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Banking, Commerce and Insurance Committee  
January 31, 2011

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[LB49 LB269 LB396 LB462 LB535 LB553]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 31, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB49, LB269, LB396, LB462, LB535, and LB553. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Pete Pirsch; and Dennis Utter. Senators absent: Dave Pankonin. [LB535]

SENATOR PAHLS: Good afternoon. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls. I'm from Omaha, and I represent District 31. We'll take up the bills as posted. You can see, we did make a minor change or two on those. So, we will start soon with (LB)535, but please, I'm going to direct you to the smaller of the boards over there, so you can sort of follow some of the procedures. And I can see already we have the person moving up to the reserved chairs which I appreciate. That gives us some idea of who's going to be. You need to sign in and give the information to Jan. I want to ask you to spell your name, be concise especially if there are several of you on the same topic. We need ten copies. If you do not have those, wave them so we can have the page send them. It looks like everybody is prepared. Introduce...if Jan doesn't hurt somebody over there, I'll introduce Bill Marienau right here to...sitting beside me and all the way over there is Jan. You have to be careful because she can be devilish, and we'll start with the senators. And, first of all, I'm going to start with you to introduce yourself first before. []

SENATOR UTTER: I'm Senator Dennis Utter from District 33 in Hastings, and I'm sitting here because they elevated me to first place. []

SENATOR PAHLS: Okay, well, you be quiet a little bit, though, don't get...over here. []

SENATOR LANGEMEIER: I wasn't here for that vote (laughter). I'm Senator Chris Langemeier from Schuyler. []

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

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

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

SENATOR PAHLS: I'm sorry for shutting you off (laugh). This is a...and we have Senator Pirsch as he comes around, and he is also from the Omaha area. Thank you, Senator. Over here, I'm going to introduce Tom Kelly from Sutherland and Matt McNally from Norfolk. Okay. And I think we have everyone, and we are ready to go. Apparently,

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we are ready to go, and like I said, we will start with (LB)535, Senator Utter. []

SENATOR UTTER: Thank you, Senator Pahls and members of the Banking Committee. I'm Senator Dennis Utter of District 33. That's spelled U-t-t-e-r. I am here today to introduce LB535 which creates a licensing framework applicable to the sale of portable electronics in Nebraska. Coverage under this type of insurance protects against loss, theft, mechanical failure, damage, and other perils. This bill does not apply to service contracts or manufacturers' warranties. LB535 would require vendors who offer to sell portable electronics insurance to obtain one limited lines producer license. This legislation is intended to be consistent with a national trend with respect to the regulation of these types of products. LB535 also provides significant protections for the consumer in the form of required disclosures to consumers regarding their insurance coverage as well as training for individual salespersons. After discussions with the Department of Insurance and various stakeholders, there is an amendment which clarifies several issues brought to our attention from the Department of Insurance. I don't believe this amendment is quite ready yet, but certainly will be presented to you before we would exec on this bill. LB535 was brought to my attention by Asurion Corporation, a leading national provider of portable electronics insurance. Rhonda Oswald, the director of legislative affairs for Asurion, will testify after me and will provide a detailed summary of the bill. And I guess the only unusual thing that I would point out to you is that in my short experience with the Legislature at least, why, it's not very often that somebody comes and asks to be regulated. And I would suggest to you that that's a little different in this bill here. So with that, that's my closing. I'd be happy to refer any questions that you may have to Ms. Oswald when she comes up here unless it's something that I could answer. [LB535]

SENATOR PAHLS: Apparently, we don't think you can answer (laughter). Thank you, Senator Utter. Proponents. We can go in the order of proponents, opponents, and then neutral. Proponents. [LB535]

RHONDA OSWALD: Good afternoon. First of all, I want to thank you for moving this up, so I have an opportunity to make my flight this afternoon so. My name is Rhonda Oswald, O-s-w-a-l-d, and I'm here testifying on behalf of Asurion in support of LB535 and the amendments as offered by Senator Utter. Asurion is the leading provider of handset protection programs in the country, and has joined forces with leading wireless carriers throughout the world to bring this valuable product to consumers. The product that is at the heart of this bill is an insurance program that protects the consumers' investment in their wireless communications device by insuring it against loss, theft, damage, and internal malfunction of the device. The bill provides for an entity level license to vendors, offering portable electronics insurance and provides for key consumer protections related to such coverage. As wireless devices have become an integral part of our everyday lives, their functionalities have expanded exponentially, and with these developments the cost of these devices has also risen. Portable

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electronics insurance not only insures that a consumer's investment in such a device is protected, but also insures that a consumer has very little down time when a problem does occur by getting a preprogrammed phone or other portable electronics device in the consumer's hands, oftentimes the very next day after filing a claim. Staying connected in today's world is crucial, and Asurion's products ensure that its customers stay connected. LB535, sponsored by Senator Utter, is a bill that creates a licensing framework applicable to the sale of portable electronics insurance in Nebraska. Currently, there is no statutory regulatory framework for these products in Nebraska. This legislation would provide such a structure and provide for an individual limited lines producer license to sell this type of insurance product. The approach set forth in this important piece of legislation ensures a balanced, regulatory structure that would avoid the need to license every individual on the floor of every retailer in Nebraska that offers the insurance to consumers while also providing important consumer protection and meaningful disclosures. LB535 creates a regulatory scheme governing the sale of this product by creating a licensing framework under which the retailer holds the license authorizing its employees to sell this insurance product on their behalf. This model is consistent with the national trend that we have seen with respect to the regulation of this product as it creates an efficient and fair licensing framework for the entities offering this product to consumers and gives regulators the authority they need to effectively oversee these activities. Laws similar to LB535 have been enacted into law in Minnesota, Maryland, New Mexico, Texas, California, Georgia, Washington, Florida, and New York, providing this licensing framework and its inherent consumer protections to well over half the population of the United States. In addition to the licensing framework created by this bill, this bill also provides significant consumer protection measures in the form of required disclosures to consumers regarding the insurance coverage that is being sold as well as required training for those individual salespeople acting under the retailer's license. Asurion and local counsel have worked through the language in this bill with the Department of Insurance, and the department is in agreement with the bill's language as amended. So, in summary, this bill is a good bill not only for the retailers of Nebraska but also for the consumers of Nebraska in that the bill creates a regulatory structure for this product and ensures full disclosure to the consumer of the terms and conditions of this insurance coverage while also providing the Department of Insurance with the regulatory authority to ensure that the product is sold to Nebraska consumers in the right way. This bill strikes an effective balance between the interests of consumers and industry, and we would ask that you vote favorably to advance LB535 with the amendments offered by Senator Utter from committee to General File for further consideration. And with that, I would be happy to take any questions. [LB535]

SENATOR PAHLS: Senator Christensen. [LB535]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Thank you for coming today. Does this affect any vendor right now that you know of that provides coverage like this?

