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COMMITTEE ON BANKING, COMMERCE AND INSURANCE
February 7, 2006
LB 1261, 980, 1122

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 7, 2006, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 1261, LB 980, and LB 1122. 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, ladies and gentlemen. Let me welcome you to the Banking, Commerce and Insurance Committee. My name is Mick Mines and I'm proud to serve as Chair of this committee. This is your part of the process. This is where you, the public, get to give us your thoughts and ideas and we will give you every opportunity to help us understand your thoughts. To help us facilitate the meeting, would you please turn off your cell phones? Would you also sign in before coming to testify and sign-in sheets are located over by the door or on the desk in front of me. We are going to take up the bills as published, (LB) 1261, (LB) 980, and (LB) 1122. Back to testifying, please give us ten copies of any testimony that you wish handed out or any other information. And when you do testify, please state your name, spell your first name and spell your last name. Let me introduce to you the members of this committee or who's with us today. I'll start on my right, your left, Senator Rich Pahls from Omaha; Senator Joel Johnson from Kearney; Senator Jim Jensen, Omaha. Entering promptly, oh, a little less than promptly, entering now is Senator Pam Redfield from Omaha. It's not like Pam to be anything but on time. On your right, Senator Chris Langemeier from Schuyler and Senator LeRoy Louden from Ellsworth. Committee counsel on my right, Bill Marienau and committee clerk is Jan Foster. Our page for the day is Joe DiCostanzo from Columbus, Nebraska. With that, welcome again, and we will take up LB 1261 and Senator Brashear is not with us, but Jim, you are the man today. Nice to have you with us.

LB 1261

JIM PIEPER: Thank you. Good afternoon, Chairman Mines, members of the Banking, Commerce and Insurance Committee.

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LB 1261

My name is Jim Piper, P-i-e-p-e-r. I'm counsel to the Speaker, appear this afternoon on behalf of Senator Brashear in introduction and support of LB 1261. LB 1261 was brought to our office by the Secretary of State and he will have representatives for the committee to answer any of the technical questions about the bill. LB 1261 encompasses and expands on LB 647 which this committee heard last year and advanced unanimously. That bill is currently pending on Select File and should the committee act favorably on LB 1261, we would hope to link the two bills back up and move them on procedurally that way. Let me tell you briefly what the bill accomplishes. First, it would provide specific statutory authority for corporations, domestic and foreign corporations filing with the Secretary of State, to file corrections or amendments to a biennial report at any time. Currently, the Secretary of State has no specific statutory authority for corrections or amendments, and this would enhance their ability to maintain accurate records in their files. Second, it would harmonize provisions relating to refunds of occupational taxes. Currently, there's the potential for the Secretary of State to be required to pay a refund for a period of time for which they're no longer maintaining the records and the statute requires them to keep the records for five years. So this bill would harmonize the refund procedures so that the period of time for the refund would match the period of time for the records. Third, it would clarify provisions relating to limited liability companies that are performing professional services. This would address concerns that have arisen with respect to LLCs that are operating in professional areas and would clarify those provisions, enable the Secretary of State to deal with those types of questions. Fourth, it would clarify provisions relating to changes in a registered agent for corporate filings. This will assist the Secretary of State in that manner of recordkeeping. Fifth, it would remove the Secretary of State from the duty of acting as a registered agent for LLCs with respect to service of process. This has already been done for business corporations and this would harmonize the LLC statutes with the business corporation statutes. Finally, it would, as I mentioned, encompass the provisions of LB 647 which requires limited liability companies to file biennial reports with the Secretary of State which is not currently required. In order to have all of the provisions harmonized, we did encompass that same requirement in this bill in order that

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some of the clarifications could be made, assuming that both bills would be viewed favorably and only one, obviously, would move all the way to the finish line. So, that's essentially what is in this bill and, as I mentioned, the representatives of the Secretary of State's office will be available to you so.

SENATOR MINES: Thank you, Jim, nicely done. It's our custom that we don't ask questions of the introducer's legislative assistant, and closing will be waived.

JIM PIEPER: Okay.

SENATOR MINES: Thank you. Nicely done.

JIM PIEPER: Thank you for your time.

SENATOR MINES: Can I see a show of hands, those wishing to testify in support of the bill? I see one. Those wishing to testify in opposition to the bill? There are none. And those wishing to testify in a neutral position. None. You're it, those in support.

JOEL GREEN: Very good. I'll try to keep this short. Chairman Mines and members of the banking committee, for the record my name is Joel Green, J-o-e-l G-r-e-e-n, and I am legal counsel for the Nebraska Secretary of State's Office Business Services and Licensing Council, Licensing Division, excuse me. Mr. Pieper, I believe, has sufficiently gone through the finer points of this bill. I'm just here to testify in support of it to state that we did bring it to Senator Brashear's attention and ask for your consideration. And I'd just be here to answer any questions of a technical nature you might have.

SENATOR MINES: Thank you. Questions? Senator Redfield.

SENATOR REDFIELD: I do. Section 3 you talk about a statute of limitations in excess of five years. Is there a current statute of limitations?

JOEL GREEN: No, there is not. Currently, the way the statute is written and this deals with occupational tax reports, corporations are the only entities that file occupation tax reports. They pay an amount and it could

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very well be that they pay in excess of what they actually have to. They could be paying in excess for 11, 12, 15 years. As it stands, the Secretary of State's office record retention schedule requires that we keep reports for five years. So they could ask for a refund for a ten-year period and we would have only records for five years and have no way to verify those first five years of whether they did or did not exceed payment.

SENATOR REDFIELD: Thank you.

SENATOR MINES: Senator Jensen.

SENATOR JENSEN: Certainly the LLC seems to be coming more preferred on filings. What is the percentage today between LLCs and corporate?

JOEL GREEN: Well, that's a very good question. In fact, I just looked at this report the other day. Currently, on file, we have 45,000 domestic and foreign for-profit and not-for-profit corporations. Since the inception of the Limited Liability Company Act, I believe in 1993 and it was introduced by, I believe, Senator Doug Kristensen at that time; 25,000 are on file at the Secretary of State's office. So there is a significant increase as a limited liability company, as a shell for organizations to do business. And I think you're seeing that reflected in those. And the problem being, to expound on that is corporations, we have a way of tracking them. Are they doing business? Are they not? If they do not pay their occupational tax report every two years, they can be administratively dissolved. LLCs, there's no tracking method. You could have a defunct LLC that essentially will sit out there for a perpetual time period and it creates administrative problems because while you can't track that name, you can't use that name, how do you verify they're doing business or not? If they don't file papers of dissolution, you can't track them.

SENATOR JENSEN: So the reason for the bill.

JOEL GREEN: Reason for the bill.

SENATOR JENSEN: Thank you.

SENATOR MINES: Thank you. Any other questions? Joel,

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biennial filing? It appears to me that, I think in my first year I offered a bill that would change filing to biennial status. Is the Secretary of State moving in that direction, procedures and processes?

JOEL GREEN: Yes, as it stands, and thank you for the question. Nonprofit corporations, for-profit corporations, they are both biennial in nature. What you see is and I believe nonprofits are required every even-numbered year. For-profits every odd-numbered year. That might be switched around. But that's what we're going to. It, quite frankly, is an easier process than every year, getting envelopes and notices of occupational tax reports, send them out. It cuts down on administrative fees; it cuts down on requirements. It makes it easier to do business.

SENATOR MINES: By not doing it annually, I mean, is there a down side to not doing it annually?

JOEL GREEN: I would say if there was one downside it's the fact if there is a change in the company or they submit an occupational tax report that contained incorrect information. Before this bill, they could not amend that information because we have no authority to accept new filings. However, I think that one downside would be taken care of by language addressed in LB 1261. Outside of that, I don't see a downside to it.

