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Banking, Commerce and Insurance Committee
January 20, 2009

[LB11 LB29 LB30 LB31]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 20, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB11, LB29, LB30, and LB31. Senators present: Rich Pahls, Chairperson; Pete Pirsch, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Beau McCoy; Dave Pankonin; and Dennis Utter. Senators absent: None. []

SENATOR PAHLS: Good afternoon. We are ready. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls, I'm from Omaha, and I represent District 31 which is sometimes called Millard. I serve as the Chair of this committee. The committee will take up the bills in the order posted. I think you did probably see the...by the door. Our hearing today is your part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. To better facilitate this meeting, I'm asking you to take a look at the chart on the side, basically telling you to turn off your phones, and if you are going to testify, when you're ready, we have three reserved chairs up here. That will give us an indication of how many people are going to testify. And the order of testimony is, of course, as has been in the past, we have the introducer, proponents, opponents, neutral, and then the closing. We're asking the testifiers to sign in. There's a box up here. We're also asking you to spell your name for the record, and the reason being is that the transcribers, it makes their life easier if we make sure that people know who we are. I'm going to ask you to be concise. If people have given testimony before you, I'm asking you to not rehash past testimony. And if you have written testimony that needs...or written material that needs to be distributed, we need at least ten copies. And right now if you do not have ten copies, and you need for us to run them off for you, wave your hand. Well-prepared, appreciate that. Just to give you an idea, to my immediate right is one of the individuals who holds this committee together, Bill Marienau. And Jan Foster is all the way over there, is our committee clerk. What I'm going to ask today, the committee to introduce themselves, starting with... []

SENATOR UTTER: I'm Dennis Utter from District 33, live in Hastings, represent Adams and part of Hall County. []

SENATOR PANKONIN: I'm Senator Dave Pankonin, District 2. []

SENATOR LANGEMEIER: I'm Senator Chris Langemeier, District 23, Schuyler. []

SENATOR PETE PIRSCH: Senator Pete Pirsch, District 4, west-central Omaha, Boys Town, and parts of Douglas County. []

SENATOR BEAU McCOY: Senator Beau McCoy, District 39, west Omaha and Elkhorn.

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SENATOR GLOOR: Senator Mike Gloor, District 35; that's Grand Island. []

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

SENATOR PAHLS: Thank you. I have been told we have an unbelievable committee. We had a good one last year, but I've been told this is even better. Just our committee...we do have a couple of pages over here. We have Jared Weikum from Lincoln, and Rebecca...do I see Rebecca? Is she...okay, we will have Rebecca Armstrong from Omaha. We will take up the bills in the order. It will be LB11, LB29, LB30, and LB31. Senator Langemeier, we are ready when you're ready. []

SENATOR LANGEMEIER: Thank you, Chairman Pahls. My name is Chris Langemeier. It's C-h-r-i-s. Langemeier is L-a-n-g-e-m-e-i-e-r. And I'm proud to introduce LB11 on behalf of the Nebraska Real Estate Commission, will be as concise as I can. The bill is very straightforward. The Real Estate Commission is a cash agency that has their operating budget based on fees paid by real estate agents and brokers across the state. They have requested, due to the flux in number of individuals in the real estate world changing from year to year, they have requested that their cap on their cash fees that they can charge agents from \$100, be raised to \$250, and that is it from start to finish. Are there any questions? [LB11]

SENATOR PAHLS: Any questions for the Senator? [LB11]

SENATOR LANGEMEIER: The commission will testify behind me if there are questions for the commission themselves. [LB11]

SENATOR PAHLS: Thank you, Senator. Proponents? And, again, I'm going to refer, that's why we have the reserved chairs up here. It gives me an indication of who is going to be on board. Thank you. You may begin. [LB11]

TERESA HOFFMAN: (Exhibit 1) Good afternoon. I have my written testimony. Mr. Chairman, members of the committee, good afternoon. My name is Teresa Hoffman. That's Teresa without the h, and Hoffman, H-o-f-f-m-a-n. I am the deputy director of the Nebraska Real Estate Commission, and I am here speaking on behalf of the commission and in Director Les Tyrrell's absence. He does send his regrets and he certainly would have liked to have been here today. The commission initiated LB11 and wishes to thank Senator Langemeier for sponsoring the proposed legislation and introducing it here today. The current statute sets out limits on the fees that licensees and applicants can be charged for various services related to obtaining and maintaining a real estate license. The current limits were established in 1990. Two things have happened in the last 18 years. Costs to provide these services, most over which we

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have no control, have increased, and we are experiencing a downturn in the number of applicants and licensees which has affected the commission's revenue base. The Real Estate Commission is a cash fund agency. It receives no federal funding nor does it receive any money from the state's General Fund. Should the Real Estate Commission run out of money, it ceases to exist and is no longer there to enforce the license act which, essentially, was written to protect the consumer in real estate transactions. Therefore, the commission has for quite some time sought to maintain, in reserve, a cash fund balance that would cover five to six months' operating costs. While we may look flush at this moment, we have just collected, through our license renewal process, the majority of our income. Our funds are at their lowest from July through September every year. While we have managed very well over the last 18 years to keep our expenses minimal, and to raise and lower our fees as needed to maintain our cash balance, we have as of January 1, 2009, been required to raise our fees to the limit set 18 years ago. We are not planning to raise our fees, and I can assure you that the first thing we would look at, should we need to make financial adjustments, is, indeed, our expenditures. However, and I need to emphasize this, we feel that passage of this legislation this session is critical. If the current market conditions continue well into 2009 or beyond, and we do not have the ability to raise our fees beyond the current limits, we will very likely be forced to significantly cut our services, services which do help to ensure and protect the public. With regard to the obsolete language that's also referenced in the bill, charging different fees for nonresident licensees, this practice ceased over 15 years ago. The commission felt that it was unfair to nonresident licensees and did not want their actions to be perceived as an attempt to restrain trade. Similarly, it seemed only fair to the commission that someone who pledges funds electronically and then fails to make them available should be treated the same as someone who pledges a check with insufficient funds in the account. It is our hope that this proposed legislation will be reflected upon positively by the members of this committee and moved forward to the full Legislature for passage during this session. And if you have any questions for me now or in the future, I will make myself available to you, and I thank you very much for your time. [LB11]

SENATOR PAHLS: Does anyone have a question for Deputy Director Hoffman?
Senator Pirsch. [LB11]

SENATOR PIRSCH: Just...the proposal would be to raise it from \$100 to \$250. Is that right? [LB11]

TERESA HOFFMAN: Yes. [LB11]

SENATOR PIRSCH: The maximum? Is that to get some...I mean, the higher number now \$250, how was that selected or for what reason was \$250? [LB11]

TERESA HOFFMAN: We were...you know, it's the future. We're lacking a crystal ball.