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Is there a bad actor we're after or is this just regulations you're trying to put in? [LB535]

RHONDA OSWALD: There are no bad actors. All of the vendors who offer that product today in the state would be affected by this legislation. That's correct. [LB535]

SENATOR CHRISTENSEN: Did they all work on legislation together? Did you... [LB535]

RHONDA OSWALD: They did, and as a matter of fact, one of the telecommunications providers here in the state came to us as late as this morning, and we are working with them to incorporate the changes that they would like in this bill. [LB535]

SENATOR CHRISTENSEN: Thank you. [LB535]

SENATOR PAHLS: Senator Gloor. [LB535]

SENATOR GLOOR: Thank you, Chairman Pahls. Ms. Oswald, why would some of these devices not be covered under homeowners' insurance as an example? I'm thinking especially of laptops or tablets that may serve as personal computers. Might they be included under some property coverage with homeowners' insurance? [LB535]

RHONDA OSWALD: Absolutely, and one of the disclosures that is set forth in the bill that's required is that you may have other insurance that covers this. However, as we all know, your deductible on your homeowners and the claims filing process for your homeowners' insurance is quite burdensome, and the likelihood of them getting their electronics device preprogrammed and ready for them to go, you know, in less than 24 hours is pretty unlikely. So from that aspect, from the claims process to the deductible which can be significantly more than the device and therefore leave that type of insurance really not applicable to these devices. [LB535]

SENATOR GLOOR: Okay. Thank you. [LB535]

RHONDA OSWALD: Um-hum. [LB535]

SENATOR PAHLS: I'm just curious. On my...let's say my Verizon phone, and there's a little like \$5, almost \$6 and that's my insurance for that phone. I'm just curious. Is that typical? [LB535]

RHONDA OSWALD: That's typical. [LB535]

SENATOR PAHLS: You know, and percentage... [LB535]

RHONDA OSWALD: They range from, you know, \$4 to \$7, all depending upon the

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coverage, yes. [LB535]

SENATOR PAHLS: Okay. And I'm looking at that, so in a year's time...let's just round it off to the middle, \$6. So that would be 70-some dollars for how much would that...for a phone that's actually pretty decent...I mean, pretty high rates, is it not? [LB535]

RHONDA OSWALD: So those rates are vetted throughout...I have to be honest with you, and I can't recall in Nebraska whether we have to file rates. But it's the same rate nationally, so those are vetted through the Department of Insurance. In many states, those rates have to be filed, so they meet the ratio that's required by the department. I can say that. But from a...you know, \$70 a year for a, you know, possibly, you know, \$700 to \$800 device, upwards to \$1,000 device is relatively normal for insurance coverage. [LB535]

SENATOR PAHLS: Yeah. No, I just...after I talked to you, I looked at my Verizon bill and the interesting thing about it is two months ago I lost my phone, and I would have to wait a day or two to get my phone. I said, oh, just give me another one. And then they moved my whole package deal...I almost thought it was sort of a...interesting transaction, you might say, yeah, okay. Senator. [LB535]

SENATOR LANGEMEIER: Thank you, Chairman Pahls, and thank you for your testimony. You read in the definition, and it's fairly straightforward, but kind of for the record, we've talked about this in the previous days, and you talk about cell phones. [LB535]

RHONDA OSWALD: Um-hum. [LB535]

SENATOR LANGEMEIER: But this would cover my GPS unit I bought at Best Buy. It would cover my wireless headset, a boom box I might walk out with, anything that could be electronics that has an extended warranty offered from anybody. Is that my understanding? [LB535]

RHONDA OSWALD: So this is...the extended warranty is exempt from this, so it doesn't cover extended warranties. We tried to make the definition broad enough to encompass things that we couldn't think of. For instance, when the original bill was passed several years ago in 2001 and 2002, we had boxed ourselves in to only cell phones. Today, those...our partners such as Verizon and AT&T; they offer tablets now, and so it became that we were trying to make it broad enough. So we did work with the department, and I'm not sure which definition you're looking at, but we did work with the department to cull down and make them comfortable with making it as narrow as possible. The goal of this product is to cover those things carried by Verizon and the telecommunications carriers. So that's where we were going with this and covering a wider variety than just cell phones, because today they offer a great deal more than

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that. [LB535]

SENATOR LANGEMEIER: Thank you. [LB535]

RHONDA OSWALD: Um-hum. [LB535]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB535]

RHONDA OSWALD: Thank you. [LB535]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? Good afternoon. [LB535]

KATIE ZULKOSKI: Good afternoon. Senator Pahls, members of the committee, my name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm testifying today on behalf of Viaero Wireless. I'm testifying in a neutral capacity simply to state that we are working with the parties on some suggested language that we would have in referring to the green copy. And on page 2, lines 23 and 24, it relates to what you were speaking about, Senator Langemeier, about the seller's warranty. And we want to make sure that that is clarified in the language of the bill, and so we are working with the parties. And we appreciate Senator Utter and other interested parties working with us to make sure that that's clear. [LB535]

SENATOR PAHLS: Are you saying these are the amendments that Senator Utter is talking about? [LB535]

KATIE ZULKOSKI: I think that that's part of that. [LB535]

SENATOR PAHLS: Okay, okay. Any questions? Seeing none, thank you for your testimony. [LB535]

KATIE ZULKOSKI: Thank you. [LB535]

SENATOR PAHLS: Good afternoon. [LB535]

CURT BROMM: Good afternoon, Mr. Chairman, members of the Banking, (Commerce and) Insurance Committee. Curt Bromm, C-u-r-t B-r-o-m-m, appearing as a lobbyist on behalf of Verizon Communications in a neutral capacity. And to give you just a little bit of explanation on that, this bill...Verizon, at least the people that I deal with and communicate with were not aware of it until after it had been introduced. And so the initial reaction was, what's the problem, and why do we need the regulation? So, quite frankly, initially, we indicated to the senator we were opposed. But as the bill has been examined and vetted some through the Verizon organization, they have become neutral

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to positive, and we haven't seen the amendments, so we were concerned about the Department of Insurance involvement, and how that would all mesh and the costs and so forth. But we're certainly willing to work with the senator and try to accomplish a very positive result, so that's why we're appearing in a neutral capacity. [LB535]

SENATOR PAHLS: I did hear you say you're going from neutral to positive, though, depending on the amendments? [LB535]

CURT BROMM: Our position is neutral, but I would say it's a positive neutral (laugh). I don't know how to...I mean, we're not...I'm not jumping up, you know, we're willing to work on it and, hopefully, we're optimistic that the product that you come up with will be a good one so. [LB535]

SENATOR PAHLS: Okay. I see no questions. Thank you for your testimony. [LB535]

CURT BROMM: Sure. [LB535]

SENATOR PAHLS: Any more neutral? If not, Senator Utter. The good senator waives closing. Thank you. That closes LB535. Now we're ready to go back to LB49. Good afternoon, Senator. [LB535]

SENATOR KRIST: Senator, how are you? [LB49]

SENATOR PAHLS: Fine. Thank you. [LB49]

SENATOR KRIST: (Exhibits 1, 2 and 3) Good afternoon, Senator Pahls and members of the Banking, Commerce and Insurance Committee. For the record, my name is Bob Krist. It's K-r-i-s-t. And I represent the 10th Legislative District in northwest Omaha. I appear before you today in introduction and support of LB49, a bill I introduced on behalf of my constituents, who want to see no one else in this state experience the torture they went through. You will hear their testimony today. They braved the weather and drove up from Omaha. My staff and I worked on this legislation extensively during the interim, and I want to thank the Douglas County Register of Deeds Office, Diane Battiato, and her chief deputy, Larry Miller, for their technical assistance and support as we attempted to craft good public policy and something that would not be burdensome to the county recording office. I will tell you that there are still some questions with this legislation. Why did we introduce LB49? Two words. Paper terrorism. LB49 can't prevent the terrorism from happening, but it will provide notification to the property owner at the time of filing that a nonconsensual lien has been recorded on their property. To be clear, this bill does not apply to mortgages, deeds, or trusts, or any encumbrance, where all parties involved have knowledge of the encumbrances. How does it work? The bill requires a person who files a nonconsensual lien to provide the county recording office with a postage-paid envelope that is addressed to the property