SENATOR MINES: Okay, thanks. Any other questions for Mr. Green? Seeing none, thanks for your testimony.

JOEL GREEN: Thank you very much.

SENATOR MINES: I'll ask again, those wishing to testify in support, please raise your hand. Those wishing to testify in opposition and/or neutral? Seeing none, I'll close the public hearing on LB 1261 and we'll open the public hearing on LB 980. Senator Langemeier.

LB 980

SENATOR LANGEMEIER: We're on a roll, try and keep that going.

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LB 980

SENATOR MINES: Welcome.

SENATOR LANGEMEIER: Thank you.

SENATOR MINES: This better be good, by the way (laughter).
You know you're on videotape, you know that.

SENATOR LANGEMEIER: You just don't know how good it will
be.

SENATOR MINES: Okay, good luck.

SENATOR LANGEMEIER: Good afternoon, Chairman Mines, members
of the banking committee. My name is Senator Chris
Langemeier. It's spelled L-a-n-g-e-m-e-i-e-r. I represent
the 23rd District. I'm here today to introduce LB 980 and
yesterday's hearings went so well, I'm going to do the same.
I would ask the committee to hold LB 980 and possibly look
at an interim study with the discussion we have today. The
idea of this bill was given to me by a constituent who's an
independent insurance agent in David City, Nebraska.
Basically, his request was to be allowed to charge a service
charge, if he so desires, for some clerical functions that
he offers in his office. He said many times, many various
days of the month, his staff becomes very busy to the point
of working exclusively for two to three days with insureds'
premium payments, for accepting premium payments in his
office. So he has asked to allow, and I'm under the
impression that I've been in some insurance agents since
this bill has come up that some of this is already taking
place and maybe incorrectly. But to allow him to collect a
fee at the door for payments brought in for the envelope to
stamp to send an independent payment off for a dollar.
You've seen that in a number of particular independent
insurance agents. So they're asking to allow them to have
that option to do it. Currently, we can't do it. It's my
understanding the Department of Insurance and the insurance
industry has talked about this in the past. It has never
come forward with quite a plan. So you're going to hear
today from some testifiers behind me to some examples to
where this would be applicable and also I think you'll hear
some testimony to the implementation of how do you do it,
what is the proper fee? Do you see agents proposing this
potential fee and playing that off to their customers, maybe
uneducated customers that it's just more premium to pay?

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And so I think that's all very well and good discussion, and I look forward to that discussion. And if there's any questions, I'd entertain questions.

SENATOR MINES: Thank you. Questions for Senator Langemeier? Senator Pahls.

SENATOR PAHLS: Thank you. Senator, are you suggesting a dollar fee or that's just one of the?

SENATOR LANGEMEIER: I think you're going to see in this bill as you see the letter of intent is longer than the bill. I think you'll see if we can generate some discussion and create a replacement, we would have a committee amendment that may replace this whole bill with some caps on fees whether it's...well, you'll hear the testimony to the kind of fees we're looking at. I think you'd limit it to a cap and it's a voluntary agency disclosure. If you did it in my town of Schuyler and the other agent isn't doing it, you probably wouldn't be getting the customers.

SENATOR PAHLS: But you're saying it's happening right now.

SENATOR LANGEMEIER: I think it is. Matter of fact, I've visualized it and I think this bill also brings some awareness to some of those people that it can't be done and I've made some phone calls to address some people that are doing it to get them to stop so they're in compliance with the law.

SENATOR PAHLS: Thank you.

SENATOR MINES: Other questions for Senator Langemeier? Seeing none, thank you for your testimony or for your opening. Very professional.

SENATOR LANGEMEIER: Thank you.

SENATOR MINES: Thank you. May I see a list of hands, those wishing to testify in support? There are four, five. Those wishing to testify in opposition? I see none. Neutral? One, two, three. Three. Jim, the floor is yours. Nice to have you here.

JIM CAVANAUGH: Thank you, Senator Mines.

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LB 980

SENATOR MINES: First time this year, right?

JIM CAVANAUGH: In the hot seat, yeah.

SENATOR MINES: In the hot seat. Nice to have you here.

JIM CAVANAUGH: Senator Mines, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh, C-a-v-a-n-a-u-g-h, attorney and registered lobbyist for the Independent Insurance Agents of Nebraska, representing more than 565 agencies from border-to-border in Nebraska with over 2,000 registered agents. Undoubtedly, some of you or some of your family members are buying their car or house insurance from independent agents and that's who we represent. We commend Senator Langemeier for bringing this issue before you and we appear in support of LB 980. It's an idea that as agents, obviously, we have a vested interest in, but let me just give you kind of the lay of the land. This is currently what's advocated in LB 980. The law in over a dozen states including Missouri, Kansas, Illinois, Idaho, and Nevada kind of in our extended region. And, basically, it allows agents who are currently prohibited from any other compensation, other than the commission on the premium if they sell the policy, to charge fees incidental for working the policy up. Now, I'm an attorney and in our practice a lot of the fees that we have are what they call contingent fees. And you'll see it advertised from lawyers from time-to-time, no fee unless we recover or no fee unless we win. The same is kind of true with insurance agents. There's the commission fee but the commission fee is only paid if you sell the policy. And what we're saying is there a lot of lost costs to agents and, you know, we represent the mom and pop agents of Nebraska and not huge company agencies but mainstream agencies that I'm sure that you have in all of your communities. And these costs, although modest, are uncompensated because of the current prohibition that you can see in (LB) 980. And all that (LB) 980 does is remove that prohibition. And we're saying, although that's a necessary first step to get to where we want to go, there's probably more that's necessary and we'd endorse Senator Langemeier's request that an interim study be had on this issue. Because what other states have, and I'll just give you one example for Missouri, are the general prohibition

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that says, you know, agents will be compensated out of their commissions. And then it says, except for a limited number of things and you'll hear from some of the agents to follow me, one of the garden variety things that come up but I can tell you again, in the law practice analogy that I was giving you, even on those cases that are contingent fee cases, the lawyers are paid the costs of developing those cases and win or lose and those are the costs of getting a doctor's report or having 500 pages of exhibits copied, those are costs that go into the development of the case. And win or lose, those are paid...nobody makes any money off of them, but nobody loses any money off of them. Similar types of costs are incurred by agents in developing requests for coverage now. They're not big numbers but cumulatively they become big numbers to family agencies. In Missouri, they have the prohibition that no insurance producer shall have any right to compensation other than the commissions deducted from the premiums, pretty much the state of Nebraska's law. But then they say, unless the right to compensation that you can have it, unless the right to compensation is based upon a written agreement between the insurance producer, the agent, and the insured specifying or clearly defining the amount or extent of the compensation. And we think that that would be an important part of any final statutory change that we've got here that you have to tell the person up front, look, I can develop a request for coverage. I'm going to have to get certain things from you. Here's a list of those things and what I think they will cost. I'll sign it; you sign it; everybody agrees up front that that's the way it is. As Senator Langemeier indicated, none of this is mandatory. If I want to do it in my agency and the agent two doors down doesn't want to do it, so be it. And, you know, the market is going to bear then on who does what and at what cost. Missouri statute does another thing that will probably be important to final statutory change that's advocated in LB 980. And what it does is it gives a short list of things that can be included in these costs. And it says, an insurer or insurance producer may charge additional incidental fees for premium installments, late payments, policy reinstatements, or other similar services specifically provided for by law or regulation. Such fees shall be disclosed to the applicant or insured in writing and, you know, it gives you...you can charge incidental fees for these things. Again, you have to tell them up front and you have to give it to them in writing,

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all of which we think would be appropriate and good public policy. We're not asking for anything and nobody will get rich off of this, but for modest-sized agencies around Nebraska who are trying to make ends meet, during the same period that a lot of insurance companies are cutting back on commissions, it's an important thing to them. These are costs that are fixed and are never compensated currently whether you sell the policy or not. So, we would ask that you take a look at having an interim study on it and we'd be happy to provide the committee with the statutes that Missouri and other states have that kind of give you a good model. It's not anything new. What we're saying is, it's time for Nebraska to take a look at this. I'd be happy to answer any questions you might have.