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[LB11]

SENATOR PIRSCH: Um-hum, I see. [LB11]

TERESA HOFFMAN: And we just thought that we would not have to come back to the Legislature in any time soon. We looked at what other states were charging, what other jurisdictions in the country were charging, what expected fee increases there would be, and that's the figure we arrived at. [LB11]

SENATOR PIRSCH: Super. Thank you very much for your comments. [LB11]

SENATOR PAHLS: Senator. [LB11]

SENATOR GLOOR: Mr. Chairman, other than payroll, what are your more significant costs that you incur? [LB11]

TERESA HOFFMAN: Well, and payroll is indeed one. Insurance, of course, keeps going up. We have legal expenses, and those seem to be increasing as the world gets more sophisticated. We also...let's see, I jotted some down. The transportation, we're charged through DAS. Some of those costs keep increasing, and those would be the major ones. [LB11]

SENATOR GLOOR: Thank you. [LB11]

TERESA HOFFMAN: Um-hum. [LB11]

SENATOR PAHLS: Senator Pankonin. [LB11]

SENATOR PANKONIN: Thank you, Chairman Pahls. Just a follow-up question about the fees of neighboring states, the states around us. Do you have any of that information handy with you? [LB11]

TERESA HOFFMAN: I'm sorry, I do not. There is a website. We are in an organization of real estate license law officials, and that's ARELLO.org, and they keep some of that information in a digest available. [LB11]

SENATOR PANKONIN: Okay. [LB11]

TERESA HOFFMAN: If you'd like, I can make that available to you. [LB11]

SENATOR PANKONIN: I think it might be helpful just to know what the...especially the neighboring states are. Thank you. [LB11]

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SENATOR PAHLS: Seeing no questions, thank you. Appreciate your testimony. Additional proponents? Good afternoon, Secretary Gale. [LB11]

JOHN GALE: (Exhibit 2) Mr. Chairman, members of the committee, I'm John Gale, J-o-h-n G-a-l-e, Secretary of State, and permanent chairman of the Nebraska Real Estate Commission. I've served as chairman of the Nebraska Real Estate Commission for eight years since my initial appointment in December of 2000, and it's been an incredible challenge when you're involved in a regulatory agency that involves some 7,000 to 8,000 realtors, licensed realtors, both brokers and salespeople across the state of Nebraska. The commission itself consists of four brokers from the industry, one salesperson representative, a public interest representative, and myself as chairman. I can assure you that the commission is very judicious and shows great restraint in terms of determining such things as increasing rates for the members of that industry. In fact, we've shown, I think, a very responsible and conservative approach over the years. During the good years, I guess you would say in the early 2000s, we cut the fees at least three years, if not four years, in a row. We've been very careful about maintaining the fees so that it is not an obstacle to anyone who wishes to enter the industry. But these are dramatic times. As Teresa Hoffman testified, the impact on the real estate industry with the downturn in the economy and particularly the impact of the subprime market foreclosures has truly had a very dramatic effect on the number of people who are willing to renew their licenses or to apply for examination to become...to sit for examination for licensing. And I didn't realize at first--and I'm on the budget committee of the Real Estate Commission--and I didn't realize at first how immediate that impact was going to be. But because you renew licenses every November, this last November we saw that very, very dramatic impact, such that the cash fund has really started taking a very dramatic downward turn to the point that the commission decided that we really needed to be sure that we could protect ourselves and have the flexibility in the future if we needed to raise rates, because November will come between legislative sessions and not at a time when you can address it. So the flexibility we're asking for is not to increase the fees instantly to the maximum that we're asking for. We're just asking for that flexibility so we can address these dramatic times, if we need to, over a longer period than six months or one year. Obviously, it could be a much longer period of time. The testimony, Mr. Chairman, that I distributed, I guess for economy of paper, addresses all three of the bills, (LB)11, (LB)29, and (LB)30, that I will address, but at this point, my testimony is limited to LB11. [LB11]

SENATOR PAHLS: Appreciate that. Do I see any questions? Seeing none, thank you, Secretary Gale. [LB11]

JOHN GALE: Thank you, Mr. Chairman. [LB11]

SENATOR PAHLS: Next proponent. [LB11]

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WALTER RADCLIFFE: Mr. Chairman, members of the committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e, appearing before you today as a registered lobbyist on behalf of the Nebraska Realtors Association in support of LB11. Our members, obviously, are the individuals who are licensed and pay the fees, and are very supportive of the work that the commission has done, and recognize their need to remain solvent in order to perform their regulatory function, and would wholeheartedly endorse LB11. If you have any questions, I'd be happy to attempt to answer them. [LB11]

SENATOR PAHLS: Any questions for Mr. Radcliffe? Seeing none, thank you. [LB11]

WALTER RADCLIFFE: Thank you, Senator. [LB11]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? Closing? [LB11]

SENATOR LANGEMEIER: Just for one clarification. Not only am I the introducer of LB11, I am a real estate broker in Nebraska that pays these fees. And if you do look to the fiscal note, you'll see the upper limits as set forth in statute now as well as proposed with LB11. And then in the third column, it has the actual fees. So myself, as a licensed broker, resident broker, the cap is \$150. We're currently going to pay \$115 for 2009, and I can also attest that two years ago it was at \$100, and it's gone up and down as the number of people come in the business and go out of the business. So with that, I thank the committee for their consideration, and thank you, Chairman Pahls. [LB11]

