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Banking, Commerce and Insurance Committee
January 28, 2008

[LB779 LB792 LB918 LB920]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 28, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB779, LB920, LB792, and LB918. Senators present: Rich Pahls, Chairperson; Chris Langemeier, Vice Chairperson; Tom Carlson; Mark Christensen; Tim Gay; Tom Hansen; Dave Pankonin; and Pete Pirsch. Senators absent: None. []

SENATOR PAHLS: Good afternoon. On January 28, we are starting our Banking, Commerce and Insurance Committee meeting. Welcome to the Banking, Commerce and Insurance Committee hearing, my name is Rich Pahls, I'm from Omaha, represent District 31. I serve as the Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your part of the public process. This is your opportunity to express your position on the proposed legislation that we have before you. As you can see, the bills will be in the order (LB)779, (LB)920, (LB)792, and (LB)918. Turn your attention to the charts to better facilitate today's proceedings. I ask that you abide by the following procedures. Please turn off your cell phone, move to the front two rows if you plan to testify, move to the on-deck chair when you are ready to testify. Of course, most of you know order of testimony is introducer, proponents, opponents, neutral, and closing. We're asking the testifiers to sign in, spell your name for the record before you testify, and we're asking you to be concise. Written materials may be distributed, we need 10 copies. Right now if you do not have 10 copies, let me know, and I will have the page pick those up for you. To my immediate right is committee counsel, Bill Marienau; to my immediate left is committee clerk, Jan Foster. The committee members with us today will introduce themselves beginning by... []

SENATOR CARLSON: Tom Carlson, District 38. []

SENATOR PIRSCH: Pete Pirsch representing District 4, home of Boys Town, which is celebrating it's 90th anniversary. []

SENATOR PANKONIN: Dave Pankonin, District 2. []

SENATOR GAY: Tim Gay, District 14. []

SENATOR CHRISTENSEN: Mark Christensen, District 44. []

SENATOR HANSEN: Tom Hansen, District 42, home of Buffalo Bill and his Wild West Show, still going on after 135 years. []

SENATOR PAHLS: Keep on giving us more of that information. This is our communication, and our page is Ryan Behrns from Louisville, Nebraska. As I said

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earlier, the order we will take of the bills is (LB)779, we'll begin with Senator Pirsch. I'm going to ask Senator Carlson, would you be the chair? I must leave. []

SENATOR CARLSON: Okay. []

SENATOR PAHLS: You can sit there if you choose. []

SENATOR CARLSON: Senator Pirsch, proceed. []

SENATOR PIRSCH: Thank you, Senator Carlson, members of the Banking, Commerce and Insurance Committee. I am Pete Pirsch, state senator representing Legislative District 4 in Douglas County in Omaha. I am the sponsor of LB779. LB779 proposes to make amendments to the Nebraska [Multiple Employer Welfare Arrangement Act], a multiple-employer welfare arrangement, or MEWA as its acronym is know as, is a provider of a health benefit plan that is not fully insured that is sponsored by an association of employers. The act in part requires MEWA's to make application for a certificate of registration accompanied by an initial \$1,000 fee and various organizational and trust documents, and to make a series of annual reports thereafter to the Department of Insurance, including the filing of a financial statement and the certification of compliance with applicable state laws and regulations. The provisions of the NMEWAA currently require all board members to attest to the financial statement required to be filed with the Department of Insurance. In addition, each board member must certify that the activities of the MEWA have been conducted in accordance with applicable provisions of Nebraska law and regulations relating to MEWA's. LB779 would serve to streamline the reporting requirements for MEWA's by reducing the number of board members who must attest to the financial statement and who must execute the certificate of compliance relating to the conduct of activities by the MEWA in accordance with applicable provisions of Nebraska law and rules and regulations affecting MEWA's. In each case, LB779 would only require two members of the board, one of whom must be the chairperson or president of the board of trustees to satisfy the financial statement and the certification of compliance filing requirements. LB779 also would conform the provisions of the NMEWAA to regulations recently adopted by the Department of Insurance regarding the timing of certain annual reporting requirements by allowing these documents to be filed with the Department of Insurance within 90 days after the last day of the fiscal year of a MEWA. Current law only provides that these reports and filings must be made, quote, on an annual basis. Thank you. [LB779]

SENATOR CARLSON: Thank you, Senator Pirsch. Any questions of Senator Pirsch? Hearing none, we'll proceed. [LB779]

SENATOR LANGEMEIER: Yes, I have a question (laughter). [LB779]

ROBERT J. HALLSTROM: (Exhibit 1) Senators, my name is Robert J. Hallstrom,

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H-a-l-l-s-t-r-o-m. I am the registered lobbyist for the Nebraska Bankers Association appearing today on LB779 in support of the legislation. Senator Pirsch read the same book that I did and his testimony was much like the testimony that I've submitted to you. As a result, I'll just give you a little bit of additional background. In approximately 2002, there were a handful of multiple employer welfare arrangements, or MEWA's that were operating in the state of Nebraska under the auspices of the trade association, the Bankers Association, the State Chamber of Commerce, New Car and Truck Dealers, and the like, and at that time the Department of Insurance had expressed some concern over what they referred to, commonly, as fly by night insurance companies that were coming in collecting premiums to provide health insurance coverage for individuals and then sneaking away in the still of the night and not being around when the claims came due, so that they left with the premiums and the people that had paid for the coverage did not have insurance coverage when they needed it most. As a result, the Department of Insurance had suggested that we put together a law that would address MEWA's and similar types of entities. The trade association MEWAs, which we assumed were here operating properly had been here for many years. There's criteria in the law as to how a trade association MEWA can operate. They have to be here, they have to be in existence for a certain period of time. They have to be set up for reasons other than the provision of insurance and so forth. At this time, to my knowledge the NBA MEWA is the only remaining MEWA that is operating and is subject to regulation under this particular act. We do not object to the regulation that's instilled upon us, but we do have some questions with regard to the scope of regulations and the reports that must be filed which currently require each and every board member, individually, to make an attestation to financial statements and to attest to certificates of compliance that your MEWA has been operated in accordance with all applicable rules and regulations of Nebraska law. As a result, we have asked Senator Pirsch to introduce the legislation that would streamline and only require the chair person of the board of trustees and one other board of director to make those attestations. We've also made some changes under LB779 which actually in kind of a twist, make the statute conform to the regulations that have been adopted by the Department of Insurance with regard to the annual reports within 90 days of the end of the MEWA's fiscal year, rather than just on an annual basis, and we would request that the committee advance the bill to General File. I'd be happy to address any questions the committee might have. [LB779]

SENATOR CARLSON: Thank you, Mr. Hallstrom. Any questions? Senator Hansen. [LB779]

SENATOR HANSEN: Thank you, Senator Carlson. Bob, you said something kind of interesting right there toward the end. You said LB779 puts into statute the rules and regulations that the department works under. [LB779]

ROBERT J. HALLSTROM: Just with regard to one issue, Senator. When we were working with the Department of Insurance, the statute on its face says that these reports

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must be filed on an annual basis and the fiscal year, at least with regard to our MEWA, was not on an annual basis. It was on a calendar basis, excuse me, and so we simply asked for the flexibility from the department to allow us to file it within 90 days of the end of our fiscal year rather than having to be on a calendar year basis. And since the regulation was changed, in response to that request we're coming in and making that modification to the statute so that it conforms to that practice. [LB779]

SENATOR HANSEN: Okay, thank you. [LB779]

SENATOR CARLSON: Senator Langemeier, you have a question yet? [LB779]

SENATOR LANGEMEIER: I did, thank you. Good job. Bob, where's the harm? Why do we need to limit this down to two? What's happening out there that we need to limit this down to just two people? [LB779]

ROBERT J. HALLSTROM: I think, Senator, it's probably just a matter of logistics. A board doesn't always have unanimous attendance at a board meeting. It causes one to go through the process I would imagine of having to circulate documents or to do things of that nature that just quite frankly, at least in the eyes of the Department of Insurance as far as I know from visiting with them in advance, was nothing that was objectionable to them as long as they have the chairperson and one other director attest to this information. [LB779]

SENATOR LANGEMEIER: Is there any liability then that goes back on those board members for that documentation? [LB779]

ROBERT J. HALLSTROM: I suppose as in any situation, Senator, there could be some type of liability. One of the things that's provided for in the bill is that the directors are acknowledging to the best of their knowledge that the MEWA has been operated in accordance with all applicable laws and regulations. So I would assume that there could be some potential responsibility in that respect. [LB779]

SENATOR LANGEMEIER: But yet as a board member, I may never ever see this document if the chairman and another board member signs it. And I would have some liability. [LB779]

ROBERT J. HALLSTROM: Senator, since we're the only group that's subject to it, I can assure you that that would not be the case in ours. The only question is all of the directors would be privy in terms of documents that have to go out to the board of directors in terms of the agenda that's set. The items will be acted upon at a particular meeting. It's just the actual, physical act of signing the document that would only require the two members of the board to sign. [LB779]

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SENATOR LANGEMEIER: Okay, thank you. [LB779]

SENATOR CARLSON: Senator Pankonin. [LB779]

SENATOR PANKONIN: Thank you, Senator Carlson. It might be helpful just to, obviously this is the only group, but just the size of the number of people, approximately, that are in this and the number of financial institutions that are part of this plan. [LB779]

ROBERT J. HALLSTROM: Thank you, Senator. There are 258 banks in the state of Nebraska and I think we're somewhat north of 220 banks that participate. There's over 13,000 employees that are covered under the NBA MEWA program. We've been in existence and had a well-run and beneficial program for the employees of banks in the state of Nebraska for many, many years, longer than I've been around. Again, we're not concerned with the regulations even though we are the only MEWA that's covered, but we again think the streamlining is an improvement over the submission of these reports and doesn't impact the safety and soundness either of the operation of our MEWA or the information that the department needs to have to properly regulate us. [LB779]

SENATOR PANKONIN: Thanks, Bob, I just thought it was important to get the breadth of this question. It's good Nebraskans are in this plan. [LB779]

ROBERT J. HALLSTROM: Thank you. [LB779]

SENATOR CARLSON: Any other questions of Mr. Hallstrom? Bob, help me understand the difference between a MEWA health insurance plan and a normal, common insured plan. [LB779]

ROBERT J. HALLSTROM: Well, Senator, there's probably three and there may be more permutations, but there's probably three primary or principal forms of insurance that you'll look at and this committee hears a lot when you talk about mandated benefits. For example, about ERISA exempt programs. ERISA exempt programs are generally going to be your fully self-insured programs. Then you get to the middle layer, which is a MEWA, which is self-insured to a great extent, taking our plan for example. But we do have some excess insurance or some reinsurance that covers against catastrophic claims, so we're partially self-insured, primarily self-insured, but we do have some third party insurance coverage in that respect. And then you'll have a general, either individual or group-type, of policy that is fully insured by a Mutual of Omaha, Blue Cross/Blue Shield, whatever the case may be. So those would be the three principal types of insurance and the distinctions between them. [LB779]

SENATOR CARLSON: So then a MEWA plan is in terms of limits of benefits and so forth, is probably not much different from a fully-insured plan, it's just the design. What

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thought came to my mind first this may be a plan that's really got some internal limitations, but that's really not the case. [LB779]

ROBERT J. HALLSTROM: No, as a practical matter I think the marketplace dictates in some situations that we probably act more like a fully-insured plan in terms of the coverages, the deductible plans that are offered and so forth. [LB779]

SENATOR CARLSON: Okay, thank you. Any other questions for Mr. Hallstrom? Thank you for your testimony. [LB779]

ROBERT J. HALLSTROM: Thank you. [LB779]

SENATOR CARLSON: Any other proponent? Any opponent? Or anyone testifying in a neutral position? Okay, Senator Pirsch waives closing and that... [LB779]

SENATOR LANGEMEIER: Then I can't ask him my question. [LB779]

SENATOR CARLSON: Okay, Senator Langemeier, we have LB920 and we'll leave it to you for your opening statements. [LB920]