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owner at the time of the filing in order for the lien to be recorded. Procedurally, we're asking for the person filing the lien to provide the envelope, the postage, and the correct address to be sent forward. The county recording office then will mail a copy of that nonconsensual lien to the property owner, allowing them an opportunity to be notified, and that's the key. Presenting a postage-paid preaddressed envelope at the time of filing should be considered merely another requirement for the lien to be filed akin to other requirements such as completing the necessary paperwork by law, paying the appropriate fees, etcetera. The postage-paid envelope has nothing to do with the validity of the nonconsensual lien. As we understand it, county recording offices do not render judgments on any lien. They merely ensure the lien filer has complied with all of the filing requirements by law. I understand that there might be opposition to LB49 or allowing a property owner to be notified of a lien at the time of the filing. Please know that we welcome the opponents of LB49 to offer constructive solutions which will solve the notification problem, as the current situation is apparently unreasonable for a property owner to be left completely in the dark, perhaps for years, and only made aware of the lien when it is time for them to check or dispose of the property. You may have heard some news accounts of IRS agents having false nonconsensual liens placed on their property by antigovernment activists. One court brief stated, in part, bogus liens that have been asserted to harass IRS employees and deter them from enforcing the tax law. The tax protesters, while claiming to act in the interest of freedom of personal liberty, use this weapon to harass private individuals in their private lives as part of the taxpayers' protest campaign. I cite United States v. Van Dyke. Other news accounts have relayed disturbing details of prominent elected officials--judges, lawyers, doctors targeted with frivolous practice liens which clearly is a means to harass and intimidate those individuals. Some states have severe penalties. I thought long and hard about whether to attack that side of this problem. That is, making much stiffer penalties, but the key issue is, that if we inform the person who has had the lien put on them--he or she--they can take the proper action and solve the issue. In closing and to reiterate, I am merely asking for the lien filer to provide a postage-paid preaddressed envelope at the time of filing as another requirement before the county recorder office can file the person's nonconsensual lien. I want to thank this committee for its consideration in this matter. I am open to working with anyone who would appear to want to amend or...and talk to anyone who wants to change it in a way to make it any better, and I'd be happy to answer any questions for you. [LB49]

SENATOR PAHLS: Senator Pirsch. [LB49]

SENATOR PIRSCH: Yeah, I appreciate the problem that brings you before us here today, and certainly that does happen. The problem is based on somebody who files a lien with absolutely no legal basis to do so, and with bad faith. But if the cure...and I assume you fashioned your cure to be the least intrusive to the government officials, but if you have that bad intent, why couldn't you write down on the envelope, you know, a wrong address, and how would the government official know then? Does it provide



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meaningfully help to the problem? [LB49]

SENATOR KRIST: We had talked about making the language in the bill more specific in terms of the legal address of the lien to be filed. And we had talked about changing it a bit. If you're filing a nonconsensual lien, actually, I do have one more handout for you that would describe what those nonconsensual liens would be. But let me give you an example. If a contractor would file a lien on your property, because they have done work to your home and have not been paid, or some contractors do it when they enter into an agreement to make sure that they will be paid. They would have to file your legal address, your address, in order for that lien to be valid, and that's already in the law. Interesting to know, the law also says that you should notify, but there's no feedback loop, and that's what this is intended to do. And I would say one other thing. It's not just people who are being targeted, and you'll hear the Rainwaters talk about their particular situation in a minute, I'm sure. But I have also personal knowledge of another lady in my district who is 93 years old, passed away. And when it came to settling the estate and selling the piece of property, she had four individual contractors who had small liens on her property. Now, she's gone...Grandma is gone, and we're trying to settle the property out...they're trying to settle the property out, trying to sell the estate, and they can't. They have to basically settle out the lien in order to release the property. Those were small enough that they were nuisances, but this is a practice. And not so much in Nebraska as we've been able to see, but there are certainly situations here, but when you look at other states, and certainly, again, with that court case as noted, this is going on. And I just believe that feedback is an important part of this whole thing. Any other questions for me? [LB49]

SENATOR PAHLS: I see no more questions. Are you going to stick around for closing? [LB49]

SENATOR KRIST: Yes, sir. Thank you. [LB49]

SENATOR PAHLS: Okay. Okay, thank you, Senator. Now, we will have the proponents. [LB49]

LARRY RAINWATER: Good afternoon. I feel like I'm underdressed for this, but it's a snowy day out. My name is Larry Rainwater, and that's spelled R-a-i-n-w-a-t-e-r. My wife, Karen, and I are here as taxpaying citizens of Douglas County, Nebraska, in support of LB49. The first thing, I want to thank Senator Bob Krist and his staff for following up on a commitment they made to try to achieve some sort of a change in the way certain liens are filed and recorded. And the second thing I want to do is thank Attorney General Bruning and his staff for their interest, attention, and suggestions on how to deal with this thing. Although we are speaking in support of LB49, we are concerned that it may not be enough to deter the filing and recording of fraudulent liens. As we read the bill, the lien is recorded before the property owner knows. As a

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minimum, we think there should be a 30-day waiting period from the time the notice is mailed to the property owner to when it is recorded. Actually, we would favor more restrictive and more punitive measures to prevent and deter the filing of fraudulent liens. Fortunately, to date, the problem in Nebraska does not seem to warrant the measures that have been taken in other states--Colorado and Texas are states where the filing of fraudulent liens has become a real problem for some time, especially for judges and law enforcement officers. It's unfortunate we are here discussing this. It seems to us that there are already statutes covering certain nonconsensual liens. Also, it seems a level of common sense should be expected from those who record the liens. Section 52-1903 of the Nebraska Statutes says, and I quote, "The Secretary of State, county clerk, register of deeds, or the clerk of any court shall refuse to accept for filing any nonconsensual common-law lien." We assume the term common-law changes the meaning of nonconsensual term that we're using in LB49. Following discovery of the Omaha lien, we met with the Douglas County Register of Deeds. We asked her if there was anything that could be done to prevent this from happening again. She said, no. She maintained that her office is blameless and simply acting as a recording agency. Once the lien is in the proper form and notarized, it will be filed. The Register of Deeds office doesn't bother with the merits of the supporting documents. When asked if the Register of Deeds office ever checks the validity of the notary, she indicated, they don't have the time or resources. As far as we can see, there's no value in having documents notarized. Also, as near as we could determine, the Register of Deeds never referred the threats in the Rockefeller letters to the county attorney. In our opinion, the Register of Deeds office was an active participant in the recording of the fraudulent lien. Section 52-1604 of the Nebraska Statutes exempts county staff from personal liability except in cases of willful misconduct or gross negligence. Reading the documents included in the filing of the lien on our property as well as the approximate two-month-long correspondence between the perpetrator and the Register of Deeds, we wonder what it takes to be considered grossly negligent. If a similar lien is recorded on our property, we may be tempted to find out. We appear here today with fraudulent lien recorded on our Omaha property. We still do not know who filed the lien or why the lien was filed. The only action we have taken at the suggestion of the Nebraska Attorney General's Office was to file a notarized affidavit stating that the lien is fraudulent. Only when we decide to sell the property will we know for sure if our affidavit and other supporting information from the over \$2,000 we spent on a Kansas lien from the same person will be sufficient to the title companies. The committee has been furnished with copies of the five-page letter dated June 1, 2010. We wrote to Senators Krist and Lathrop. It describes most of our key points and opinions. We thank the committee for their attention and appreciate anything the Legislature can do to deter the filing and recording of fraudulent liens. If you have any questions. [LB49]

SENATOR PAHLS: Senator Pirsch. [LB49]

SENATOR PIRSCH: I'd just like to say that I'm very sympathetic to your...for the

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problem that exists and that you've experienced, and, you know, certainly would be interested in if it's possible, fashioning something that can address that. [LB49]

LARRY RAINWATER: Thank you. [LB49]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. Good afternoon. [LB49]