SENATOR PAHLS: Thank you, Senator Langemeier. As you can see, the next three bills, (LB)29, (LB)30, and (LB)31, are mine. And I think as we take a look at the day, this is going to be a good day. I'm going to turn the meeting over to Senator Pirsch. [LB11]

SENATOR PIRSCH: Very good. Thank you very much, Senator Pahls. If you'd like to introduce your bill. [LB11]

SENATOR PAHLS: Okay. Good afternoon again, my name is Rich Pahls, P-a-h-l-s. I represent District 31. My opening remarks on LB29 are basically very brief. LB29 comes to us from the Nebraska Realtors Association. This bill would make one change in the Real Estate Association's license act. It would allow a broker, as well as an associate broker, to be the manager of a branch office. A broker outranks an associate broker, so it would make sense to allow a broker to at least have as much authority as an assistant broker. And that's simply the bill. And I know we do have people following me who would probably give you some more additional information. [LB29]

SENATOR PIRSCH: Very good. Thank you very much, Senator. Are there any proponents? [LB29]

JOHN GALE: Senator Pirsch, you're acting Chair? [LB29]

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SENATOR PIRSCH: Yes. Sure. [LB29]

JOHN GALE: Do I need to fill out one of these for each of the bills? I do. [LB29]

SENATOR PIRSCH: I believe that is necessary for each one. Yes... [LB29]

JOHN GALE: Okay, thank you. [LB29]

SENATOR PIRSCH: Thank you and you may go ahead. [LB29]

JOHN GALE: (Exhibit 1) Mr. Chair and members of the committee, John Gale, G-a-l-e, Secretary of State and chairman of the Nebraska State Real Estate Commission. I just have very brief testimony with regard to this item. As you know, in many of the industries, there's a lot of consolidation and change, particularly because there's a population shift moving from rural areas into the bigger cities. And you have more and more offices of every kind, whether it's law offices, medical offices, real estate offices, that are being run out of a larger community with branch offices in smaller communities. And in this particular instance, it's not always possible to have an associate broker who has the management skills that you want in one of your branch offices, and currently, the law doesn't allow the broker to manage those offices on their own. With all the new means of communication, whether you're a BlackBerry fan or you're just going to use a cell phone, but there's so many ways that you can manage more thoroughly with technology for branch offices. It seems like it's a very reasonable request on behalf of the industry to allow the broker to manage branch offices, so I would support the bill. Thank you. [LB29]

SENATOR PIRSCH: Thank you very much. Are there any questions at this point in time? Any questions? No questions. Thanks a lot. [LB29]

JOHN GALE: Thank you. [LB29]

SENATOR PIRSCH: Yeah, if you'd like to come on, and take the chair, and just submit the form. Yeah, and you can proceed. Thank you. [LB29]

VINCE LEISEY: All right. I'm Vince Leisey V-i-n-c-e L-e-i-s-e-y. I am president of the Nebraska Realtors Association, a member of the Real Estate Commission and the broker-owner of Prudential Ambassador Real Estate in Omaha, Nebraska. As a proponent, the thing that...that I think makes the most sense in this bill is that currently under the law that's stated, an associate broker, a manager broker can manage 10, 15, 20 offices, but the designated broker who is a person that is responsible for all these managing brokers can only manage one. And I think we're in an environment today, we're starting to see in Omaha and other markets where some people who have

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multi-offices are starting to contract those and put those into larger offices. And I think we're going to see more and more of a need over time here, where there's going to be branch offices out of convenience to give the agents a place to go and meet clients and have a conference room and fax machine and all those other things. But it's not going to really be an office that's functional, that's going to have a manager sitting in it, because it's more of a convenience thing, and the transactions are still going to be processed out of a primary office. So to me, the primary point here is, I think you're going to see more branch offices as this environment continues to change, and you have brokers who have multi-offices continue to downsize those into larger offices, you're going to see more of these branch offices. And to not have the designated broker who has all of the responsibilities of all of the managing brokers not to have the ability to manage more than one office, when the person that has less responsibility has the ability to do that, it just doesn't make sense. [LB29]

SENATOR PIRSCH: Great. Thank you. Are there any questions for this testifier?
Senator Langemeier. [LB29]

SENATOR LANGEMEIER: Commissioner, thanks for your testimony. I only have one question. Is there a limitation to how far a branch office can be? Could you open a branch office in Scottsbluff and for convenience, or is it just within the city limits of Omaha, or is that not an issue? [LB29]

VINCE LEISEY: I'm going to refer this to the next person, Teresa, that's talking, but my understanding is, anywhere in the state of Nebraska. I have a broker's license for the state of Nebraska, but that anywhere in the state of Nebraska we could open up a branch office, not limited just to the geographic metropolitan area we're in. [LB29]

SENATOR LANGEMEIER: That was my understanding, but I just wanted to make sure I was right. [LB29]

VINCE LEISEY: Yes. Correct. [LB29]

SENATOR LANGEMEIER: Thanks. Great. [LB29]

SENATOR PIRSCH: Any other questions? Okay, thank you for coming by today... [LB29]

VINCE LEISEY: Thank you. [LB29]

SENATOR PIRSCH: ...and testifying. Ms. Hoffman, if you'd like to be next. Thank you for coming down here today, and you can proceed whenever you're ready. [LB29]

TERESA HOFFMAN: And hello again, and I'm still Teresa Hoffman, H-o-f-f-m-a-n, and I

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am representing the Real Estate Commission, and need to go on record and let you know of their support of this bill. To answer your question, yes, you can open a branch office anywhere in the state of Nebraska and be located anywhere within the state of Nebraska. Actually, this bill probably affects about 1,500 employing brokers, so it would give them this freedom. [LB29]