SENATOR LANGEMEIER: Thank you, Senator Carlson and members of the committee. LB920 would amend Nebraska state statute (section) 44-354 to provide that an insurance producer may charge additional, incidental fees for processing premium installments, late payments, policy reinstatements, and insufficient fund checks. Such incidental fees may also be charged for obtaining or providing records and reports, or making regulatory filings for an insured or an applicant of insurance. This bill does place limits on the amount these incidental fees that can be charged by agents. The bill would provide that incidental fees for the above described services shall be disclosed in writing at or before the time the fees are charged, and that the amount of such fees shall be posted where the insurance producer conducts business. The bill would provide that violations are subject to the Unfair Insurance Trade Practices Act. With that, I'm going to stop. Are there any questions? It's just like LB62, however, it does limit it down to the amount the fees could be charged. I think that's a crucial factor and line items out the exact fees for what services could be so given. I think there will be testimony behind me and others testifying on a practical aspect of this. [LB920]

SENATOR CARLSON: Any questions of Senator Langemeier? Senator Christensen. [LB920]

SENATOR CHRISTENSEN: Thank you, Senator Carlson. Senator Langemeier, who regulates the fees? [LB920]

SENATOR LANGEMEIER: The fees would be allowed by any independent agent to set

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his fees within the guidelines of the bill. [LB920]

SENATOR CHRISTENSEN: So there's no regulatory over it then? [LB920]

SENATOR LANGEMEIER: There's part in there where the department shall adopt and promulgate rules and regulations to carry out this bill, but I think as the bill states now those agents could set their fees as long as they disclose them in their office, as long as they fit within the guidelines given by the bill. [LB920]

SENATOR CHRISTENSEN: And then one more. Is there any conflict, let's say you got an independent insurance agent, and if I understand this right, one company could choose to have fees, one company could choose not to... [LB920]

SENATOR LANGEMEIER: One agent could choose to or another... [LB920]

SENATOR CHRISTENSEN: Agents can choose, not insurance companies? [LB920]

SENATOR LANGEMEIER: For example, if Senator Gay had an insurance office and he wanted to charge a dollar for collecting payments and you had an agency and you wanted to charge the \$5, you would have that right. [LB920]

SENATOR CHRISTENSEN: Okay, so it doesn't matter if it's different in the companies, it goes by agent. [LB920]

SENATOR LANGEMEIER: You as an agent. [LB920]

SENATOR CHRISTENSEN: Okay. Thank you. [LB920]

SENATOR LANGEMEIER: Then the market then would dictate what you're going to get away with. [LB920]

SENATOR CARLSON: Any other questions for Senator Langemeier? Senator Hansen. [LB920]

SENATOR HANSEN: Senator Langemeier, the number four I guess it is processing insufficient funds, can't that be done by any business now? If you work with your bank on processing insufficient funds? [LB920]

SENATOR LANGEMEIER: It states that in state statute that insurance agents cannot collect. That's what brings this bill forward. [LB920]

SENATOR HANSEN: Cannot collect? Okay, that's all I had. Thank you. [LB920]

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SENATOR CARLSON: Senator Pankonin. [LB920]

SENATOR PANKONIN: Thank you, Senator Carlson. Senator Langemeier, I understand you use all these fees in your example with the senators here, is that if your company prohibits you from charging a fee, then that can be a company policy, too... [LB920]

SENATOR LANGEMEIER: That would be restriction that, I want to say supply and company, but your contracted company could put on you. [LB920]

SENATOR PANKONIN: Your own, their own restriction. [LB920]

SENATOR LANGEMEIER: Right. Yes, you don't want to do whatever your contract...right. Exactly. [LB920]

SENATOR CARLSON: Any other questions? Okay, thank you Senator Langemeier. Do you want to make concluding testimony? [LB920]

SENATOR LANGEMEIER: We'll see how it goes. [LB920]

SENATOR CARLSON: Okay. All right, proponents? [LB920]

JIM CAVANAUGH: Senator Carlson, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh, I'm an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska appearing on behalf of LB920. We'd like to thank Senator Langemeier for reintroducing this proposal which was before you last year as LB62, and in the interim, a lot of people have put in a lot of good work on fine tuning the proposal so that it's a much tighter and better written bill. We've had the assistance of the chairman and his staff. In that process we've met with all concerned parties and taken input from just about everybody relative to their concerns. As Senator Langemeier outlined to you, this new draft of this proposal includes six items basically that agents would be allowed to collect fees on. And that's a slimmed down list of allowable fee items from last year's bill. It also includes a set statutory limit on the fees. Three of the items you can charge no more than \$5.00 for, 3 of the items you can charge no more \$25.00 for. As the bill last year included, this also includes that you can only charge fees for acts that you actually perform and there are disclosure that you are going to charge fees requirements in here, you have to tell people up front, I'm going to charge you fees. You have to post that fee schedule in a prominent place both in your office and if you're doing business online, you post it electronically. Violation of this act is subject to penalties under the Unfair Trade Practices Act. Eighteen states, that we know of, currently have similar provisions on statute including almost all the neighboring states of Nebraska, Missouri, Kansas, Iowa, and Colorado. What we are asking for is that Nebraska allow these essentially main street independent agents, who hundreds of

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them living in the state, all of you represent some...a number of independent insurance agents, to recoup some bottom line costs that currently they are out of pocket for. This is an elective requirement, the agents aren't obligated to charge these fees and if your competitor down the block is waiving the fees, you might want to think long and hard about waiving them yourself. You might want to think about advertising the fact that you waive all fees as a competitive advertising technique. It also allows you to enter into agreements with insurance companies who say, look if you're going to carry our line of insurance we don't want you to charge these fees and fine, you can contract this right away. There's nothing mandatory in here at all relative to the independent agents charging these fees, it's purely elective. We have looked at this, I think, now for three or four years and have tried to get it in the best possible shape to present to you. And in the course of that we've talked to a lot of insurance companies, and particularly the insurance companies in Nebraska, domestic companies and insurance companies whose lines we market and you're going to hear some testimony from some of the agents that will follow me, but the vast majority of those companies that we've spoken with say we don't have any problem with this. I think that the testimony that you heard last year on LB62, the only opposition testimony were from two insurance company groups--not individual insurance companies. And what we've discovered since then because we made the effort to talk to the constituent members, or many of them of those groups, is that many of the companies that they represent don't have a problem with this at all. They do this in other states. As a matter of fact, they do it in almost every state contiguous to Nebraska, and it doesn't cause them any heartburn at all. What it does is allow what are essentially family-owned businesses in all of your districts to recoup bottom line costs. For instance, when consumers come to them and say I want to buy some car insurance or some house insurance, and if it's a car insurance thing, obviously you're going to go to DMV and check their driving record. And DMV obviously is going to charge you for that. Now, you can tell the consumer, go to DMV and get your own driving record. But as a service, really, to our customers we do that and currently we're out of pocket for that cost, \$10.00, whatever it is. If you go to the county sheriff or the police department in your city for an accident report, you're out of pocket for the \$5, \$10, \$15, whatever that is. And if you're writing the whole town of Wahoo, or you're writing a big chunk of South Omaha and you're writing hundreds and hundreds of these policies every year, times \$10 for these family-owned businesses, that's a fair chunk of change. If you're what is known as a direct-writer company, like a GEICO, you don't have this problem. You don't have insurance agents, you don't have family-owned agencies. People can pick up the phone and get a quote and buy your insurance, and the transaction except for your phone call doesn't even occur in Nebraska. And those people are not particularly affected by the fact that maybe they have to shell out \$10 to DMV or to the Omaha Police Department for some record. But for the family-owned companies across the state of Nebraska, they do and it does make a difference and we're in a competitive age. And if you drive across Nebraska, you see a lot of towns where they used to have a lot of different services and they don't anymore. Main street used to be full of independent businesses and they're not anymore. The independent

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insurance agents represent one of those in every town in the state that still exists, still locally owned, still paying taxes, still serving on the school board, still sending their kids to school, still making Nebraska what it is. All we're asking for here is give them a little help. It's not going to hurt anybody, they don't have to do it if they don't want to. The consumers have all kinds of choices if they come to an insurance agent and he says I'm sorry but it's going to be \$10 for this fee. If they don't like it, they can go down the street or they can pick up the phone and call GEICO or somebody. But for those agents who elect to do this, it might make just a little bit of difference back home, and it might keep them in business on your main street, and it might keep them paying that property tax on their office. It's that competitive of an age, and in insurance it's that competitive of a business. All we're asking you to do is put this out, it doesn't hurt any of the companies, doesn't hurt the consumer. Eighteen other states, including almost every state surrounding Nebraska seem to survive doing business like this and have for a long time. As a matter of fact, the original bill that we copied off of from Missouri, much more extensive than this bill in terms of what it allows, they've never, ever even had a complaint. Insurance department has never had a complaint of anybody abusing or violating this, but you could certainly turn somebody in if you thought that they were doing something outside of the scope of what's contained in LB920. So we would ask for your positive consideration of this bill. I'd be happy to answer any questions you might have. [LB920]

SENATOR CARLSON: Thank you, Mr. Cavanaugh. Any questions? Senator Gay.
[LB920]

SENATOR GAY: Thank you, Senator Carlson. Jim, I guess I'm not that familiar with property casualty insurance, but are the commissions trending down, I assume, in that as you see more online... [LB920]

JIM CAVANAUGH: Yeah, it's gotten tougher out there and what has happened is some things that some companies used to pay for they're now telling agents, well I'm sorry we're not going to pay for those anymore. So it's the competitive advantage of the big companies operating with no overhead. If you're one of these electronic, call me and buy your insurance on the phone company, you're not paying even a light bill in Nebraska. And the fact that some shifts have been made from costs that companies used to underwrite to the agent. [LB920]

SENATOR GAY: Okay, so a follow-up question, Senator. It's a consultant business then. You're my agent, I'm picking your brain, it's not always the lowest cost here you go, lowest cost deal. It's amount of coverage, some of the quality of the care. So you provide that consultant nature and what you're saying, does this allow you to be more of a consultant then and not maybe based on you're not going to sell me a policy just because it pays you the highest commission? You could then be more of a consultive agent. By saying, hey, I charge a few incidental fees, but overall I can give you a

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cheaper service and a better service that way as the other industries are getting that way where commissions are being driven down and you do a fee-based service. [LB920]

JIM CAVANAUGH: Yeah. I think you hit on a good point there. Say you were an independent agent, you carry a number of different companies, lines, and you try to give your folks who you see at the grocery store, at church, you know these people, the best deal that you can. That's fine. But, you know, maybe you're going toe-to-toe with somebody, one of these electronic direct-writing companies, who...they're kind of like Wal-Mart, they can undercut you at almost every turn. The difference then becomes well, great, when the hail storm comes or the tornado, your teenager gets in a wreck, try getting a hold of them on a Saturday night...come down and do what has to be done to get the claim going. I mean, I can tell you from personal experience my father was an insurance agent and when a hailstorm would hit our neighborhood in South Omaha, the phone would ring off the hook for a week and he took all those calls. And it's that personal service, I think, that keeps a lot of these agencies in business is I do know you and you know what, I trust you. And maybe I'm going to pay a couple extra bucks a month on my premium that I could knock off from these other guys, but they're not going to necessarily come when I call. They don't know me. And we do a lot of business in Nebraska based on that. It's a matter of trust and respect and that's how main street Nebraska, thank God, still works. So I think you're right. You're paying maybe a little bit more for that, but it's worth it because that guy's also raising a family in your community, he's an anchor for your community. He's got a house in your community, he's paying property taxes in your community, we can make all that go away if you want to save five bucks on your insurance. Is that really worth it? [LB920]

SENATOR CARLSON: Any other questions? Senator Christensen. [LB920]

SENATOR CHRISTENSEN: Thank you, Senator Carlson. Can there be multiple fees applied then because let's say you're doing a reinstatement, and you're processing a premium installment, and you're obtaining the records and things this way, so can there be multiple fees added on then? [LB920]

JIM CAVANAUGH: Well, you know, Senator, I learned a long time ago that if I don't know the best thing to say is, I don't know, but there's a couple of folks here who do this everyday for a living and they'll be able to tell you. My impression is that each of these is kind of a different transaction, some of them would occur if you're coming to me fresh for a new policy for your car or your house. Some of them would occur if we're renewing a policy, some of them would occur if there was an accident or something like that. And so I can't tell you for sure, but you know, I think there are some people that can coming up behind me. [LB920]

