing, there's a possibility that doesn't get there. But is the...so when I receive this notice from you, right? It says you have the choice to make an election, is the default...is it we will send it to you by mail unless you contact us and tell us that you want it electronically, and you would have to then provide an e-mail address or is the default...yeah, I mean, it would have to be that way, right or? [LB528]

JIM KRUGER: Yeah, I think practically speaking, they would get a postcard with a notice of the meeting... [LB528]

SENATOR PIRSCH: Um-hum. [LB528]

JIM KRUGER: ...as well as contact information. If they choose to contact us, we will send them the...or the printed materials. But they would need to contact the company in order to receive the printed materials. [LB528]

SENATOR PIRSCH: Okay, so what it says... [LB528]

JIM KRUGER: But there would be e-mail and phone number and so forth for them to, you know, get in contact with the company. [LB528]

SENATOR PIRSCH: Okay, so the default is nothing is sent either in paper format nor electronically. It's just a notice that says, if you contact us we will either send it to you in electronic or paper format. Correct? But if you don't hear anything back, then you send it neither. Right? [LB528]

JIM KRUGER: That's correct. I mean, the notice process really doesn't change other than the fact we wouldn't send out the full packet of information so...and on the notice they would have directions to how to vote on-line in this case... [LB528]

SENATOR PIRSCH: Okay, um-hum. [LB528]

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JIM KRUGER: Or if they chose to, want the full packet of materials, they could contact us, and we would send the full packet of materials. [LB528]

SENATOR PIRSCH: Okay, and that just...the way it differs now with existing law is whether they want it or not, right now a paper copy is sent to everyone required by law. And so in certain situations where you...if you don't respond, you wouldn't necessarily get either. I mean, if those people who either didn't take the time to fill it out or didn't care enough, they wouldn't get...I mean, they wouldn't get a...unless they take the time to fill it out, they wouldn't get electronic or they wouldn't get paper format, right? [LB528]

JIM KRUGER: Correct. I mean, they're going to receive it today whether they want it or not. And, you know, research shows us that 98 percent would prefer just to do it on...do their proxy and do their vote on-line. [LB528]

SENATOR PIRSCH: Hmm. [LB528]

JIM KRUGER: And so, you know, essentially we're sending a lot of materials through the mail to... [LB528]

SENATOR PIRSCH: That are not used. [LB528]

JIM KRUGER: ...that are not really used,... [LB528]

SENATOR PIRSCH: And I'm like that, too. But I was just kind of...I just wanted to see clarification about how that affects and so, I appreciate that. [LB528]

SENATOR PAHLS: One question. Is this a relatively simple process? [LB528]

JIM KRUGER: I mean, I would consider it to be a relatively simple process. [LB528]

SENATOR PAHLS: That's what I...to me, I don't...it seems...I'm just going to use the word simple. [LB528]

JIM KRUGER: Yeah. We, you know, certainly after you've been through the process as a public company, the second year...of course, the first year, it's always, you know, you got to go through the process, but the second year it's a pretty simple process. And, you know, it comes down to providing choice for the investor and providing...and saving, you know, money for the company and the shareholder, for that matter. [LB528]

SENATOR PAHLS: Yeah, and right now I have some of these opportunities myself. And this...I can either choose to do it or not. In many different ways, not just what you're talking about, from even if I order magazines, give me the option of doing this. I'm just

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trying to get to...this is not a complicated process. Okay. [LB528]

JIM KRUGER: Right. I agree. [LB528]

SENATOR PAHLS: Okay, okay. Thank you. Senator. [LB528]

SENATOR LANGEMEIER: Just one question. I agree this is pretty simple. Now I want to diverge a little bit. I'm curious. When you send out all this paper for people to act for proxy, what's a good rate of return? What percent do you actually get back? I mean, how many of them throw them away anyway and? [LB528]

JIM KRUGER: Well, you know, it's a little hard to say because depending upon how many shares a certain shareholder might hold, you know, you can get one shareholder to return it, and it might account for 40 percent of the shares... [LB528]

SENATOR LANGEMEIER: That's understandable but... [LB528]

JIM KRUGER: ...so it's a little...it's a little, but I would say, you know, we probably get less than 50 percent. [LB528]

SENATOR LANGEMEIER: That's what I thought. Okay. Thanks. [LB528]

SENATOR PAHLS: Thank you. Oops, Senator. [LB528]

SENATOR GLOOR: Thank you, Mr. Chairman, and I fit in with Senator Pahls in that I find this pretty simple. I also find...and if I understand, we're trying to update the Business Corporation Act, Nebraska's Business Corporation Act to come to the 21st century along with almost every other state that has corporations that allow this already since I think most of us are besieged by opportunities to do this if we're lucky enough to have investments in a few companies. But I am surprised that this is the...it's taken this long for this to come up. I've had this opportunity going back for four or five years, and there are other major corporations in this state, including yours, and yours seems to be the first corporation that...thinking of Berkshire Hathaway, as an example, and others who seem to also be greening up. Just a commentary probably more than a comment or commentary. But if you want to comment on it, you're welcome to take credit maybe. [LB528]

JIM KRUGER: Well, we're really happy to present...we're so thankful Senator Fulton presented this, and we're happy to support this bill because we think it's the right thing to do for, as you said, the 21st century. [LB528]

SENATOR PAHLS: Thank you for your testimony. Proponents, opponents, neutral? Yeah, come right up to reserve. That way it gives me a feel of where we're at. I

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see...thank you. [LB528]