SENATOR MINES: Thank you, Mr. Cavanaugh. Questions?
Senator Redfield.

SENATOR REDFIELD: Are we talking about all product lines or is this primarily property casualty?

JIM CAVANAUGH: Well, we're property casualty agents, and I think you're going to hear from the department. My understanding is that it's a prohibition on all insurance lines currently. But we're talking about your car insurance and your house insurance primarily.

SENATOR REDFIELD: If we are talking about the market driving the cost, why wouldn't we just strike section 44-354 and leave it up to the consumer and the agent?

JIM CAVANAUGH: We'd be fine with that. We think, you know, based on what other states have done, there might be some good reason to look at additional kind of guidelines that, you know, you can't go hog wild on it. You know, we'd be fine with that. I think that the insurance department doesn't want to particularly regulate this area. I'm not going to speak for them, they're here today. But whatever we do, we'll have to do what's in (LB) 980 to get there anyhow. You have to take the prohibition away whether you put the other language in or not.

SENATOR REDFIELD: So, do you think this would end up costing our agents business because they could go to Geico and eliminate the middle man altogether?

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JIM CAVANAUGH: Well, we're pretty competitive people and we're part of the community. And, you know, we're willing to compete on anything approaching, you know, a level playing field. I think that the agents will have the option to, you know, agency by agency make the decision as part of their business plan, does this work for me or not? And can I recover these lost costs currently or not? Some of this is, you know, it's a product of...like I have a pretty good relationship with my agent, you know, we're friends and I've been with him a long time. And my father was an insurance agent and he sold to a lot of his friends, and they would trust him and they would kind of do what he recommended (laugh) that they do. And I think a big part of this comes down to that. It's the trust between an agent and his client.

SENATOR REDFIELD: Thank you.

SENATOR MINES: Senator Jensen.

SENATOR JENSEN: Yes, thank you, Senator Mines. This really would not be totally different than an automobile where you sign or you pay for a documentation fee or a bank where there's an administration fee. Those things seem to get added on and the same reason because banks don't have many accounts that they don't pay interest on or at least, so administration wise there's at least a recovery for functions that are done. This would be somewhat similar, would it not?

JIM CAVANAUGH: I think that's exactly right, Senator Jensen, and, you know, it strikes me that, you know, this is pretty clear. What we're talking about in terms of well, you have to check to get a car policy, and you'll hear from the agents, are very definable things. Like an SR-22, you know, like an accident report. You know, those things...everybody understands what those are and everybody knows that, you know, how they figure into the mix there. And, yeah, it happens in the banking world; it happens in the legal world as I indicated to you. The one I can never figure out is the credit card charges that they have these administrative charges on their credit cards and, you know, everybody gets them. They never quite explain. But we can explain to you (laugh) what these charges are down to a

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pretty...

SENATOR JENSEN: Can you explain my phone bill? (Laughter)

JIM CAVANAUGH: (Laugh) Well, that's another one, that's another one. And, no, I can't (laughter).

SENATOR JENSEN: Thank you.

SENATOR MINES: Further questions for Mr. Cavanaugh? Jim, if there were opponents here they would say, isn't this just the cost of doing business? Isn't it...I mean, why enable agents to collect a fee because they might not get the business? I mean, in competitive environments there are seldom fees charged to decide whether or not I'm going to be your customer or not. How would you respond to that?

JIM CAVANAUGH: Yeah, I think that it's not so much fees charged on whether or not I'm going to be your customer or not. But, you know, fixed costs defrayed to get you a bid to see, you know, see if something can work for you. I mean, this is a loss leader and a loss cost item, but I have to have these things to get the company to tell me it's going to be \$750, you know. And I can't under this current statutory scheme recoup that from anybody. I just eat that. And what happens in the real world out there is that companies come in and say, okay, Jim, you were getting 25 percent premium commission last year and this year we think we're going to give you 15 percent. And, you know, I don't have any say about that, but all of a sudden not only can't I collect for these lost costs on the front end, but on the back end what I am allowed to be compensated for is in a lot of cases, shrinking. So all we're saying is, if that's going to be the case let's give these folks the competitive ability to decide whether or not they're going to charge these modest loss cost fees on the front end.

SENATOR MINES: Okay.

JIM CAVANAUGH: And I think, you know, like I said, we're not talking big numbers. I think when you hear the agents, you'll get a pretty good idea. In my practice on a standard disability case, I mean, we've got it down to, it's going to cost you between \$75 and \$150 and, you know, that's because we've done thousands of these cases and we know what stuff

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costs. And I think the agents are in the same boat. They're going to know, you know, SR-22 costs you this, accident report costs you this, this costs that, you know.

SENATOR MINES: And then the customer could choose whether or not they want to do business with the agent.

JIM CAVANAUGH: Correct.

SENATOR MINES: Or go somewhere else that may not charge the fee.

JIM CAVANAUGH: Exactly.

SENATOR MINES: Or go on-line. Would this enable on-line providers like a Geico to add an administrative fee?

JIM CAVANAUGH: Well, I think you're going to hear from some insurers here today and I'd be interested to see. But my understanding is that the statute says it's unlawful for any insurance company, association, or society, or for any officer, or manager agent, or other representative to do these things. So, I think they would fall into those categories.

SENATOR MINES: Okay. One last thought and I know you're going to work on this over the interim and come together on something. But if I, as a customer, have to sign a sheet that you give me the sheet and say, here's the costs that I'm going to give to you and, Mick, it's going to cost you \$25. Just sign it and we're good to go. Very seldom do I as a consumer buy insurance face-to-face or upgrade or downgrade my insurance, I do it on the phone. Just did it on one of my cars. I just added a car, called the agent, said, hey, Joe, just added a car. What's it going to cost me? And he says, I don't know. I'll e-mail it to you. Now, if I had to go down there and sign off that he's going to assess fees for that, I mean, that may be a problem. In fact, it is a problem.

JIM CAVANAUGH: Exactly, ...

SENATOR MINES: So you might work on that.

JIM CAVANAUGH: ...and I probably misspoke on this. When I

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was using the Missouri example, it said, shall be disclosed to the applicant or insured in writing. It doesn't mean they have to sign it necessarily.

SENATOR MINES: Got it.

JIM CAVANAUGH: I think I led you to believe...

SENATOR MINES: Okay.

JIM CAVANAUGH: ...that maybe that was the case. But, no, I think that it's like a lot of things that, you know, you used to be required to go down to the office and you can get an e-mail now or you can get a fax now and it serves the same purpose.

SENATOR MINES: Got it. Thanks. Senator Redfield.

SENATOR REDFIELD: I have one more question that prompted. Do we have agents that sell for more than one company?

JIM CAVANAUGH: Yes.

SENATOR REDFIELD: Would they have an incentive to add fees for the customers on one company if that company were compensating at 15 percent as opposed to another company that wanted to compensate me at 25 percent so that they could steer customers?

