

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

COMMITTEE ON BANKING, COMMERCE AND INSURANCE
January 25, 2005
LB 97, 315, 149, 374

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 25, 2005, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 97, LB 315, LB 149, and LB 374. Senators present: Mick Mines, Chairperson; Pam Redfield, Vice Chairperson; Mike Flood; Jim Jensen; Joel Johnson; Chris Langemeier; LeRoy Louden; and Rich Pahls. Senators absent: None.

SENATOR MINES: Good afternoon, everyone. I'd like to welcome you to the Banking, Commerce, and Insurance Committee hearings. My name is Mick Mines, and I am chair of this committee. I am honored to serve as chair. First rule of order, please turn off your cell phones, or Rich will be over and break your arm, with due respect. Let me introduce the members of the committee that are with us today. Senator Joel Johnson from Kearney on my right; on my left, at the very end, Chris Langemeier from Schuyler, Mike Flood from Norfolk, and LeRoy Louden from Ellsworth. To my immediate right is committee counsel, Bill Marienau, and to my left, Jan Foster, our committee clerk. Our page for today is Jeff Armour. He would be an Ogallala-lan (phonetic). There's an Ogallala-ite (phonetic). Ogallala-lan (phonetic). Our committee is going to take up the bills as posted in order. This is the public part of the process. You're welcome to say and offer comments on anything you wish. We ask that you keep your comments concise, to the point, and I'll take care of watching the time. We've been joined by Senator Pahls from Omaha, formerly of Gretna, now of Omaha. (Laughter) To better facilitate today's proceedings, I ask you to just do a few things. Before you testify, please fill out a sheet. There are some on the table in front of me, or those by the door. And we will circulate a sheet if you choose not to participate in testimony, where you can indicate your preference on any particular bill. We start with the introduction by the senator, followed by testimony from you, the audience, and you can support, oppose, or testify in neutral capacity. We also then have the closing statement by our introducer. If you have a prepared statement, please hand it to the page for distribution to the members of the committee. It will be inserted in the record, and we would like to have 10 copies. Remember there are other testifiers

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 2

LB 97

behind you, so keep your comments direct and to the point. Please spell your first and last name when you come to testify, and again, welcome, glad to have you here. Our first hearing of the day is LB 97, and we have Senator Beutler with us to do the honors. Senator Beutler?

LB 97

SENATOR BEUTLER: Mr. Chairman, this is a new experience, Mr. Chairman, with you here and not knowing what degree of civility to expect or not expect. (Laughter)

SENATOR MINES: Be very afraid, Senator. (Laughter)

SENATOR BEUTLER: LB 97, Mr. Chairman, is a bill I've been working with the banking industry on and addresses some concerns they have with regard to the legal viability of some instruments, mortgages and deeds of trust that may have been filed for a long period of time. As you know, when title to property transfers, there is a process now which is used almost all the time, whereby title insurance is issued to a buyer, and the purpose of the title insurance is several fold. But one of those purposes is to identify those types of instruments that have been filed against the property and constitute liens against the property, and which must be removed in order for title to be marketable. Mortgages and deeds of trust always have to be taken into account in this process, and in the normal process of things, would need to be released or reconveyed, as I say, with respect to deeds of trust. Mortgages and deeds of trust, I think you all are probably aware, are very similar instruments, basically both used; now mostly deeds of trust because of quicker foreclosing procedures, to secure loans made on real estate. So the normal process is to get a release. But what happens sometimes is that there is a failure somewhere way back in time to get a release, and in order to prevent the wasting of a lot of time and resources, over a period of years the Legislature has enacted a number of what they call curative statutes, and usually they provide that after the expiration of a certain period of time, instruments that are filed such as mortgages and deeds of trust that would normally be a lien on the property are no longer a lien. And when you do the title insurance, you're not obligated to pick those up, and if somebody files

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 3

LB 97

a new mortgage and the old one has been properly released with regard to the curative statute, whoever had that old mortgage, if it happens to still be good, does not have a first lien on the property. But there is a point to the curative statutes. You know, you could have a situation where somebody's had a ranch in their family, Senator Loudon, for 60 years and maybe a grandfather had a mortgage or a deed of trust put on it that was never released, and somewhere down the line the grandson owns it and wants to get a new mortgage, and the title company says, you need to release the old instrument. And it's a lot of trouble to try to find out how you get it released, if you can't find the original mortgage company or lender. So with respect to mortgages and deeds of trust, the curative statute that they've put in place is 76-239, which is right there in your bill book, and it generally provides for two different situations. One situation is where you can detect the maturity date of a debt from the mortgage or deed of trust itself, or from the record at the courthouse. And with respect to those instruments, it basically indicates that they will cease to be good 10 years from the date of maturity. Now it's also possible that mortgages and deeds of trust are filed, from which you cannot tell the maturity date. And in those cases, this curative statute says that they no longer function as notice at the expiration of 20 years from the date of the execution of the mortgage or deed of trust. So you have that 10-year rule and you have that 20-year rule, and then there are rules that you can read if you read on in this section, that have to do with giving of notice and the continuation of the lien, in the event that proper notice is given. What the banking industry has pointed out is that there are certain kinds of mortgages and deeds of trust that have future advance clauses. And under those instruments, loans can be made at one point in time and then at another point in time, and the instruments can remain good. Our bankers may want them to remain on file for a long period of time, and what the banking industry has suggested is that these types of mortgages or deeds of trust be exempted from that curative statute that I've just described to you, so that they basically would function in a legal sense, until such time as they were actually released. Now having set the stage for you, I'm going to let Bob Hallstrom follow me and describe to you in more detail whatever you may want to know about what a mortgage or deed of trust with the future

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 4

LB 97

advances clause may be. The title insurance industry is not satisfied with this green copy of the bill, but I know there has been considerable discussion between the two industries, and they may have something to report to you on some way of looking at this that may be mutually satisfactory. In any event, you'll hear the pros and cons, and I would reserve my right to close, Mr. Chairman.

SENATOR MINES: Thank you. Thank you, Senator. Committee, do you have questions for Senator Beutler? May I, just one.

SENATOR BEUTLER: Okay.

SENATOR MINES: And I'm certainly...I'm not an expert; by far I'm not an expert. Is the real question the term, the number of years that are in question, or is it much deeper than that? I mean, is that one of the sticking points?

SENATOR BEUTLER: Well, a possible solution that may be acceptable to both is to change the number of years involved. You know, for example, that a lot of deeds of trust and mortgages that are filed today secure loan agreements that are 30 years in length.

SENATOR MINES: Right.

SENATOR BEUTLER: And in my own opinion, I used to be in the title insurance industry, I've never felt comfortable not putting on a title insurance commitment something that was only 20 years old.

SENATOR MINES: Yeah, I understand.

SENATOR BEUTLER: So that's a possible way of...an alternative way of looking at this, rather than creating a total exemption, which is what the green copy of the bill does, you could explore with those who come after me whether that might not be another way of looking at it.

SENATOR MINES: Okay. Thank you, Senator Beutler. We will take testimony now, those in favor, or proponents. Could I see a show of hands of those in favor of this bill? I see one. Those in opposition, would you please raise your hand? I see two. Neutral testifiers? I like the odds. Mr. Hallstrom, welcome.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 5

LB 97

ROBERT HALLSTROM: (Exhibit 1) Thank you, Chairman Mines, members of the committee. My name is Robert J. Hallstrom. I appear before the committee today as registered lobbyist for the Nebraska Bankers Association in support of LB 97. Senator Beutler, in the short time that he was up here, accomplished two amazing feats. He described the curative statute in an interesting way, and he also provided somewhat of a compelling argument for the retention in one form or another of the curative statutes. In terms of looking at the issue that is before the committee today, the Nebraska Bankers Association had received a contact from one of our member banks within the last year, indicating that a title insurance commitment that had been issued in connection with a lending transaction had not revealed the existence of a deed of trust that the banker knew full well was still filed of record, and was still effective and part of an ongoing lending relationship with a long-time borrower. In looking into the situation, we discovered or uncovered the provisions of section 76-239 that Senator Beutler has described, that provide two different methods by which a deed of trust, or a mortgage, or a real estate contract can be terminated, somewhat by operation of law over the passage of time, the first being within 10 years from the stated date of maturity in the mortgage or deed of trust, and the second being 20 years from the inception, if there doesn't happen to be a date of maturity listed in that particular document. One of the things that that curative statute also does, although you have to have a pretty fine tickler system in place, is that it does provide an opportunity to either execute a written extension agreement that the bank and the borrower would sign that can be filed of record and provide for an extended 10-year, an additional 10-year period, or it does allow for the lender to file an affidavit, which also serves to extend the effective period for a time period of 10 years from the date the affidavit is filed. So there are some solutions within the existing statute, but it does provide through inadvertence or otherwise for the termination of what might be an ongoing, existing, and valid deed of trust. What we have proposed in LB 97, as described by Senator Beutler, is one method of resolving those problems, and that is to simply provide that any mortgage or deed of trust that has a future advances clause would be exempted or excluded from the applicable 10- or 20-year termination or discharge of the mortgage or deed of trust.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 6

LB 97

One of the reasons that we took this approach, as I've stated in my testimony on page 2 is that there are a couple of other statutes that have passed long after these curative statutes were put into play, specifically section 76-239.01(2) and 76-1002(4) that were designed to address what was seen as a problem a number of years ago, and legislation advanced and promoted by the Bankers Association, and that problem was that under the former law, without question, you had situations where an existing mortgage or deed of trust, if it was paid down to zero loan balance by the borrower, that it was conclusively determined that that mortgage or deed of trust as a lien had been extinguished. And so in looking at that situation, what commonly was required, then, was a new deed of trust to be executed and the cost associated therewith, and the filing fees for refiling a new deed of trust or mortgage. So what we have done under those two statutes, both with regard to mortgages and deeds of trust, is that recognized that notwithstanding the payment of a loan balance down to zero, that you don't need to go to the expense of preparing a new deed of trust and mortgage, or filing it, but rather future advances that you've provided for in your loan document can be made, and the lien will continue its effectiveness accordingly. And a future advances clause simply is as the name would denote, is an agreement between the borrower and the lender, perhaps up to a certain amount, maybe the original amount of the indebtedness or some other amount, that can be advanced from time to time, periodically, much like a revolving line of credit or an operating line of credit, for the benefit of the borrower and becomes part of the loan that is secured by that ongoing deed of trust. So when we looked at those two issues, we see the outright discharge by the nature of the curative statute versus the other policy that says if you have a future advances clause, the deed of trust or the mortgage will remain effective. Now what we've come to an understanding with, at least technically or temporarily, tentatively, with the Nebraska Land Title Association, is that they are giving serious consideration to an alternative to LB 97 that would instead retain the 10-year from date of maturity stated in the document requirement of current law, but would extend the period from inception from 20 years to 30 years. And at this time, we believe that that is probably a solution that provides some resolve to the issue, maybe not what we were looking for initially, but a satisfactory resolution and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 7

LB 97

that we will continue to work forward in trying to promote that solution to this issue. We probably believe that in doing so, the amendment will also have to indicate that anything that's been discharged under the old law will not suddenly be revived because we've changed from 20 to 30 years, but we'll draft that accordingly. We've also discussed whether or not, since deeds of trust are a newer animal then that came after the curative statutes were adopted, that we may also modernize the statute to make reference to deeds of trust. So although that's not finalized, that is our hope and intent and design, that an amendment of that nature will probably be brought forth to the committee for consideration and advancement of the bill. I'd be happy to address any questions you may have.