SENATOR PIRSCH: Super. That's all? Are there any other...well, questions? Anyone have any questions of Ms. Hoffman? No. Thank you very much for coming down here today. Are there any other proponents? Any other proponents here today? No? Okay, are there any opponents, any opponents? Anyone testifying in a neutral capacity here today? Okay, very good. We'll close the hearing on that then unless Senator Pahls has... [LB29]

SENATOR PAHLS: Waive to close. [LB29]

SENATOR PIRSCH: Okay, very good, and you're waiving your closing on the... [LB29]

SENATOR PAHLS: Yes, I am. Yes. [LB29]

SENATOR PIRSCH: ...so we'll proceed on to LB30. Senator Pahls. []

SENATOR PAHLS: Good seeing you again. My name is Rich Pahls, P-a-h-l-s. I represent District 31, and my remarks will deal with LB30. LB30 comes to us from the Nebraska Realtors Association. It would make a change in how real estate licensees are disciplined by the Real Estate Commission. Now the commission can suspend or revoke a license, it can censor a licensee, and it can enter into consent decrees. This bill would allow the commission to impose a civil fine along or in combination with the existing sanctions. Under the bill, a civil fine could be imposed for each violation with a total fine not to exceed \$2,500 per complaint. This bill would clarify provisions, update internal references, and add customary language regarding investment of cash funds, disposition of fines, and procedures for recovery of unpaid fines. This bill would also repeal an internal reference to sections which were repealed in 1973. Again, just reiterating, the bill would allow the commission to impose a civil fine. That's the addition. [LB30]

SENATOR PIRSCH: Very good. Thank you very much. Okay, at this time I'll ask for any...are there any proponents of this measure, LB30? Any proponents of LB30? Mr. Leisey, if you want to come up, that's great. And thank you very much. You can just get going whenever you're comfortable. [LB30]

VINCE LEISEY: Do I need to state my name again? [LB30]

SENATOR PIRSCH: Yes. If you would, yes. [LB30]

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VINCE LEISEY: Okay, sorry. Vince Leisey, V-i-n-c-e L-e-i-s-e-y, president of the Nebraska Realtors Association, a member of the Nebraska Real Estate Commission, and broker-owner of Prudential Ambassador Real Estate. As a commissioner, and this was brought forward by the association to the Real Estate Commission which is really giving the commission the authority to fine the association members. And as a broker, it would basically be giving the commission the authority to fine my own agents in this case. But as a real estate commissioner, I think this is where this is most important. Today we basically have the ability to censure somebody, which is, for all practical purposes, slapping their hand and maybe giving them some continuing ed hours or something like that, suspending them, or revoking their license. And that what we see this as is basically an additional option to what we already have. In some cases, maybe to take it and do it in addition to a censure or a suspension, but in other cases to do it as an alternative, because there's many times where we kind of get stuck in a situation as, you know, we don't want to take someone's livelihood away for six months or a certain period of time, but we'd like to see something more than just a censure. And so it would be nice to have some ability to give some sort of fine, saying that, you know, this is something that we do not believe that you should have done. This is against the violations of the commission and the rules and the regs, and so it's an alternative method to, I think, penalize. I believe Nebraska and Arkansas are the only two states in the country that currently do not have the authority to fine its agents and/or brokers. Questions? [LB30]

SENATOR PIRSCH: Great. Thanks. Anyone have any questions? Senator Pankonin. [LB30]

SENATOR PANKONIN: Thank you, Senator Pirsch. Sir, I mean, I'm just looking through the bill right now. Would these fines be made public? [LB30]

VINCE LEISEY: Would the fines be made public? They're printed in our Nebraska Real Estate Commission comments which I believe is public. [LB30]

SENATOR PANKONIN: Okay. [LB30]

VINCE LEISEY: Yes. [LB30]

SENATOR PANKONIN: So there is some...besides the financial, there is some censure by having your name published with the fine. [LB30]

VINCE LEISEY: And, currently, if you have a censure or a suspension or whatever your penalty is assessed right now, it is made public also. [LB30]

SENATOR PANKONIN: Right, and the amount of the fine would be...Ms. Hoffman might

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have that information, but I assume the amount of the fine would also be named. [LB30]

VINCE LEISEY: I would ask her, but I believe that's the case. [LB30]

SENATOR PANKONIN: Okay. Thank you. [LB30]

SENATOR PIRSCH: Great. Any other questions? Thank you very much, Mr. Leisey. [LB30]

VINCE LEISEY: Thank you. [LB30]

SENATOR PIRSCH: We'll have the next testifier. Ms. Hoffman, if you want to step on up, and if you could restate your name and whenever you're ready to proceed, that's great. [LB30]

TERESA HOFFMAN: Okay. Good afternoon, Mr. Chairman, members of the committee. My name is Teresa Hoffman, H-o-f-f-m-a-n. I am the deputy director of the Nebraska Real Estate Commission, and I am here speaking on behalf of the commission and the director, Les Tyrrell. The commission has moved in support of this proposed legislation, and they instructed the director, in fact, to work with the association in developing the legislation. He did so, and he worked with the association's counsel and utilized the Real Estate Commission's counsel, and also worked with the revisor in finalizing some of the language that you see there, and it has met the commission's satisfaction, so we are in favor of passing this legislation. You asked about the publication of fines and disciplinary actions. Yes, it is public record. And after all available appeals have been satisfied, then that information is published on our website and our newsletter, and is maintained on record, and anyone can go to our website, look up a licensee, and see what kind of disciplinary actions have ever been taken against that licensee. There is a ceiling as well in the bill. No one would be fined more than \$2,500 per complaint, so even if there were multiple violations, it would not exceed that amount. [LB30]

SENATOR PIRSCH: Okay. I'm sorry, Senator Christensen, did you have a question? [LB30]

SENATOR CHRISTENSEN: Thank you. Now, if I understand this right, the fine just goes to the broker that makes the mistake or breaks the law, correct? It's not to the firm; it's to the broker. [LB30]

TERESA HOFFMAN: We don't license firms, so it is to the licensee. It might be a salesperson; might be a broker. [LB30]