SENATOR CHRISTENSEN: Okay, thank you. [LB920]

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SENATOR CARLSON: Any other questions? I have one that something you said hit with me and I don't expect you really to have an answer, but you talked about and I agree that a lot of small towns, we're losing independent businesses. And some of those small towns are down now to one independent agency, one agency, period. So for example, in Guide Rock, Nebraska, I don't know how knowledgeable those folks might be about understanding that if the agent that's left there starts charging these fees that they really have a choice. And there isn't a good answer to that, I don't think. Do you have a good answer to that? [LB920]

JIM CAVANAUGH: Well, I mean my impression--I'm an insurance consumer like everybody else--is if they turn on the television and there's this little lizard that comes walking across with a 800 number, you know, if they can understand the English language, they can probably figure out that the choice is I can go to you down on Main Street, or I can call the phone number under this little lizard and at least I'll get a couple of quotes. I mean, the good and the bad of the electronic age is it doesn't make any difference where you are anymore. You know, you can buy caviar in Guide Rock if you've got a computer and you get on the Internet. And I think that the choices are out there for anybody who sits down and maybe goes down to the public library and Googles car insurance, or looks in the yellow pages of whatever phone book they've got. There's going to be choices for you. Unfortunately there's not going to be choices of I can come to Tom Carlson and say, Tom, my kid had a wreck last night. I mean those choices are kind of disappearing and I think that's worth something to us to be able to actually do business in the cities and towns in Omaha where we live. [LB920]

SENATOR CARLSON: Okay, thank you. Any other questions? Thank you for your testimony. [LB920]

JIM CAVANAUGH: Thank you, sir. [LB920]

SENATOR CARLSON: Next proponent. [LB920]

IRWIN NELSON: Senators, my name is Irwin Nelson, I-r-w-i-n N-e-l-s-o-n. I'm from Fort Calhoun. I'm an independent agent. I have an agency in South Omaha and I also have one in my hometown of Fort Calhoun. They're both independent agents, but they're two different type of agencies. The one I have in South Omaha is basically an agency that we write a lot of substandard auto, where people haven't...they let the insurance drop, they've got a lot of wrecks, DUIs, driving under suspension, blah blah blah, that type of thing. The one in Fort Calhoun is basically like Guide Rock--standard, farming-type community that you write the standard type homeowners and auto. The expense part of it is in the South Omaha office, the people bring their, most of them don't have checking accounts, so we get the payments brought into us so we have to upload them and we have to put the money into the bank. So basically what I'm saying is this bill is basically

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to give me back what I'm already spending for customer service. We take, in the South Omaha office, between 25...an average probably 25 to 30 payments a day that they bring in and hand to us. Some days it's 15, 20. Some days it might be 50, depends if it's close to payday or not. The accident reports if you look at the Nebraska motor vehicle report, all it says is accident, it don't say who's at fault. You write this to an insurance company, you have to get an accident report, if they don't have an accident report, you either have to go get it or you have to send them to get it, and in Omaha it costs \$10.00. You have to send that accident report into the insurance company to provide statistics that it wasn't this person's fault. Otherwise they get charged a penalty for having an accident and it increases the rates. So basically we do that for them or if we can get them to do it, we let them do it, but most of the time we end up doing it. This is the type of customer service we have to do in the type of agency I have in South Omaha. We do a lot of SR-22s, which is not...we usually have to send them in, or they don't make their payments, the SR-22 expires, so you have to turn around and write another one. They're bringing their payments in on the day that it's due or maybe the day before, or a few days afterwards...so it brings in the day it's due, we can upload it on the computer, which most companies allow us to, there's a couple that won't. When we do this, this stops the cancellation process. So it also helps the companies so they don't have to be sending out letters...you'd have a major payment so it's going to cancel by so many days. We do this continuous, this is all we do...in the type of agency down there, that's the type of business...it's not how we wanted to start, but that's how it ended up. So basically we're a customer service agency that take payments everyday, provide service to people that normally they change cars because their cars are broke, we don't charge them. You're not going to charge them for bringing in and changing the car, that's a normal thing that we normally do. All we're trying to do is get the things back that we have to spend out, like the \$10 for the motor vehicle report, or \$3 for motor vehicle report or whatever we have to do at this time. The companies that are doing it that surround us, it should not affect any companies by having to change their forms or anything because they're doing it in states around us, so it shouldn't affect that. If a company don't want us to do this, then it's our decision whether we want to write with that company or not write with that company. We don't want to write, we'll do whatever they tell us. Somebody brought up about the bad checks, you get the money back for the bad check from the insurance company, but you can't get the money back that the bank costs, the \$5 or \$10 that they charge us. You can't charge that back to the customer. The state law says we can't do it. This allows us to do that. I'm just going to tell you, in Fort Calhoun it's a different situation. Probably other than maybe getting a report once in a while, we probably never get a fee out of there because it's a different type of environment, and that's the way this is going to work. Some places is going to use this, some are not because of the type of business you're writing. I'm done. [LB920]

SENATOR CARLSON: Okay, thank you, Mr. Nelson. Any questions? Hearing none, thank you for your testimony. Next testifier? [LB920]

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MICHAEL JONES: Senator Carlson, senators, my name is Michael Jones, M-i-c-h-a-e-l J-o-n-e-s. I'm testifying in favor of this bill. In fact, I appreciate Senator Langemeier introducing it on my behalf for the Big I. I'm from David City, Nebraska. I own an independent agency. We also have branches in Kearney, York, Grand Island, Seward, and Beatrice. I'm going to read a little bit of text that I prepared, rather than just go adverb here. Number one, I want to make sure that all of you understand this is not a company issue. It's not an insurance company issue. It wasn't even introduced, or no contemplation of a company issue. That's very important to the discussion I want to share with you in a little bit. You'll be hearing pros and cons on this issue, but to better understand the internal nature of the arguments, we need to point out that a major factor is the presence of two delivery systems in insurance. One is a direct-writer system, the other is the independent system. When you hear the word direct writer, many times you'll think of the Geico's like our lobbyist had referred to, or State Farm, American Family, the companies that only allow an agent to represent their product solely. That's in opposition to the other offering of an independent agency, that contracts with several different carriers and then can make choices in consort with their customers to find out which plan of insurance might be best suited to their needs. This is a very important concept, and you're going to hear some arguments in a little bit and I want to make sure you understand the goods and the bads. By definition, as a part of the independent system, by representing numerous companies, it implies that we have to interact with all those companies on behalf of an insured that comes into our office for coverage. That means in essence we tend to try to shop. By doing that shopping, it also imposes on us a requirement to select and obtain lots of data that's specific for the different carrier's needs to underwrite the risk. Those are some of the costs that we're going to hear in a little bit that are included in this bill. Most direct writers may claim opposition because their representative agents do not directly pay for the cost specified in the bill. In the long run, their agents really do, but it's through the way that they're structured in their commission. But as an independent agent, these costs become ever increasingly higher, and they're becoming more and more common. You heard earlier that many of these costs are being shifted from the company level who used to perform those duties to the agent who now has to. Thereby, in the end the overall effective profitability of agencies comes under even closer scrutiny and yes, in fact, average commissions have dropped about 2.5 points in the last 3 or 4 years. I've got statistics, I could show to you later if you want them, but the bottom line is getting tighter as competition gets tougher. We're also in a soft market so that the premium rates of most renewals coming back, right now, are in the consumer's favor. That's a good thing because the market has been strong and pretty robust, so investment income has offset some underwriting costs that companies used to charge because the profits are kind of helping supplement those. Although we continue to become more efficient at the agency level, expenses continue to rise as carriers shift those duties away to the agency level. This is occurring at the same time that average commission levels are declining and right now premium rates are being reduced almost across lines with the exception of health insurance. Contrary to what we heard during earlier testimony on

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LB62, from the company association representatives, my personal conversations with representatives of companies that belong to those associations, which includes Auto-Owners, FirstComp, Columbia Insurance Group, and others do not agree with what you were told by those representatives. The company represented is who I talk to firsthand are either supportive or, at the very least, neutral on the bill. They do not think it impacts them whatsoever. Contrary to what you heard, many companies are either supportive and neutral, but as a footnote, the company associations have members that are comprised of both direct writers and independent carriers. So when they say that they're expressing an opinion, we need to make sure that they're not expressing an opinion of all the members of those associations. I would surmise that any of the members of the company associations who are opposed, guessing them to be the direct writers that are leading that charge, really should support the bill because in doing so based on their arguments, they would garner a competitive advantage against those of us who choose to implement the provisions of this bill and doing so on a voluntary basis. If you examine a large majority of the services for which the fees are requested, the insurance agent is demonstrating consumer advocacy. In doing so, it also reduces the company costs, even of those carriers who are said to be opposed. A case in point would be under Nebraska law, insurance carriers have to notify auto clients of cancellation of their policy within ten days. If we have a customer come in the door, is on the threshold of that cancellation period, and we take their payment, upload it, transact electronically, it then would prevent the company from having to go through the exercise of generating the cancellation notice for nonpayment. In the end, it does save them as well. Economically, I don't think there can be an argument brought against that concept. I think the summary of all this, I analyzed our organization, we transact somewhere in the neighborhood of 500 payment transactions a month. The costs continue to go up because the bank fees and the time expended in providing the service to those customers is driven to us. And it's not that we're opposed to helping our customers, but we also know customers can procrastinate and then we end up being penalized in the competitive spirit because we are helping them keep their coverages enforced, which is probably in the public good. We simply ask for us a chance to recover some of those costs that we're seeing shifted into our pockets so it can help us enhance our ability to stay viable in the business community. Any questions I can help answer? [LB920]

SENATOR CARLSON: Okay, thank you, Mr. Jones. Question, Senator Christensen? [LB920]

SENATOR CHRISTENSEN: Thank you, Senator Carlson. Is there multiple charges that can apply here, I asked earlier? [LB920]

MICHAEL JONES: Just when you raise that question, I don't know how there would. The transactions that are listed in the bill are all individual transactions, not duplicate. I don't see anywhere there would be stacking. For example, in the case of taking new

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insurance applications, many times we're requested to complete a motor vehicle record report. Once we get the report one time, that report is accessible and usable by any of the five, or eight, or ten carriers you would submit it to. So we'd only have to get one report. In the case of fees, if a customer came in and was going to make a payment, deliver it to our office and ask them to forward to them electronically, there's only one payment involved. There's not two or three payments. I can't think of an example where... [LB920]

SENATOR CHRISTENSEN: Well, how about if somebody was late, so you're doing a reinstatement and you're processing the premium, wouldn't that be, too? [LB920]

MICHAEL JONES: The only fee we charge is a single fee for processing the payment. [LB920]

SENATOR CHRISTENSEN: Even if you're reinstating the policy and they've let it lapse. They come in a few days late, the policy's lapsed and now you're reinstating that, plus you're processing the premium, wouldn't you have two? [LB920]

MICHAEL JONES: Mechanically if they came in with a notice of cancellation, they've already been notified by their carrier, the coverage is not in force. We would have to contact the carrier to ask if they would accept a payment. If they would accept the payment, then we could impose the payment fee. Many times the companies assess the late payment or the cancellation reinstatement fee. We've been told already we can't duplicate fees that the company charges, and that's by contract within our carrier contracts. So we would charge for the uploading of the payment, but the reinstatement fee on behalf of the carrier if they charge one would be the carrier revenue, not our revenue. We couldn't recover something that's not expense to us. Now I don't know of a case, I can't think of a case off the top of my head. If you had a reinstatement customer come in, gave us the money, we uploaded it, the company did not charge a reinstatement fee but I think, yes, we would be under the bill eligible to charge that fee for that transaction. [LB920]

SENATOR CHRISTENSEN: Okay, thank you. [LB920]

SENATOR CARLSON: Any other questions? Hearing none, thank you for your testimony. [LB920]

MICHAEL JONES: Thank you. [LB920]

SENATOR CARLSON: Next testifier. [LB920]

JOE ELLIOTT: My name is Joe Elliott. I'm a lobbyist with the Professional Insurance Agents Association of Nebraska, also an independent agent with INSPRO Insurance.