SENATOR MINES: Thanks, Bob. Committee, any questions for Mr. Hallstrom? I see none. Nice job, thank you.

ROBERT HALLSTROM: Thank you.

SENATOR MINES: Any other proponents? Anyone else in favor of the bill? Opponents, come on down.

JAMES LAMPHERE: (Exhibit 2) Thank you, senators. My name is James Lamphere. I am president of Capitol Title Company. I'm here on behalf of the Nebraska Land Title Association.

SENATOR MINES: James, could you spell your name, please?

JAMES LAMPHERE: L-a-m-p-h-e-r-e.

SENATOR MINES: Great, thanks.

JAMES LAMPHERE: And I'm not going to read my entire testimony; I'm just going to go through the highlights, since Senator Beutler has so eloquently described the concerns here. The title industry is very concerned that this statute of repose continue in existence. Statutes of repose are very important to the title industry, because it allows us, as Senator Beutler described, to discount certain archaic instruments. It is an efficient and streamlined approach to doing away with those instruments. There is adequate notice under the existing law for lenders whose loans are longer than the statute of repose to renew and revive those loans. The big issue here is a consumer issue.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 8

LB 97

In the event this statute of repose goes away and any deed of trust or mortgage with a future advances clause in it, is basically nonterminable without a release or reconveyance. It means that in many instances title insurers or title attorneys are going to have to require a quiet title action in order to remove those items from the records. That's going to tie up the court's time; it's going to tie up a lot of attorneys' time, and whenever you're tying up attorneys' time, you're tying up a lot of money. And so that's...it's not an adequate solution for the consumers, whereas the existing statute does. As Bob Hallstrom described, we've had discussions about a longer period for the statute of repose. Personally, I think that's perfectly fine. I know our executive committee is discussing that now, and I'm hard pressed to see that they're going to reject that as a solution. I concur with most of Bob's additional comments regarding modernizing the statute. I think that's a good idea at this point. There's some additional corrective language to deal with the extension, which would be fine. But an unlimited...or doing away with the statute of repose at any...for any length of time would be a mistake. It's not in the consumers' interest. I'll take any questions.

SENATOR MINES: All right, James, nice job. Questions?
Senator Louden?

SENATOR LOUDEN: Then you believe in the one part where it's just changed from 20 years to 30 years would be sufficient to...

JAMES LAMPHERE: Well, I think that's consistent with...yeah, I think that's consistent with the way most loans are given. Most consumer loans now are based on a 30-year amortization, and I think that would be acceptable with me, and I'm fairly certain...I can't speak for the association because the executive committee is discussing it right now, but I think that will be fine. We'll come up with some number that's acceptable to all of us.

SENATOR MINES: James, your board, you said you're meeting now. Is this something that this committee will see in the next several days, an amendment or...

JAMES LAMPHERE: It depends on how soon our lobbyist and Mr. Hallstrom can sit down and write some new language.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 9

LB 97

SENATOR MINES: I understand. Thank you for your testimony.

JAMES LAMPHERE: Thank you.

SENATOR MINES: Next testifier in opposition? Korby?

KORBY GILBERTSON: Good afternoon, Chairman Mines, members of the committee. For the record, my name is Korby Gilbertson, that's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as registered lobbyist on behalf of the Nebraska Realtors Association in opposition to LB 97 as drafted. I think Mr. Lamphere did an excellent job of outlining everything that the realtors had concerns about, so I won't be repetitive. I also did speak with Mr. Hallstrom this morning about his proposed amendment, and I have called the realtors to let them know that. As you know, working with an association I can't make one call and get a yes or no, so I'm waiting to hear back from them, and I will let Mr. Hallstrom know and the committee know, as soon as I do.

SENATOR MINES: Great. Glad you're working things out.

KORBY GILBERTSON: We try.

SENATOR MINES: Committee, do you have any questions for Ms. Gilbertson? Thanks a lot.

KORBY GILBERTSON: Thank you.

SENATOR MINES: Any other opponents to the bill? Anyone in a neutral capacity? Seeing none, we'll ask Senator Beutler to close, and while you're coming up, Senator Beutler, I have ignored Senator Redfield for the better part of 20 minutes. She joined us earlier, and I'd just like to comment that although late, she's here with us now.

SENATOR REDFIELD: Thanks for the (inaudible). (Laughter)

SENATOR MINES: You're welcome. Senator Beutler?

SENATOR BEUTLER: Mr. Chairman, you've heard the whole story, fairly stated, so I would waive closing.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 10

LB 97, 315

SENATOR MINES: Thank you, thank you. That closes the public hearing on LB 97. On your schedule it shows that we will hear LB 149; however, we're still awaiting one of the testifiers, so we will move forward to LB 315. Senator Howard, I see you're here. Please come on up. This is LB 315.

LB 315

SENATOR HOWARD: (Exhibits 1-5) Thank you, sir. My name is Gwen Howard, that's H-o-w-a-r-d, Senator Howard from Legislative District 9 in Omaha, and I'd like to thank you for this opportunity to address the committee. This is the first hearing for one of my introduced bills, so if I'm shaking a bit...

SENATOR MINES: You're doing great.

SENATOR HOWARD: Thank you, sir, thank you.

SENATOR MINES: And thank you for not nicknaming your district, the lovely district or whatever. We have a lot of those. Thank you. (Laughter)

SENATOR HOWARD: I inherited the nickname, and I'm proud to carry it. I'm glad to be here in front of the wise senators in charge of our banking and real estate policies. Nebraska state law statute (section) 76-2,120 requires the disclosure of many items to protect people buying homes. If you look on the attachment you have, you will see some of the items that are asked for. And here is the attachment I'm referring to, Exhibit 1, in fine print. Currently, we require the seller to disclose the condition of the house. We want potential home buyers to know the condition of the roof and the water heater. The buyer should have a firm idea of what is included in the sale, such as whether the washer and the dryer stay. We even ask about cable television jacks. We require information about the condition of the house for health and safety. We ask about asbestos, contaminated soil, lead-based paint, radon gas, toxic materials. We ask these questions to protect the health and well-being of the people who will live in the house. LB 315 simply adds to that protection. It would require the seller to let the buyer know of the existence of

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 11

LB 315

the sexual offender registry and the registry that can be accessed by contacting the state patrol or local law enforcement agencies. The actual statement would read, "Information regarding registered sex offenders may be obtained from local law enforcement agencies or the Nebraska State Patrol. This notice is intended only to inform you of where to obtain this information and is not an indication of the presence of registered sex offenders." The registry would help the buyer determine if a potentially dangerous sex offender lives in the neighborhood, before the buyer agrees to a home sale that could jeopardize his or her family. Now some will probably argue that such a disclosure does not belong with the other information that we require to be disclosed to buyers. But it seems to me that if it is important for a home buyer to know if the cable television jack works, then it is important for a family to know if a sex offender lives next door. I would give you just a brief background on the registry. The Nebraska sex offender registry act (Sex Offender Registration Act) requires those persons convicted of kidnapping a minor, false imprisonment of a minor, sexual assault of an adult or a minor, incest, pandering, or possession of child pornography to register their address with the sheriff in the county where the offender resides. The full list is on Exhibit 2, and that would be this exhibit right here. The offender must keep that registration current for at least 10 years after release from prison, parole, or other forms of state supervision. There are approximately 1800 offenders that are on the patrol registry. The state patrol is required to release information regarding the offender based on the threat of recidivism posed by the offender. The patrol determines this by dividing the offenders into low-, medium-, and high-risk categories based on a risk assessment developed by the University of Nebraska Law/Psychology Department. Information about low-risk offenders can be given only to other law enforcement agencies. Information about medium-risk offenders goes to law enforcement and to day cares, schools, and youth organizations. Only if an offender is considered to be a high-risk, or a Level III, can information be released to the public. These are the offenders that you would find at the state patrol's web site. The printout that you have demonstrates how the system works. It's labeled Exhibit 3; it's got a little heading right up here. My legislative aide, Rick Hoppe, typed in his zip code into the registry and this list of

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 12

LB 315

offenders came back. Now one in particular was pulled out, and his individual profile is included in your packet. Note the address; it's 1245 North 44th Street. Rick's address is 1120 North 42nd Street, meaning that a Level III sex offender lives only three blocks from his home. Now I don't want to speak for Rick, but I can tell you from what he has told me, that his family will be a bit more cautious in their neighborhood. As parents of a nine-year-old daughter, they will be more concerned about what routes their daughter takes in the neighborhood. I can also tell you that Rick would never have checked that registry, and he would not have been working on this legislation, thus denying his family the ability to protect itself. This is exactly the point of LB 315. We need more people to go to the registry. We need more people to become aware. We need more people to take the steps necessary to prevent harm to a loved one. Knowledge is power, and LB 315 increases our power to help protect our families by letting people know about the registry. In the third quarter of 2004, over 33,000 people checked the web site, according to the state patrol. While it is hard to say with certainty who those people are, it is clear that a good portion were employers or organizations involving children who were checking backgrounds. Please look at the figures on Exhibit 5, on residential homes sold by realtors in several Nebraska cities. It's this one right here. These figures are actually estimated data in determining that over 19,000 homes were sold in Nebraska last year. Keep in mind these figures do not include people who sell their own home, and it does not cover every sale in our state. So this number is a little low in determining how many people would be educated about the registry. But it does appear that in requiring residential home sellers to make the buyers aware of the registry, we would be giving this knowledge to at least 19,000 more Nebraska families every year. Finally, I want to point out that LB 315 provides liability protection for the sellers of residential homes. It clearly states that the seller is not responsible for the registry, its content, or for investigating whether sex offenders live near the property. In closing, I think we should all appreciate the tremendous opportunities afforded by the registry. This is to protect our families. I am certain that my aide has a new-found appreciation for the possibilities. I know that LB 315 will be one more tool in helping Nebraska families protect themselves from sex offenders. I would also mention that many people who wanted

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 13

LB 315

to testify were unable to be here. Several members of the Attorney General's Task Force on Sexual Assault wanted to testify, so we have included their letters of support for your review. That would be Exhibit 4, which is right here. Thank you.

SENATOR MINES: Thank you. Nicely done.

SENATOR HOWARD: Oh, thank you, sir.

SENATOR MINES: And I'm tickled you were here first. Thank you. Committee, do you have any questions for Senator Howard? Senator Louden?

SENATOR LOUDEN: Yeah. Thanks for bringing this forward, Senator Howard. I think this is something that probably needs to be done somewhere along the line. The one question I have about it is that, say you wanted to sell me your house for \$100,000, or whatever you want to ask for it. And I go to this registry and I look, and I say, oh, I don't know. There's this guy a couple of blocks away. I think maybe it's only \$90,000. Should that happen? Should that be...should there be legislation against discrimination on that deal, or how do you address that problem?

SENATOR HOWARD: Sir, if you had the information and you took it upon yourself to go to the web site and become better educated, I personally would be very proud of you. You've taken on parental responsibility, which makes our system work. And I think the benefits of the knowledge far outweigh the consideration of whether the price would go up or down on the home.

SENATOR LOUDEN: You don't think there would be a problem with anybody using it as a hammer, then, to drive the price down of the property?

SENATOR HOWARD: A negotiating tool? That would be really hard for me to say, since there are so many things used as a hammer.

SENATOR LOUDEN: Okay, thank you.