SENATOR CHRISTENSEN: Okay. So if some firm has multiple brokers that they've had multiple different brokers that get fined, the firm can never be touched then? It's just the

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individual licensee. [LB30]

TERESA HOFFMAN: We have no jurisdiction, and we can only go to our licensees. [LB30]

SENATOR CHRISTENSEN: Okay. Thank you. [LB30]

SENATOR PIRSCH: Great. Senator Gloor. [LB30]

SENATOR GLOOR: I think the general concept makes a lot of sense to me, but I wonder on the implementation fees, how do you provide a degree of justice, if I can use that word, in what sin is worth how much dollars so that we don't find ourselves back here trying to amend this because someone complains that, obviously, if they got fined \$1,000 for what they did, it should only be \$500 for me, and so on and so forth. And how do we implement this? [LB30]

TERESA HOFFMAN: Well, I think that any time the commission has to determine the disciplinary action, there is a struggle to be fair and take all of the circumstances into consideration. We do now keep a catalog, if you will, of disciplinary actions that have been taken based upon the violation. And we ask that the commissioners review that document, and when they are contemplating discipline now for a violation, we ask them to look at that and try to keep it in line so that there is consistency to the kind of justice that they're dealing out. That would be the same kind of instruction that we would give to the commissioners in the area of fining. There is not a menu of fining in this legislation, and I think that they will have to work on that and develop, and I'm sure that there will be a great deal of dialogue that goes into that. [LB30]

SENATOR GLOOR: Has there not been any concern about subjectivity with current ramifications or fines that have been put in place, or penalties have been put in place? [LB30]

TERESA HOFFMAN: Actually, with the disciplinary actions taken by the commissioners so far, and I have been there 20 years, there really has not been a challenge in that regard, that it was one person was treated fairly while another unfairly. We really haven't had to deal with that. It has been done with, I think, great thought. [LB30]

SENATOR GLOOR: Thank you. [LB30]

TERESA HOFFMAN: Um-hum. [LB30]

SENATOR PIRSCH: Any other questions? Yes, Senator Langemeier. [LB30]

SENATOR LANGEMEIER: Thank you, Chairman. One clarification on Senator

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Christensen's question about the firm versus the broker. In the real estate world, the broker...the managing broker is the firm. Would that not be a fair statement? [LB30]

TERESA HOFFMAN: Yes. They have to register with us, how they're doing business, so their identity as thus and so Real Estate Commission is there. Our authority is through the broker's license alone. We can't discipline a firm. We can discipline a broker. Of course, there would be, you know, some other ramifications. If a broker or a single firm had multiple disciplinary actions, I would imagine that their errors and omissions insurance; they're different: they would, you know, would also come into question. If we saw a pattern of practice and found that an individual was responsible for that, when discipline is meted out in the future, we look back. After guilt has been established, we look back and see if there have been previous violations. And the disciplinary action taken, takes all that into consideration, so it would get increasingly severe. So in those ways, if there's a pattern of violation, it would be addressed. [LB30]

SENATOR LANGEMEIER: Thank you. [LB30]

SENATOR PIRSCH: Very good. Are there any other questions? Thank you very much, (Deputy) Director Hoffman, and we'll see if there's any other proponents out there. Secretary Gale. [LB30]

JOHN GALE: (Exhibit 1) Mr. Chairman, members of the committee, John Gale, Secretary of State, chairman of the Nebraska Real Estate Commission, here to testify in support of (LB)30. As chairman of the Nebraska Real Estate Commission for eight years, I have found just a very irreconcilable discrepancy in the penalties that can be imposed. The real estate industry itself has been very proactive in trying to ensure that the standards of the industry are high, and that the commission maintains high standards for performance according to the law. And I can tell you that I have been totally impressed with the caliber of the commissioners who have served on behalf of the Real Estate Commission. This is really a first-class group of people who are very, very concerned about the professionalism of their industry. One of the problems that we have is that it's either a very small penalty or it's a very severe penalty. As Mr. Leisey testified, it's a censure or it's a suspension with probation or it's continuing education. But our sense has been, and the real estate industry's sense has been that some of those things really don't catch the attention of the offenders or catch the attention of the rest of the industry in terms of maintaining the standards of performance that we think the public are entitled to. So I volunteered to work with the real estate industry on a committee ourselves to study the question of fining, and after having looked at what some 40 states have done, and some of the options that are available, knowing that the industry was very, very interested in securing this additional option to impose a different degree of penalty, I thought it was an excellent idea. And, of course, 40 states already exercise that option. But continuing education is a wonderful thing, but it doesn't necessarily, particularly because continuing education can be gotten on-line anytime

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from the home or from the office, it doesn't really result in, necessarily, a conscious effort on the part of the individual who has been penalized to improve their standards or really to take the continuing education seriously as a penalty. We'll certainly continue to use that, but with the ability to fine, it gives us an option, and when you have four brokers and one sales representative on that commission, they're obviously not going to be abusive with regard to the right to penalize. But if you take an example of, say, an individual or a salesperson who's making \$30,000 a year as a salesperson, and you're going to impose the maximum fine of \$2,500. That maximum fine, obviously, will have considerable impact on an individual making \$30,000, but they haven't lost their right to work. They still can continue to practice as a realtor; they maintain their goodwill; they maintain their contacts; they continue to work the jobs that they have. If you suspend somebody for that 30 days, they not only have lost the \$2,500 that they would have earned, but they have also lost their networking, their contracts; any contracts that need to close that month have to be turned over to another realtor. So the penalty of a suspension of 30 days is dramatically more than a fine of \$2,500. And the fine that we're asking for here is not a fine that would be imposed to \$2,500; it's \$2,500 for the total of the complaint. So you may have three or four or five different violations of unprofessional conduct or negligence as a salesperson, and if they're found guilty on all five, you might have a penalty on each of those of maybe \$100 or \$250, but it's a way of getting their attention, having a little bit of a bite in their pocketbook, but we're not imposing the more onerous option we have today which is suspension. You realize that probably there are only 70 complaints that get filed every year against realtors, and there are 7,000 realtors in the state of Nebraska. So you're talking about maybe 1 percent, so we have a pretty high standard. But for those complaints where we do find guilt, it would be highly, highly useful to have this additional option which we will exercise with great prudence and care. But it will help maintain those standards that we like to maintain. Thank you. [LB30]