KAREN RAINWATER: I am Karen Rainwater, R-a-i-n-w-a-t-e-r. In January of 2010, we set about to sell our property in Manhattan, Kansas. We received a call from the abstracting company, said, you have a lien on your property. We can't proceed any further with this sale. What? A lien. Well, what's it about? They sent us a copy. It was dated 1984, went back to a case in 1984 from the Tenth Circuit Court of Appeals. It named a long list of defendants...well, not initially. Initially, we only knew that, and we knew that on the lien that we had supposedly received notice of this lien September 20, 1984, and that it was sent by U.S. Post Office mail. We've been in our house since 1974. So this took us quite by surprise. The name was Sandra J. Rockefeller, so...I'm in human resources, so I think back through, you know, is this somebody that I've dealt with in my position, somebody that's got it out for me? No, couldn't come up with any leads there. So we set about to see what we could learn about Sandra J. Rockefeller. Well, we couldn't. All of the addresses were dead ends. They had been sent in from a P.O. box, so she was not traceable. We wanted to get the property sold, and so we hired an attorney in Kansas to proceed to do what we needed to do to get this before a judge, to get it cleared aside, acceptable. It's still on there, but it's...to get it acceptable to the abstract company to get clear title to be able to sell it. In looking at the document, it listed a long list of defendants--doctors, FBI, Social Security Administration, Eastern Airlines, Dallas Police Department. Never once did it say Karen Rainwater other than to provide in the notice of lien the legal description of our property in Omaha in my name. So after we went through this and spent 2,000-plus dollars to get it cleared, I said to Larry, we better check our property in Omaha and make sure we don't have a lien on our property in Omaha. Well, lo and behold, there was a lien on our property in Omaha, and the very same lien, very same person, very same case, Tenth Circuit Court of Appeals. When we were going through the property in Kansas, I wrote to the Tenth Circuit Court of Appeals, asking for a copy of this particular case, because I wanted to see, what does it say? They couldn't find it in their records. It was too far back. So that was a dead end. They sent me back my \$45. So, as my husband mentioned, we did go visit with Ms. Battiato, and went through...she was able to give us some documentation. There had been four correspondences with Sandra J. Rockefeller between her and Ms. Battiato--two letters back from Ms. Battiato to her. On the third letter, December 10th of 2007, Sandra Rockefeller who's calling herself attorney pro se, says please return the certified copy of the recorded court order and the motion it grants and the condition with the lien to me at the above address. The authority to record the instruments are clearly included in the lien. "Failure to record the five pages will result in the Register of Deeds

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to prosecution pursuant to the order granting the motion to dismiss entered with the U.S. Court or Appeals, not of, or Appeals for the Tenth Circuit. Douglas County Register of Deeds is subject to prosecution for obstruction of justice subject to the enclosed order if the five pages are not recorded." Then in the December 29 letter, because she still had not been able to accomplish getting this recorded after four tries. In her fourth letter, she says, "I am the attorney pro se, and I represent the appellants of the aforementioned lawsuit in which the appellants prevailed on the appeal to the U.S. Court of Appeals in the Tenth Circuit. All cities, counties, and the federal government were found to have obstructed justice. The final court order was entered against the appellants (sic) and all aggregates which Karen L. Rainwater, Kimberly R. Rainwater--my daughter, state of Nebraska, all the counties and cities within the state of Nebraska are a part of." That is ludicrous. This was the first time my daughter, who is not an owner of the property, was mentioned. "Do not send me letters about the authenticity of the original Claim of Lien I am enclosing to be recorded, references to my court orders, or how many times I have written to the Douglas County Register of Deeds regarding the above. It is interesting to me that you doubt the lien is original, because I am the person who composed, printed, and mailed it. It is an original Claim of Lien; it is not a facsimile. I am returning the Claim of Lien with a check for the recording fee in the amount of \$5.50." On January 2, 2008, the lien was recorded. I think my husband has summarized our points of view about this. I certainly am so appreciative of this committee hearing this particular issue and so appreciative of Senator Krist for bringing it forth. This is a very difficult thing, and in today's age when it's hard to sell property and hard to get buyers for property, I wouldn't want anyone else to go through this. And as my husband mentioned, we still have it on our property today, and we are not looking to sell in the near future. But this is, to me, a very important step in trying to put some additional force around the regulations of filing nonconsensual liens. I do totally support the 30-day notice to the property owner that my husband mentioned as well. So I'd like to thank you all very much. Any questions? [LB49]

SENATOR PAHLS: It appears right now it's sort of like a nightmare. Any questions? Seeing none, thank you. [LB49]

KAREN RAINWATER: Thank you very much. [LB49]

SENATOR PAHLS: Any more proponents? Opponents? [LB49]

JUSTIN BRADY: Senator Pahls and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association in opposition to LB49. The realtors had a lot of discussion about this bill, and they went back and forth between, as you heard here, the need to provide notice, but then went back on what, not only their belief and policy is, but what the public policy of the state has been on the Register of Deeds Office is, literally a depository of recordings. The Register of Deeds Office should not act in a

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judicial capacity and decide, is this a valid lien? Is this a valid recording? Their job is to accept the papers and record them. And, so specifically, in LB49 on lines 11 through 14, where it gives the Register of Deeds Office the authority to say, if you don't have the envelope, and you don't have the stamp, they shall deny it--deny the recording. That's the part that the realtors focused on and said, that's against what they believe the public policy of this state and what the Register of Deeds Office should do. They did have discussion, and I've spoken with Senator Krist about this, about looking at, is there a way, though, to get after these bad actors? And they felt that the proper way would be to go after the lien and say, if you haven't provided notice, the validity of the lien is automatically presumed to be invalid or something along those lines as opposed to turn the Register of Deeds Office into a judicial branch as opposed to just an administrative branch. So with that, I'll try to answer any questions. [LB49]

SENATOR PAHLS: Let me ask you a question. Do you see the...the couple that talked to us...do you see their plight? [LB49]

JUSTIN BRADY: I do. And like I said, the realtors talked about that, and they struggled with, because they also believe that people should be given notice. And then when they went through the discussions, current law does require notice to be given, so I guess the next step would be, instead of turning the Register of Deeds office into deciding whether or not they should file something, let's look at doing something when that actor does not give notice. Punish them or go after their lien, their criminal part, if you will, as opposed to change the public policy in this state of what the Register of Deeds office does. [LB49]

SENATOR PAHLS: Yeah. I understand that point, but somewhere in this, I hope we can find the solution, because it seems like the person out there is living their life. All of a sudden, they get hit with something. Is the authority... [LB49]

JUSTIN BRADY: And there's another bill that the committee will hear. I believe it's next week. Senator Campbell has a bill that talks about how when making recordings have to fit certain margins, certain fonts. In that bill, though, that Senator Campbell specifically says, but the Register of Deeds cannot reject the filing if it doesn't. I think that would go...the realtors still would have a discussion, but I think it would go a long ways for the realtors concerned if the part was that the Register of Deeds couldn't reject it. I mean, still you could have the requirement that there was the envelope that they were stamped, but the Register of Deeds, they feel, shouldn't have the ability to just deny recordings. [LB49]

SENATOR PAHLS: Okay. And I don't have a dispute with where they're standing on there. But how can we help people with this issue, the group that you're lobbying for...what's their answer to this? [LB49]

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JUSTIN BRADY: I think their answer was, do you automatically make the lien invalid? I mean, make it so it's not a process of going through a whole court proceeding to prove that. It is, if notice wasn't provided as law currently requires, the lien is invalid. [LB49]

SENATOR PAHLS: Okay, okay. I think Senator Christensen... [LB49]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for testifying. Wouldn't we have to change this to a letter with return receipt to have proof then, to invalidate that? And that probably should be that way anyway, not just mail, because otherwise, there's really no proof that it did go, if somebody didn't want to receive it versus the other...if something like this is done, be done with return receipt? [LB49]