SENATOR MINES: Thank you, Senator Louden. Other questions for Senator Howard? Thank you very much.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 14

LB 315

SENATOR HOWARD: Thank you, sir.

SENATOR MINES: Ladies and gentlemen, by the way, I'd like to mention we've been joined by Senator Jim Jensen and we welcome him, as well. May I see a show of hands--how many proponents do we have in the room? How many will testify in favor of the bill? I see two. Those in opposition, how many hands? I see none. Neutral? I see two. Great. Please come forward, proponents.

MAYDE MCGUIRE: Hello.

SENATOR MINES: Hi.

MAYDE MCGUIRE: Hi, I'm Mayde McGuire, M-a-y-d-e M-c-G-u-i-r-e. I've been employed as a police officer for the last six-and-a-half years with the Lincoln Police Department. This is the first time I've ever done this, also.

SENATOR MINES: Well, good.

MAYDE MCGUIRE: Senator Howard, everything she said I agreed upon. The Lincoln Police Department supports this bill. I've arrested several offenders who reoffend. State patrol only classifies and it's only public knowledge of those Level class III offenders that are the most likely to reoffend. The registry came about because of a seven-year-old New Jersey girl that was killed and murdered by her neighbor, because the parents didn't have information about their neighbor's past criminal history. That's why the registry came about, basically, from that case. I am a member of the Sexual Assault Task Force, the Attorney General's, that Senator Howard spoke about. I instruct the academy on sexual assault, do several presentations for RSACC, SANE nurses, and do things a lot with the community on sex offenders and sexual assault. So basically we're just here to support the bill. Senator Loudon, I have a sex offender that lives six houses from me. Your same concern came up to me when I also saw the bill. It's public knowledge already. They can go to that web site and check it out before they have that, so the only thing this does is just have it in the paperwork at the time when people maybe most need it, when they're going to make a large purchase

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 15

LB 315

and move their family to that area. So I did come to support that bill, even having...

SENATOR MINES: Nicely done, nicely done.

MAYDE MCGUIRE: ...six houses away. And I plan to probably sell sometime, so...

SENATOR MINES: Okay, thank you. Committee, do you have any questions for Ms. McGuire. Senator Johnson?

SENATOR JOHNSON: Not a question, just a comment. Isn't it nice to sit here and see a police officer just a little bit nervous like you are? (Laughter)

SENATOR MINES: Yes, it is.

MAYDE MCGUIRE: I don't...I'm usually over there.

SENATOR FLOOD: Senator Johnson, you should sit on the Judiciary Committee. (Laughter)

SENATOR MINES: Any other questions for Ms. McGuire? Let me ask. This bill really is just providing...not just...it provides information for people that we would hope they would know already.

MAYDE MCGUIRE: Correct.

SENATOR MINES: And I wonder if certainly this might be the appropriate time to do that, when you have a seller disclosure statement. But are there other...should we be informing people of other things, as well? If we take this to the next level, why don't we inform people of other offenders, of other problems? I mean, is this something that will make an impact, in your opinion? I mean, will it drive people to the web site? Won't it drive people to ask the police departments?

MAYDE MCGUIRE: I know there's not a lot of promotion on, this is where you can go for the registry. I don't know if it will make...I think it will make an impact to those people who care about if they live next to an offender, or if they had knowledge of maybe people who, you know, are addicted to drugs or burglarize places, or do other kind of

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 16

LB 315

crimes. I certainly would be interested. There are some people that you could put them in flashing neon signs and they would never go and check it out, because they just don't care.

SENATOR MINES: That's hard to predict?

MAYDE McGUIRE: Right.

SENATOR MINES: Yeah. Senator Jensen?

SENATOR JENSEN: Yes, and thank you for coming and testifying. On a seller disclosure statement, there is, you know if...does your basement leak? Does this happen? Does that happen? A lot of other things that has to be on there. But then there's always a space for, "I don't know."

MAYDE McGUIRE: Um-hum.

SENATOR JENSEN: And if...they would certainly check that one. I don't know if the information that the buyer would want to have is actually going to be received. Then also, we're talking about a class III sex offender, correct?

MAYDE McGUIRE: Correct.

SENATOR JENSEN: Those are the only ones that are registered. Class I, class II are not registered.

MAYDE McGUIRE: They're registered, but that's only...

SENATOR JENSEN: They're registered with the department, and so a school official or somebody else who's qualified can call and get that information.

MAYDE McGUIRE: Correct.

SENATOR JENSEN: But a property owner cannot.

MAYDE McGUIRE: No.

SENATOR JENSEN: Is that correct?

MAYDE McGUIRE: Right.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 17

LB 315

SENATOR JENSEN: Well, and I think that Korby Gilbertson, probably representing maybe the real estate, might come up. I might ask her some follow-up questions with that. Thank you.

MAYDE MCGUIRE: Okay.

SENATOR MINES: Senator Pahls?

SENATOR PAHLS: I just have a question. In your experiences with Level III, do they...are they involved with rental properties more so than homeownership?

MAYDE MCGUIRE: More so, I would say, rental properties, yes. I have contacted a few that own their home. But more so rental property, in the area that I work in, which is the downtown, 27th and Holdrege area.

SENATOR MINES: Great. Other questions? Thank you, nice job.

MAYDE MCGUIRE: Thank you.

SENATOR MINES: Any other opponents (sic: proponents)? Please come forward.

TARA MUIR: Hello.

SENATOR MINES: Hello.

TARA MUIR: I've got some copies of my testimony, if anyone wants to pass them around. My name is Tara Muir, Senator Mines, and members of the committee. I'm the legal director of the Nebraska...

SENATOR MINES: Would you spell your name; I'm sorry.

TARA MUIR: Thank you. Tara, T-a-r-a Muir, M-u-i-r. I'm the legal director of the Nebraska Domestic Violence Sexual Assault Coalition. We provide training and technical assistance to Nebraska's network of 22 domestic violence and sexual assault programs. I'm here on behalf of the programs and the many victims they serve in every county of our state. We'd like to thank Senator Howard for introducing this bill. We're speaking in support of LB 315 as a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 18

LB 315

reasonable and appropriate alert to people of the existence of the sex offender registry in our state. Some people may believe a myth that sex offenders live only in certain parts of their town or city, perhaps the poorest parts. We know through our work that sex offenders can live next door to anyone, as the perpetrators are often someone the victim knows very well. The YWCA is submitting a letter in writing and we'd like to echo some of their thoughts. We also believe that child sexual abuse continues to be a safety issue that communities do not want citizens to forget. As parents remind their children frequently concerning hazards with fire, drugs, electricity, and traffic concerns, prevention of sexual abuse is often not on their radar screens. Yet one girl in four and one boy in six will be sexually abused before they are 18 years old. The perpetrator of this crime will be a stranger in only 20 percent of the cases; in the other 80 percent of the cases, the child will know their perpetrator. Perpetrators of children come from all walks of life and live in many different neighborhoods. While schools provide some education on this issue, it is ultimately left to the parents. Parents often neglect this issue because they believe they have covered the topic with a warning to stay away from strangers. While this warning is fine, it fails to cover the majority of situations in which someone the child knows breaks their trust and harms them. Parents need to provide education on child sexual abuse to their children on a regular basis in the same way other safety information is presented. LB 315 is one additional reminder to parents that ongoing safety information, including prevention of sexual abuse, is critical. As the business transaction of purchasing a house is completed, parents will be reminded that they can be alerted to sex offenders in their neighborhood by utilizing the sex offender registry. This also becomes another opportunity for parents to share child sexual abuse safety information. Whether a sex offender is living in their neighborhood or not, it offers parents the occasion to discuss sexual abuse prevention when they may otherwise let safety concerning sexual abuse slip away. Thank you for letting me testify, and I'm happy to answer any questions I can.

SENATOR MINES: Thank you. Committee, do you have questions? Well done. Thank you very much.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 19

LB 315

TARA MUIR: Thank you.

SENATOR MINES: Any other opponents (sic: proponents)? Anyone wishing to testify in opposition? We have neutral testimony, I believe? Please come forward and I think we had two. Is that correct? Good afternoon.

LES TYRRELL: Good afternoon, Senator Mines, members of the committee. My name is Les Tyrrell, L-e-s T-y-r-r-e-l-l. I'm director of the Nebraska Real Estate Commission and I'm here on behalf of the commissioners today, not so much with regard to the issue of should there or should there not be notification, because we feel that is a policy decision that you would need to make. And the commission did not take a position on that, although they understand the need for people to know if there are sex offenders in the area. We would say that since the seller property condition disclosure statement, the statute which we regulate to develop the disclosure statement itself, that even though the sex offender notification does not necessarily have to do with the condition of the property as the bill has looked at before, that since the seller property condition disclosure statement is probably the most widely used, consistent document, that the commission would probably...would urge you to include this notification, even though we know this could open us up to other notifications down the road. But even though it's not a property condition, that since this would get to most people in the most way, that if you decide to do this, that we'd just make that notification as part of the seller property condition disclosure statement. To answer your question with regard to the "yes, no, I don't know." We don't read that as this bill having to say that. It's a notification that you can go out to get it, not is there a sex offender within the area. So there would be no "yes, no, or I don't know," which they do have the opportunity of doing. It would be a notification that we would place after the list of "yes, no, I don't know," those types of things, and prior to the signature line, is where we would anticipate, if that's where you decide to go. And I'd be happy to answer any questions that you might have about this.

SENATOR MINES: Questions by the committee? Senator Jensen?

SENATOR JENSEN: Yes, thank you. And I'm glad you came up

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 20

LB 315

to testify, and maybe you can clear some things up with me, who had a real estate license for some 30 years, and finally gave it up.

LES TYRRELL: I'll try.

SENATOR JENSEN: And you know without a doubt that the real estate agent is certainly under more scrutiny than he ever has been probably before, at least 20, 30 years ago. And he is under restrictions as to what he can say and what he can't say about even the property next door or across the street. Is he going to be required also to give information about what is down the street, or whatever?

LES TYRRELL: Under the agency relationships act, which we also administer, which sets out the disclosures and things that need to be disclosed by real estate licensees as they work with clients and customers throughout the state, we asked for an Attorney General's opinion, just on this issue, when the three levels came out, because we have, as you know, many real estate licensees are highly involved in civic groups, coaches, YMCA, those types of things, as part of their life. And so when the three-level system came out, a question was asked, what happens if a real estate licensee, because of the fact they're in the second level group, as I'll refer to it, the middle group, as part of that civic group are working with youth, that they find out that because of where they're coaching soccer, let's say, there is a sex offender of Level II across the street from that soccer area. What duty do they have to disclose that? At any point in time that they're involved in a real estate transaction in that area, would they have to disclose that? And the Attorney General's opinion came back to us that nothing in the agency relationships act requires that. The Legislature did not set out that as one of the disclosures or adverse material facts, even in a general way, and so that, should that happen to a real estate licensee, the real estate commission would not be able to take disciplinary action administratively. However, they needed to check, you know...they might want to check for civil liability with their own legal counsels. So in essence, under our purview, they wouldn't have a duty, at that point in time, that we could take disciplinary or administrative action against them, if that answers your question.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 21

LB 315

SENATOR JENSEN: If I'm a prospective buyer and you are a real estate agent, and I ask you, is there anybody on this block who has committed a felony, how would you reply?

LES TYRRELL: Probably, "I don't know," if I were a real estate licensee.

SENATOR JENSEN: What happens if you did know?

LES TYRRELL: What I would do is I would have them check with the local police department, as to see what happens.