JIM CAVANAUGH: No, for a couple of reasons. First of all, the incentive isn't there but the idea that they may represent three or four companies only allows them a competitive advantage if picking among those three or four they can get that person who they're trying to sell to the lowest number. You know, they're not trying to drive that number up. They're trying to get that number down as low as possible. It helps you make the sale if you can deliver the product at the lowest price, and Wal-Mart has taught us all. But I don't think that there's any incentive, quite the reverse, to do that and, like I said, we're talking really modest numbers here. I mean, I suppose we could define in statute, although I haven't seen any states that say, okay, up to but not to exceed dollar X, but if we were to do that, it would be, you know, a low three-figure, probably, dollar amount. There currently are consulting agreements allowed

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under current statute where even though I'm an agent I can sign a contract with you and say, I'll be your insurance consultant and you'll pay me \$10,000 a year to consult you on all your insurance needs. Those are currently allowed. So, if you really wanted to go out and, you know, make that kind of money you would go out in the current field and execute one of those. And those large companies with lots of insurance needs and exposures and problems, you know, they have them. They have agents that they buy an insurance policy from, but the agent is also their consultant on which type of coverage you need and what to buy. So, I think that if you were going towards that kind of a market you would employ that currently existing contract option. This should be fairly specific, and that's why I thought the laundry list was kind of instructive. I mean, you can do (LB) 980 just as it is, but, you know, that can include anything so maybe put in a little bit of...

SENATOR MINES: Okay. Thank you. Any other questions? Thank you, Mr. Cavanaugh.

JIM CAVANAUGH: Thank you, Senator.

SENATOR MINES: Nice to see you. Next testifier, please. Good afternoon.

IRWIN NELSON: Senator Mines, banking committee members, I'm Irwin Nelson, I-r-w-i-n N-e-l-s-o-n. I have a small insurance agency in Ft. Calhoun and in Omaha and represent Independent Insurance Agents; I'm their alleged chairman. The reason that we're for this is right now we have costs that we get from writing an auto policy, or basically auto policies, that we have to go out and get like an accident report and that costs us...the accident reports in Omaha right now are \$10. We have to eat that cost unless we can get the customer to go get it. The SR-22s, if we have to refile them or you walk in and we write your auto policy and then you forget you need an SR-22, or now you go to court and then the court says you have to have an SR-22. You come back in and we have to type up an SR-22 which is for...an SR-22 is a piece of paper that's sent to the state of Nebraska that says that you got liability insurance. It goes to the Department of Motor Vehicles. That takes time. We have to get the CSR or whoever it is away from the desk to do this. All we're trying to do is to recap the expenses

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that doing business is costing us. I mean, basically, the way the law reads now if you write me a bad check and I get charged X number of dollars from the bank, I can't...the way the law reads I can't get that money back because that's just...the law says I can't charge for anything other than receive a commission. And that's all we're basically trying to do is put ourselves in a position where we can get the small amount of money that we charge or we get charged back to us. I'm just going to keep that real short and I'll just leave it right at that. I mean, you know, I have a small agency in south Omaha that we write a lot of substandard auto so the most people that we deal with don't have checking accounts so they bring us dollar bills which takes time and takes money for us to handle because we have to make sure everything is rectified and sent into the company. The state insurance department comes in and makes sure everything is done so, I mean, that's an expense to us and we're doing it as a service to the customer which we probably could just say no, you got to go get it and send it in. So all that costs us money. So that's all we're trying to do is just get back to break even point and then let us make our money on what we sell the insurance for.

SENATOR MINES: Okay, thank you, Irwin. Questions for Mr. Nelson? I see none. Thanks for being here, nice to see you.

IRWIN NELSON: Good to see you again. Thank you, sir.

SENATOR MINES: Thank you. Next testifier in support, please. Welcome.

CARL ZEUTZIUS: Good afternoon, Chairman Mines, members of the Banking, Commerce and Insurance Committee. My name is Carl Zeutzius. That's C-a-r-l, last name is Z-e-u-t-z-i-u-s.

SENATOR MINES: Do that one more time, Carl. Z-e...

CARL ZEUTZIUS: Yeah, Z-e-u-t-z-i-u-s (laugh).

SENATOR MINES: Got it.

CARL ZEUTZIUS: I'm with UNICO Group here in Lincoln, Nebraska. I represent as an independent agent and the

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Independent Insurance Agents of Nebraska. I do represent several companies. I'm from a little different larger...a larger agency than Irwin, and I wanted to give maybe some examples of why this interim study should be looked at because there are also other areas of things that a larger agent does for commercial customers that we could address further for them if we were able to charge a fee, things we do right now that we don't charge a fee, and things that maybe our customers want us to do but we just can't because of the time involved and because we can't collect a fee. We have some commercial accounts that don't have anybody on staff that can help them with the loss control or their risk management needs, and they come to ask us a lot of different situations on how to do that, something as simple as they don't even know how to begin to have an inspection report done or how to do an accident investigation. And we have forms like that and we're happy to provide that. But if they were able to, you know, come to us and know that we could provide that maybe further, that's an area where, you know, you might see an agency try to then charge a fee if they could do this. As well as auto fleet programs, helping a customer that maybe has 40, 50 cars on the road, getting them proper accident report forms, driver packets. Can we assist at all in monitoring their drivers? Do they need a cell phone, actual policy? So do they address how their drivers are using cell phones? Assistance in one area we get requests for because they have to outsource it and we do assist is even in disaster and recovery planning. You know, does your business have a disaster plan in place? Do you know what's going to happen if something happens? So, what I'm trying to also get is this study is important because there are other areas here where larger agents could be looking at wanting to charge a fee. And, again, it's all going to be market driven. If a large agency down the road is still going to want to provide that service for their customer to a limited degree at no charge, that's fine. And if someone else down the road is going to do it, I mean, it's a very competitive marketplace right now. So it's not an area where we think at all, you know, it should be perceived as trying to stick it to the business owner consumer, but in a way that's going to ultimately help us better serve them, keep their losses down, and, obviously, in the long run cut down on their overall costs. So, those are just a few examples of what you may see from a larger agency, but I'm happy to answer any questions you may have.

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SENATOR MINES: Thank you, Carl, appreciate the testimony.
Senator Redfield.

SENATOR REDFIELD: Do you think legislators ought to be able
to charge fees for answering questions for constituents and
for delivering services (laughter)?

SENATOR MINES: Yes.

CARL ZEUTZIUS: (laughter) Answering...no...

SENATOR REDFIELD: I'm just thinking you could keep your
taxes down (laughter).

CARL ZEUTZIUS: No, and answering questions, no, depending
on the level of service. No, I mean, no but (laughter) I
think if you saw the, you know, the...we're happy to do what
we do. There are areas where we could probably even
improve, though, how we perform for customers, especially
our larger commercial ones, if there was a way for us to
charge because they want to outsource it possibly and if we
can do it less than that, we're saving them money.

SENATOR REDFIELD: We're out to save taxes, we really are.

SENATOR MINES: Thank you. Other questions? Carl, would
you or UNICO prefer to see the sections stricken completely?
I mean, lift all restrictions or would you prefer to see a
laundry list that every time something new develops in your
industry you may need to come back here and be authorized?

CARL ZEUTZIUS: That's a tough question. I think the
laundry list would be good just because I know also, I
believe the Department of Insurance doesn't want to get into
a situation where they're having to regulate this, you know,
and monitoring everything that's going on. And I think to
keep, to make sure that, hopefully, nobody was ever taking
advantage of anything, that the laundry list would help.
It's just an area that, again, like I said, we think with
the way the marketplace is, you're not going to see a whole
lot of it taking place. But it will be something that
unless it's addressed properly, you will see items like
this...