JUSTIN BRADY: That was part of the discussion, yeah, because they got into the whole legal rule of the mailbox rule which is, if someone says they put it in the mailbox and no one can dispute it, then it's presumed that it was mailed and delivered which, yeah. So then should it be certified mail? Should it be some other type of mail, so there is notice? Again, which that part of providing notice, they support. It still comes back to the Register of Deeds just being able to say, no, we aren't going to record things, because...yeah. [LB49]

SENATOR CHRISTENSEN: Yeah, I understood your objection, but I should have asked...certified mail would make sense here. [LB49]

JUSTIN BRADY: Yeah, the certified mail would make more sense than just regular mail. Yes. [LB49]

SENATOR CHRISTENSEN: Thank you. [LB49]

SENATOR PAHLS: Senator Pirsch. [LB49]

SENATOR PIRSCH: So then your remedy would be simply that once upon discovering that the filing of the lien and the homeowners would file in the court, and then bring to the...I guess maintain, and the presumption would be that if their testimony is that they never received notice, that that would...unless somebody was (inaudible) there? [LB49]

JUSTIN BRADY: Um-hum. That would invalidate the lien unless I guess, then it would fall back on this other actor to say. [LB49]

SENATOR PIRSCH: To appear in court and file some sort of proof or. [LB49]

JUSTIN BRADY: Yeah, yeah, put the burden back on the other individual, the fraudulent individual that come to court can say no, it's a legitimate lien, and we provided notice, as opposed to the homeowners have to go sit there and say, no, it's not a good lien. No,

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we didn't get notice. I guess they look at it, and it's no problem putting the burden on the party that's in violation here. [LB49]

SENATOR PIRSCH: Who probably won't show up. [LB49]

JUSTIN BRADY: Right. And then in that case, then the lien is automatically lifted or nullified, I guess. [LB49]

SENATOR PIRSCH: Does that structure...you're familiar in terms with other states, they must have encountered this problem--Texas, Colorado. Does that...I mean, do you have a familiarity with how they've...? [LB49]

JUSTIN BRADY: I don't have a familiarity with how other states do. [LB49]

SENATOR PIRSCH: And what about on the criminal sides of things? Is there sufficient tools that the...I know part of the problem is identifying who these individuals are. Right? But, I mean, does that make criminal prosecution of them practically impossible or...? [LB49]

JUSTIN BRADY: Well, I suppose...I mean, I suppose the hardest part with any of them would be finding them. I mean, finding the actual individual. I mean, as you've heard, they'll communicate through a post office box, but actually physically getting a hold of them...yes, would be tough. But I guess I was going about it from the homeowner side. If they aren't willing to show up in court, if the individual who has brought this lien is not willing to show up to say it is legit, and we did provide notice, then the homeowners here in Nebraska were being harassed, are then able to move forward with their lives, because the lien would be wiped clean. Yeah, and if the individual did show up, then you would know where they were and could criminally prosecute them. [LB49]

SENATOR PIRSCH: Sure. Other than shelling out a couple of grand for an attorney there. [LB49]

JUSTIN BRADY: Right. [LB49]

SENATOR PAHLS: Senator Langemeier? Thank you for your testimony. [LB49]

JUSTIN BRADY: Thank you. [LB49]

SENATOR PAHLS: More opponents? Neutral? [LB49]

JERRY STILMOCK: (Exhibit 4) Good afternoon, Senators. My name is Jerry Stilmock, J-e-r-r-y Stilmock, S-t-i-l-m-o-c-k, testifying in a neutral capacity on behalf of the Nebraska Bankers Association. [LB49]

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SENATOR PAHLS: What committee are you in front of? [LB49]

JERRY STILMOCK: Good afternoon, Senators. Nebraska...the Banking Committee. [LB49]

SENATOR PAHLS: Thank you, thank you. [LB49]

JERRY STILMOCK: Yes, sir. Chairman Pahls, the Nebraska Bankers Association comes in, in a neutral capacity, and I've asked the page to send out...distribute to each of you a rather technical amendment. Line 15 merely captures that the language of...in Chapter 76 under Nebraska law, referring to trust deeds as compared to that language, it appears in line 15 as deeds of trusts. And we have asked that that be considered. We ask that that be considered by the committee. Also, it merits discussion that is it a good idea, and we believe it is a good idea to provide notice. Presently, taking this discussion up to this point in time and looking at the Nebraska construction lien statutes, the Nebraska construction lien statutes also require notice be delivered once the lien is filed in a construction lien situation. But as Senator Krist said, there's no hammer. There's no what if...there's nothing built into the statute to provide that notice and some mechanism for giving notice to the property owner be given. And as I understood the testimony, that it would be the document itself, the nonconsensual lien that would have to be submitted as well as the envelope with the address and with the postage on it. I think it takes it a step forward for what is required now with giving notice, and it puts the burden on the person wanting to file the lien, and to us, that makes sense. [LB49]

SENATOR PAHLS: Do you think that this can be handled really, this problem, this issue should be or is solvable? [LB49]

JERRY STILMOCK: Yeah, I think it's solvable. The question is, the people that aren't here, that a lot of the conversation...the gentleman coming before in opposition spoke in terms of if you don't provide notice, then I wasn't clear if that would be a nullity that the lien without giving notice would be void or what everybody...the common goal seems to be, is we don't want the citizenry to go out and have to file a lawsuit in order to clear title to prove in a court of law that the lien was fraudulent. The ultimate hammer would be lien filed, notice for that lien be required to be given by the action that's being proposed in (LB)49, and that upon the property owner finding out about that lien being filed and having not received notice of it, that the property owner could file an affidavit saying we never got notice of it and make it void. That would be the ultimate hammer that I see, but that's a drastic step, because then I assume there would be numerous people that would have concerns that that would be a substantial change in Nebraska law. [LB49]

SENATOR PAHLS: Okay. I see no questions. Thank you for your testimony. [LB49]



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JERRY STILMOCK: Thank you, Senator. [LB49]

SENATOR PAHLS: Yeah. You're welcome. Any...one more, come on down. [LB49]

KATIE ZULKOSKI: Good afternoon, Senator Pahls, members of the committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying today on behalf of the Nebraska State Bar Association. And we appreciate Senator Krist bringing this issue before the committee today. We do recognize that this is an important issue. We also recognize the concerns that have been brought forth on both sides. That this is a significant issue that would need a comprehensive solution that we think really merits further study, and that we would lend our support to perhaps over the interim or yet this session, really delving into what would be the appropriate way to address this issue. As you've heard, there's...almost all the solutions offered have a similar side that well, perhaps here's a concern on that side, so we do think that this is something that merits further study. [LB49]

SENATOR PAHLS: Thank you for your testimony. [LB49]

SENATOR KRIST: Senator Pahls and members of the Banking, Commerce and Insurance Committee, I want to thank you for the opportunity to come before you today, and I want to make a couple of final statements. I felt sincerely empathetic, sympathetic for the Rainwaters and for other people who have brought their issues forward. I set about trying to find an answer. I went to those that are most current in the nonconsensual lien filing process. I went to the Register of Deeds office, and if you've taken the testimony that's been given to you when you read the letter from the Register of Deeds in Douglas County, and you go in and say, how do we fix this? They're going to say, scarecrow from the Wizard of Oz. Look at him, because I don't want to be held liable for not accepting a lien. When I went to the realtors, they said, don't keep us from doing this. When I went to the lawyers and asked specific questions about...in the law. I believe that this is a procedural matter. What I initially started out to do was at least a ten day cooling-off period or a consensual period where that notification would have to go double feedback. Registered letter going to the individual. That individual coming back to the Register of Deeds office and saying, I have received, and I do not concur. Does the Register of Deeds take any other action at that point? Absolutely not, because notification has been made and the individual is going to have to fight it, because someone is coming after him. This is a serious matter, and I don't know how to fix it other than to bring it to the committee's attention. I tried to take step one which was at least provide us with an envelope to go out, and that gets into the feedback loop, and that's what we're talking about. We're talking about a feedback loop that allows you, Senator Pahls, when you have been liened upon to say, it is valid or it is not. I think most people, especially in the construction liens, and I know Senator McCoy can talk to it, most people are very responsive once they find out if they're doing things the Nebraska way. And that brings me to my final point. It has not happened yet in