SENATOR JENSEN: Okay. It would seem to me that that is the same thing that is available, then, on this endeavor. And believe me, I'd love to get rid of all the sex offenders.

LES TYRRELL: I understand that. No, we would...

SENATOR JENSEN: I am concerned about property owners and also real estate people in the business of whom I know many, and what their responsibility is going to be, and what they can say and what they can't say. And there have been some instances, where there has been something that the agent may have known about, but kind of "don't ask, don't tell" almost, but...

LES TYRRELL: If it's an adverse material fact, of which we have authority, and we find out about it, of course we would take disciplinary action.

SENATOR JENSEN: Right.

LES TYRRELL: But normally a real estate licensee are informed that if they don't know the answer, they should refer the person to that source, or I would imagine, I guess, if you're a buyer's agent, working with a buyer who asks a question, or a seller, that you would go find out for that person. But that would be in general.

SENATOR JENSEN: Well, I do see that you also sat in on many disputes between buyers, sellers, and so on and so forth.

LES TYRRELL: We have complaints.

SENATOR JENSEN: And if somebody wants out of a contract,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 22

LB 315

this is just another issue. Of course, some attorneys have told me that there's no contract that can't be broken, but it might cost some dollars to do that. But I do have some concern about that, and...but anything that we can do to get rid of the sexual offenders, I'd love to do it. But we have to do, I think, what is proper also. Thank you.

SENATOR MINES: Thank you, Senator. Other questions?
Senator Louden?

SENATOR LOUDEN: Yeah. Thank you for coming here today, Mr. Tyrrell. I guess, like I've said before, when we pass these laws, they aren't just for Lincoln and Omaha, but they cover the entire state of Nebraska. What I have a problem with is, you have to tell the lack of thereof, or presence of a sex offender in the area of the seller's property. Now I suppose here in Lincoln or some place, maybe that would be, what, a three-block area around there? Would it be six blocks? What would an area be if we get out into a smaller town in western Nebraska? Does that include the entire town? And if we're selling a residential lot off of the corner of circle pivot out there in sumac country, then does that include a whole portion of the county? Where do we draw the line on an area?

LES TYRRELL: Not being involved in the drafting of this legislation and appearing in a neutral position, the way I have read this and the commission has read this, that this doesn't say that you disclose if there is one anywhere in the area. It simply says it informs a potential buyer that they can go to the local law enforcement agencies or the Nebraska State Patrol, and that it's only to inform them where they can obtain the information, and does not indicate a presence in the neighborhood. So, I mean, I didn't draft this legislation, but the way I read it, it doesn't say you have to disclose it if it's within an area. It just says, here's a notice. If you want to find out if there is one, you, Mr. Buyer or Ms. Seller, go to local law enforcement or the Nebraska State Patrol. I don't know if that answers your question, but...

SENATOR LOUDEN: Well, yeah, it helps. Then what you're telling me is, like here in Lincoln, then, anyone that's in Lancaster County, then, every piece of residential property that has to be sold, probably has to have that disclosure.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 23

LB 315

LES TYRRELL: The way, again, not being the drafter and here in a neutral position, the way we read the bill as it's drafted, is they are indicating that every seller of residential real property that has to do the written disclosure under the seller property condition disclosure act, (section) 76-2,120, would have to do this notice to those same people. And therefore, we just came here to say, rather than make it a separate piece of paper somewhere else in law, that even though it's not a condition of the property per se, what most people think of as a condition, that we would say, even though we know we might be opening ourselves up down the line as the administrator of the form itself, that notification on that form might be the place to go with it.

SENATOR LOUDEN: Okay, thank you.

SENATOR MINES: Thank you, Senator Louden. Senator Flood?

SENATOR FLOOD: Would this be similar to like the lead-based paint disclosure that an agent or an attorney hands to the party of a purchase agreement, upon execution of the purchase agreement?

LES TYRRELL: I believe the way this is written, yes. It could be like a separate. The lead-based paint disclosure is a federal law.

SENATOR FLOOD: Um-hum.

LES TYRRELL: Now I'll give you an example from Omaha. On Omaha area board of realtor seller property condition disclosure statements, which are our format, after the signature line...and most of you are aware, there's a--and forgive me, I think it's a lead...isn't it a lead area...is it a lead problem that Omaha has?

SENATOR FLOOD: Yes.

LES TYRRELL: Okay. I went blank; I'm sorry. On the Omaha area board form, since they print their own, they print, below the signature line because they had blank space on the way they print the form, they have added on the bottom of their seller property condition disclosure, some form about

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 24

LB 315

the lead area in Omaha, and the superfund. So that, I know, has been done on that, and we would anticipate that this would go on our form that we broadcast to everyone, as a notification only. But it would be different than lead-based paint, from the standpoint that lead-based paint requires you to actually do some checking off as to whether you have it and et cetera. But it could be a separate form, also; yes, it could.

SENATOR MINES: Thank you, Senator Flood. Committee counsel Marienau?

BILL MARIENAU: Les, just to complete that thought. Now does the commission prescribe the form by rule and reg, or does it approve forms that are generated separately? How does that process work?

LES TYRRELL: No. The commission prescribes the actual seller property condition disclosure form by rule and regulation. What Omaha asked us to do is, since the way that they...we have a form that's 8 1/2 by 14 that we produce. But it also can be produced 8 1/2 by 11. I think Omaha does theirs in 8 1/2 by 11 and it's in multiple pages, like two pages front and back. And they have space left over; it doesn't fill all four front and backs. So they asked us if they could put that disclosure on that form, and we told them that as long as it was above--excuse me--after the signature line on however they printed it, it wouldn't be part of the prescribed form. Whereas this, if you wanted to make it so, could be, or I suppose, you know, people could put it on there, but most people contact...most people who are sellers of property on their own will contact us for the form. And so just to cover them, we probably almost have to do something to help that. We wouldn't have to, unless you did it, and so I don't know how far my legal counsel would let me get gratuitous liability to do that, but you know...so I'm kind of speaking here, but yeah, it's done by rule and reg. But this could be part of it, or it could be outside of that rule and reg process, depending upon how this bill came out, if it came out that way.

SENATOR MINES: Senator Jensen?

SENATOR JENSEN: Yes, and one of the first statements you said is, you don't know whether this might lead to other

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 25

LB 315

circumstances.

LES TYRRELL: That's correct.

SENATOR JENSEN: I could certainly see that it could lead, perhaps, to drug, to methamphetamine, to other issues coming down the road. I think there are three people on this table here that reside in the same facility, which is very close to the Capitol here, and yet south of that facility, there are some drug dealings, I know, that go on. And I wonder now, is that going to be the next thing that property owners have to disclose, also?

LES TYRRELL: That was a caveat that the commissioners, when they had their discussion, they understood that this could open them up to that down the line, but they thought that if you decided to do this, that that would probably be the place for it to go, because it will have the most wide distribution, and would be the simplest. But you know, needless to say, they sent me here, and I said what they wanted.

SENATOR JENSEN: Thank you for coming.

SENATOR MINES: I understand. Other questions? Any other questions? Seeing none, Les, thanks for your testimony.

LES TYRRELL: Sure enough.

SENATOR MINES: Korby, you're up.

KORBY GILBERTSON: Good afternoon. For the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as registered lobbyist on behalf of Nebraska Realtors Association in a neutral capacity on LB 315. Senator Loudon, you pointed out a lot of the confusion that has happened with this bill since it was introduced. I've gotten calls from everywhere that, how are we supposed to know? How far does this pertain to? Well, it really doesn't do anything. What does it have to do with the condition of the property? So it's been all over the board. The realtors think that this is...they're not opposed to the idea of having this disclosure. The one question they did have, does it belong on the condition disclosure statement, since it doesn't have anything to do with the actual

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 26

LB 315

condition of the property? But then I've also spoken with Mr. Tyrrell, and his idea or the commission's idea of making it just part of the form, seem to make a better idea to us, since it's not actually a disclosure. It's just a written statement. So from that standpoint, we don't oppose the idea.

SENATOR MINES: Great. Any questions from the committee? Seeing none, thank you.

KORBY GILBERTSON: Thank you.

SENATOR MINES: Any other opponents of the bill? Excuse me, anyone else in a neutral capacity? Seeing none, Senator Howard, would you like to close?

SENATOR HOWARD: Thank you. I would really like to point out that this bill is to provide information only, and to read one section of it briefly, "The notice regarding sexual offender information does not create any legal duty on the part of the seller or the real estate licensee to investigate or to provide the buyer with information regarding the actual presence or lack thereof of registered sex offenders in the area of the seller's property." And to answer Senator Loudon's question, the information is obtained town, zip code, or name. And on a personal note, I would like to say that having come from the system, spending many years working within the system, this is an opportunity for parents and responsible individuals to use the system's information to their benefit, their protection, and to protect their children and families. So I hope we give them the opportunity to do that. Thank you.

SENATOR MINES: All right. Thank you. Questions for Senator Howard? Senator Redfield?

SENATOR REDFIELD: I do have one. Senator Howard, clearly the intent of the bill is to get the information out to people, and I'm looking at the numbers that you gave us for transfers of property, people looking at contracts. And I'm wondering why you're not pursuing public service announcements or some remedy in financing those announcements by television, radio, so that a broader spectrum of the population would be more aware of the registry and access the information.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 27

LB 315, 149

SENATOR HOWARD: That's a good question, and that's certainly worthy of consideration. The focus on this bill is to provide people, families, individuals, the opportunity to know how to access the information. It's a beginning. It's a start. And in the frenzy, if you would, of buying a house, with all of the things to be aware of, the financing, the rates, the details, this would not be something that would first pop into someone's mind. But this is an opportunity for us to help people to be better informed.

SENATOR REDFIELD: Thank you.

SENATOR MINES: Committee, any other questions? You did great. Thanks for coming.

SENATOR HOWARD: Thank you, sir. Thank you. You've given me confidence.

SENATOR MINES: Exhibit 1) That will close the hearing on LB 315, and we will open the hearing on LB 149. Senator Aguilar?