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SENATOR MINES: All right, thank you.

CARL ZEUTZIUS: ...the people getting...try to get charged for.

SENATOR MINES: Thank you. Any further questions? Thanks, Carl, nice job.

CARL ZEUTZIUS: Thank you.

SENATOR MINES: Next testifier in support? Can I see a list of hands of those in support? We had four; we have a fifth. Very good.

MIKE GLASER: Good afternoon, Senator and members of the committee, Banking, Commerce and Insurance. Mike Glaser, G-l-a-s-e-r. I'm one of the business partners with Marcotte Insurance Agency in Omaha, Nebraska. I'm also the current president of the Independent Insurance Agents of Nebraska. Not to repeat anything, you made a question about the incentive, Senator Redfield, about changing insurance companies due to their commission. This would technically be consistent, if I would charge \$3 for an MVR, it would be all the way across the board, or if I'm going to charge \$5 to do a certificate of insurance. Marcotte Insurance Agency is a large insurance agency. We currently have customers who come to us, they have to get 500 certificates of insurance a year. They easily would love to outsource that to us where we can do that on our e-mails, send them out, make sure that they are properly done, that they had the right notice of days of loss notice, that they are the right rating of the insurance company; all that's done properly. At the same time, we have customers who have a lot of subs, subcontractors. They require the certificates of insurance and, in turn, we can review those for them and make sure they're all done properly. Senator Mines, you made a comment about the playing field versus the direct writers, or the 800 numbers, or the e-mails. Some of those carriers, I'm not going to speak for them specifically by name. Some might be in the room. They provide some of these services already for their agents where we have companies who have passed that on down to us, that made that decision that I have to go out and get photos of buildings. I have to perform a costimator (phonetic) to determine the value of something. That's been passed down to us to do. Some other

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companies do that for their particular agents so. That would be about it, not to run this any longer. Any questions?

SENATOR MINES: Thank you, Mike. Questions for Mr. Glaser? I see none. Thanks a lot.

MIKE GLASER: Okay, thank you.

SENATOR MINES: All right. Next testifier in support? David.

DAVE McBRIDE: Good afternoon, Chairman Mines, members of the committee, my name is Dave McBride, M-c-B-r-i-d-e, executive vice president for the Nebraska Association of Insurance and Financial Advisors, really here just to do a me too at this point. This is not an issue that necessarily had come to us from our membership as a concern, but it certainly does have an impact or bearing of interest to our members. Our members are about 1,200 insurance and financial advisors across the state. The majority of our members are life and health insurance, and financial advising, but certainly a high percentage also are involved in property casualty. This strikes us as more a property casualty type concern, but certainly would have some impact and, as I say, is of interest to our members. We would certainly support the notion of this being considered as an interim study or continue to work on. We appreciate Senator Langemeier bringing the issue to the committee, but would support the notion that there is probably some clarification that should be added as to what sorts of fees are or are not intended to be permissible. And that's about all I have.

SENATOR MINES: Thanks, Dave. Questions for Mr. McBride? Senator Pahls.

SENATOR PAHLS: Yeah, thank you. Dave, I just have...just to help me through this. Let's say that I'm buying car insurance from you. What are the fees that you're thinking about charging me? Just off the top of your head. What would you charge me?

DAVE McBRIDE: I don't know that I can answer that since I'm not an agent at all.

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SENATOR PAHLS: I'm not trying to...because just to give you an idea. Right now, I'm trying to figure out, let's...I mean, I know there's some fees because of people that do extended things for me. But right now, I'll just be honest with you, I pay over \$400 a month on car insurance because I happen to have two teenagers. I mean, it seems like I'm wondering, you know, I understand the cost of doing business. But where's, I mean, the \$400 has got to be going somewhere. I mean, I'm just...that's one thing I'm having a hard time dealing with is what additional fees that you'd be charging me unless I'm missing the boat here.

DAVE McBRIDE: Well, I understand and appreciate the question. I'm not sure I have a definitive answer either. Our understanding of this bill and the explanation from some of the previous testifiers is that it essentially would be for reimbursing or covering hard costs, direct expenses, and in some cases of doing paperwork, filing documentation, postage charges, et cetera, et cetera to the extent that it would compensate somebody for their time they would be spending. I'm not sure how that works out and I wouldn't be able to comment on how any individual agent or agency would develop charges for that.

SENATOR PAHLS: So that's why you're saying we need a study to see what these things would be.

DAVE McBRIDE: Right.

SENATOR PAHLS: Okay, okay, thank you.

SENATOR MINES: Any other questions for Mr. McBride? Seeing none, thanks, Dave.

DAVE McBRIDE: Thanks.

SENATOR MINES: Any others wishing to testify in support? Great, those wishing to testify in opposition? Neutral? Come on, Korby, lead the charge. Again, I think we have three wishing to testify in neutral.

KORBY GILBERTSON: Good afternoon, Chairman Mines, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of

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the Property Casualty Insurers Association of America. Neutrally on the bill, based on the agreement that it's not going anywhere this year. Otherwise, we would be very much concerned with it. Senator Pahls, you illustrated our main concern with the bill in that consumers' perceptions are often reality and the consumer says, I pay \$400 a month in auto insurance premiums. Doesn't that cover the cost of doing things like making copies, doing the accident reports, things like that? And for many companies, the answer to that is yes. Those things are specifically enumerated in contracts with agents, some of the things that have been talked about today, accepting payments, adding cars, increasing coverage amounts, discussing different types of coverage. Those are things that are anticipated and covered in the compensation package with the insurance agents between them and the companies they represent. Furthermore, some of the companies we discussed this with have concerns about the possible impacts that this type of legislation could have on their filings with the Department of Insurance because they have to file the rates and all of this. If these additional fees are allowed, that can cause a problem down the road because this would be looked at as an additional fee. Senator Mines, you brought up the question about that a consumer could see these costs and then decide whether or not they wanted to do business with that insurance company. That's the way it is now because an insurance company has to delineate in their policy, here is what we charge for, and I can give you a personal example. My auto insurance, the company I have it through used to do monthly deductions from my checking account for my auto insurance. I received a notice saying we're changing our policy rules. We are now going to be charging a dollar a month if you decide to continue doing monthly debits. If you would like to make an annual payment, one time a year, we won't charge that dollar so I changed to making a payment one time a year because I could do that. But that is something that they had to state in the policy so I could decide whether or not I wanted to continue doing business with them. The way that this bill is, you would already have your policy. Here's what is included in your policy. These charges will be above and beyond that. They would not have to delineate them in the policy so it would really add some questions for a consumer, am I going to drop my insurance or am I going to pay the \$10, \$20, \$50 since there's no limit in here. There's really a question as to

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what could be charged. If you want to look at it from the side of what most public agencies have to do insofar as public records, they can only charge the actual cost of producing the record. Those are all things that I think need to be considered and thought about before anything like this would be put forward. And I'd be happy to answer any questions.

SENATOR MINES: Thank you. Questions for Ms. Gilbertson? I see none. Thank you.

KORBY GILBERTSON: Thank you.

COLEEN NIELSEN: Chairman Mines, members of the committee, my name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n. And I'm testifying on behalf of the Nebraska Insurance Information Service which is a local association of property casualty insurance companies, doing business here in Nebraska. And for all the reasons that I think that Ms. Gilbertson eloquently stated, we are neutral and we're willing to discuss this in an interim study, but there are concerns by the companies that I represent. And if you have any questions, I'd be happy to answer them.

SENATOR MINES: Questions? Coleen, give me an example of who is in this association.

COLEEN NIELSEN: There is Allstate, American Family, Farmers, Farmers Mutual of Nebraska, State Farm. Now I'm going to skip a...there's some others but...