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Nebraska. It will happen. We will have people who put fraudulent liens on. We have had it happen to one family in terms of harassment. It'll happen more and more. I misspoke...it hasn't happened to our elected officials, our judiciary, our lawyers, our IRS agents to the extent it's happened outside of Nebraska, but it has happened to our Nebraska residents. I would be happy to work with anyone and any amendment status to try to move this thing forward. I do agree with Katie and her testimony in the fact that this is something we cannot let linger. We need to solve the problem. And if the committee would consider at least one step, I would very much appreciate your consideration. Thank you again. [LB49]

SENATOR PAHLS: Seeing no...thank you for bringing the bill forth. That closes the hearing on LB49. Now we are ready for LB269. Good afternoon, Senator. [LB49]

SENATOR CONRAD: (Exhibits 1, 2) Good afternoon, good afternoon. Distinguished members of the Banking(, Commerce) and Insurance Committee, my name is Danielle Conrad. That's D-a-n-i-e-l-l-e Conrad, C-o-n-r-a-d, and I proudly represent north Lincoln's "Fighting 46" Legislative District right here in our Nebraska Unicameral Legislature. I'm here today to introduce LB269, and as you can probably tell, I am quite excited to do so. Here are the three most important components to remember about LB269. Number one, this legislation forges important and refreshing common ground on a topic that has been quite contentious over the past few years. I believe that you will find those testifying in support today will represent a broad and unique coalition. I want to commend the industry for our hard work together over the interim period to identify positive, pragmatic, and constructive ways to improve the economic landscape together. Number two, LB269 improves our state's financial literacy and educational efforts through established and well-respected public, private partnerships. These type of educational efforts are proven to help the next generation make good financial decisions. As evidenced during recent economic uncertainties, Americans need more sound financial education to ensure that they are responsible actors in our economic and democratic system. Three, LB269 modernizes the licensure fee structure which has not been modified since 2001 in order to ensure Nebraska structure is reasonable in comparison to other states, and most notably, our border states. I do have a handout to illustrate this component point and will ask the page to distribute that now. Additionally, I do want to make clear at this stage of the hearing today that my intentions regarding the Department of Banking which is responsible for regulation and licensure of this industry, are meant to ensure that this department and its budget and its revenue implications as posed through LB269 are essentially held harmless. I'm also going to have the page bring around a potential committee amendment that I drafted in coordination with committee counsel and others who have worked on this legislation to ensure maximum clarity, so that the Department of Banking is, indeed, held harmless if this legislation does advance forward. It was never my intent to impact their revenue budget or other important responsibilities, and I pledge to continue working with them and others that have an interest in this legislation to ensure that it can be implemented in the most

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reasonable manner as possible. So with that, I am happy to answer any questions, and I know that you're probably very excited to hear from the folks that have a lot of expertise in this area, most notably from the industry and financial educational professionals that have joined us here today. But this is a common ground approach to a difficult problem, and I think it's something that, hopefully, we can have a great dialogue on and figure out a way to move forward together. So with that, thank you. [LB269]

SENATOR PAHLS: Okay. Any questions? Senator. [LB269]

SENATOR LANGEMEIER: Thank you, Chairman Pahls and thank you, Senator Conrad. One question. [LB269]

SENATOR CONRAD: Yes. [LB269]

SENATOR LANGEMEIER: The current fees are \$150 for the main office and \$100 for the branch office. Is that set in statute as a fixed number or is that...they can't be more than? [LB269]

SENATOR CONRAD: Those are the renewals. There's an initial licensure fee which I think is at about \$500, so this would bring those renewals all up to the \$500 level. I believe it is specifically set in statute, and I'm getting a nod of the head from the resident expert here, so that's technically how the legislation does work. It would change that rather than providing a range or delegating it to rule and regulation. It's a specific number. [LB269]

SENATOR LANGEMEIER: Very good. Thank you. [LB269]

SENATOR CONRAD: Thank you. [LB269]

SENATOR PAHLS: Seeing no questions. Oh, sorry, Senator Utter. [LB269]

SENATOR UTTER: Senator Conrad, does this put this to bed? (Laughter) Or are we going to...is there more to come? [LB269]

SENATOR CONRAD: Senator Utter, as you well know, having been a member of this committee, I have worked on legislation over the past few years to address concerns that exist related to this industry. And I can't speak for everyone in Nebraska in terms of their preferred approach, but I can tell you this. I think it's important as we do our job that we not let good be the enemy of perfect, and I think that we have different definitions of what perfect is in this body based on our experiences and our philosophies. I think that this is an important and significant step forward. Working together, we can achieve real positive difference for the lives of many Nebraskans that

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are affected, and I think I would be quite satisfied with being able to do that with you. [LB269]

SENATOR UTTER: Thank you. [LB269]

SENATOR CONRAD: Yes. [LB269]

SENATOR PAHLS: Are you going to stick around for closing? [LB269]

SENATOR CONRAD: Yes. [LB269]

SENATOR PAHLS: Okay. Thank you. Proponents? Can I just see a hand how many proponents there will be? Two. How many opponents? One, two. Okay. [LB269]

DeMARIS JOHNSON: Good afternoon, Chairman Pahls,... [LB269]

SENATOR PAHLS: Good afternoon. [LB269]

DeMARIS JOHNSON: ...members of the committee. My name is DeMaris Johnson. It's D-e-M-a-r-i-s Johnson, J-o-h-n-s-o-n, and I'm the executive director of the Nebraska Financial Services Association. We're made up of 116 licensees and 64 branches of...better known as delayed deposit businesses here in Nebraska. And we want to thank Senator Conrad for bringing this piece of legislation. She contacted us earlier this year about an idea that she had to try to bring financial literacy in a public, private manner, and we were excited to work with her on that. When I was thinking about my testimony today in financial literacy, I thought back to a young time in my life when I was a 4-H girl, and I had gotten my first 4-H calf. And the thing that my dad did after getting the 4-H calf was to take me to the local banker, and his name was J.J. DeLay. He had the DeLay Bank in Norfolk, Nebraska, and he introduced me to him, and we set up my first checking account, so that I could understand how when you had a calf, you had to pay for the feed and the hay, but when you sold that calf there was profit in there, but then in turn, you were going to have to buy another calf. And not everyone was as fortunate as I was to have a father who taught financial responsibility. Through my years teaching in Norfolk, I taught a class called adult living, and that was a class that was supposed to help seniors in high school get ready to go out into the real world. And I remember, we spent about two weeks in there on balancing a checkbook, and as you all know, two weeks' time is not nearly enough to learn how to balance a checkbook. Recently, I was reading my hometown paper, the Meadow Grove News, and I noticed where their school board just approved adding one semester of financial literacy to their graduation requirements which I think is just outstanding, given the economic times that we have. And so when Senator Conrad suggested that we do something with a public private partnership, our association jumped on board right away, because not only will it benefit all of us, but it benefits everybody in the United States and in the world if we

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have people who are responsible. And so, I'm here today to speak in favor of her bill and would ask that you would support it. We think the amendment that she's offered is a good one, and I hope that you will pass this out. If you have any questions, I'd be happy to answer them. [LB269]

SENATOR PAHLS: I see by your getting into the calf business, you didn't become a cattle person. [LB269]

DeMARIS JOHNSON: Absolutely. No, I didn't, but you know, it helped me graduate from college debt free (laughter). [LB269]

SENATOR PAHLS: Okay, okay. Thank you. Senator Pirsch. [LB269]