LB 149

SENATOR AGUILAR: (Exhibits 2 and 3) Thank you, Senator Mines, members of the Banking, Commerce and Insurance Committee. Also, I have some handouts here, before we get started. I think my job here is to get a couple of those last representatives out of neutral and get a real position, and answer Senator Jensen's last question at the same time. Senator Mines and members of the committee, my name is Ray Aguilar, spelled A-g-u-i-l-a-r. I represent District 35 in the Nebraska Legislature. I'm here to present LB 149, a bill about public safety. It's about disclosing the presence of a methamphetamine lab, as we call them, in a residence or rental. The reason this is needed to be disclosed is because of the harm that could come to a child or an adult who unknowingly comes to occupy a dwelling where the chemicals used to make methamphetamine may still be present. These chemicals, in and of themselves, are toxic, but add them together and maybe apply some heat, and they will get extremely toxic, fumes that permeate walls, carpeting, even metal surfaces. Any one of the chemicals

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 28

LB 149

used, the remaining traces of the chemicals, even the end product, methamphetamine, can remain on surfaces. Put a child in that environment and you are placing that child in extreme danger. The National Jewish Hospital in Denver concluded through their research that this is, in fact, the case. The aftermath of a meth lab can be strong enough to cause burning of the eyes, nose, throat, and skin, and continued exposure can lead to damage of internal organs. My handout points out some of these results. Meth usage in an adult will cause damage to every portion of the body, including irreversible damage to the brain. Even small doses can do the same harm to children. When law enforcement officials go into a lab to gather evidence and clean up the aftermath, they wear full protective gear, including a gas mask with air tanks. Everything in that environment is considered hazardous material. They know this because early clean-up efforts without the Hazmat gear resulted in officers experiencing permanent damage to their lungs and various kinds of burns to their skin and eyes. Right now what happens is they go in and they place this label on this house. That's the only protection there is. If the landlord or even some bystander decides to remove that label, nobody knows what happened in that house. Knowing this, I think it's imperative to do everything we can to keep innocent people from exposure. Can we reduce the incidence of meth labs? I believe we can, but that legislation for another committee. This issue is so important, because meth labs can be anywhere, and unfortunately, are prevalent across Nebraska. I feel it's imperative to make this disclosure. Since introducing the bill, I've had continuing discussions with the Nebraska Real Estate Commission, the real estate association, and the hotel/motel association. Do they have concerns? Yes, and I shared some of those concerns. It is not my aim to make property unusable or unmarketable. Can redemption or clean up of this property take place so that disclosure becomes no longer necessary? It can, and standards are being developed across the state. Different labs need varying levels of clean up, and only local authorities can determine that. The responsibility of enforcing those standards lie within county and city health departments, and building and safety departments. Are county health departments able to deal with this safety issue now? Yes, some more than others. However, this danger is much like other hazardous material dangers. My understanding is that the health departments

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 29

LB 149

that need to work toward being able to deal with methamphetamine labs are working toward that now and should soon be prepared. In the city of Lincoln, the building and safety department will red tag a property until the owner mediates or cleans the property to the standards set by the health department, and the property is declared safe for occupancy again. There are good examples of how to deal with these properties, but until these types of procedures are common statewide, I feel that disclosure is a very useful tool to encourage caution and provide for safety of potential renters and buyers. Due to various conversations I've had about LB 149, I have an amendment to offer the committee. This amendment does the following: It discontinues the disclosure requirement if the property has been cleaned up, and when it is deemed safe by the health department or other applicable agencies. It places the disclosure requirement on properties exempted from the current seller property condition disclosure statement. An example would be a property handled by a relocation company or sold to another family member. It places the disclosure requirement on the hotel/motel industry. It changes the wording "rental unit" to "rental dwelling," in order to be consistent with the current language in definitions in statute. You will hear today from some law enforcement personnel about the dangers of these properties. I'm sure the testimony today will reveal some concerns on the part of property owners. With the amendment, I feel the largest concern is taken care of, that being the issue of when disclosure is no longer necessary. Basically, disclosure is not necessary when the dwelling is safe for occupancy. I understand the economic consequences of a meth lab in a property. However, if a property owner is handling the situation properly already, this bill will not affect them. Senators, the meth problem is complex, and this is just one of the issues meth raises. To me, it's common sense not to reoccupy an unsafe dwelling. The goal is to encourage proper clean up. I cannot imagine letting children live in these conditions, and yet it happens. Let me paraphrase one portion of the research: We also placed a stuffed bear approximately 12 inches from the cook area. After the cook was completed, the bear was sealed in a plastic bag and returned to the lab. Test results indicated an extremely acid pH. Further analysis results indicated methamphetamine in the fur and the clothing of the bear. That bear contained enough acid to cause severe burns to the skin and

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 30

LB 149

mucous membranes and would expose a child to significant concentrations of methamphetamine, particularly if the toy was placed in the child's mouth. I ask for your strong support of this bill and amendment. If further revisions need to be made, we can look at that, too. I strongly feel that this needs to be passed this year. Thank you. I'll take any questions at this time.

SENATOR MINES: Thank you, Senator Aguilar. Committee, any questions for the Senator? They're not going to let you off easy. Thank you very much.

SENATOR AGUILAR: Thank you.

SENATOR MINES: Could I have a show of hands, those that are in favor of the bill, the proponents, would you please raise your hands? I see one. And anyone in opposition to the proposed legislation? I see one. And those in the neutral position? I see one, two. So we have four testifiers. Before I bring the proponent up, I just might mention for those of you that aren't familiar with process, you'll see senators leave and come back on occasion. It means no disrespect to you or the process. They are introducing bills in other committee hearings, so please understand that they do need to leave us once in a while. Would the proponent please come forward? And the opponent, you may want to come forward as well, sign in, get ready for your testimony, as well. Good afternoon.

MARK DREHER: Good afternoon. I'm Mark D-r-e-h-e-r. I'm as nervous as the other officer here.

SENATOR MINES: You're doing great.

MARK DREHER: I'm an investigator with the Grand Island Police Department; I'm also an investigator for the Tri-City Drug Task Force with the Nebraska Clan Lab Team. Part of my duties are to go out and investigate these such meth labs, as Senator Aguilar was speaking with. My concerns today are for the disclosure and the support of this bill. As Senator Aguilar said, after we have gone through these meth labs, cleaned them up to our standards, we don't clean the whole lab up, we just take the gross contaminants out, we mark the property with a red... big red sticker, basically, and we walk away. Major concerns about that is all the chemicals

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 31

LB 149

we see in these labs, you can find underneath the kitchen cabinet, cleaning supplies, simply cleaning supplies. Are they a problem when they're cleaning supplies? No, but when you take regular table salt and acid and perform a hydrochloric gas reaction, that becomes an acidic gas. Is that a problem? Yes, it is. Coleman fuel, everybody has Coleman fuel, or a lot of people have Coleman fuel. But do people take Coleman fuel into their house? Do they spill it all over their house? Do they spill it on the carpets? My concern is because I have children, young children. And we all have had children...children crawl around on the floors. They get into these chemicals. They put everything...the mentality is to grab everything and stick it in their mouths. Another serious chemical is anhydrous ammonia. That is, of course, found on every farm property around the Midwest. However, we find it inside residences, and we don't find it inside nurse tanks, we find it inside of thermoses, glass Mason jars, containers that aren't compatible for anhydrous ammonia. We are now becoming more stringent on looking into the children and safety like that, and I believe this would just follow along with protection of the children.

SENATOR MINES: Great. Questions? Let me ask. What is your experience in Grand Island if Senator Flood is producing methamphetamines at his home. He's renting the home, and you are brought in to investigate. You find that yes, indeed, he's got methamphetamines. The department, your department, cleans up the meth lab to your standards?

MARK DREHER: Yes.

SENATOR MINES: Do you report that to anyone else in the city? Does the city inspector, then, get involved? Does any...

MARK DREHER: No. We just report it to the El Paso Intelligence Center, EPIC. We have no other reporting procedures on that.

SENATOR MINES: The municipality has no other obligation to, or the governing agency, whether it's county, has no other obligation to ensure clean up of that facility?

MARK DREHER: No, and I believe the only other agency that

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 32

LB 149

takes after-care action is the Lincoln/Lancaster County Health Department, that actually goes out to residences at that time.

SENATOR MINES: Okay. Wouldn't you want...well, maybe I'll ask Senator Aguilar in closing. It would seem to me that you'd want to clean up...you'd want a follow up to clean up and restore the property to its original condition, as opposed to notifying the next person in line, but we'll talk about that. Any other questions? Thank you. You did a great job.

MARK DREHER: Thank you.

SENATOR MINES: Any other proponents of the bill? Chris, you're the opponent.

CHRIS ABBODD: Chairman Mines, members of the banking committee, my name is Chris Abboud, A-b-b-o-u-d, representing the Nebraska Association of Hotels and Motels. I am testifying today in opposition to the amendment that has been offered to LB 149. I would like to first start off by saying that Senator Aguilar has been a tireless worker in his fight against methamphetamine use in the state, and he should be commended for that. He has passed some major legislation in the past on this issue, and certainly, methamphetamine use is a scourge on this state that should be eradicated. With that, we would like to work with Senator Aguilar in trying to solve this problem, and the members of the Nebraska hotel/motel association have been working with law enforcement throughout the years in dealing with the methamphetamine problem here in the state. As the state law currently reads, when an individual wishes to rent a motel or hotel room in this state, that person cannot be denied. If that person brings in cash, then they can rent that room. And as a result of that, even if they may not feel that this person would be doing something right in that room, they still have no option, because of the discrimination laws. And in the past, the hotel/motel association has brought in legislation to allow them that flexibility to restrict individuals from renting or leasing a hotel or motel room, based on suspicions they may have about what is going to be used in the room. But that's not the law in the state. So they work with law enforcement, in the fact that they, if they see something suspicious going

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 33

LB 149

on in the room, or let's say they...whatever that might be, they contact their local police department, sheriff, state patrol, and this in turn allows them to have probable cause to bring in a drug-sniffing dog or a warrant that can be issued by a judge, so that those premises can be inspected, and those individuals, if they are doing something illegal, can be arrested. So we do work with law enforcement in this area, and will continue to work with law enforcement, regardless of what happens with this piece of legislation. There are some concerns that we have with this amendment, in that the notice requirement, dealing with the health department. We feel that the current situation in Lancaster County, where the health department is brought in and determines whether or not the room or the building should be properly reoccupied, is the right approach on this thing. And getting involved in notice, or having actual knowledge of whether or not methamphetamine production is taking place in those motel rooms, is a great...is a burden on that owner. Really, the goal should be to, if it is a health hazard, which it sounds like it is and we believe that it is, then that area should be cleaned up. And that's what we do when something like this does happen. It's not an occurrence that occurs a great deal, because there is a certain odor to it, so individuals, generally if they're producing methamphetamines it's cut in rural areas, or in a vehicle out in the country, because of that smell that it does produce. But if it does, it certainly damages the room a great deal and their immediate concern is to be able to re-rent that room out, so they strip out the carpet, rip out the drywall to the studs, take out the draperies, and refurbish the room. So the goal should be, in working together, that that health department, if they feel that it is not a safe room to rent, then they should flag that room, or they should flag that building and not allow anyone to reoccupy it. And in addition to that, there's another issue as well, dealing with confidentiality. Let's assume that the police go in and they make an arrest, or they charge someone, or they just go in and confiscate whatever is in that room. There's a confidentiality that those police have that they can obviously notify the county prosecutor on whether or not to prosecute. If the case is big enough, then it will be passed on to federal authorities, and they may, in fact, they may prosecute that individual in the room, or they may try to bring someone else in, because of that illegal act. The point is, though, there's a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 34

LB 149

confidentiality between the police, and the hotel/motel owner does not necessarily fit within that confidentiality, and they may not find out about what actually occurred in that room until the case is brought to trial, if then. It may never even be brought to trial. They may work something out where someone testifies against someone else, and that particular instance will never be brought forward or made public. So...but you don't have those same confidentiality restrictions with the Department of Health. If the police realize there's a health problem there, they can go in and notify the Department of Health. The Department of Health can contact, notify the owner that this room will not be allowed to be reoccupied until it's cleaned up. So in that regard, that is an existing mechanism. The Department of Health has that authority currently under statute, to go in and shut down any buildings or rooms that they don't feel are safe. So that's our recommendation, use existing law. I will add a couple of things dealing with the language itself; ours deals with lines 4 through 9, or 10. And the language there, where it talks about any knowledge, that's somewhat of a vague term. I mean, they may hear something or hear rumors, but without actual knowledge, it's difficult to know what exactly occurred in that room. And regardless of the conviction, as I mentioned earlier, it may never come out publicly what actually occurred in that room. But yet someone could file a lawsuit and say you had that burden, and I became sick and something happened here in this room and you should have known about it. Whether or not they do or they don't, it's a difficult challenge.