SENATOR MINES: Well, you've touched...

COLEEN NIELSEN: There's about 10 or 12.

SENATOR MINES: ...and I'm not an insurer...

COLEEN NIELSEN: Um-hum.

SENATOR MINES: ...are State Farm agents considered independent agents?

COLEEN NIELSEN: No, they are not independent agents. They're captive agents.

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SENATOR MINES: So, well, I guess the State Farm then would determine if they are going to charge fees, I assume.

COLEEN NIELSEN: Right. Well, I think most likely that would probably be contemplated in the contract.

SENATOR MINES: Yeah.

COLEEN NIELSEN: And so...

SENATOR MINES: Yeah. Where independent agents represent different lines and I can understand perhaps their argument maybe a little more than an agency representative, State Farm, Allstate, those kind of things.

COLEEN NIELSEN: ...and I'm not familiar with the contracts that independent agents have with...

SENATOR MINES: Right.

COLEEN NIELSEN: ...the different companies. So, I don't know.

SENATOR MINES: Could be different.

COLEEN NIELSEN: I don't know if the commission is contemplative of these charges or not.

SENATOR MINES: Thank you. Any other questions for Ms. Nielsen? Thank you, Coleen. Next testifier. Eric, you might be last.

ERIC DUNNING: Good afternoon, my name is Eric Dunning. That's spelled E-r-i-c D-u-n-n-i-n-g. Rather unusually, I'm here on behalf of Director Wagner who's out of state today and so couldn't be with you. I'm here to testify in a neutral capacity on (LB) 980. We believe that the property and casualty insurance agents should not be necessarily prohibited from recouping some of the costs of doing business that may or may not be contemplated in the rate-making process. That said, the department believes that specific language to accomplish this goal needs to be very carefully considered for the reasons that have come forth in the questions that have been asked today. We agree with the independent insurance agents and some of the

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company representatives that this project is best undertaken as an interim study and we promise to work very hard with the stakeholders to develop a proposal that's good and solid for next year. I'd be happy to answer any questions.

SENATOR MINES: Thanks, Eric. Questions for Mr. Dunning? Thanks a lot, appreciate it.

ERIC DUNNING: Thank you.

SENATOR MINES: Anyone else wishing to testify in a neutral capacity? Seeing none, I will close the public hearing on LB 980...oh I'm sorry, let's close. I always forget that part (laughter). All right, what do you have to say? (Laughter)

SENATOR LANGEMEIER: You got to love a good discussion, don't you? I just have a couple of things. One, a clarification. I think you'll see the bill is very simple. It was done purposely by myself to make it very simple. I didn't want to taint discussion with giving guidelines of fees and trying to direct in a direction versus hearing just a good discussion. On my letter of intent, I want to clarify one thing. At the end of the second line, I'm just going to take an excerpt out of here. It says employees to charge service charges or fees for clerical duties, and it currently says premium payments or other single. It should have said collection of premium payments in there. This would be an addition to that. And so, that would conclude my testimony. I think you've seen the reason this needs to be discussed further and a whole guideline per se to come forward.

SENATOR MINES: Any questions for Senator Langemeier? Senator Pahls.

SENATOR PAHLS: Senator Langemeier, I'm assuming you want to go forth with a study.

SENATOR LANGEMEIER: Yes.

SENATOR PAHLS: Just a word or two of advice. In one of the bills that I presented last year had to do something with increasing fees for Douglas County, the sheriff's department, some were in the 1960s. And increasing the fee

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from 50 cents to \$1.50 just really caused a lot of concern. Just so that you know that when you talk fees (laugh), it's an interesting issue (laughter).

SENATOR LANGEMEIER: I think I was one of those (laughter).

SENATOR MINES: Any other questions? Chris, why would we list, have a laundry list if, in fact, and Senator Redfield brought it up, why don't we just strike the section and let the market do what it does?

SENATOR LANGEMEIER: I think in my mind, you want the laundry list for credibility for public safety even though you're going to have market-driven, the market is going to decide what these are...what the market will tolerate for fees. I think you're going to see these type of fees come up in unique situations where businesses are taking larger clients, providing them an additional service. I don't think you're going to see this on your auto policy when you call to add your son's new car onto the policy, a fee driven for an addition to your policy. They already have your policy; they collect a commission. And so I think you need to have some guidelines there for a public safety process.

SENATOR MINES: And then there will be discussion about penalties and what penalties will be imposed. My assumption is that Eric and the Department of Insurance will have to hire people to oversee the process. And during that fee collection process somebody's going to have to pay for the state oversight so you've got a big job in front of you.

SENATOR LANGEMEIER: Thank you.

SENATOR MINES: You're welcome. Any other questions? Nice closing, thank you. Now, that will conclude the public hearing on LB 980. Senator Redfield, would you take the Chair?

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SENATOR REDFIELD: We will open the hearing on LB 1122 by Senator Mines. And, Senator Mines, I will tell you I have a bill up in Transportation so if I slip out, I will ask Senator Jensen to take over.

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SENATOR MINES: He does a nice job as well. Senator Redfield, members of the committee, my name is Mick Mines, M-i-n-e-s. I represent the 18th Legislative District and I'm the principal introducer for LB 1122. This bill amends section 8-1123 of the Nebraska Banking Act to provide that a state chartered institution that accepts savings deposits shall not, for opening or increasing an account, give any giveaway that has a monetary value in excess of the amounts prescribed in federal regulation 12 C.F.R. 217.101 rather than the amounts designated by the director of banking and finance. The federal regulation provides that the value of the premium or in this case the articles of merchandise, the total cost including taxes, shipping, warehousing, packaging, and handling cannot exceed \$10 for deposits of less than \$5,000 or \$20,000...let me back up. Shall not exceed \$10 for deposits of \$5,000 or less, or \$20 for deposits of \$5,000 or more. And, Mr. Hallstrom with the Nebraska Bankers (Association) is behind me to explain this bill.

SENATOR REDFIELD: Are there questions for Senator Mines? Senator Mines, we were just talking about a bill about the marketplace, determining what people should be able to do. Can you explain why they should be different? (Laughter)

SENATOR MINES: Mr. Hallstrom has (laughter)...well, this is more of a regulation. We are regulating the amount of...so that financial institutions are restricted from buying business. And I think there's opportunity for some hanky-panky when you're encouraging people to trade with you as opposed to charging fees to gather information for other people. That wasn't very good, was it?

SENATOR REDFIELD: It's kind of like advertising.

SENATOR MINES: Thank you.

SENATOR REDFIELD: Thank you. Are there proponents?

SENATOR PAHLS: Is hanky-panky a legal term?

SENATOR MINES: You pick up on two words (laughter).