SENATOR PIRSCH: Just a quick question. How much money would this raise then towards that goal, the Financial Literacy Fund? [LB269]

DeMARIS JOHNSON: I think right now it raises it to \$500 and out of that, you have to take the \$100 filing fee, so I believe it's \$400, so that times 116 licensees would be what, \$40,000? I'm not a math major, Senator. [LB269]

SENATOR PIRSCH: That gives me a ballpark. Thank you. [LB269]

DeMARIS JOHNSON: Uh-huh. [LB269]

SENATOR PAHLS: Thank you for your testimony. Proponents. [LB269]

KURT YOST: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Kurt, K-u-r-t Yost, Y-o-s-t. I'm a registered lobbyist for M&M Finance, LLC out of Bellevue, Nebraska, and we, too, appear here today in support of Senator Conrad's LB269. As she most appropriately pointed out, it is good to come before this committee on behalf of this industry in a positive way and with some positive results that can come from financial literacy. I think we all know, particularly those sitting in this room who have raised kids, how important financial literacy is as they become young adults and grow into becoming responsible citizens. [LB269]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. Proponents? [LB269]

WALTER RADCLIFFE: Senator Pahls and members of the Banking, Commerce and Insurance Committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e. I appear before you today as a registered lobbyist on behalf of the Community Financial Services Association which is a national organization to which the companies that Ms. Johnson's clients belong and so does Mr. Yost's. I will be very brief. I'm just glad to be here on the

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positive side of Senator Conrad's bill this year. Those of you who have been on the committee know this has been a contentious back and forth issue for a number of years. And when the senator came to us when she first called us up and wanted to have a meeting, we all thought well, (laugh) here we go again, you know. But Senator Conrad proposed this and the two things that really...well, three things, I guess, that are really appealing from our standpoint. Number one is the concept of financial literacy is something that has been endorsed and pursued nationally by all of the member companies. Secondly, they have always said that they were willing to step up and to pay their fair share to implement that, and this does that. Although it's a considerable hike in fees, they are here and in support of it. And thirdly, whenever possible, and in this instance it does, it goes to a program that has a proven track record and has been established. And it's not something "that the industry is doing." So, those three things, and I think the fact that we can all be here on the same side, hopefully, will encourage you to advance LB269. I'd be happy to answer any questions you might have. [LB269]

SENATOR PAHLS: I see no questions. Thank you for your testimony. [LB269]

WALTER RADCLIFFE: Thank you. [LB269]

SENATOR PAHLS: Any more proponents? Opponents? Good afternoon, Director. [LB269]

JOHN MUNN: (Exhibit 1) Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is John Munn, M-u-n-n. I'm Director of the Nebraska Department of Banking and Finance. I'm appearing today in opposition to certain of the provisions of LB269. The department received a copy of Senator Conrad's amendment this morning, and it appears to address one of the concerns I will discuss today. At the same time, I feel it is important to inform the committee of all of our concerns with the bill. LB269 would establish the Financial Literacy Fund to promote assistance to nonprofit entities that offer financial literacy programs to elementary and high school students. This is a laudable goal and one which the department has supported for years through the Nebraska Council on Economic Education. The department's opposition to LB269 is threefold and is due to the revenue provisions of the bill. First, LB269 would capture and remove the license renewal fees paid to the department by delayed deposit service licensees. As of today, there are 117 main office locations and 64 branch offices licensed. The current statutory rates for renewal, which are \$150 for a main office location and \$100 for a branch, results in \$27,000 in revenue for the department. This revenue is now dedicated to funding our supervision of these licensees which, by law, includes on-site examinations. LB269 takes all of the renewal fees for the literacy fund, while assigning the department the duty of administering the fund. As a result of this shortfall, we will have to decrease the frequency of our examinations, increase the hourly examination fee, or shift the costs to the other industries that we regulate. Second, LB269 would artificially increase the department's budget, because all

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revenues and disbursements related to the literacy fund will flow through our agency. As drafted, the bill would now make the department responsible for \$90,050 of educational funds on an annual basis. Little guidance is provided on how to spend the funds. It may be more appropriate that another agency, such as the Department of Education, be selected as the responsible agency. Third, LB269 provides for an across-the-board fee increase. We believe this will place an inequitable burden on the small, and primarily local, licensees. Twenty-six of the 117 company licensees operate in only one county; some of these could be considered mom and pop enterprises. They will be paying the same fees as licensees which operate in multiple counties and, in some cases, nationwide. As a state agency, we are concerned about fee increases, higher examination charges, and shifts of costs from one industry to another, even though the increases may be to fund a worthy cause. I appreciate the opportunity to express the department's concerns. If requested, the department will work with the committee and Senator Conrad on possible further amendments. I will be happy to respond to any questions. Thank you. [LB269]

SENATOR PAHLS: Director, I just have one. Apparently, in previous testimony, other states do do this is my understanding, because if a national organization thinks education is a thing--something that they should be doing, I was just curious if other Departments of Education... [LB269]

JOHN MUNN: I have no knowledge of it. [LB269]

SENATOR PAHLS: You have no idea. Okay, that's fine. Thank you for your testimony. Any more testimony? I think we're ready for. [LB269]

SENATOR CONRAD: Thank you, Chairman Pahls, members of the committee, for your kind attention and consideration this afternoon and fantastic questions. A couple of points I do want to note in closing. Again, I want to reiterate my commitment to work with this committee and all those who have an interest in this legislation to ensure that when and if it does move forward, that it happens in a way that is clean, clear, and appropriate to carry out the stated objectives. And with all due respect, I think that the concerns brought forward by the Department of Banking today are well-intentioned, and I take those to heart, the first of which was in relation to the implications of the legislation as drafted. The technical amendment that I presented earlier does address that first concern, so as we move forward, I do want to reiterate your consideration for that component. Secondly, in regards to their budgetary concerns that are appropriate to be addressed in this context and always, as a member of the Appropriations Committee and one of those who you've chosen--one of your colleagues who you've chosen to help draft our budget and navigate it through the process, I can tell you a few things that I think are important to think about in regards to the ideas they've brought up in relation to their budget. Number one, for the most part, the Department of Banking is a cash fund agency rather than General Funds which is

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important in terms of our budgetary considerations, because what we're always seeking to do is to balance those General Fund dollars, those taxpayer revenues, and then the ensuing obligations that go out. The cash funded agencies, as you well know for the most part, are funded through fees for licensure or regulation or otherwise. And so, not that they don't matter in terms of the budget, of course they do, but they're counted a little bit differently. And so, when you're thinking about general versus cash funded agencies and budgetary implications, those are some important things to keep in mind there. And I think if you would look at your copy of a Legislator's Guide to State Agencies which, unfortunately, is only available on-line this year due to budget considerations or go back and look at past hard copies that are in your office, take a look at the scope and size of this agency overall, and think about what \$90,000--an increase there may have an actual impact of, and I think that you can see this is a very, very small and reasonable, if not a de minimis component of what the overall budget is there. So that's something that I think is important to keep in mind. And then finally, in regards to the last point brought forth by the director, I think it's fantastic that the state agency has taken what sounds like an advocacy role to bring its testimony forward today on behalf of, particularly, smaller folks who may be affected by this change. But make no mistake, the record is clear from our testimony here this afternoon these very, so-called moms and pops who run some of the smaller operations, are well represented dues-paying members of the organizations that you heard earlier support this bill. So we have not been contacted by any individuals who would be affected otherwise to state their opposition, but rather have worked in concert with the industry, large and small, to put this legislation together. So I do want to must make sure the record is clear in that regard. Overall, I want to thank the testifiers that came forward today. I think it helps to, indeed, paint a clear and vibrant picture about how we can put a somewhat contentious issue to bed for at least the meantime in terms of my hope, Nebraska can also be a model potentially for how we move forward. There's a newly created federal office that's going to be doing a lot in terms of consumer and financial literacy and education and protection, and they're taking different routes, some similar to things that I've proposed in the past, putting a hard rate cap in, looking at other stricter regulations. But really, finding this common ground, focusing on this common ground, and working together to achieve a public private partnership that improves financial education might be something for other states or the federal government to think about in terms of how we move forward, and I'm hopeful that it will make a positive difference, and goodness knows, there's plenty of other things I'd like to attend to before my tenure in this office is complete. [LB269]

SENATOR PAHLS: Seeing no questions, thank you, thank you for your testimony.  
[LB269]

SENATOR CONRAD: Thank you. [LB269]

SENATOR PAHLS: That concludes, again, LB269. We should be ready for LB553.