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Last year, I testified neutrally. We had so many discussions, and this issue has been around 10, 12 years ago, it was only introduced 3 years ago. But there are so many people on both sides of the fence and it's very confusing to me to be in the middle, in a sense, because I've had some pretty nasty calls when I told them that we might be neutral again, but I did send out a survey just to get a feel for what was going on. And we have about 300 agents, but we have maybe 120 agency--we got an awful lot of them in the western part of the state that are merging together, and some of them got 8, 10 agencies. But 33 percent of them said, yes, they would charge the fees. They wanted the bill; 25 percent said no, and then I put a third block in there. Let's get a statute on the books and then say, but probably won't charge any fee. Well, 40 percent of the people said that. In other words, they felt it important to get something on the books because we've had this issue before us and if there's good or bad times, maybe some of these things will show up. But I know I had one, and like I say, some of them were very adamant about not wanting to charge a fee. One of them said something says, no, we're in the service business, period. And he didn't know where it's going to go from here. In other words, there's going to be a telephone call, there's going to be miscellaneous this and that. And he had a point, but anyway, then I got one from a West Point agent and I thought it was kind of worth mentioning to you. A real problem comes from the Medicare D coverage. We have to resell these policies each year. We have to go over the medicine taken, if it is approved drug, then what the copay is required. This takes over an hour for each policy and with little commission involved. We are really wondering if we should be in this business with very little commission involved. The government forgot to fund in this business. The government forgot to fund the agents when setting this up. We feel we should be allowed to charge a minimum of \$25 per hour to service these policies. Well, the only place I can see that you could even consider this, and I don't know if this is a property casualty agent, I'm assuming it is, because of the small town we got a lot of qualified property and casualty agents, and that's what this bill is saying. But it doesn't say anything about life or Medicare or something like that, so I don't know whether that would be covered or not. But nonetheless, he has a good point and what you say about...I don't visualize a lot of agents using this from our standpoint, at least at our board meetings that I've been at and all that, and I just don't see it. And we've seen the banks abuse this. I happen to have an automobile loan that had a \$300 payment come up in December. I got a holiday greeting from the bank saying we're going to forgo your payment this month and you can continue on the next month. And then down at the bottom was a \$75 charge...you stop to figure that out, what the interest rate and how they could ever do it, I don't know. I called the company. I said, is this correct? I'm going to pay \$75 when I only owe you \$300. And \$300 I figured I get 30 cents maybe from the bank if I don't pay it, but he said, yes, a lot of people are taking it. I said, well, it's got to be a fee and not interest certainly, because at that exorbitant rate...but nonetheless, the banks have had some pretty liberal situations in going and charging these fees. But I just don't think that the agents are going to abuse this. And I hope that you see favor on it because I think our agents have indicated they would like to see a statute on the books. [LB920]

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SENATOR CARLSON: Thank you, Mr. Elliott. Any questions? I've got a couple. On your survey, how many responded all together? [LB920]

JOE ELLIOTT: Oh, I think there was right around 48. I was a little disappointed in the total response because I thought this was an important issue, but they didn't. Evidently, those people that did respond probably didn't feel that convicted that they would charge. [LB920]

SENATOR CARLSON: And let me interpret, the 40 percent, that I think you said indicated it was okay to have it available, but they probably didn't want to use it. [LB920]

JOE ELLIOTT: That's right. [LB920]

SENATOR CARLSON: All right, thank you for your testimony. Next testifier? That's proponent. Any opponent? [LB920]

KORBY GILBERTSON: Good afternoon, Senator Carlson, members of the committee, for the record my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in opposition to LB920. Just to set the record straight, PCI does represent companies that write approximately 50 percent of the P and C business in the state. These are companies that I've been talking to on numerous conference calls regarding this bill that voted to oppose the bill. So if they're companies that are independently saying they support the bill, they haven't done so on calls that I've been involved with or during meetings that we've been involved with during the interim. There are several concerns with this legislation. Primarily, though, it's a public or consumer interest bill that something that would be allowed by the agents. I think Senator Langemeier might have misspoke a little bit in his opening when he said that the bill said that the department shall promulgate rules and regulations. The bill, as it stands right now, states that the department may promulgate rules and regulations. During a meeting that occurred this summer with Senator Pahls and Senator Langemeier and others, the department was asked whether or not they thought they would promulgate rules on this piece of legislation, and they said they, at that point, were not interested in doing so. They thought their time was better spent doing other things. So what you have in front of you is a proposal to have fees in place that would be unregulated. Now I understand that there are a lot of very good actor agents that might either not use these fees or would only do so in a very respectful manner. However, I think that as with all types of activity there might be some agents that overused this, or as Senator Christensen brought up, you have six different things that a fee can be charged for. A person comes in and as a matter of fact, during that meeting this summer when Mr. Cavanaugh was asked the question of how much this would cost on the average person for a renewal, they thought that the charges probably shouldn't exceed \$50 every time you needed to

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go in for a renewal. And you can ask other people who were at that meeting whether or not that was a reasonable amount of money. I think for some people that might not seem like a lot of money, but I think for other people who possibly walk into their insurance agent's office to make a payment with just enough money to make that payment, that \$50 might be more than they can handle at that time. This is a public policy issue that we think goes too far and might end up hurting the consumers rather than helping them, and it's taking a contract issue between agents and the companies and turning it into something that is going to be governed by the Legislature. We think that's a bad idea and for that reason, we'd ask that you indefinitely postpone LB920. Thank you. [LB920]

SENATOR CARLSON: Okay, thank you for your testimony. Any questions? Senator Pirsch. [LB920]

SENATOR PIRSCH: The proponents of the bill had mentioned that this was in place in a number of other states, is it generally in this form or have you surveyed other jurisdictions? [LB920]

KORBY GILBERTSON: I think it varies across the board. I think the language that they took out of Missouri, there's language from Missouri that was in LB62. The language that's in this bill, it's my understanding that this is language that Senator Langemeier worked hard on trying to come up with comments that were made during the interim during meetings that we had to come up with kind of a middle ground. [LB920]

SENATOR CARLSON: Other questions? Senator Gay. [LB920]

SENATOR GAY: Thanks, Senator Carlson. Korby, you said the department, they would not regulate this, so we don't have an agreement there. But listening to this case, your side versus the other side, it's an industry argument obviously. But what I asked earlier is if commissions are being driven down and we're trying for the consumers interest--let's say the best interest of the consumer, you've got commissions going down, then isn't there some point though where an agent should be able to run his own industry and do more of a consultive fee-based, is that common in this industry or not or why would this not help the consumer while in term because your agent could then be more of a consultant and say, well, listen I've got six policies here, especially an independent agent, this one's a little cheaper but there's these things wrong with it. Maybe there's somewhere in the middle for doing some of these. I know this chart is for other things, but long term, is the industry going to be going to a consultive basis? And maybe we don't have it this year. Why wouldn't they want to charge another fee to offset some of those costs? [LB920]

KORBY GILBERTSON: I can see what you're saying, and I think that if you have well-educated consumers that understand the difference between an independent agent

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and, as Mr. Cavanaugh said, calling the 800 number that you see on the bottom of the television screen, that makes sense. However, the problem is that most consumers don't know the difference. They don't know that there are different types of agents. They don't understand that there are captive agents, that there are independent agents. They see that sign on the outside of a building and assume that that sign represents that company. And so if one agent is allowed to charge fees, another one chooses not to, most consumers don't know that and if they get upset about a fee that they're being charged or something goes wrong, they don't blame that agent, they blame that company because that's who they think they're buying their insurance from. [LB920]

SENATOR CARLSON: Senator Pankonin. [LB920]

SENATOR PANKONIN: Thank you, Senator Carlson. Korby, and I don't know what states around here have this type of law. Obviously, Missouri's been mentioned. And the standard question would be if these insurance companies have to deal with other states in the Midwest, have they had experience that they don't like? What reasons do they give you on these conference calls that they don't want to do this? [LB920]

KORBY GILBERTSON: In discussions we have had, they have said that every state is different, and there have been deals made in different states based on different things that are going on, and the overwhelming comments that I've had repeatedly was they just think it's bad public policy to allow this. To start, if especially unregulated, that the insurance industry is very heavily regulated, to allow this type of activity to go on and not be heavily regulated is not a good idea. [LB920]

SENATOR PANKONIN: Thank you. [LB920]

SENATOR CARLSON: Senator Christensen. [LB920]

SENATOR CHRISTENSEN: Thank you. Korby, if this was changed so the director shall adopt, would that change your view? [LB920]

KORBY GILBERTSON: I would want her to know that I did not make that suggestion (laughter). [LB920]

SENATOR CHRISTENSEN: But understand that oversight, but if I change this to say "shall," would you support the bill then? [LB920]

KORBY GILBERTSON: I don't think they would necessarily support the bill, but I think you'd all be probably shocked at the fiscal note that would show up out of the Department of Insurance, but... [LB920]

SENATOR CHRISTENSEN: Thank you. [LB920]

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SENATOR CARLSON: Any other questions? Senator Gay. [LB920]

SENATOR GAY: Korby, I guess we get back on any insurance or other issues that we deal with. I'm not a big regulation defender either, but sometimes insurance sometimes we want to self-regulate ourselves in this industry. And that goes to the agent, of course; part of your job is to educate your client on the best, not to abuse it. Now there's always going to be cases of an abuse out there in anything, whether it's not property, but let's say life or anything else, to do what's best. A consultant says what's the best thing for you. So in this case, why are we not helping the consumer in being up front with them? In other issues, that's the thing I'd say in here is we want the consumer to be a better educated consumer, but we also want them to make their own individual choices. What we're saying is they can't make those choices. Is that the way you're framing this? All the agents would abuse this, wouldn't some use it very wisely and say it's the way I want to practice my business? [LB920]

KORBY GILBERTSON: I'm sorry, Senator. If that's what it sounded...I thought I was pretty clear in saying that I think there are agents that wouldn't use it all, there are agents that would use it very responsibly, but unfortunately there will be ones who don't. And if you're going to have a system like this in place, that's the fear. That the consumer...well, there might be very well-educated consumers that can make those decisions and find the best agent for them, there are others who don't, who are not as savvy and don't have that ability. [LB920]

SENATOR GAY: So if I could follow up the question, Senator Carlson. So I guess what Senator Christensen is saying is that if we did pass this, I think there has to be somebody to kind of be the referee between the two sides or to say, here's what's doable so it's not abused. And I guess I'm just listening to both sides of the story here, but at some point, I can see that side where, you know, we ask the consumer to be a better consumer, a more educated consumer, and then we have technology driving down everything else. There is a certain point, I don't care what you're representing, but it's part of your job in any insurance is to educate your client. They may not want to be educated, but part of it is that, and your ethical responsibility that we always are getting tested on and checked up, are we being ethically sound? To this, I don't see where it's a whole lot different than what we're asking agents to do in other situations whether it's securities, law, or something else. So I'm listening, I'm just kind of putting that out there, because I didn't want to put words into your mouth. I'm just kind of saying... [LB920]

KORBY GILBERTSON: No, and to that end I don't see how allowing fees to be charged changes how consumers are educated by agents. But I see it more as the Legislature getting involved in a marketplace. I mean, I think Mr. Jones said this isn't a company issue. The problem is we have two different systems and technology is changing a lot of things and the marketplace is changing. Well, that's life. It's affecting how everything in

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this world is done, and I don't think by instituting fees that will change that. [LB920]

SENATOR CARLSON: Any other questions? Thank you for your testimony. [LB920]

KORBY GILBERTSON: Thank you. [LB920]

SENATOR CARLSON: Next opponent. [LB920]