ROBERT HALLSTROM: (Exhibit 1) Senator Redfield, members of

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the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB 1122. Senator Mines has provided the committee with information regarding the dollar limitations on promotions or so-called giveaways under the state statute that are allowed for banks in connection with the opening or maintaining of deposit accounts. The consequence of having any type of promotion above that is that they constitute the payment of interest, therefore, they are reportable and that's the way that the federal statute works. This is not necessarily about the size of the promotion, or the giveaway, or trying to make any changes in what federal law in the current state regulation allows. It's just a matter of whether or not we have covered the field in terms of the application of the federal regulation and its impact accordingly on state-chartered banks. The department of banking, to their credit, has attempted to piggyback or dovetail onto the federal regulation, in this case, regarding the dollar amounts of the giveaway. Senator Mines indicated the \$10 on \$5,000 accounts or less and \$20 on \$5,000 or more. One of the issues that I've noted in my testimony and, by the way, I do have the department of banking regulation that is attached along with one of the issues of contention in terms of the broader scope of the federal regulation under Regulation Q, and if you turn to the very last page of the attachment on my testimony or my letter, subparagraph b talks about the limitation of \$10 and \$20 based on the size of the account as provided in the federal regulation and the state regulation, does not apply if it is not directly or indirectly related to or dependent on the balance in a demand deposited account and the duration of the account balance. That particular exception or exclusion, if you will, is not reflected on the face of the department of banking regulation. The bankers association had had a couple of calls from bankers wondering if the federal and the state regulation of premiums or giveaways was identical. Upon looking at that, we decided that that particular interpretive letter was not incorporated into the current state department of banking regulation. As a result, there's probably two approaches. One is to see if the department of banking would be amenable to changing their regulation to expand it to incorporate that exclusion. The other, which is embodied in LB 1122, is to simply adopt the federal regulation as it currently

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exists. With that, I'd be happy to address any questions.

SENATOR REDFIELD: So, Mr. Hallstrom, is the issue the fact that we're worried that state-chartered banks could give better prizes than federally-chartered banks?

ROBERT HALLSTROM: Senator, it's not about the better price or the larger promotion or giveaway. It's whether or not the limitations are applicable. The exclusion that I referenced in that back page of the attachment says that the \$10 and \$20 limitations do not apply under the federal regulation which would be applicable expressly to national banks if those two criteria are not part of what it's tied to, the opening of the account, the duration of the account. Arguably, that same exclusion may not apply to state-chartered banks because we don't have it on the face of a specific, express regulation that has been adopted by the department of banking.

SENATOR REDFIELD: Thank you. Other questions? Senator Jensen.

SENATOR JENSEN: Yes, thank you. Mr. Hallstrom, would this apply to credit unions?

ROBERT HALLSTROM: The issue right now, Senator, as I read the statute is that it is embodied in Chapter 8 which would apply only to banks.

SENATOR JENSEN: There's a very large bank in Nebraska that has a drive for new accounts and if you can steer somebody into a new account, they pay \$50. Is that covered in this also?

ROBERT HALLSTROM: Well, what you have, Senator, is my understanding and maybe Patty Herstein with the department can clarify that. My understanding is that you have the exclusions. It depends on what the promotion is tied to, and I think that's kind of at the heart of the issue that what is not now in the department of banking regulation, that we would suggest ought to be either by modifying the regulation or by adopting the federal regulation in toto under LB 1122 is that if that \$50...if it exceeds, obviously, on its face the \$10 or the \$20 threshold. But the exclusion says, if it's not dependent on the balance in

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a demand deposit account and the duration of the account. So if you don't have those two things in concert, then the \$10 and \$20 limitation, I would submit, doesn't apply and you may have the scenario where you'll have a larger payment that can be made.

SENATOR JENSEN: All right, I'll stop there. Thank you.

ROBERT HALLSTROM: Okay. Thank you.

SENATOR REDFIELD: Other questions? Senator Flood.

SENATOR FLOOD: Thank you, Senator Redfield. Robert.

ROBERT HALLSTROM: Yes.

SENATOR FLOOD: The back page, Regulation Q, is that state regulation?

ROBERT HALLSTROM: No, that is a federal...Federal Reserve Board regulation, Senator.

SENATOR FLOOD: Okay. So if we're...I have to admit, I'm confused here so we might need to backtrack. So if we have a state-chartered bank right now, what rules are governing them? I mean, are they at all governed by the federal rules?

ROBERT HALLSTROM: The concern or the confusion, Senator, might be...we could probably make the argument that we can automatically do this if the state-chartered wild-card not withstanding the express regulation of the department supersedes that regulation in which case then we can incorporate all of the federal law and regulations and we'd have that flexibility.

SENATOR FLOOD: Oh, wait a second. I got to get a handle on this. So, you're saying, the state bank right now, if we don't have anything express in the statute and the director hasn't promulgated a regulation, then by default we look to the federal odyssey if it is permissible.

ROBERT HALLSTROM: Because of the state wild-card, I believe that's correct.

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SENATOR FLOOD: And just because I'm new to the committee, explain to me briefly, I know we've talked about state wild-card. That's just one year authority to operate as a state bank in Nebraska rather than...

ROBERT HALLSTROM: The state bank wild-card, Senator, simply says that, arguably, unless there's something contrary on the face of the state statute governing a particular area of law, then the state-chartered wild-card that applies to banks, savings and loans, and credit unions will allow them to piggyback onto the federal law of their counterparts to do whatever it is that federal law or regulation allows them to do. And the issue here which may be splitting hairs is, do we have something specific or express in law or department of banking regulation that provides different authorization for state banks, whether it's broader or, in this case, less broad.

SENATOR FLOOD: Thank you. That helps me.

ROBERT HALLSTROM: Yeah, okay.

SENATOR FLOOD: So I guess my question is, we are seeing more banks choose the state over the federal charter which is a good thing given it expresses a lot of confidence in our department of banking. If we put into the statute that, specifically, the director of the Nebraska Department of Banking (and Finance) shall promulgate regulations governing the gifting from a bank, does that accomplish the mission?

ROBERT HALLSTROM: I might just broaden that a little bit to say perhaps consistent with the federal regulations that might clearly...

SENATOR FLOOD: See, I don't know if I want to go there. You know, I'm in the advertising business, my other business, and I remember last fall I got a huge order from a seed corn company, and I sent them Omaha steaks because I was amazed at the amount of the order that we got. I think that there's a marketplace will determine how a business rewards a customer for their patronage or their business and I'm with Senator Redfield on that. I'm all for closing the loophole to make sure we communicate clearly as a Legislature, but my interest would be, let's make the department of banking make that regulation however he or she

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deems fit and then we don't have this...

ROBERT HALLSTROM: And to a certain extent, Senator, I think I probably would not disagree with you on that. Traditionally or historically, the state charter has kind of been the testing ground, and we have had...the dual chartering system has provided quite a bit of innovation in the banking world and the ability to do more things on the state level has been a positive thing. The issue is here, specifically, and I know maybe we're a little selfish in picking and choosing, the interpretation here is that the current department of banking regulation is more narrow than the federal banking regulation and we'd prefer to take the best of the two worlds in this particular situation. But we don't want to discount the ability of the state department of banking to go beyond federal law where it's not otherwise preempted.

SENATOR FLOOD: What if we granted the wish in the best possible scenario and said, you may gift however you see fit as a bank to any potential or current customer?

ROBERT HALLSTROM: I would probably have to think and talk to bankers about that. I think there are certain areas where you can obviously go beyond where you don't have those limiting factors currently. I think there's safety and soundness issues that the regulators would come in on if you went overboard in terms of what you could give away or promote.

SENATOR FLOOD: Well, thank you for your help. I appreciate it.

ROBERT HALLSTROM: Thank you.

SENATOR REDFIELD: Senator Jensen.

SENATOR JENSEN: Yes. One of the largest financial institutions in this state recently changed hands, but Commercial Federal and before that it was a couple other names, grew from a small south Omaha facility into a very large multistate facility, kind of on premiums and gifts. And there was a time when that little facility down in south Omaha had people lined up for a block and a half to deposit their money to get a blanket free. I really don't see

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anything wrong with that and, you know, in the banking business everybody's got the same product. You rent money, but how you attract customers to that, I think that's a personal industry banking decision. And to put regs in that says, to start describing what you can do and what you can't do, I think we're removing part of the competitiveness out of the individual banks. And I'm not convinced that we should go there just yet.