SENATOR PIRSCH: Very good. Thank you very much, Secretary Gale. Are there any other questions for the Secretary? Yes. [LB30]

SENATOR UTTER: Mr. Chairman, thank you. Secretary Gale, I do have a question. With regard to the fine, I assume this fine can be charged in addition to a suspension or a...or is it...are we talking about a one or another situation here? [LB30]

JOHN GALE: Well, the way the law is written, it could be used in combination with something else. Obviously, if you're going to impose a revocation or a suspension or a suspension without probation, it's unlikely you're going to charge a fine too. A fine is more likely to be...come into a combination with continuing education, or if you have a suspension for six months on probation, you could impose a fine as well. But if you're going to impose suspension for a month or for six months of a license, that is onerous enough that you're not going to impose a fine, I would say. That would be my position. I'm one of seven votes, but that would be my position that you...you're not going to...

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[LB30]

SENATOR UTTER: But both could be done. [LB30]

JOHN GALE: It could be done, it could be done. The thing I wanted to point out with regard to that is, we don't have any self-interest in this fine because these fines go to the school fund, the educational fund. They don't come to our cash fund, so we're not going to be trying to extort fines from realtors in order to replenish our cash fund. It's going to the school district. It's just a means, another arrow in our quiver, to ensure that we maintain high standards. [LB30]

SENATOR PIRSCH: Thanks for your question, Senator. Are there other questions? Okay. Well, thank you very much, Secretary. [LB30]

JOHN GALE: Thank you, Mr. Chairman. [LB30]

SENATOR PIRSCH: Are there other proponents, LB30? Okay, seeing none, we'll ask for any opponents. Are there any opponents here today of LB30? Okay, seeing no opponents, we'll move on. Are there any who wish to testify in a neutral capacity here today on LB30? Very good. We'll move to closing then. I see Senator Pahls is waiving his closing. We'll thus move on to LB31, a bill that is sponsored by Senator Pahls. And we'll...whenever you're ready, Senator. [LB31]

SENATOR PAHLS: Good afternoon. We will be moving away from the real estate business. My name is Rich Pahls, P-a-h-l-s. I represent District 31. My remarks on LB31 comes to us from the Nebraska State Board of Public Accountancy. It does two major things. First, the bill allows for greater mobility of CPAs across state lines. Second, the bill makes clean-up changes throughout the Public Accountancy Act. The bill will allow out-of-state CPAs to exercise practice privileges in Nebraska, and the bill would allow the board to grant foreign accountants temporary practice privileges in Nebraska. Individuals, along with their firms, who exercise practice privileges or temporary practice privileges would, by so doing, consent to the jurisdiction and disciplinary authority of the board. A Nebraska CPA would be subject to discipline by our board for improper acts committed in other states. An individual while exercising practice privileges or temporary practice privileges in this state, who performs attest services for a Nebraska client may do so only through a firm which holds a permit issued by the board. CPA mobility is being pushed nationwide. Here is an example how CPA mobility would help a Nebraska CPA if it is adopted around the country. Think of a Nebraska CPA who has done work for a client, and the client retires and moves to a sun belt state down south. The client still wants the Nebraska CPA to do his or her tax returns. With CPA mobility, the Nebraska CPA can do that client's state tax return in the new state without the accountant's C-board in the new state trying to give the Nebraska CPA grief for doing work there without proper credentialing. The bill would also amend sections throughout

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the Public Accountancy Act to make updating and clean-up changes. Among these, the bill would provide with the annual register of permit holders and board members shall be made available by the board to the permit holders instead of printed and mailed to them. The bill would change the name of the board's cash fund from Public Accountancy Fund to Certified Public Accountancy Fund. The bill would eliminate obsolete provisions throughout the act including those regarding public accountants who were, as a group, grandfathered under the act in 1957, and of whom the last retired in 2006. That concludes my opening statement. [LB31]

SENATOR PIRSCH: Thank you, Senator Pahls. Senator Langemeier, you have a question? [LB31]

SENATOR LANGEMEIER: Thank you, Chairman. [LB31]

SENATOR PAHLS: Yes. [LB31]

SENATOR LANGEMEIER: Senator Pahls, I have one quick question. And when you talk about passing this nationwide, and I'm going to ask you, so maybe your next ones will answer it... [LB31]

SENATOR PAHLS: Yeah, yeah. [LB31]

SENATOR LANGEMEIER: ...but talk about making this nationwide, would it be good for all other states to come to Nebraska? We would have this reciprocation even if their state won't reciprocate with Nebraska. [LB31]

SENATOR PAHLS: Right. [LB31]

SENATOR LANGEMEIER: So let's say in the real estate world, I can get my broker's license in every other state except Arizona. Arizona does not reciprocate with Nebraska. [LB31]

SENATOR PAHLS: Right. [LB31]

SENATOR LANGEMEIER: Should we not keep their people from reciprocating with Nebraska if we don't reciprocate with them or vice versa? [LB31]

SENATOR PAHLS: Okay, well, the reason...let me react. Right now, 28 states have this. [LB31]

SENATOR LANGEMEIER: Okay. [LB31]

SENATOR PAHLS: And this year there's 17 other states who are working on legislation

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such as this, so I think probably that would not be an issue before long, if it is one right now, but somebody following me could probably answer that better. But when you have 28, with 17 potential this year, it goes to show you that we're going to be almost, I would assume, nationwide, the reciprocal. But that could be a question asked by somebody who has more information. [LB31]

SENATOR LANGEMEIER: They don't want me to retire in Arizona and have my real estate license... [LB31]

SENATOR PAHLS: Let's change that. [LB31]

SENATOR LANGEMEIER: ...so I've just...that's why they don't reciprocate. [LB31]

SENATOR PAHLS: Well, no, I understand. Yeah, yeah. [LB31]