COLEEN NIELSEN: Good afternoon, Senator Carlson, members of the Banking, Commerce and Insurance 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 number of property casualty insurance companies doing business here in Nebraska, and I'm testifying in opposition to LB920. I'm not going to try to repeat basically what Korby has already said to you, but I do just want to point out a few things. First of all, I think that Korby's right in saying that the insurance companies basically have taken the position after going over all the issues that we have discussed in this bill, and decided that essentially this is bad public policy for Nebraska, and whatever any other states have decided, for Nebraska, they feel it is bad public policy. If you take a look at the old law, I mean this law has been on the books for a very long time, and basically what it says is that it's unlawful for an agent to charge fees that isn't already in the policy. And what was the purpose of that? I think it's a no-brainer. It's just so that when somebody buys insurance, they know that they're paying this particular premium and that's what they're paying. And what LB920 would do would be allowing agents, depending on their business, to charge additional fees for the privilege of getting that insurance. If the agent has problems with whether or not their commissions are adequate for them to do business any longer, then that should be an issue between the insurance agent and the company. It should be negotiated between the insurance agent and the company, instead of the agents coming to the Legislature saying, and we need more money. I don't understand why that hasn't been addressed at this point in time. So that's the number one issue, I think. Number two is basically this situation would definitely be unregulated. There is no way that the department would have any of the resources necessary to regulate this situation. And the companies wouldn't be able to regulate it either. The companies could contract with the agents and say, no, you can't charge fees with our company. But in the case of an independent agent who represents several different companies, how will that happen? Some companies allow the fees; some companies don't. Who's going to get the business within the insurance agency? I think that's very, very confusing to the consumer as well. And finally, I think the thing that bothers me the most is the example that the gentleman who testified from South Omaha talked about. And that is that in this bill you are allowing, under different circumstances, different types of fees. And one of them is for making regulatory filings for an insured or applicant for insurance. He talked about the SR-22, and basically what he's talking about is allowing agents to charge fees to individuals to get insurance to these individuals who can least afford to buy insurance. We're talking about people who

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have hit on hard times or whatever, who live paycheck to paycheck, and then not only have to pay the regulatory filings--the SR-22s, which involves \$125 fee with the Department of Motor Vehicles, but then get slapped with another \$25 to actually have that filing occur. And my understanding is that that filing, it can occur through an e-mail--electronic filing--or the person can do it on their own. But that's what I find really problematic about this bill, because it may hurt the consumers that need the most protection. And I'd be happy to answer any questions. [LB920]

SENATOR CARLSON: Okay, thank you. Senator Christensen. [LB920]

SENATOR CHRISTENSEN: Thank you, Senator Carlson. Coleen, I understand. I hate to see some of these charges come in, too. But for one like insufficient fund checks, you know, that's probably should be added. Would you agree or... [LB920]

COLEEN NIELSEN: I think that when an agent negotiates his commission or however that contract occurs between the insurance company and the agent, that has to be taken into consideration. And so those expenses are contemplated within that contract between the insurance company and the agent, and it shouldn't be passed on to the consumer. And that's how the law has always worked in Nebraska since this law's been into place and that's how I think it should continue. [LB920]

SENATOR CHRISTENSEN: But I guess, you know, anywhere else that you write a bad check, you get charged. You know that for one, I can't see being a fair deal, but thank you. [LB920]

COLEEN NIELSEN: You're welcome. [LB920]

SENATOR CARLSON: Senator Gay. [LB920]

SENATOR GAY: Coleen, two things and I can see both cases where this could be abused in a certain...those that probably are not as educated could be abused, but on the other hand though I keep saying tell me why this could be a good thing longer term. And I say I'm not that familiar with the agency. But bigger companies, when you're buying a very complex insurance program, will hire a consultant all the time, and they'll say, well, here's what you can do and they'll pay for that. But the smaller person, at what point is the insurance industry going to change where they say, well, for \$300 or \$200 I'll review all your insurance, and it's flat fee basis versus just straight commission. Is that changing, that the industry is going away from commissions or is it always going to be just flat out commissions? Because what you're implying is, well, commissions will cover everything. But if commissions are getting squeezed and the agents out there trying to represent a...you know, you have an agent system where he's trying to represent that, at what point is the insurance company going to squeeze it out of someone? They're going to push it all to their agents. Now the agent can say, I'm not

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going to handle ABC Insurance any more, the heck with it, they don't pay good enough. I'm not going to offer that. So I see where you're coming from that way. But I guess the question is, is the insurance industry changing that this would never be a case or just not the case now? Or just flat out always opposed to it, because how can 18 states think it's a good idea and here we think it's bad public policy? And then another thing, when you're talking about these fees where you got to go file it, what's being done electronically or to help the agent that he can say I can just get online and take care of a lot of this for you? Or do I have to actually march down, I need to go create this work? Is the work getting easier to do? That's a lot to throw at you, but... [LB920]

COLEEN NIELSEN: Okay, first of all, you know, with the consulting aspect of that, this isn't a consulting bill. And I know that you know that, that these are basically just fees that the agent is tacking on so that they can make copies, send filings to the department, whatever they have to do. [LB920]

SENATOR GAY: If they are abusing it. [LB920]

COLEEN NIELSEN: It's extra things in their business that they're going to charge the consumer for. I think that the consulting issue is an entirely different issue not contemplated by this bill. And whether or not you'd need a new law to allow a property casualty agent to consult with a client about their insurance needs and things, I don't know. But that's not what this does. This is just simply operational fees that we're passing on to the consumer. [LB920]

SENATOR GAY: Can an agent do that now, charge a fee? [LB920]

COLEEN NIELSEN: And that's a good question. I don't know. [LB920]

SENATOR GAY: Can you charge a fee and I'll do it all for you? [LB920]

COLEEN NIELSEN: According to this... [LB920]

SENATOR GAY: We don't know that. [LB920]

COLEEN NIELSEN: It appears not from this language, but I don't know in terms if you framed it in terms of consulting, I don't know whether you'd be able to do that. And the second part of your question was, is it getting easier? Yes, I think in a lot of instances it is. I know that the DMV did not allow SR-22, electronic filings and now they encourage it. They want the agents to just e-mail them because the stack of papers is incredible. So it is getting easier. [LB920]

SENATOR CARLSON: Senator Pankonin. [LB920]

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SENATOR PANKONIN: Thank you, Senator Carlson. Coleen, just on this...I have a twofold question also. I want to know...I'll ask two different questions, the SR-22, tell me a little more how that works and what comes into play and the fee that the state charges on that. Just explain how that works one more time. [LB920]

COLEEN NIELSEN: Okay, an SR-22 is usually required in, I think, about six different instances. And I can't think of all of them, but one of them is DUI revocations, if your license is revoked for some reason. The other one is if you didn't have insurance at a time and had an accident, and a judgment was rendered against you your license is revoked. So what happens is that when these people want to go back and finally get their insurance (sic: driver's) license, they have to get a certification from their agent and present that to DMV. So they go to their agent, they're usually given a substandard policy, they're high risk, and they get a certification, an SR-22 form that used to be on paper filled out basically saying we're covering this individual as of this date, and then they take it to the DMV who charges them a, I think it's \$125 fee to get the license. So not only are they paying for higher insurance rates because of this, but then they charge a fee...they have to pay for a fee at DMV, and now they're saying, and the agent wants to charge them a fee as well. So it's a big hit for people that are trying to get insurance, and these are high risk drivers; we want these people insured. We don't want to discourage them from getting insurance. [LB920]

SENATOR PANKONIN: And that's what I'm debating here because I can understand the purpose there to have those folks have insurance. On the other hand, I can tell you probably from a business standpoint, those people take a lot of time, they're a lot of trouble. And sometimes...are we going to get to the point where agents...I know they're high risk, maybe those premiums are pretty good, but they don't pay on time. You're always having to follow up, they're coming in late, and on and on and on. You know, is it going to be where if we don't have this fee structure, will people just say like the gentleman, I'm not just going to close my operation in South Omaha. This Fort Calhoun deal is so much easier. I mean I don't know if that's going to happen where if we don't have the fee structure, people are going to get in some of those situations where you're just going to say I'm not going to mess with it, it's just not worth it. But maybe the premiums are high enough. I don't know, I'm just kind of theoretically asking if from a policy standpoint, are we going without the fees, knowing that there's a chance for abuse, and these people are already paying a lot. But is it going to be where agencies don't even want to mess with it because of the other, all the babysitting you've got to, and all the work you have to do with these folks who aren't as responsible. Obviously, they're driving records aren't as responsible, and they're not as responsible about paying and on and on. I don't know, I can't answer it, you can't answer it probably either but whether that could happen, I'm not sure. [LB920]

COLEEN NIELSEN: And I can't answer that question, only to say that generally there are specific kinds of companies that deal in this substandard business. And so I'm

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guessing that they take all that into consideration, because that's their specialty. [LB920]

SENATOR PANKONIN: Okay, thank you. [LB920]

SENATOR CARLSON: Any other questions? Okay, thank you, Coleen, for your testimony. Next. [LB920]

JAN MCKENZIE: Senator Carlson, members of the committee, for the record my name is Jan McKenzie, spelled M-c-K-e-n-z-i-e. I'm executive director and registered lobbyist for the Nebraska Insurance Federation, an organization of Nebraska-based companies, most of which are life and health but six or seven of which are property and casualty and work comp. I'm here today in opposition to LB920 with maybe a little different slant. Last year we did not testify on the bill that Senator Langemeier introduced and sometimes I think in all best efforts, things maybe get a little too specific to the point that this year we're in saying we can't support the bill and basically for these reasons. It has generally been the policy of the companies not to support fee bills for the agents. This one now is so specific in terms of what can be covered and what can be charged, that we're now in a position of saying it's probably not a good idea to put dollar amounts in specific laundry lists and statute. And so maybe it's gone a little too far, especially relative to the conversation, Senator Gay, you've brought up as to where is this industry moving. How will we be doing business? How does the relationship between the company and the agent and the Internet work, and where we have captive agents and independent agents and Internet? Just as an experiment I went online thinking I would shop my P & C package for my health insurance, my car insurance, everything around. And in ten minutes, I had filled out a little form and zipped it off and got notice back from five companies in my e-mail saying that someone would contact me within 48 hours. And in every case I was contacted by a company agent or an independent agent in Nebraska within 48 hours with a potential bid, just based on the few things I popped in. So it creates a whole new, I think, conundrum for us in terms of how is this industry going to do business and how does it all work out in the future? Also, just to answer one of the questions that you had brought up earlier, Director Wagner had talked about the fact that company commissions had gotten less adequate in terms of the cost of doing business overall when you looked at the fees and requirements, and what agents had said had been happening over time. So that is, in fact, a reality and the way to deal with it and address it is, I think, a challenge, especially as the time we look at finding a solution in this bill might be too narrow for what the real world might be like in two or three years. So with that, I would answer any questions you might have, but our basic opposition is to narrow definitions and, I guess, also putting dollar amounts in statute because we know how that works. You have to come back in every two years to change it. [LB920]

SENATOR CARLSON: Any questions for Jan? Senator Gay. [LB920]

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SENATOR GAY: So the tools are out there, basically they're changing their policies, Nebraska agents still calling you, let's say now is not the time on this. Just a quick, brief summary. Down the road, is there going to be a time, do you think, where this is an option, because like I say, something's got to give if you're driving a commission down, then this will all be done on the Internet. And maybe that's just the way it goes, but is there an option where an agent can have a better business model and incorporate some of these into it because if everyone else is being forced to do a fee for service in other industries, that's the norm, or that's the way it's going in the next five or ten years. [LB920]

JAN MCKENZIE: Well, it was interesting to me the response I got from just a little query on the Internet and who I heard from, and the fact that they were agents in Nebraska--two from Lincoln, one from actually up near Grand Island. So apparently some of them have figured out or connected in a way that allows them by either zip code or phone number or whatever address I popped into that Web site overall, to fire that to those agents. And it's a model I didn't know existed and I thought it was really quite interesting. And I didn't know how those agents were involved in it, but apparently it's a way for them to generate new business. [LB920]

SENATOR CARLSON: Any other questions? Senator Pirsch. [LB920]

SENATOR PIRSCH: Just in getting back to the specificity with which you said the statute. Was that designed as a measure to mitigate the departments, otherwise requirement to promulgate more guidelines with respect to what's now mentioned specifically in the statute? In other words, do you think that helps to ameliorate the need for specific guidelines by the department or do you think that really doesn't have any effect upon...it doesn't help that area? [LB920]