ROBERT HALLSTROM: Well, and, Senator, keep in mind in this particular instance, we already have federal regulations that clearly apply to national banks. We have previously directed the state department of banking which is where the current law stands, to have similar types of regulations and the only reason that any discussion and discourse on this issue has come about is because there is a discrepancy between what the federal and the state regulations applicability is and conversely, what authorization is there for state banks which we believe might be a little narrower, perhaps, than what national banks can do.

SENATOR REDFIELD: Are you through?

SENATOR JENSEN: I'm through.

SENATOR REDFIELD: So, we could actually look at some language that might say that the Department of Insurance may not limit by...be more restrictive than the federal and accomplish your goal.

ROBERT HALLSTROM: That certainly would accomplish the goal.

SENATOR REDFIELD: Thank you. Questions? Senator Louden.

SENATOR LOUDEN: Yeah, Bob. These regulations on the federal level, they've been in there for years and years or how?

ROBERT HALLSTROM: Regulation Q has been on the books for many, many years.

SENATOR LOUDEN: Okay. And like Senator Jensen alluded to, these...I know in our area, what, First Federal came out west there and gave away all kinds of knickknacks and pots and whatever, and took a lot of business. Now they're Tier

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One and they go out there and they got casseroles stacked in there by the pickup loads. That would all change then if we went along...they'd be just like our high dollar bank downtown. They wouldn't be able to give away anything more than worth \$10 or something like that.

ROBERT HALLSTROM: Senator, those rules are already...the dollar limitations are already in play through the state banking department regulation. The only thing that isn't clearly on the state law scene, if you will, is the exclusions under that subparagraph b that I referred to earlier. So we're not going to restrict or limit anything having to do with the dollar amount that's on the face of the federal statute and regulations because it's currently in the state department of banking regulations. What we would clarify by piggybacking or hitching our wagon to the federal regulation is proposed under LB 1122 is that we would clearly have the exclusion under that subparagraph b that I referenced earlier.

SENATOR LOUDEN: Now, you're telling me then the casserole and everything that Tier One was giving away wasn't worth ten bucks or less?

ROBERT HALLSTROM: I don't know. Well, the issue is, there are exclusions where those limitations do not apply. That would be the issue. They probably are offering that promotional package not tied to the normal restrictions so that they can go beyond the bounds of the \$10 and \$20 limitation. That's what the...yeah.

SENATOR LOUDEN: Now, you just have on deposits, but if they were open checking account that would be a different deal altogether then from a deposit to a checking account?

ROBERT HALLSTROM: The federal regulation talks about opening the account or maintaining it for a certain duration so there are two prongs that have to be there in order for the \$10 and \$20 limitations to apply, as I understand.

SENATOR LOUDEN: Well, I was going to say that's when my mom always used to look around at these outfits, that's how she filled up the kitchen, I think (laugh) with blankets and everything else. And I didn't think that was all bad at the time, I guess, kept them happy.

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ROBERT HALLSTROM: Don't disagree, Senator.

SENATOR LOUDEN: Thank you.

SENATOR REDFIELD: Other questions? Seeing none, thank you.

ROBERT HALLSTROM: Thank you, Senator.

SENATOR REDFIELD: Other proponents? Those who wish to testify in opposition? Yes. Thank you.

PATRICIA HERSTEIN: (Exhibit 2) Vice Chairman Redfield, members of the Banking, Commerce and Insurance Committee, my name is Patricia Humlicek Herstein. That's P-a-t-r-i-c-i-a H-u-m-l-i-c-e-k H-e-r-s-t-e-i-n. I'm general counsel for the Nebraska Department of Banking and Finance, and I'm appearing today on behalf of the department in opposition to LB 1122. LB 1122 removes the authority of the department to designate maximum monetary values for giveaways related to the opening of deposit accounts. The federal regulation governing giveaways by national banks would replace the department's ability to provide any additional regulation in this area. The department is not opposed to a reference to federal regulation. In fact, 45 N.A.C. 22, a copy of which I have attached, which is the department's current rule relating to the subject, was substantially based on federal regulation 12 C.F.R. 217.01 which is what the reference is in LB 1122. State chartered banks are also able to use the wild-card if a situation arises where the agency rule does not address a bank's proposed giveaway plan, or if a national bank would have an advantage if offering the same type of plan. At the same time, however, the department believes it is important to preserve the state's ability under the law to provide additional guidance in this area to our state chartered banks should the need arise. As LB 1122 does not do so, the department respectfully requests that the bill not be advanced. Thank you. I'll be happy to answer any questions you may have.

SENATOR REDFIELD: Thank you. Are there questions? Senator Louden.

SENATOR LOUDEN: Did your mom get free blankets at savings and loans or anything?

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PATRICIA HERSTEIN: No, she generally banked at the bank at Prague. And once in awhile they'd give a giveaway but generally I think it was a turkey.

SENATOR LOUDEN: I see. Thank you.

SENATOR JENSEN: Kolache.

SENATOR REDFIELD: Other questions? Senator Langemeier.

SENATOR LANGEMEIER: Thank you, (Vice) Chairman Redfield. We talked about...Mr. Hallstrom talked about the states being narrower than the federals. Is there some thought process behind that or why is that currently narrower than federal?

PATRICIA HERSTEIN: I believe at the time the regulation was first adopted by the department, it probably mirrored almost exactly the federal regulation. As Mr. Hallstrom indicated, there was, I believe, a later opinion or interpretation that was attached to the regulation and the department just did not adopt it at that point in time. So, yes, I will say, we are narrower at this point in time.

SENATOR LANGEMEIER: Has that been something that's been discussed and you like that position you're in or?

PATRICIA HERSTEIN: Actually, it was...I think it was probably brought to our attention about the same time that it came to the bankers association that there perhaps should be an amendment to our rule. So it is something that we are considering, but we haven't done anything formally or done any drafting at this point in time. But it's been...I think we've had two banks contact us, one from Omaha and one from Saline County and both of the contacts were within the last couple of months which I think brought this bill to the forefront. But it is on our list of things that we need to be looking at, yeah.

SENATOR LANGEMEIER: So this is something you think you can handle in a rule versus statute?

PATRICIA HERSTEIN: Yes.

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SENATOR LANGEMEIER: Thank you.

SENATOR REDFIELD: Senator Flood.

SENATOR FLOOD: Thank you, Senator Redfield. Thank you for testifying today. Do you have an opinion as to why the Nebraska Bankers Association would prefer this in statute versus state regulation?

PATRICIA HERSTEIN: I think it could be because of the fact that if the federal law changes, it might be a little quicker just to reference federal law than to wait for the department to have to go through the rule-making process.

SENATOR FLOOD: So this isn't cause for concern or anything?

PATRICIA HERSTEIN: As I indicated, you know, we don't really have a problem with referencing the federal regulation. But at the same time, there might be situations where we think we might be able to give a little better advantage to our state banks than would be present under the federal regulation. And with LB 1122, that takes away any authority to do that.

SENATOR FLOOD: Why couldn't we just get rid of the prohibitions on specific dollar amounts altogether?

PATRICIA HERSTEIN: I think there's a possibility that you could. We have to be careful in this area because we're talking about deposit accounts. And in addition to our regulation, all of our banks are insured by the FDIC and, as Mr. Hallstrom indicated, at a certain point, we might get to a situation of is it interest or not? And then that could jeopardize some of the things that go on under the FDIC insurance program.

SENATOR FLOOD: Thank you very much.

SENATOR REDFIELD: Other questions? Seeing none, thank you.

PATRICIA HERSTEIN: Thank you.

SENATOR REDFIELD: Are there other opponents? Any neutral testimony? Senator Mines is waiving so we're going to close the hearing on LB 1122.