SENATOR MINES: Good point.

CHRIS ABOUD: So anyway, that concludes my testimony. I'll be happy to answer any questions.

SENATOR MINES: Thanks, Chris. Questions? The committee have any questions? Thank you very much.

CHRIS ABOUD: Thank you.

SENATOR MINES: Thanks. Those in a neutral capacity? Korby, you're first, like it or not.

KORBY GILBERTSON: Like it or not. Good afternoon, once again. For the record, my name is Korby Gilbertson,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 35

LB 149

K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as registered lobbyist on behalf of the Nebraska Realtors Association in the neutral capacity to LB 149. If you were Senator Landis you would probably be getting ready to yell at me, because I should probably be in opposition. But the realtors are not opposed to this type of notice going out. They have some questions regarding who's going to determine whether or not the cleaning has taken place. I was given this amendment right before the hearing started, so I have admittedly not had time to go through it with the realtors' association. But in reading it and listening to Senator Aguilar's testimony, it dawned on me when he said there may be some communities that have standards set, there may be some that don't. We don't really know. So what happens if you clean your house and your community does not have any standards yet? What happens to those people? Do they still have to do the notice, even though, under another community, they would have been fine and not had to do the disclosure? I think there's a lot of unknowns with this legislation, and when we had met with Senator Aguilar initially, he had told us that he would propose doing an interim study to look deeper at the issues surrounding this. And that is what turned the realtors from doing opposition testimony to neutral testimony. So I felt that I should disclose that, as well. And we would very much be happy to work with Senator Aguilar in trying to come up with a solution on this.

SENATOR MINES: Thank you.

KORBY GILBERTSON: Thank you.

SENATOR MINES: Committee? Questions? Thanks for your testimony.

KORBY GILBERTSON: Thank you.

SENATOR MINES: You are it.

LES TYRRELL: Thank you.

SENATOR MINES: And I think the air conditioning is coming on a little. We've asked for it to be turned down, and...

LES TYRRELL: I hope that wasn't because of my previous

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 36

LB 149

testimony, and the amount of hot air.

SENATOR MINES: People are dozing off behind you. You had a lot to do with it, by the way. (Laughter) No, go ahead. You're going to have to restate your name; I'm sorry.

LES TYRRELL: Chairman Mines, members of the committee, my name is Les Tyrrell. I'm director of the Nebraska Real Estate Commission, here today at the direction of the commission, in a neutral position. We too agree that buyers and renters of property should be informed of hazardous contamination when it is present. And methamphetamine, we believe it should be eradicated, also. I too got the amendment and have had a little time to peruse it on my own, but our concerns, coming in, were there standards to determine contamination level? And it appears from some of the testimony that there are areas where there's a contamination level that can be determined by a health department or by the police. Somebody red tags or tags the house, and that's our concern. We think that to have a seller be held to a standard of any knowledge of prior methamphetamine production, any, ever, knowledge of prior methamphetamine production as is set out in the bill, is a fairly high standard for a seller to have, especially if it happened three or four sellers ago. So we think there should probably be standards for, what is contamination? Is it the red tag that the police put on it? If that's it, fine. It's not occupiable (phonetic) until somebody cleans it up to a standard. We understand, too, that some of the health departments have standards, I would agree. But we need to get...probably should be something across the state. The other thing is we had concern about the foreverness of it all, but that seems to be handled somewhat by the amendment. But as I heard the testimony today, and I haven't discussed this, obviously, with my commissioners, who they determine our positions not I, but I think after hearing the discussion today, the seller property condition disclosure act just might not be the place for this. This sounds like it's a more encompassing type situation involving health departments, habitability of property, those types of issues, similar to the lead-based paint. Maybe it should be, as we talked about in the previous hearing. Maybe it should be something separate and not in a seller property condition disclosure statement, where you're putting this on a seller, if the health departments

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 37

LB 149

determine habitability or something like that. I'm not trying to stop it; we'd be happy to work with the Senator on trying to get this worked out, but I think that the standard of how it gets to be contaminated now seems to be an issue, and what level the seller would have to have of knowledge, of any knowledge. And I'd be happy to try and answer any questions that you might have.

SENATOR MINES: Thank you. Questions, committee?

LES TYRRELL: Oh, I would have one other thing. Under...excuse me. In the amendment, lines 21 through 23 on page 1, in there it says, the new language being proposed says, "Except for the disclosure required under subdivision (4)(g) of this section..." If you look back at (4)(g) in the bill, which is on page 4, lines 12 through 17, what that change would do is it would take all of the exemptions currently set out in the act, and it would take all hazardous conditions, whether they were methamphetamine or lead-based paint, or whatever, and pull those out of the seller property condition disclosure and then for these 16 exemptions, would require a separate disclosure for them, because it says all of (4)(g), not just the meth sections of that. So I just bring that up as a potential...possible problem.

SENATOR MINES: Well, we can talk about that, too. Les, thank you very much, appreciate your testimony.

LES TYRRELL: You're entirely welcome.

SENATOR MINES: Any other...anyone else wish to testify neutral? Seeing none, I'll ask Senator Aguilar to close.

SENATOR AGUILAR: Thank you, Senator Mines. First let me state that I'm more than willing to accept any help that any of the representatives want to come and work on this bill. That's great. I encourage it and accept it. I want to share with you; yesterday during my lunch hour I spent at the Nebraska State Patrol Crime Lab watching a demonstration of meth being manufactured. And it was done by an expert under controlled conditions, and let me say, of the dozen people that were there, I think every one of us was very nervous and very much afraid because of the instability of the chemicals being used. We experienced two near accidents

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 38

LB 149

while manufacturing the meth, under controlled conditions. So try to translate that to a meth head doing a production in an uncontrolled environment. That's the scary part for me, folks, it really is. I agree and I understand what the opponents are talking about, and the neutral testimony. It can be an extreme financial hardship to a lot of business owners and property owners. But the bottom line in this, folks, the safety of children in the state of Nebraska is more important to me, and I'm sure to you, than someone's business bottom line. That's a fact of life. The Hall County Health Department is working toward being able to do the after care, and we will be able to define what levels of toxicity are present and what needs to be given more care and more clean up, so that that business is occupied. We want to work very hard to establish those standards, and we'll continue to do so. I do have more interim studies coming up to do more in this area. One thing that is talked about or not talked about is the fact that meth labs in Nebraska are severely under reported. You know, you hear the numbers on the news, they're not even close because there are towns and communities out there that choose not to report that they have meth labs, for whatever political reasons, they choose not to. And that harms Nebraska severely, not only because those toxic chemicals are still out there and still in place, but also it keeps us from gaining federal funding, because everything is based on the number of labs involved in your state. And if we're not reporting the actual true number, we're hurting ourselves. We're shooting ourselves in the foot. That's for another day. Thank you. I'll take any questions.

SENATOR MINES: Thank you, Senator. Any questions? The problem is clean up. The brief conversation that we've had, the problem is clean up, and I wonder if the bill...I know it notifies people and puts the onus on the realtor or the seller to notify that there was a meth lab there at one time. But isn't the heart of this, we need to establish some standards for clean up and impose those standards statewide?

SENATOR AGUILAR: Yeah, the heart of it is, we need to force people to do a clean up. We're not able to do that in statute. We're not able to say, you have to clean that up. But we can say...we can force them to disclose that information, and then work towards an ability to make them

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 39

LB 149, 374

clean up to a proper standard. But I mean, that's not going to happen overnight. We'll work on that as fast as we can. It's a top priority as far as I'm concerned.

SENATOR MINES: Great. Any questions?

SENATOR PAHLS: I just have one.

SENATOR MINES: Yes, Senator Pahls?

SENATOR PAHLS: The health department is powerless to cause something, if something is, you know, one of these meth labs?

SENATOR AGUILAR: I wouldn't say they're powerless, but right now there's nothing that gives them any authority...

SENATOR PAHLS: Okay.

SENATOR AGUILAR: ...to say, you have to clean this up.

SENATOR MINES: Senator, thanks for your testimony.

SENATOR AGUILAR: Thank you.

SENATOR MINES: Appreciate it. We will now close the hearing on LB 149, and open the public hearing on LB 374 and our frequent visitor and friend, Senator Kruse.

LB 374

SENATOR KRUSE: Ah, yes.

SENATOR MINES: Welcome.

SENATOR KRUSE: Thank you, Mr. Chairman, senators and staff. Good afternoon.

SENATOR MINES: Good job. We can wait for people to shuffle.

SENATOR KRUSE: Take a little bit of shift time here.

SENATOR MINES: Yeah, that's right. I think everyone is in

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 40

LB 374

place.

SENATOR KRUSE: This is fairly straightforward bill. LB 374 would enable regional library employees to obtain health insurance through the state of Nebraska. We have a system whereby we, with state funds, provide for the regional library system. Presently we have nine employees, but through the nature...through the technicality of the law, these persons are not able to get group health insurance. We provide for a benefits package within it, but it doesn't work unless they have access to health care system. This bill would allow them to access the state health care system, and it's on the premise that the funds that go to pay them are state funds. But it goes to regional boards, and their salary check is issued by those regional boards. So technically, they're not a state employee. Therefore, we are proposing that they be declared a state employee, only for the purposes of health insurance. This bill was brought in '01 and passed out of the committee unanimously, but we ran out of time to take care of it. It's a small item; nobody's going to prioritize it. It's not a small item to the people that are involved, and hopefully, by getting started on it early and getting it along early, if you agree, we'll be able to take care of the matter. Again, I emphasize that this is state funds. These are state funds that provide for them, but that because of the regional boards, they are not directly employed. The immediate question that would come to any of our minds would be, is this a precedent for any other agency? And we've looked at that fairly carefully and really don't see it applying to any agency. We wouldn't be setting up a precedent, because we just don't have other agencies where we provide all their funding, their operating funding. So with that, I would let it be, let others speak to it. But welcome any questions.

SENATOR MINES: Thank you, Senator. Any questions for Senator Kruse? Did you bring this in 2002?

SENATOR KRUSE: No.

SENATOR MINES: I was going to ask if it's the same language, if you know.

SENATOR KRUSE: No, it's the...I think it's the same language. I forget who brought it.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 41

LB 374

LaMONT RAINEY: Senator Bromm.

SENATOR KRUSE: Senator Bromm.

SENATOR MINES: Senator Bromm.

SENATOR KRUSE: Brought it. Oh, yes. In fact, we talked with him about it, is LB 826 in 2001.

SENATOR MINES: Great. Thanks for your testimony.

SENATOR KRUSE: Thank you.

SENATOR MINES: Thank you. Could I see a show of hands of those in favor of the bill? I see five. Anyone in opposition? I see none. In a neutral capacity? I see none. First testifier, please state your name and spell it for the record.

ROD WAGNER: (Exhibit 1) I have written copies of my testimony.

SENATOR MINES: Thank you. Our page, Jeff, will distribute those.

ROD WAGNER: Senator Mines, committee members, good afternoon.

SENATOR MINES: Good afternoon.