JAN MCKENZIE: It's always one of those two-edged swords where I know in the beginning people said it's too broad, it's too wide. It's not specific enough, and then as you get it specific, then you bring up the other edge of the sword which is, now we have a laundry list in statute that may need to be amended as new. Problems are new, needs or new services arise, and then also, well, at some point in time the \$5 will be adequate or the \$25 won't be adequate or maybe it should be \$10 to \$15 or \$10 to \$25. So I don't know that it was done and I think Senator Langemeier could probably better answer that as he worked a lot more on the compromise discussions during the interim. But I think it's always a challenge in legislation, so... [LB920]

SENATOR PIRSCH: Thanks. [LB920]

SENATOR CARLSON: Any further questions? Okay, thank you, Jan, for your testimony. Any other opponents? Anyone testifying in neutral position? If not, Senator Langemeier, you may close. [LB920]

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SENATOR LANGEMEIER: This chair is warmer after a while. I want to thank the committee for their great questions. And first of all, when we talk about the narrowing down of this, I don't want anybody to think this was a compromise, that all sides came together. I think what we did is tried to take some of the views that all the sides brought together and tried to create a bill that tried to address what we could. I don't anybody to think it was a compromise. I also want to address...if I said that the department shall, I can't read my own typing here, but it is may--the department may promulgate rules and regulations. Couple thoughts, Ms. Nielsen said that this should be part of the company's negotiation between the company and the agents. If the agents by statute can't do it, how do you negotiate? Think about that a little bit. The second thing is Ms. Gilbertson said that this is a public policy issue and I will not argue that. I believe it is a public policy issue, and I believe that's why you are here. That's why you were elected, to deal with public policy issues. That is your job. And with that, thank you all for your great questions, and I can't say I've gotten a better fair and open hearing and I appreciate it. Thank you. Are there questions of me? [LB920]

SENATOR CARLSON: Did you have a question? [LB920]

SENATOR PIRSCH: No, I guess not (laughter). [LB920]

SENATOR CARLSON: Thank you, Senator Langemeier, that concludes the hearing on LB920. [LB920]

SENATOR PAHLS: Thank you, Senator. We are now ready for LB792. Senator, welcome. [LB792]

SENATOR KARPISSEK: (Exhibit 1, 2) Thank you, Chairman Pahls, members of the Banking (sic: Commerce) and Insurance Committee. My name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I bring to you LB792 today. LB792 deals mainly with the ability for an insurance agent to access the policy for their customer. I did bring an amendment that we just quickly typed up before we came, that it can be redone--it has not been to bill drafters yet, but we will redo it. I'm just going to...I also have a letter from my constituent that brought it to me. I will let you read that. The biggest issue that we have here is if one agent goes from XYZ Company over to ABC Company, and they're independent insurance agents, when they move over and they sold one brand of insurance, and move over and stayed with that same insurance, a lot of times they cannot access that account until the maturity date, so they can't actually do the insurance for that person. So if I am with that insurance agent, I want them to be my insurance agent all along. Some companies are very good about letting the new person access the account right away. Some are not as good and you have to go through customer service and get written documentation to make sure that you can access that account. The amendment brings up the issue of how many...well, we said 15 days, you

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had 15 days that you could not have access to the account. We're trying to ask for 15 days that you can have access to the account, the new insurance agent. What we had in was when the insurance producer of record was in the bill and with the amendment we are taking that out, because this issue is not about the commissions that happened to go along with the insurance policy, which is usually when everything changes is the annual date or whatever date that the company sets up. This only has to deal with access to the account and the date when the change a provider will still be on the anniversary date or whatever the individual insurance company wants to do. So again, all this bill wants to do is make sure that an insurance provider can access my account if I choose him...that I moved insurance companies or he moved insurance companies. And with that, I'd take any questions. [LB792]

SENATOR PAHLS: Do we have any questions? Senator Gay. [LB792]

SENATOR GAY: Welcome. [LB792]

SENATOR KARPISEK: Thanks. [LB792]

SENATOR GAY: Senator Karpisek, so if I'm reading this letter real quick, I'm kind of glancing through this, if you're with company A in McCook, let's say, and you're moving to Lincoln, you're still going to be with company A with a new agent. But you're saying it has to be within 15 days that they have to hook you up so I can view my client's records. But is it only within the existing same company? [LB792]

SENATOR KARPISEK: Right, only with the existing same company. If you change... [LB792]

SENATOR GAY: You just have to be able to it access in 15 days. [LB792]

SENATOR KARPISEK: Right, because I think if you're changing companies, that would be a completely different, that new company...you would be the new person of the new person of record, and so you would have access to that account from the beginning. [LB792]

SENATOR GAY: Is there a penalty in here that... [LB792]

SENATOR KARPISEK: Yes, there is. There's a \$1,000 penalty if that was not done, UCC code. [LB792]

SENATOR GAY: Thank you. [LB792]

SENATOR KARPISEK: Thank you. [LB792]

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SENATOR PAHLS: Senator Carlson. [LB792]

SENATOR CARLSON: Senator Pahls. Senator Karpisek, so that is a \$1,000 penalty on the company that didn't make the transfer, correct? [LB792]

SENATOR KARPISEK: Correct. [LB792]

SENATOR CARLSON: And enforceable by the Department of Insurance? [LB792]

SENATOR KARPISEK: Yes, and since we've amended it or we're proposing an amendment, it's not that...they just have to give them access now? They don't have the...they don't have to change the producer of record. [LB792]

SENATOR CARLSON: And 15 business days after that company has been notified, that would be by the insured. [LB792]

SENATOR KARPISEK: Yes. [LB792]

SENATOR CARLSON: And I don't know this, are there standard forms to request that? Sometimes you can't read somebody's writing. [LB792]

SENATOR KARPISEK: Right. Most of the companies do have a standard form and, again, most companies are pretty good about doing this, but there are a few that don't want that to happen until the maturity date comes up or the annual date comes up. So in the meantime, someone else is servicing that account, may not be doing the job they want or they just want their same insurance person to take care of their account. [LB792]

SENATOR CARLSON: Okay, thank you. [LB792]

SENATOR PAHLS: Seeing no more questions, thank you. [LB792]

SENATOR KARPISEK: Thank you. [LB792]

SENATOR PAHLS: Proponents? [LB792]

JIM CAVANAUGH: Senator Pahls, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska appearing in support of LB792. I think Senator Karpisek did a good job of outlining the intent of the bill. Our agents are kind of the people in the middle on these transactions and obviously if we're representing somebody on a policy, we need access to that policy to give them timely and informed advice on our representation. So for that very common-nonsensical reason, the bill

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makes a lot of sense. I'd also point out that the penalty involved here under the jurisdiction of the insurance department is the same one that's involved in the bill that you just heard, LB920. I'd be happy to answer any questions you might have. [LB792]

SENATOR PAHLS: Senator Christensen. [LB792]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Why isn't this occurring now? I've had the same problem when I moved to Imperial. I had to do it on my expiration date or renewal date. Why doesn't this occur now? Is it a statute that's causing this to happen on our end? Or is this just laziness on insurance companies? [LB792]

JIM CAVANAUGH: Well, I don't think it's laziness. There's just no duty on the insurance company without statutory duty imposed by language, like you find here, to do what you're talking about. It makes a lot of sense, but the whole industry as we just got done talking about on the previous bill, is pretty regulated, and that's what everybody goes by is what's on the books. What does it tell us to do? And if it doesn't tell you to do this, well, you don't do it or you don't have to it. There's no downside for not doing it. A lot of times when this occurs, my agents tell me I leave an agency and go someplace else and people like me and so they come with me. Or there's...this transaction occurs for whatever reason, a lot of times you just start maybe a new policy, just drop this policy and start a new policy, and then you already have access to it that way. But you know, if somebody's satisfied with the company, they just want to follow the agent. It's kind of like, I'm satisfied with the haircut, I just want to follow the barber, you know (laughter). And so this allows you not to go through that, but if you really wanted to do what you're talking about under a current thing, you go to your agent at the new place or whatever producer you pick and you say, okay, let's drop this coverage and we'll start all over again with new coverage. [LB792]

SENATOR CHRISTENSEN: Thank you. [LB792]

SENATOR PAHLS: Senator Carlson. [LB792]

SENATOR CARLSON: Senator Pahls. I want to go back to what I asked Senator Karpisek because it just happened to me over the weekend. I'm not interested in protecting companies when they don't do what they're supposed to do. On the other hand, I made a request that I be agent of record and I decided do I print this out, and I got pretty good printing, I think they can read my printing. And then I decided at the last minute, maybe I better have it typed just so there's no confusion, so I could see some confusion on a form because you get mail and I got mail. I can tell who sent it, and I can't tell what they're trying to tell me. So and you don't want to require that it has to be typewritten because that's a nuisance, but I could see a problem there. And yet that's a pretty poor excuse if they can read it, they ought to respond to it. [LB792]

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JIM CAVANAUGH: I agree with that. You know, there's a whole area of insurance regulation just relative to forms. And you know, we've had a lot of model legislation, you've heard a lot of model legislation come through this committee in the last five to ten years, relative to standardization on rates and forms. And they filed them with the insurance department, and you used to have to get prior approval. Now you can file them. Unless something goes wrong, you don't have to get the prior approval. So you know, we operate in that kind of an environment in the insurance industry where presumably there is a form that company X has, and you know, if you don't have your form filled out, well, we don't maybe recognize what we should in terms of your very neatly printed or perfectly, clearly typed authorization to change that, well, that's why the form exists, and that's why they file them with the insurance department so there's some kind of standardization. That's as good an answer as I can give. [LB792]

SENATOR CARLSON: Well, a \$1,000 fine to a company is not a big deal. But that's still a...it's a fairly significant amount of money, so we get this typewritten out, it's policy number 12345 and it gets typed as 12346. [LB792]

JIM CAVANAUGH: Right. That happens, I suppose. I mean, to err is human. [LB792]

SENATOR CARLSON: So somebody has got to determine whether it is intentional or unintentional to pay \$1,000. [LB792]

JIM CAVANAUGH: Right, and I think there is yet an element of intent and the Unfair Insurance Trade Practices Act, I mean, simple mistakes are not viewed the same as intentional mistakes and, you know, it's like we have in the criminal code. Most crimes contain an element of intent where you have to intend to have done the bad thing rather than accidentally do something that might have been bad. But, you know, I think that everybody in the insurance industry, though, is sensitive to the Unfair Trade Practice Act. I mean, it's universally recognized as the stick that kind of keeps people in line. And where maybe the dollar amount isn't particularly significant all the time, it's the fact that you got tagged with that and that follows you. Your reputation is all you really got at the end of the day, and I know from experience that people respond to that when you kind of bring up that phrase, their ears perk up and they make sure that they're doing the right thing. So I think it's an effective deterrent. [LB792]

SENATOR CARLSON: Okay, thank you. [LB792]

SENATOR PAHLS: Senator Gay. [LB792]

SENATOR GAY: Earlier on the prior bill, it said 18 other states are doing this. How many other states are doing this, where they require that you have to have this by 15 days? I mean, yeah, I understand, sometimes the company's not giving you what you want and it's very frustrating. Are there other states doing this or would we be unique?