SENATOR PIRSCH: Are there any other questions for Senator Pahls? Very good. Thank you, Senator. I'll ask first for proponents of the measure, proponents of LB31, if you'd come forward and have a seat. If you could just state your name and your position, and whenever you're ready. [LB31]

JIM TITUS: Mr. Chairman, the Banking Committee, and I'm Jim Titus, J-i-m T-i-t-u-s. I'm the chair of the State Board of Public Accountancy, and have been for the last three years. And the board consists of six certified public accountants and two public members. I'm one of the public members. I'm an attorney here in a private firm in Lincoln. The board regulates CPAs within the state of Nebraska, and we take our job seriously and discipline those CPAs that are not following professional standards. We've been monitoring this concept of mobility for several years. I mean, this has been...there's been momentum growing for that. There has been changes to the Uniform Accountancy Act to provide for this, and the National Association of State Boards of Accountancy, to which we belong, and the AICPA both endorse this concept. And it's been also endorsed by the U.S. Treasury Advisory Committee on the auditing profession who would like to see more mobility. But even with that, we're not at the forefront of this concept. We have taken pretty much a wait-and-see attitude on this. We wanted to see how other states were dealing with it. We did want to see that...you know, with reciprocity, how that was working. We considered putting reciprocity into our bill, and some states have. We have visited with members from several other states, both at conferences, and actually...the Iowa, some of the Iowa members came to one of our meetings to give us some of their benefit of the changes they made to the bill from the UAA language. And our language is not strictly UAA. We have made some exceptions based upon that experience, including that if a CPA wants to do test functions for a Nebraska-based company, they would need to still be registered in the state of Nebraska. At this point, the numbers have gone up a little bit. There's...and, you know, I used the term "states," but its actual jurisdictions, because there's 55 jurisdictions with

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boards of public accountancy because there is District of Columbia and some territories. But 31 of those jurisdictions have now adopted mobility provisions, while there's another 18 planning to do so this year. So, you know, we could potentially have 49 jurisdictions out of the 55 having mobility at the...you know, at...by the end of this year. So we thought it was a good time to come, and we have been working together with the Nebraska Society of CPAs in drafting this bill, and had a good relationship working with them. This will help CPAs that have now multiple filings with various states, and which is nice that we could help them that way. But we're more interested in public protection as a board, and what sold me on this is looking at the fact that right now in our current bill, we have a temporary practice provision that allows CPAs to come into the state and practice temporarily without notifying us or paying anything. But there's no definition of what temporary is, and we were looking at actually defining that by regulation. But even then, the only way we would be able to enforce anything against an out-of-state CPA that came in temporarily into our state is by injunctive action through the courts. By this bill, we'll have out-of-state CPAs coming in, and it is their principal place of business will still be outside the state. If their principal place of business is in Nebraska, they will need to register. But we will have penalty provisions that now will apply. We will be able to fine them; we'll be able to suspend their practice privilege or to revoke their practice privilege. We have a little bit more ammunition that we can use in disciplining an out-of-state CPA. We do recognize that there could be a decline in board revenue as out-of-state CPAs do not renew their Nebraska credential and just exercise under the privilege. We believe that will be a gradual decline, and we are cash funded by fees, not by the General Fund, but we do think that decline will be gradual. And the other thing is that our CPAs within the state will have that privilege as well. And by granting this, even though states that have the reciprocity provisions, they would be, you know, our CPAs would be able to meet that requirement. But so far from what we have heard, most of the states have not put reciprocity in there. They're just granting mobility as far as CPAs would be able to have a license in Nebraska and be able to practice in any one of these other states that have adopted it, including border states. There are the other changes. I understand the independent accountants would like to make an amendment to this bill because there's a provision from 1957 that says that you cannot use the term, "enrolled accountant" or the initials "E.A." Well, an E.A. has taken on more of the terminology of enrolled agent for the IRS, and they want to make sure that their members can use enrolled agents or E.A., and we are supportive of that. Are there any questions? [LB31]

SENATOR PIRSCH: Very good. Well, thank you very much, Chairman Titus. Any questions? Seeing none, we'll move on to the next testifier. Thank you very much for coming down, and if you could just state your name and position, if any, and whenever you're ready. [LB31]

BOB McCHESNEY: Bob McChesney, M-c-C-h-e-s-n-e-y. Thank you. I am a owner in a CPA firm in North Platte, Nebraska, and I'm here this afternoon as the immediate past chairman of the Nebraska Society of CPAs, which is our membership organization, and

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we are in support of the passage of LB31. I have worked with the issue of CPAs crossing state borders to practice public accountancy for a number of years. Our own firm does practice in other states. We currently are authorized to practice in Colorado, Wyoming, and South Dakota. Currently, each one of those states, we have to go in and register and meet the test and be authorized to practice. I believe two of those three states are now considering the mobility issue also. LB31 will amend the Nebraska Accountancy Act of 1957 to provide that mobility to the CPAs from outside of Nebraska so they can practice in the state without the need to obtain license by reciprocity; they won't have to register; and they won't have to pay a fee. But most importantly, this bill would provide jurisdiction to the Nebraska Board of Accountancy to enforce disciplinary actions where needed and if needed. And, currently, in the past, based on current law, we have had CPAs from out of state come into our state, probably have violated ethics. And the best course of action has always been to go back to the original board of accountancy from where they come from, and that has been successful, but it takes time. The Nebraska Board of Accountancy has very little authority over these out-of-state practitioners. LB31 would greatly improve that. It's good public policy. We've talked already about the national trends. Yes, it's happening all around us. It's happening in other professions too. In fact, the idea of having an accountant in the...or having a client in Arizona kind of appeals to me right now, and I don't seem to have one right now, so I'll keep looking, especially in January. The bill also contains those needed technical clean-up amendments, especially the elimination of the term, "public accountants." That was a grandfathered class of Nebraska accountants in the 1957 act, and no longer have any of them practicing in the state. The bill also has an enactment date, September 1, 2010. That will allow time for the drafting and approval of the board rules and regulations. The board of directors of the Nebraska Society of CPAs enthusiastically endorses and supports this legislation. We believe it would be good for the profession; we know it would be good for the Board of Accountancy; and most important, it would be good for the public. We are in favor of the amendment that would add the enrolled agent designation, that it could be used. Currently, the bill as proposed, might have some conflict with what it refers to as E.A.s, but enrolled agents, we're okay in supporting that, and letting them continue to use that name. I would be glad to answer any questions you may have. [LB31]