ROD WAGNER: I am Rod Wagner, I'm director of the Nebraska library commission. Wagner is spelled W-a-g-n-e-r. I am here to represent the Library Commission. First of all, I'd like to thank Senator Kruse for introducing this bill, proposing to provide for a remedy, a means by which the employees of the six Nebraska regional library systems may participate in the state of Nebraska employee insurance program. The Library Commission encourages the committee to consider this bill favorably and to advance it for further consideration by the Legislature. A bit of background and to provide a little bit of framework for this, the Library Commission is the state agency responsible for statewide promotion, development, and coordination of library services. In fulfilling that function, the Library

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 42

LB 374

Commission has for many years worked with regional library systems to promote, develop, and coordinate library services to the many communities across Nebraska. Currently, and for many years, we have contracted with these six regional library systems in order to supply services within multi-county regions. Since the early 1980s, the regional systems have been organized as nonprofit organizations under the Nebraska not-for-profit laws. They have each received designation by the Internal Revenue Service as 501(c)(3) educational organizations. Each, as Senator Kruse indicated, have employees. Each of the six systems has a full-time professional administrator, an individual who has professional education in library science. Each also has a part-time staff assistant to provide help in undertaking the activities of the system. It has been a problem over a long period of time, and I think it's a problem that is becoming more difficult, that for these small 1 1/2 person offices, to acquire health insurance. We think that because the employees essentially receive their compensation through the contract with the Library Commission through appropriated funds from the Legislature, and that is primarily state funds with some federal funds involved, as well, that it is a proper basis for allowing them to participate in the state insurance program. It does not add any expense to the state. They would not receive additional funds for that, but it would allow the system boards the opportunity to make that available, and for these employees, many of them, it would be a very helpful and important benefit. So we believe that the result here would not be added state expense, but it would allow access to affordable and adequate health insurance coverage for these individuals. If I could also make one suggestion. I don't see any reason why this should not be broadened a bit to permit the system employees to have ability to participate in the other state insurance offerings, those that are essentially paid 100 percent by the employee, and that would be the dental insurance, the vision insurance, disability and so forth. Those are available to state employees; they're not additional expenses for the state. So even though the important thing here is the health insurance coverage, I would suggest that consideration be given to broadening that a bit. With that, I'll stop and be glad to respond to any questions you may have.

SENATOR MINES: Thank you, Mr. Wagner. Questions by the

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 43

LB 374

committee? Senator Langemeier?

SENATOR LANGEMEIER: I appreciate you coming in and talking to us today, Mr. Wagner. Right now the nine librarians, I take it you're some of those, that currently have coverage through personal plans, how do they have their current insurance?

ROD WAGNER: Well, I think some of the individuals who will follow me can give more precise examples of that, but I think it's a mixed situation on an individual-by-individual basis. Each of the systems handles that in a bit different way with their employees. It's possible that for some of them, they may have coverage through a spouse, but we can't always count on them having that, and I know that some of them do not now. And again, just to clarify, each of the six offices has one full-time position, and they each have a part-time of either half or up to three-quarter time staff assistant.

SENATOR LANGEMEIER: But there's currently state dollars spent to the regions for health insurance that they are then buying on their own?

ROD WAGNER: My understanding of the arrangement is that the system, each of the individual systems, works that out with the employees in providing salary and benefits. And how they each do that...I think people who will follow me can give some specific examples of how that works.

SENATOR MINES: Other questions? Thank you, Mr. Wagner.

ROD WAGNER: Thank you.

SENATOR MINES: Appreciate your testimony. Next testifier?

LORI LONG: (Exhibit 2) I also have copies of my testimony for you.

SENATOR MINES: Thank you. Jeff will distribute those. Go right ahead.

LORI LONG: Thank you. My name is Lori Long, L-o-r-i L-o-n-g, and I am representing Gretna Public Library and I am also a member of the Eastern Library System Board. Thank

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 44

LB 374

you for the opportunity to visit with you about the importance of library systems and how they directly impact all kinds of libraries in all areas of our state. I am Lori Long; I've been the director at Gretna Public Library for just under two years. I and other directors, new and veteran, are very dependent on the services provided by our library system, administrators and their assistants. When I was offered the position of the director at my library, I was faced with a very unique staffing situation. The previous director left under difficult circumstances, and anyone accepting the position faced additional challenges immediately. Kathy Tooker, the Eastern Library System administrator, called me the very day of my hire and took me under her wing. With her guidance my transition into the managing role was much smoother and beneficial, not only for our staff, but for our patrons. More specifically, Kathy and her assistant, Nancy Meyer, have provided me with priceless resources, experiences, and opportunities that I would otherwise never have known. As a member of the Eastern Library System Board, I have a direct knowledge of their activities and know that they are kept very busy with issues concerning our area libraries. Kathy's administrative reports at our board meetings list her countless activities by the date, as well as an account of the topics she has fielded through telephone calls and e-mail requests. She personally helped me in my first year alone with budget planning, library accreditation, year-end statistical reports, and public relations. Regional library systems help smaller city and rural libraries like mine, like the cities that you represent, offer the same information services as larger metropolitan libraries, like Omaha and Lincoln. Our library staff has benefited greatly because of ELS efforts. We as a group have attended over 20 workshops sponsored by the ELS or neighboring systems in my short tenure. Topics have included youth services, summer reading programs, basic skills classes for librarian certification, management and collection development, marketing, personnel, and technology applications, and have been conducted by librarians from across the state and country. Because the administrator and her assistant are so considerate about budget issues, programs are offered at minimum costs. These programs have an immediate positive impact on our community, because we can share the information or apply the ideas to our patronage immediately. Kathy and Nancy do an incredible job of keeping our

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 45

LB 374

professionals current and connected. Kathy organizes bimonthly meetings of area library directors to discuss, share, vent, and learn about issues facing our libraries and patrons. Recently we've discussed safety and security policies and procedures for our libraries. Very few of us had reliable or current documents to protect our employees and patrons when dangerous situations arise. As a part of the revised library accreditation guidelines, libraries are now required to have such policies in place or risk losing state-aid money. Nancy meets with children's librarians every three months to discuss issues and program ideas with those staff members who are often the most recognizable people in our profession, because of their connections with kids and families. Together, Kathy and Nancy coordinate an annual summer reading program workshop for our librarians to plan and prepare ideas for our busiest time of the year. In a 10-year partnership, ELS and the Southeastern Library System host a youth services retreat for librarians in the fall, complete with invigorating activities and inspiring workshops to revive professional spirits for another season of story times and crafts designed for our youngest patrons. The ELS professional collection covers a variety of subjects and is available for librarians and trustees for interlibrary loan. These free resources assist us in gaining accreditation for our library boards, developing programming ideas, and managing the overall library functions on a day-to-day basis. System members circulate professional journals purchased by the system, saving the subscription rates for many expensive periodicals for rural librarians who rely on these publications for information in ordering titles and supplies. The system office also makes group purchases for our libraries, so that materials are discounted with bulk pricing to stretch our dollars as much as possible. System resources are valuable beyond the front lines of our library staff. As our library foundation was experiencing some growing pains, Kathy came to our library one summer evening to talk about the roles of foundation members and library advocacy. As a result, our foundation has new-found inspiration and is now investigating the construction of a new library. Our Friends of the Library organization, created with Kathy's guidance, raised over \$15,000 in two short years, allowing them to make an immediate and very visible impact on our facility, collection, and community. I know as a library director that at the first sign of a problem or concern, question or

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 46

LB 374

puzzle, I can call Kathy and Nancy for help and that they are instantly available, willing to work through a problem and brainstorm solutions, connect me with others who may be of service, and genuinely care about the outcome for our library. The other five library system administrators work in the same ways with their librarians. Advocating library services, promoting professional growth, and improving library access and programs are all in a day's work for Kathy and Nancy, and their statewide counterparts, and I am so thankful that they take their jobs so seriously. I enthusiastically encourage you to support LB 374, allowing regional library system employees the benefits of state insurance coverage. To borrow from a famous credit card company, regional library systems services and their employees "are priceless." Thank you very much.

SENATOR MINES: Thank you, Lori. Do you have questions, committee? You did a nice job. Thank you very much.

LORI LONG: Thank you.

SENATOR MINES: Next testifier, please? We are on proponents, and this is three of five. Two, three, four, five.

KATHLEEN BRETSCHNEIDER: (Exhibit 3) Um-hum. I have copies, also.

SENATOR MINES: Please begin.

KATHLEEN BRETSCHNEIDER: Okay. I'm Kathleen Bretschneider, K-a-t-h-l-e-e-n, Bretschneider, B-r-e-t-s-c-h-n-e-i-d-e-r. I'm used to spelling it. (Laughter)

SENATOR MINES: I'll bet so.

KATHLEEN BRETSCHNEIDER: Yes. I am representing the Battle Creek Public Library. I am the current director and I have been there almost four years, and I was the director of Pierce Public Library for three years, so I am very familiar with small-town libraries. And I also, two years ago, or the last two years, was the president of the Northeast System Board for the regional system in the northeast part of the state. I am very happy with the summary that Lori gave of what all the administrators do. She did an

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 47

LB 374

excellent job. And they are amazing people who do this job, and I encourage you to vote for LB 374. I'd like to relate to you my experience as the system board president. I had a unique situation, because I had been president for one year, and just at the very beginning of my second year, our administrator resigned. She was a wonderful person, very capable, and I had relied on her all the time, for everything it seemed like. And when she resigned, I think I went into a tailspin. So I was in charge of the hiring process as president, and we formed a committee and we worked on this for a long time. It is not easy to find someone of this caliber, and following Carol Speicher, especially, was very difficult. And then when they ask you what benefits do you offer and you say, I'm not sure, we'll have to work on that...it's difficult enough to find Master of Library Science degrees anyway in the state, but when they ask you about benefits, it's like, okay, we'll talk to the commission, we'll see what we can do. And we worked on this, and I know that the members of my committee were very concerned about what we were going to do about this. We did find someone; it took us several months and a lot of calls to the library commission with, how do we deal with this? How do we work this out? What we ended up doing was looking at the budget we had to work with and the amount of money that was given for salary, and we tried to work out a process where there was a percentage given that was designated, you can spend this on benefits. But there's no insurance policy there; there's no plan there; there are this many dollars. Well, you're on your own. You're one single person looking for insurance. It's going to cost you a bundle compared to...I'm with the state. And so it was an incredible situation, and hopefully I don't have to deal with that again. But I want to really compliment the Library Commission for their support. They helped us with innumerable things that had to do with the hiring of an administrator, and it made it a lot easier than it would have been without their help, for sure, and we have a wonderful administrator again. Their service is just absolutely necessary. Some of the things I'd like to mention, in both my jobs as director of rural libraries, I have been involved in building programs. And the resources that are available from the system administrators is incomparable, especially because they're closer to you than the commission. You can get things from the commission; that's not a problem at all. But they're right there, you

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 48

LB 374

know, and they're willing to come out. And they'll meet with your foundation; they'll meet with your council; they'll meet with whoever that you need to talk to, to persuade or to get information. Grant writing is a big thing for rural librarians. Our budgets are not very big in our local communities. We're kind of on the bottom end after fire and rescue. And so writing grants is a necessity, and when I walked into my job at Pierce, I had never written a grant. And my system administrator just walked me through every step. She was just wonderful, and she'd say, now you have to focus on this, it was great. Continuing education needs, when you're out in western Nebraska, you can't come back to the University of Nebraska very easily. You have a family at home; you can't come down here and take some more classes. The system administrators work out very affordable workshops and very affordable opportunities, that makes it so much simpler. The other part of our job that I don't think people are aware of...when you are the director of a little small-town library, there are political situations within a small town that, when you walk into the job, you're not aware are going to happen. And I find that the administrators are very good at not only giving advice, but they are excellent professional people who come to your council or come to your foundation, or whatever the political situation is, and explain the library point of view in a way that maybe you wouldn't do. And I just can't say enough about how wonderful that is to have that backup, to know somebody is there, in your corner, who is a well-respected professional, very intelligent and articulate. They know where the data is that you need to back up what you're saying, and they provide it like that. You don't have to ask more than once. So in summation, people with talent and expertise in this area are rare in this state. We need them desperately, and I think it's only fair to offer them, not only excellent pay, but also an excellent chance at getting benefits. Without them, our libraries would be isolated out west, or you know, all the little towns. We would be isolated; we wouldn't know the other librarians, because the systems organize get-togethers where we can know each other. And to know each other is also to learn. And that's it.