KATIE ZULKOSKI: Good afternoon, Senator Pahls, members of the committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, and I'm a registered lobbyist testifying on behalf of the Nebraska State Bar Association. As Senator Fulton said, we do have some specific concerns with this bill, especially the provision where you could be given notice by voice mail, and that is found on page 5, on line 25. And ultimately, what the Bar Association would like to see is a study, perhaps over the summer, where we could look at all of the changes to bring this up to date, as (laugh) (inaudible) said, to the 21st century to look at all of the changes that need to be made to bring us up to date with other states, and make us more competitive with other states and their corporation acts. [LB528]

SENATOR PAHLS: Just for clarification, you have one issue, and that's the voice mail. [LB528]

KATIE ZULKOSKI: Um-hum, um-hum. [LB528]

SENATOR PAHLS: And that's it. Otherwise,... [LB528]

KATIE ZULKOSKI: That is our major issue. There are some concerns with the electronic transmission. It says that it needs to be retrievable by the person who received that, but there isn't any provisions for the person sending that where they would have a record of that they had, in fact, sent that. [LB528]

SENATOR PAHLS: Okay. [LB528]

SENATOR PIRSCH: Just kind of to the point or line of questioning that I had before. The gentleman from Nelnet had testified that he had less than, you know, 2 percent requested the paper form. Is...which means 98 percent did not request the paper form. Is it...and maybe I...well, I guess my line of questioning, are most people then making the transition and using electronic format then or are most people just then not utilizing either paper or electronic format would be the question? I mean, is that something, do you know? [LB528]

KATIE ZULKOSKI: My answer would be an assumption but it...I would assume that they are just not using either. [LB528]

SENATOR PIRSCH: Okay. [LB528]

SENATOR PAHLS: And you think this is a simple concept also or not? If we correct whatever concerns you have, this proposal. [LB528]

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KATIE ZULKOSKI: I think it's a simple concept if you understand...I don't know that it would be a simple concept for all Nebraska shareholders in public companies. Is it simple for us reading the bill perhaps? [LB528]

SENATOR PAHLS: Okay. Thank you. [LB528]

RON MORAVEC: (Exhibit 1) Good afternoon, Senator Pahls and members of the Banking Committee. My name is Ron Moravec, M-o-r-a-v-e-c, Chief Deputy Secretary of State. Being passed around to you at this time is a letter from Secretary Gale, expressing some...Secretary of State Gale, expressing some thoughts and concerns about LB528 as it is...as part of it is written. Let me preface this by saying that Senator Fulton should be complimented on being forward thinking enough to present something like this. And that is not the question or the issue that our office has with the proposed legislation. Our concern is basically with section 1 of the bill which amends the Nebraska Business Corporation Act definitions by one, greatly expanding the definition of the word "deliver", and adding a new definition of the word "electronic transmission." Again, our purpose is not to object to those two definitions, but our concern is that by placing those two new and revised definitions where they are in the definition portion of the corporation act, this will create a financial burden, quite frankly, on the Secretary of State's Office. We believe that by having the definition of those two terms where they are presently located, will strongly advocate that any person that wishes to file a corporate document with the Secretary of State's Office will have the choice of doing it electronically. And, of course, one of Secretary of State Gale's goals is to make it easier to do business in Nebraska. But, unfortunately, at this point in time, we do not have the financial resources to develop the programs that will be necessary to comply with the delivery process, the electronic transmission, and the new definition of delivery. In looking at Senator Fulton's statement of the introducer's intent, initially, that seems to clarify and clear up the concern that the Secretary of State's Office has. However, a court of law won't get to the introducer statement of intent and the discussion that you will have on the floor and in this committee unless it determines that the language in question is unclear, and they need to seek legislative guidance as to what the Legislature intended. We don't believe that it would get to that point, because looking at the definition, expanded definition of delivery, we believe is clear that it would make provisions for the electronic transmission. Therefore, our concern that financially, cost-wise, program development-wise, the Secretary of State's Office is not at this time able to accept all kinds of electronically transmitted documents for filing in the office. With that, I'll conclude and try to answer any questions you may have. [LB528]

SENATOR PAHLS: So simply it's the definition that's causing the issue here is what you're telling me, because it expands. [LB528]

RON MORAVEC: Even the location, Senator, a possible clarification may say in the definition of delivery that delivery as provided in section 2 shall mean, just so it does not

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make that provision applicable to any kind of document. [LB528]

SENATOR PAHLS: Okay. [LB528]

RON MORAVEC: So yes to answer your question. [LB528]

SENATOR PAHLS: Okay, you want them to squeeze it down is what you're telling me. [LB528]

RON MORAVEC: Squeeze it down or possibly move it to a different location in the bill. [LB528]

SENATOR PAHLS: Okay, I see what you're saying. Okay. [LB528]

SENATOR PIRSCH: Okay, so it's...I'm sorry. [LB528]

SENATOR PAHLS: Yeah. [LB528]

SENATOR PIRSCH: It's not an objection to the bill in principle; it's just the, I guess, the means of expressing the terms. They venture upon utilizing terms that could have complicating effects for the office. [LB528]

RON MORAVEC: That's correct. As indicated in the letter, and we don't object to the concept of the bill, I think it's an excellent idea. But, again, the unintended consequences are having those two definitions in section 1 of the bill. [LB528]

SENATOR PAHLS: Okay, that makes sense. Thank you, appreciate that. [LB528]

RON MORAVEC: Thank you. [LB528]

SENATOR PAHLS: Any more testimony? The senator said that he was waiving, so that closes the hearing. Thank you. [LB528]

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Disposition of Bills:

LB152 - Placed on General File.

LB157 - Indefinitely postponed.

LB432 - Placed on General File with amendments.

LB528 - Placed on General File with amendments.

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Chairperson

Committee Clerk