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[LB792]

JIM CAVANAUGH: You know, I'm sure there are. I can't give you a number, but I'd be happy to work with Senator Karpisek to get you a number. [LB792]

SENATOR GAY: Thank you. [LB792]

SENATOR PAHLS: I see no more questions, thank you. [LB792]

JIM CAVANAUGH: Thank you. [LB792]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? [LB792]

KORBY GILBERTSON: Good afternoon, Chairman Pahls, members of the committee. For the record, my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America, in a neutral capacity on LB792. First of all, I'd like to thank Senator Karpisek for his willingness to work with us on trying to address some of the issues that were in the green copy of the bill. The bill, as drafted, kind of had two different issues in it. One would be the change of the agent of record, and then the second one would be the access to the policies so that the claims could be processed, things like that. When we discussed the legislation, the issue that came up that would cause major problems for a number of companies is that different companies based on different contracts, with different agents, and how they do things impact how the agent of record is changed. And so there are various rules regarding how many days an agent has to go to try and get the old customer back, how many days they have before it changes over to the new agent. And all of that led to a lot of gray area that we thought might best be left out of this legislation if the issue, which I understand to be...the bottom line issue is that the agent should have access to the policy so that they can help service claims or help that customer who wants to go to a new agent, which would be why the language was changed to what Senator Karpisek provided for you in the amendment. With that, I'd be happy to try to answer any questions. [LB792]

SENATOR PAHLS: Senator Langemeier. [LB792]

SENATOR LANGEMEIER: Senator Pahls. Thank you, Korby. So you're neutral right now? [LB792]

KORBY GILBERTSON: Right. [LB792]

SENATOR LANGEMEIER: But if we adopt that amendment you become...still neutral. [LB792]

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KORBY GILBERTSON: I think they're still...they were opposed as the bill is originally drafted, with the Senator's amendment, neutral. [LB792]

SENATOR LANGEMEIER: Okay, thank you. [LB792]

SENATOR PAHLS: Seeing no more, thank you. [LB792]

KORBY GILBERTSON: Thank you very much. [LB792]

COLEEN NIELSEN: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I am testifying neutrally on LB792 on behalf of the Nebraska Insurance Information Service. We had some discussion on this bill at our meeting that we held recently. I will tell you that I think that the insurance companies were disturbed that this sort of problem has occurred, that there was a problem with changing agents of record and that the customer wasn't served. Therefore, based on the amendment offered by the Senator, we have decided to testify neutrally on this bill. And I'd be happy to answer any questions. [LB792]

SENATOR PAHLS: Seeing none, thank you, Coleen. [LB792]

JOE ELLIOTT: My name is Joe Elliott, E-l-l-i-o-t-t, with the Professional Insurance Agents Association. I'm in neutral position, but really I can't see any need for this bill. I have been in the business for a lot of years, both in the company and the agent end, and I don't think we ever haven't been able to work out an agent's letter of record. Sometimes there's some lengthy discussion, but it's so important that this letter of record is sent to the company prior to the expiration date of the policy because the minute the company issues that policy, that's a contract between the company and the insured, and you can't change that. So if there's any change made a week later, you can't give commission to the new agent. There's no way you could do that. If a policy comes up midterm--all policies that you write for insurance don't come up at the same time--you might have one insured and maybe he's got three different expiration dates for the worker's comp and the general liability, and so forth. So you run into a problem with that when you designate a specific number of days that you've got on here. But what you can do is you can ask the company with this letter of record if it's past the period when they've written the policy, you can say: I, as an insured, want you to cancel and rewrite the policy. But you've got to come up with your all new information and your applications. And that's been a procedure that I've known and it's been well accepted and I just haven't seen many problems from the company's standpoint or the agency standpoint. And so I just have mixed feelings about, you know, saying that they should put this in there because when you say after the authorization of the transfer of business, well, if you're after the expiration date, then you're going to have ask to come in with your own applications. In most cases, I think companies will still give you some

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information, but you've got to then have the letter saying you want to cancel and rewrite. And I know I've been in the bond business for many, many, many years and you're dealing with financial statements there, and you can't use somebody else's financial statement. You've got to expect that new agent to be able to have the expertise and the ability to get a financial statement, which isn't easy sometimes, from an insured too, and all the underwriting information that goes with it--you can spend two, three weeks in some cases trying to get all that information together. So I know you've got to honor the insured's intent and what he wants to do, but the company has a contract with that insured and you can't change that contract unless you've got the specific authority to do it. So that's why...and I think companies can work this out with agents. If they don't, then there is going to be a parting of ways between the agent and the company at some point in time. That's all I have. [LB792]

SENATOR PAHLS: Any questions for Joe? Thank you for your testimony, appreciate it. Senator Karpisek, closing? [LB792]

SENATOR KARPISEK: Thank you, Senator Pahls and the committee. Again, the bottom line is we want the insured to be able to have the agent service their contract. It's not about money being changed mid-contract; it's not about anything other than the person that you want to service your contract to still be able to service your contract. Again, not all companies have done that even if the change has been sent in. They seem to kind of make them go through a couple different channels because the company that they were with is probably trying to keep that business because somebody new probably had it when they left or even where you moved the other agent is trying to keep your business rather than to let it go to a new person. I think the biggest problem that my constituent had was maybe some elderly people that have had him as their agent for years and maybe something came up and they weren't getting the service that they expected that they got from him for years and he really couldn't get at the contract to see what was going on to change it for him. It really made them very anxious and scared to not know what was going on, so that is the crux of it. And thank you for your time. [LB792]

SENATOR PAHLS: Any questions? [LB792]

SENATOR KARPISEK: I would like to say, too, the 15 days, if the committee would think 30 days would be a more reasonable number, I think we could live with 30 days. Again, and the fine was up to \$1,000, it was not automatic \$1,000, but I'd be glad to work with the committee as they see fit. So, thank you very much. [LB792]

SENATOR PAHLS: Thank you, Senator. That closes the hearing on LB792. [LB792]

SENATOR LANGEMEIER: Chairman Pahls, you are recognized to open on LB918. [LB918]

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SENATOR PAHLS: (Exhibit 1, 2) Thank you, Senator Langemeier, members of the committee. My name is Rich Pahls. I represent District 31, "the Millard of Omaha." I have two exhibits that endorse this bill, LB918. LB918 will update the deposit cap statute so that it works better in today's changing, more global economy. In short, the legislation allows Nebraska banks to voluntarily identify customers from outside Nebraska. The deposit from these customers would not be calculated in the Nebraska deposit cap. The question is: What is a deposit cap? Our bank holding company statutes provide that the bank or bank's owner controlled by a bank-holding company cannot have deposits in Nebraska greater than 22 percent of the total deposit of all banks in Nebraska, plus deposits in savings and loans associations in Nebraska. With the growth of the Internet and the global competition for the deposit, the landscape is completely changed from the preelectronic world. The deposit cap was intended to prevent one bank from gaining too large a share of the deposits in Nebraska. This bill does not diminish that goal. It still prevents one bank from gaining control over too large a share of Nebraska deposits. However, it does not discourage banks from competing in the global marketplace and attempting to attract deposits from other states. In the current marketplace, depositors are looking for return. They do not look at returns by walking from bank-to-bank comparing interest rates; rather they sit at their computers in New York, Chicago, west Texas or rural Wyoming and compare interest rates on their computers. When they find an attractive rate, they do not run down and hand a teller an envelope, rather they click on a transit button on a Web site and their commerce is complete. Nebraska banks seeking deposits globally are competing with each other. They are competing with banks in other states or they are competing with insurance companies or other financial-related institutions around the country. I believe LB918 is important because it allows our Nebraska banks to compete in a global marketplace while still allowing them to compete in Nebraska. It seems to me that we want to encourage our Nebraska financial institution to attract outside capital into this state, rather than penalizing them for doing so. I look forward to hearing the testimony and comments from those representing the banking communities that are here today. I would like to ask you to advance LB918 to General File. Thank you. [LB918]

SENATOR LANGEMEIER: Are there any questions? I only have one. You said they're clicking on their mouse in rural Wyoming. We can't do that in rural Nebraska, so maybe we need to work on that a little bit (laughter). [LB918]

SENATOR PAHLS: Good, yes. [LB918]

SENATOR LANGEMEIER: Thank you for your testimony. Next proponent? [LB918]

NICHOLAS BAXTER: Mr. Chairman, senators, good afternoon. I'm Nicholas Baxter, N-i-c-h-o-l-a-s, Baxter, B-a-x-t-e-r, senior vice president with First National of Nebraska, testifying on behalf of First National Nebraska, the Lauritzen Corporations, First National

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Bank of Omaha in support of LB918. First National and Lauritzen Corporations are currently the largest holders of deposits and makers of loans amongst banks in the state of Nebraska. I would like to testify in support of the proposals included in LB918. To clarify certain language within the current deposit cap legislation originally passed in 1983 as LB58 and subsequently amended several times. As you're aware, the bill proposes no change to the current deposit cap level of 22 percent. The bill is proposing to permit the exclusion from the total deposits in the state calculation and total deposits of any institution calculation, deposits that do not belong to residents of the state. On a totally voluntary basis, any bank would be permitted to elect, through the Department of Banking, to have excluded from its total deposits all those deposits that originated with customers resident outside of the state of Nebraska. In addition, the Department of Banking would exclude the same number from the published totals of all deposits in the state. The election would take the form of a written communication to the department, validated by referral to public reports, filed by the electing bank with a federal government agency. We believe that the methodology contained in the bill is acceptable to and welcomed by the Department of Banking. Once the total nationwide deposits of a Nebraska bank or group of affiliated banks exceeds the deposit cap, further growth by any of those banks is restricted within the state. It could be said that the benefit of these additional deposits would therefore be lost to the state. And due to the lack of clarity in the current statute, we may have created an impediment to beneficial growth. Under the current statute, a bank is penalized for successfully bringing deposits into the state. Deposits that could be used for business development and investment, to lend to Nebraska citizens and businesses, and that form a core of deposits subject to tax under the state's deposit tax infrastructure. LB918 does not propose any change or clarification that relates to the deposits of Nebraska residents or the level of such deposits that would be held by any affiliated banking entities. It therefore suggests no changes to legislative intent and protections imagined in the original 1983 legislation. The legislation would permit Nebraska banks to continue to attract deposits from outside of Nebraska, deposits that benefit the Nebraska economy, and it does not remove the protections against the consolidation of state deposits that has been seen as potentially risky for the state. We appreciate the opportunity to testify in support of the bill, and believe that the bill properly clarifies and resolves a situation that might otherwise have a negative impact on business development and growth within the state. I'd be happy to take any questions that the committee might have. [LB918]

SENATOR LANGEMEIER: Thank you, Mr. Baxter. Are there any questions? We'll start Senator Pankonin. [LB918]

SENATOR PANKONIN: Thank you, Senator Langemeier. Hi, Nick. I always like that accent. I know you didn't grow up in Nebraska (laughter), but we won't hold that against you by any means. Just a couple kind of technical questions. One of the things I think might be helpful if you explained that besides the state statute or rule, there's also federal guidelines in this area on deposit cap that would still effect the First National and

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their affiliates. [LB918]

NICHOLAS BAXTER: Yes. The current federal deposit cap legislation basically maintains that no bank or affiliated group of banks can maintain more than 10 percent of the deposits in the nation. Currently, that 10 percent is around \$674 billion as of 12/31/07. The cap for Nebraska would be around, I think, 7.9. The bank that's closest to the national deposit cap is Bank of America, and Bank of America is running around \$605 billion at the moment. So that statute on a federal basis still applies and would not be impacted by any changes that we've got here. [LB918]

SENATOR PANKONIN: You also mentioned about how and it talks about in the bill that the banks report the amounts of deposits are so segregated, now is that a voluntary, you know, obviously system-wise it'd be easy to say all deposits for Nebraska addresses. (Inaudible) really shouldn't be hard, right? If you don't report that call report, how would the Department of Banking know how this works? [LB918]

NICHOLAS BAXTER: The discussion that we've had with the Department of Banking has been really focused on two issues. One, to make sure that the election does not create excess work on the department. And secondly, that allows the department to validate the information put forward by the bank against a federally-submitted report. So there's a method of independent validation of the numbers. The way we understand it would work is that the information that we would use to deduct the out-of-state deposits would be included on the statement of deposits that is supplied by each bank to the fed on an annual basis. In order to make it simpler for the Department of Banking, we would also supply an additional letter outlining the numbers. They could then validate against that statement of deposit report without actually having to go to the report in the first instance. [LB918]

SENATOR PANKONIN: Let me just give you one example that could likely happen and how it might be handled. I know, obviously you're an Internet bank...let's say an individual or couple or whatever that goes to Arizona or someplace warmer in the winter, but actually maintains a residence in Nebraska in the summer and probably consider themselves to be Nebraska residents because they're maybe down there for three months. But they're in the Phoenix area, they go on the computer and they want to put their money, and even though it's coming from Phoenix, but address-wise, how do you handle a situation like that if... [LB918]

NICHOLAS BAXTER: The way that we have approached that is when we ask the people when they sign up, we're asking if they have a state of residence for tax purposes, so that would really resolve that. We follow the taxing statutes. [LB918]

SENATOR PANKONIN: Okay, perfect. Thank you. [LB918]