SENATOR PIRSCH: Thank you very much. Are there any questions for Mr. McChesney? Senator Gloor. [LB31]

SENATOR GLOOR: Mr. McChesney, I'm probably a little bit like Senator Langemeier. I'm a little disoriented by this because I come from a previous area of business, healthcare, where people were very protective, if I can use that word, of a licensure between states. And in this case, we seem to be throwing this open to a wider allowance of people. Is that because we're talking about the opportunities here to discipline? And I'm looking for what the main thrust of this is. [LB31]

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BOB McCHESNEY: Um-hum. [LB31]

SENATOR GLOOR: Is it because people are...we have professionals who, in fact, are somewhat above and beyond discipline, or is it because of the mobility of the clients? [LB31]

BOB McCHESNEY: I think it's on both fronts. We certainly have had a disciplinary problem, although that's probably minor in the number of occurrences, you know, not a major problem, plus we've solved it other ways. The mobility is certainly something that's happening. We...especially in the larger firms, it's very common to transfer expert specialties in, and they work in our state. By the same token, some of our experts go to other states to work. It's possible, of course, that by allowing this freedom, that we may be hurting our Nebraska-based practitioners, but we don't think so. We think there won't be any big influx...there won't be any change in what's happening now. It just clarifies it and certainly gives our state board authority. [LB31]

SENATOR GLOOR: Okay. Thank you. [LB31]

SENATOR PIRSCH: Any other questions for Mr. McChesney? Seeing none, thank you very much for coming down to testify. Are there any other proponents? Any other proponents, LB31? Okay, seeing none, are there any opponents? Any opponents? Seeing none, is there any individual who would like to testify in a neutral capacity? Very good. [LB31]

BILL MUELLER: (Exhibit 1) Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska Society of Independent Accountants in a neutral position on LB31. I appear here with an amendment that the CPA Society, whose president is Dan Vodvarka, and the Board of Accountancy, whose executive director is Mr. Sweetwater, and Mr. Marienau, committee counsel, and I have worked on this morning, and we are looking at one particular provision of this bill. The provision that we're looking at is on page 28 of the bill, and it does address the use of the term, "enrolled agent" or the initials E.A., which stand for Enrolled Agent. And we are asking the committee to amend the current statute, Section 1-155, which is the statute that contains the prohibition about using titles or designations or certain abbreviations that are likely to be confused with the term, "CPA" or "Certified Public Accountant." Our current law prohibits the use of the abbreviation E.A., which the statute, I believe, defines as "enrolled accountant." And what we are asking with the amendment that I provided the committee is to provide that "the title or designation Enrolled Agent or E.A. shall not be assumed or used by any person except a person so designated by the Internal Revenue Service." The Internal Revenue Service administers a test, and requires continuing education requirements for an individual to be an Enrolled Agent. And what we would be accomplishing with this amendment is to allow someone who has been educated and has passed the test and

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holds themselves out as an E.A. to continue to do that. Be happy to answer any questions you may have. I am very appreciative of the Board of Accountancy and the CPA Society in agreeing to this amendment. They're not opening this section of the statute as to this issue, but when we looked at the bill, we realized that we could have a potential problem. [LB31]

SENATOR PIRSCH: Very good. [LB31]

BILL MUELLER: Thank you. [LB31]

SENATOR PIRSCH: Senator Langemeier, you have a question for Mr. Mueller? [LB31]

SENATOR LANGEMEIER: Thank you, Mr. Mueller. Okay, now you got me confused which is easily done. You're testifying in a neutral capacity. [LB31]

BILL MUELLER: I am. [LB31]

SENATOR LANGEMEIER: So you don't care about this bill other than you saw an opportunity to correct something so you're giving us an amendment to do so? [LB31]

BILL MUELLER: Yes. We have reviewed the bill, and we have no objection to the bill. My client...are nonlicensed accountants. They are not CPAs; they are not regulated by the Board of Accountancy. But obviously, something like this affects their practice so in the process of reviewing this bill, this section was in the bill, and it came to the attention of the committee that has been reviewing this. I would also add that you've heard testimony about the Uniform Accountancy Act. This is actually one of the provisions that the Uniform Accountancy Act has addressed. We've not picked that up in Nebraska; we're asking that that be done now. [LB31]

SENATOR LANGEMEIER: So if this bill had not been introduced, so I think I'm clear, but if this bill had not been introduced, this may have been a potential bill of its own to do some clarification for your clients. [LB31]

BILL MUELLER: It certainly could have been. This has not been a problem. No one has gotten in trouble for using these letters, E.A., but in reading the statute, because it does refer just to the initials E.A., I think that there could be a problem. [LB31]

SENATOR LANGEMEIER: Okay. Thank you. [LB31]

BILL MUELLER: Thank you. [LB31]

SENATOR PIRSCH: Thank you, Senator. Are there any other questions for Mr. Mueller? Okay, thanks a lot. [LB31]

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BILL MUELLER: Thank you. [LB31]

SENATOR PIRSCH: Great. Are there any other individuals who wish to testify in a neutral capacity here today on LB31? Very good. Seeing none, Senator Pahls, do you want to close? Senator Pahls waives. At this time then, I'll turn back the chair over to Senator Pahls. [LB31]

SENATOR PAHLS: Thank you. That concludes our hearing today, appreciate your attendance. [LB31]

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Disposition of Bills:

LB11 - Placed on General File.

LB29 - Placed on General File.

LB30 - Placed on General File.

LB31 - Placed on General File with amendment.

Chairperson

Committee Clerk