SENATOR MINES: Thank you very much. Do you have questions?
Good job. Thank you very much.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 49

LB 374

KATHLEEN BRETSCHNEIDER: Thank you. Um-hum.

SENATOR MINES: Is this our final testifier? No, it's not. It's just our fourth testifier of five. Please come forward.

MARGARET HARDING: (Exhibit 4) I apologize. I only have 10 copies, and I'm keeping one because it's my brains.

SENATOR MINES: Okay.

MARGARET HARDING: But I will make it available after I get through.

SENATOR MINES: Great.

MARGARET HARDING: Senator Mines and members of the committee, thank you very much for taking your time to listen to us in support of this bill, LB...

SENATOR MINES: Margaret, you're going to have to spell your name, I'm sorry.

MARGARET HARDING: I'm sorry. My name is Margaret Harding, M-a-r-g-a-r-e-t H-a-r-d-i-n-g.

SENATOR MINES: Thank you.

MARGARET HARDING: And I would like to talk as a previous Southeast Library System Board member, and add my voice to support of this bill. I'm also the executive director for the Nebraska Library Association, and I would like to say that the association is in support of this bill, as well. I think you've heard what excellent people we've found and been able to have for our system administrators. It's hard to find people who are willing to come and to serve and do it so wonderfully well, when we can't offer the kinds of benefits that other places that hire master's degree people do. Regional library system staffs deserve to have access to affordable health insurance that is part of their employment package. It's probably one of the most important components for a candidate deciding whether or not to accept a job. And it's crucial for boards. I too have been president, off and on, of the southeast library board. As one of my colleagues said, I've been around longer than

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 50

LB 374

dirt, and so I've seen things come and go. And the systems administrators have been a real boon and a benefit to the library community. All six of the library systems have faced difficulty in hiring people, because one of the questions that is inevitably asked is, do you have health benefits? Or what is your benefit package? And while we do offer money, if any of you are self-employed, you know how very difficult it is to find a carrier who will insure you at a reasonable price. There may be pre-existing conditions that preclude you getting any insurance at all, or if there is insurance offered, it's at an exorbitant rate. I'd like to emphasize three points. The first one, I think, probably is the most crucial, because the bill is cost neutral. The state would not be putting any more money into it, because they are already providing a sum of money for the administrators, and the systems will continue to pay that. The group of six system administrators and six staff assistants is really too small to qualify as a group, and we have explored those possibilities and those options. And nobody is really willing to take on that small a group. We think that adding perhaps 11, 12, 9, however many would opt to take advantage of this opportunity, would add to the pool of people in the state insurance...health insurance pool. And we think that it would provide very affordable insurance for an individual, when it is very difficult for them to find affordable insurance. We would very much appreciate your support of this bill. Thank you for taking time to listen to my testimony, and I'll answer any questions, if I can.

SENATOR MINES: Thank you, Margaret. Committee, do you have any questions?

SENATOR LANGEMEIER: I guess...

SENATOR MINES: Yes, Senator Langemeier?

SENATOR LANGEMEIER: I have one question. Thank you, Margaret. And I'm not sure if I'm interjecting this question here, or should have done it earlier. Back to my original question, right now you indicate that a portion of your funding that comes in for your employee is dedicated into some sort of a benefits package. Has anyone looked at the state's cost, to determine whether that truly is a savings to be on the state plan, versus that percentage of

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 51

LB 374

the project that's out there? And maybe I'll leave that for the Senator to put in the closing.

MARGARET HARDING: Funny you should ask. Funny you should ask. The next person to testify does have figures on that.

SENATOR LANGEMEIER: I figured...

MARGARET HARDING: And I think it's an important question to look at.

SENATOR LANGEMEIER: I figured I'd interject it at this point and let somebody respond as they come next, so...

MARGARET HARDING: That's fine. I do not have the figures, but the next person does.

SENATOR LANGEMEIER: Thank you very much.

SENATOR MINES: Margaret, thank you.

MARGARET HARDING: Yes, thank you.

SENATOR MINES: Final testifier, final proponent.

BRENDA EALEY: (Exhibits 5 and 6) I have copies of my testimony, too.

SENATOR MINES: Good afternoon.

BRENDA EALEY: Good afternoon. I'm Brenda Ealey, my last name is spelled E-a-l-e-y. I'm the system administrator, one of the employees they've all been talking about, for the Southeast Library System. I am the administrator for the region that's in the southeast corner of Nebraska; it's 15 counties, and most of it is south of I-80 to the border of Kansas, and then west to Aurcra. I'm not going to follow what I've written exactly, because others have done that already. The services have already been outlined. I guess some of the pieces I would highlight are in the points, the reason we support this bill. First off is, we do think it helps with retention and recruitment of good employees, and I think we've been blessed to have those in the past, since 1982, and we'd like to continue that. My second support statement is that enhanced budgeted money is already

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 52

LB 374

put aside for employees stipends, which Senator Langemeier is asking about, I think could be enhanced by being put into the state health plan. The third point I want to talk about is increased benefit opportunities. When you subscribe to an insurance policy as an individual, the benefits are more limited than when you're a part of a group. There's a greater lobbying effort for the types of benefits you can secure. The fourth point is for those that are uninsured. Medical service typically costs more, because it's not a negotiated fee worked out that gives you a discount for those types of services, and it just makes sense to be able to get care at the most reasonable cost. Now on page 2 of my testimony I talk a little bit about what I do. I think the other administrators, Senator Langemeier, I believe, are on husbands' policies. I am a single parent, and so I had to pursue it independently, so I do that through Blue Cross/Blue Shield. When I took the job as system administrator, I worked for Lincoln City Libraries, so was on the city health plan. I think there was a great deal of ignorance in what it involved to get insurance independently, and I was quickly informed of that process. I consider myself a healthy individual, my daughter, also. But there are things that made it somewhat difficult and frightening to think that I might not be eligible for insurance. My age, I have a heart defect, where things that came into play with whether or not I would be accepted. I was. And I do get insurance, I think, at a reasonable cost. Those benefits, however, don't go as far as they would if that money was invested in the state health plan. For example, routine health care, or preventative health care, is not covered under my insurance plan. Most of what happens, since my daughter and I are healthy, is we never reach the deductible, so our insurance never kicks in, except for the prescription discount. So those are things that I think are inequitable and could be improved by being a part of the state health care plan. The final page, my administrative assistant put together, and we just did it kind of quickly. But the first column talks about what I pay presently, subscribing to a plan independently. The next column there, the state plan employee payment, would be what I would pay if I was eligible to participate in the state health plan, and it also talks about the types of benefits that would be available to me within that plan. And then the final column, the state plan, the employer, which would be the Southeast Library System or whatever

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 53

LB 374

system, that shows the amount that they would pay. And I think you'll see some differences, particularly in the employee contribution line, in my payment, and then also in the types of things that are covered. And I appreciate your time, and I would be glad to try and answer any questions, if you have those, and hope you'll consider this bill.

SENATOR MINES: Thank you. Questions, senators? I do have a question.

BRENDA EALEY: Um-hum.

SENATOR MINES: It's been stated several times that there is no cost to the state for passage in this bill, but any time a dozen employees are added to the rolls of a plan, certainly there is cost.

BRENDA EALEY: Um-hum.

SENATOR MINES: And I assume that the monies that are right now being used by each of the different groups would be used for that purpose. Is that the way you understand it?

BRENDA EALEY: That's the way I do understand it, and that's the additional amount that's given to each staff person, on top of their salary. It comes as a regular part of our salary now.

SENATOR MINES: How much is that, do you know?

BRENDA EALEY: And it downs here, yeah. Well, I think it is. And that varies with each system.

SENATOR MINES: Um-hum.

BRENDA EALEY: My amount that I get on top of my regular salary is \$8,571 a year, in a stipend, on top of my...

SENATOR MINES: And when you say benefits, is that for health insurance, life insurance, retirement, everything?

BRENDA EALEY: Retirement, right, yeah. And it's meant to cover all those things and can be used by the employee to do that in the best manner they can, of their choosing.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 54

LB 374

SENATOR MINES: So if this were approved, the system would pay \$7700 per employee, am I getting this right, for each employee?

BRENDA EALEY: Well, it's \$7746 a year, per system, or per employee per year, um-hum.

SENATOR MINES: Per employee, per year.

BRENDA EALEY: And the individual...

SENATOR MINES: And that would be the employer's...the employer would be paying for the employee, right?

BRENDA EALEY: No, the employer is just paying the employer's share there, based on what the state does now. And then that middle column, that \$2754.24 is what the employee contributes to that plan.

SENATOR MINES: Got it. Okay, now I understand.

BRENDA EALEY: Okay.

SENATOR MINES: Thank you, you did a great job.

BRENDA EALEY: Good.

SENATOR MINES: Yes, Senator Flood?

SENATOR FLOOD: Does that include, I mean, that's for you, an independent, but that number, that \$7700 state contribution will change, based upon family...

BRENDA EALEY: Yes.

SENATOR FLOOD: ...so that somebody could have family coverage?

BRENDA EALEY: Right. And I think that would probably be something that the boards would discuss when they...

SENATOR FLOOD: It would all come out of that money.

BRENDA EALEY: Yes, right, um-hum.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 55

LB 374

SENATOR FLOOD: Are they investigating any kind of pay flex, so that you can...so you don't have to pay income tax or withholding?

BRENDA EALEY: Well, Southeast Library System does that now.

SENATOR FLOOD: Okay.

BRENDA EALEY: They take it out of my salary prior to taxing, yes, which helps a lot. I mean, that's one step in the positive, yes. Thank you.

SENATOR MINES: Other questions? Thank you very much for your testimony.

BRENDA EALEY: You're welcome.

SENATOR MINES: Anyone else in favor of the bill? Those in...I'm sorry.

BRENDA EALEY: Well, I do have one letter from somebody in favor of the bill that I...could I just enter it?

SENATOR MINES: If you'll give it to Jeff, we'll make sure that gets entered into the record. Thanks so much.

BRENDA EALEY: Um-hum.

SENATOR MINES: Are there other proponents? Are there opponents? Is anybody neutral? Seeing none, I want to thank you. We'll close the hearing on LB 374. No, we won't, because Senator Kruse wants to close.

SENATOR KRUSE: Oh, yes.

SENATOR MINES: I am so sorry.

SENATOR KRUSE: Pardon me. You know, last time I was in this room I hooked my coat and it tore, so this time I would rather sit down than not.

SENATOR MINES: I'd hate for that to happen.

SENATOR KRUSE: For the record, my name continues to be Lowen Kruse, the hard part of it is L-o-w-e-n. I thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Banking
January 25, 2005
Page 56

LB 374

SENATOR MINES: Thank you, Senator. The public hearing on
LB 374 is now closed, and we are adjourned.