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SENATOR LANGEMEIER: Thank you, Senator Pankonin. Senator Gay, do you have a question? Senator Christensen? I have one question, and I'm thinking about who I could use for an example here but sure as heck wouldn't be me, but I'm going to follow off what Senator Pankonin said. What if I'm a resident and I have my deposits with your bank now, and I opt to make my three month stint in Arizona my permanent residence and become a permanent resident of the state of Arizona? Now I'm a nonresident and I make another deposit, are you going to take every asset I have within your bank already? Become a nonresident? I mean it's very unclear, it wouldn't say that a transfer of residency, now my savings account...let's say I had \$1 million in savings and I decide to make Arizona my permanent residence. Where would that be? How would we treat that \$1 million tomorrow? [LB918]

NICHOLAS BAXTER: We would basically look at that as to how we complete the statement of deposit reports that we file with the federal government. So from doing that, the way that we've discussed this with the Department of Banking is that when we look at the Internet banking deposits, then we will go through those that have Nebraska addresses and those that don't have Nebraska addresses. So theoretically you could move out of the state and if you didn't change the address on the account, there would be no change for the purpose of this. It's still, from our perspective, a Nebraska deposit because the address on that account that we filed is a Nebraska account. [LB918]

SENATOR LANGEMEIER: But if I moved, I would hope I would want my money, I would change my address, wouldn't I? [LB918]

NICHOLAS BAXTER: If you changed your address and you became a nonresident in a state, then that account would then follow with that address. There's no other way to do it. [LB918]

SENATOR LANGEMEIER: Thank you. Are there any other questions? Senator Pankonin. [LB918]

SENATOR PANKONIN: After discussing something with Senator Gay, I have another question. Senator Langemeier, thank you. Explain maybe to the panel about the Nebraska deposit tax and how this might affect that core deposit tax that institutions pay, if you could. [LB918]

NICHOLAS BAXTER: Well, on the grounds that I'm not the taxation expert, but the definition of deposits for deposit-tax purposes is different from the definition of deposits in the deposit cap legislation. It is our understanding that a deposit under this definition would still be covered for deposit tax because it was a deposit held by a charter resident in Nebraska. The deposit tax, I believe, links to the state of location of the bank holding the deposit, not the account holder who's a customer of the bank. That is the rationale why we don't believe that this change of statute has any impact on the deposit tax.

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[LB918]

SENATOR PANKONIN: And that would be obviously positive for Nebraska, for the state government for getting that tax then even though these funds are out-of-state, potentially. [LB918]

NICHOLAS BAXTER: I think the position that we were trying to make was that as you look at the changes that have been made in the states to encourage business development in the insurance industry, to encourage people to bring insurance companies into the state, we feel that the current statute discriminates against people going out and getting out-of-state deposits and bringing them back into the state. Our position being that the more money we bring into the state, is more money that's easily lent out in the state, but it also impacts the state deposit tax. [LB918]

SENATOR PANKONIN: Nick, just a follow-up question. You've made that statement a couple times about funds lent in the state, and First National affiliates does a lot of that. But just in rough terms of your total loan portfolio, obviously you're active in the credit card business and whatever, do you have any of the total amount lent what percent is in state versus out-of-state? [LB918]

NICHOLAS BAXTER: If you were to take and if you would exclude the \$5 billion or so loans that we've got in the credit card business, our credit card business only about 8 or 9 percent of our credit card business is in Nebraska, most of that's outside. But when you take our noncredit loans, somewhere in the region of 92 percent of those loans are actually in Nebraska from the First National Bank. [LB918]

SENATOR PANKONIN: Okay, let's add the credit card to it then now. Then how's that... [LB918]

NICHOLAS BAXTER: That number probably drops down to maybe in the 70s or 80 percent. Our total loans in state are around \$6.5 billion. [LB918]

SENATOR PANKONIN: Okay. I'm a little confused with numbers, said \$5 billion? [LB918]

NICHOLAS BAXTER: Total outstandings for our credit card outstandings around \$5 billion. [LB918]

SENATOR PANKONIN: Is \$5 billion, and out of that, you said 8 or 9 percent is within... [LB918]

NICHOLAS BAXTER: I think probably less than 10 percent of that number. [LB918]

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SENATOR PANKONIN: Okay. Big numbers, but that would be like \$500 million. Then what's the rest of the portfolio without the credit cards? [LB918]

NICHOLAS BAXTER: The rest of the portfolio is, probably take that out, is probably about 2.25, about 80 percent of that is probably... [LB918]

SENATOR PANKONIN: So that would be out of \$7 billion, \$250 million, right? Would that be kind of a rough idea? [LB918]

NICHOLAS BAXTER: No, I think we've got a zero in the wrong place there. If we were to take the total outstandings, we've got \$300 million, \$400 million, \$500 million of credit cards, then we've got the outstandings on the other side, so...I think we end up something like... [LB918]

SENATOR PANKONIN: ...the other is 225? [LB918]

NICHOLAS BAXTER: I thought we end up in the Nebraska loans are probably in the region of \$3.5 to \$4 billion. [LB918]

SENATOR PANKONIN: Even with credit cards? [LB918]

NICHOLAS BAXTER: Including credit cards in there. [LB918]

SENATOR PANKONIN: Roughly half. Overall, total portfolio. Okay. [LB918]

SENATOR LANGEMEIER: Thank you, Senator Pankonin. Senator Christensen, did you? Seeing no other questions, thank you for your testimony. [LB918]

NICHOLAS BAXTER: Thank you very much. [LB918]

SENATOR LANGEMEIER: Any other proponents? Opponents? Neutral testimony? [LB918]

RAY PONT: (Exhibit 3) Vice Chairman Langemeier, members of the Banking, Commerce and Insurance Committee, my name is Ray Pont, R-a-y P-o-n-t. I am the deputy director of the Nebraska Department of Banking and Finance. I am appearing today on behalf of the department in a neutral position regarding LB918. Director John Munn had planned to present this testimony, but is ill and unable to be here. The department has never taken a position on whether there should be a deposit cap or at what level the cap should be set and my testimony today will not deviate from that long standing tradition. The department, however, has been responsible for calculating the percentage limit on deposits of Nebraska banks that a single bank may hold since the law was first enacted in 1983. While the calculation process consumed a fair amount of

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staff time for a number of years because the data was reported on paper to a number of different regulators, and was not reported by office location, I can report to the committee that the process today is extremely efficient because all federally insured banks and savings associations now report the deposit information electronically to the Federal Deposit Insurance Corporation. The June 30 figures are due to the FDIC by the end of July. The data is sorted and processed and is readily available to the department. Once obtained, the department adds in the deposit information from one uninsured savings institution in the state, makes a mathematical calculation. My review of the voluntary reporting process proposed in LB918 indicates that it will require very minimal additional staff time and will have no fiscal impact on the department. We would expect that any bank which voluntarily reports such information to do so with an officer attesting to the correctness of the information. For your information, I have attached a copy of the FDIC's June 30, 2007 nationwide summary deposit report, and a copy of the department's most recent deposit cap calculation. There have been many changes in the financial world since 1983 and many consequent changes in banking preferences of consumers. Many consumers no longer look for a financial institution because it is close to work or home. They increasingly shop for financial services as they do other products--by the Internet. It is also no longer the norm that a person will do business with only one financial institution. Consumers are much less wary of doing business with an institution that has a home base in another state. Financial institutions have responded with online marketing and services so that many entities now have customers from all parts of the country. As section 8-910 currently reads, the term "deposits in Nebraska" is the crux of the deposit cap issue for LB918. My review of the legislative history of this issue indicates that the collection of deposits from non-Nebraskans has not been a part of the discussion, whether at the time of the initial enactment or in subsequent years when the limit was increased. LB918 is a clear indication that the time has come for this discussion. I believe it is important for the record to reflect that LB918 would not affect Nebraska law which provides for a deposit assessment of financial institutions in lieu of state income tax. All deposits held in Nebraska banks would be subject to that assessment regardless of how the Legislature defines the deposit cap for deposit cap purposes. Thank you for the opportunity to comment today. I will be happy to try and answer any questions. [LB918]

SENATOR LANGEMEIER: Thank you. Are there any questions? I just have one. The deposit tax, we talked about that, that still would be paid in Nebraska, where does that money go? [LB918]

RAY PONT: I believe it goes to the state Department of Revenue as any taxes that are paid are... [LB918]

SENATOR LANGEMEIER: To our General Fund? Or back to the Department of Banking? [LB918]

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RAY PONT: No, that does not go to the Department of Banking. If you could make it that way, that would be great, but... [LB918]

SENATOR LANGEMEIER: I'm looking for rural Internet providers in the state of Nebraska right now. Seeing no other questions, thank you. [LB918]

ROBERT J. HALLSTROM: Senator Langemeier, members of the committee, my name is Robert J. Hallstrom. I appear before you today on behalf of the Nebraska Bankers Association in a neutral position on LB918. Our government relations committee and board of directors have both looked at this issue. Our board came together as recently as this morning in hopes of being able to provide a formal position to this committee since the hearing was scheduled for this date. We do have a number of positive comments on the provision of LB918. We have met early on with the Department of Banking when the proponents were first coming forward with this legislation. We've asked a lot of questions and we're thoroughly satisfied with the manner in which the deposit computation is going to be carried out in terms of the information that will be provided by the banks to the Department of Banking for purposes of excluding the deposits of non-Nebraska residents. We are pleased that the provisions of the bill provide for a voluntary segregation of these deposits and reporting. We did not want to place any undue regulatory burden, if you will, on banks that, quite frankly, are not impacted because of their size by the deposit cap. And I think one final comment has to do with the deposit tax itself. The one issue that this approach does, that no other state to my knowledge has looked at, is to provide a couple of things and the first one is an incentive for Nebraska banks to continue to look for out-of-state sources of capital without violating the deposit cap. I had reason to contact the American Bankers Association representative to find out if there were other banks in other states that were approaching the cap and what had happened. And what I had found in a couple instances that were provided to me--and I use Bank of America as an example--was that Bank of America states where they were approaching the deposit cap had shifted deposits out of that state into their headquarters in other states to avoid violating the deposit cap. Obviously, if that is the disincentive that we provide to banks that are approaching the deposit cap in Nebraska, that would have a negative impact on the bank deposit tax. So all in all, I think from the deposit tax perspective it's a positive change, provides a little additional flexibility for growth for those banks that are approaching the deposit cap, and still maintains the integrity of that 22 percent level that was agreed upon by the industry back in, I think, 2002 when we made our last change. With that, I'd be happy to address any questions of the committee. [LB918]

SENATOR LANGEMEIER: Are there any questions? Seeing none, thank you. [LB918]

SENATOR GAY: Hold on, Bob, I do have one. [LB918]

SENATOR LANGEMEIER: Oh, wait a minute, didn't quite get away. Senator Gay.

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[LB918]

SENATOR GAY: Just a little bit of history. On that deposit cap, you said it was changed in 2002, started in 1983, then changed in 2002. In the future, is there anyone else kind of getting up around that where this could benefit them? [LB918]

ROBERT J. HALLSTROM: My understanding right now and the department probably would be better to address this, but I think the second largest bank might be in the neighborhood of 8.5 or 9 percent. So there's plenty of room for growth for other institutions. [LB918]

SENATOR GAY: Thank you. [LB918]

ROBERT J. HALLSTROM: Thank you. [LB918]

KURT YOST: Chairman, members of the Banking, Commerce and Insurance Committee, my name is Kurt Yost, K-u-r-t Y-o-s-t. I am the registered lobbyist and president of Nebraska Independent Community Bankers. I appear here today on behalf of our organization in a neutral position on LB918. We, too, have been included in the discussions on this subject and we find that this is a positive piece of legislation that should go forward. [LB918]

SENATOR LANGEMEIER: Thank you, are there any questions? Seeing none, still seeing none. Thank you. [LB918]

KURT YOST: Thank you. [LB918]

SENATOR LANGEMEIER: Are there any other neutral testimony? Closing, waives closing. That concludes our hearing today on LB918. Thank you for participation. With that, we are done. [LB918]

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Disposition of Bills:

LB779 - Advanced to General File, as amended.

LB792 - Held in committee.

LB918 - Advanced to General File, as amended.

LB920 - Advanced to General File.

Chairperson

Committee Clerk