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[LB269]

SENATOR MCGILL: Hello, Banking (laugh). [LB553]

SENATOR PAHLS: Senator McGill. It's good seeing you. [LB553]

SENATOR MCGILL: Let's see, I've got some things to pass out here real quick, so let me get myself organized. I just have a couple of things here. I think these are different than anything that's being passed out. You ready for me? [LB553]

SENATOR PAHLS: I am. [LB553]

SENATOR MCGILL: (Exhibits 1, 2, and 3) All right, Senator Pahls, members of the Banking Committee, I'm Amanda McGill. I represent the 26th District here in the Legislature. That's M-c-G-i-l-l. I'm here today to introduce LB553. This is not the same bill you've seen from me in years past. Over the interim, I've been working with the Nebraska Department of Banking and Finance to strengthen this bill, and I bring this new version to you for your consideration. And we tried to streamline some things and get to the main point of what I'm trying to do which is to prevent people from having ten payday loans out at once. Unfortunately, some of our folks, who were going to come to testify today were stopped by the weather, and I think some of them are planning on calling your offices and trying to set up personal meetings. And I do ask that you take the time to visit with one of my constituents, John Henry, who's a businessman here in town, who's daughter wracked up payday loans into over \$10,000 worth of payday loans before she came and told her parents about the debt that she had. And if she would have only been allowed to get to that \$500 or even \$1,000 the issue facing that family would be far less than her going to her folks now with the massive debt that she incurred because of the loopholes in our payday lending law. It's been a struggle on the family, and there are a lot more people out there who wrack up that kind of debt...that I don't think it's intended in any of our laws to allow people to have that much out at once. The other folks you've been hearing from, and their actual testifier who isn't here today because of weather is from Choices, dealing with problem gambling and how many folks turn to payday lenders to help feed their habit of...their addiction to gambling. And, again, they'll wrack up large amounts in debt when a database like this would stop them from wracking up as much debt in that manner. This bill provides a tool that will assist the Department of Banking and Finance in monitoring delayed deposit services or payday lending in Nebraska. Eleven other states use this statewide real time database I'm proposing, and they do this at no cost to the state's budget. The implementation date will be set on or before January 1, 2014, so we're not going to do this immediately, but we're putting it back a couple of years. And unlike my previous bills, this would not change the waiting period between payday lending transactions. I'm really just trying to get at this multiple loan issue. With this bill, Nebraska can join the rest of the country involving our regulation of payday lenders. As you recall, President Bush supported

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regulating payday lenders for the military several years ago. This will help us enforce our current laws, rules, and regulations, and close loopholes that were left open over 15 years ago when the payday lending laws, the Direct (sic: Delayed) Deposit Services (Licensing) Act was formed. This bill will bring in revenue to the state which will be spread evenly over that first biennium to cover any administrative costs during the bidding process, and this will not have a negative fiscal impact on our budget. I know in the past, there has been a fiscal note and we worked very hard to get rid of that, because we can understand the concerns of the department and of all people in Nebraska in watching our budget right now. A few things I want to address that may come up in the hearing, and that's that consumers are protected within this database. The information entered in the database can't be used for any other purpose except for verification. There are provisions that allow any person injured by...gives them the ability to bring a civil cause of action. Also, at the department's recommendation, this bill gives them the ability to take stronger action against a licensee who does violate the direct deposit act. You'll be receiving a handout that illustrates an accurate picture of what the payday lending industry in Nebraska looks like, and that's the one with the list of all of the different locations. We got this information from the department's list of licensees and locations. There are about 180 locations. As you see, about 160 out of those 180 have more than one location which means there aren't a whole lot of those mom and pa shops across the state. In fact, nearly 80 percent of all of these locations operate in more than one county, and approximately half are located in Lincoln and Omaha, and the remainder are spread out throughout the rest of the state. You'll also be receiving a handout from the legislative research office regarding cost to the payday lender locations. As an industry in Nebraska that has a yearly net income of \$5.6 million, the cost of the database is something that can be absorbed. Start-up cost is the same if someone has one location or 25. That is why the maintenance cost is on a transactional volume, making it more fair across the board to some of those smaller locations. Again, the weather has stopped a few of my testifiers from coming today. I hope you will read their e-mails or take their meetings, because this is something I've continued to work on; I've continued to streamline it to really get at what I'm trying to get at, and that's those multiple transactions. I'm in other committees this year. I have legislation that is intended to help individuals save money which I think is a testament to how I'm not just out looking at this particular industry, but I'm trying to find other ways to help our constituents, Nebraskans, be more responsible with their money and encourage them to save money. And I think this really does close loopholes and will make our families more financially sound. Any questions? [LB553]

SENATOR PAHLS: Senator Gloor. [LB553]

SENATOR GLOOR: Thank you, Chairman Pahls. Senator McGill, thank you for this legislation. I'm reading through this, and it says that the cost for the creation, the maintenance, the database, that fee can't be passed along to any of the individuals involved. Is that really possible to pull off? I mean, it seems to me it's the cost of doing

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business like Ragu...it's in there somewhere, isn't it? [LB553]

SENATOR MCGILL: Yeah, everything is in there somehow. We just heard a bill where the industry has said that they are willing to take more out of their pockets, and I mean, I think that bill is great too. I'd love to see both of them, honestly, I think they both serve a really great purpose. But our current fees and our fees relating to payday lending were drafted 15 years ago, and so, in an industry where it's \$5.6 million in Nebraska, I think there is some give there in terms of being able to fund this database. [LB553]

SENATOR GLOOR: Okay. Thanks. [LB553]

SENATOR MCGILL: And I will note that the states that have just done databases; some have done caps and other things in addition to...in fact, most states have done more than what I'm proposing to do, but in the ones that just have a database that has impacted the industry in terms of lots of shops going out of business. In fact, they've seen it stay stable or even grow, so I think it's possible to do this without it harming the industry, but it's helping families not get caught up in a cycle they can't get out of or accumulate mass amounts of debt. [LB553]

SENATOR PAHLS: Senator Utter. [LB553]

SENATOR UTTER: Thank you, Chairman Pahls. Senator McGill, describe for me, if you will, the information that's going to be included in the database, the various fields of information. [LB553]

SENATOR MCGILL: Yeah, it's very simple. It's name, address; it is Social Security number. I can get that full list for you. I have it back on a piece of paper that's not up here with me, but it's really basic--address, Social Security number, name of the person. [LB553]

SENATOR UTTER: Do you have any concerns at all with the fact that the Social Security number is included in this database from a security standpoint... [LB553]

SENATOR MCGILL: The company that's been do... [LB553]

SENATOR UTTER: ...being concerned about stolen ID's and those type of things? [LB553]

SENATOR MCGILL: It's a very secure database. In fact, all the states that have the database use the same vendor, so we've been in discussions with that vendor, finding out what the impact has been on other states, and they haven't had any problems relating to that. All right, I'll step down now for now. Thank you. [LB553]

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SENATOR PAHLS: (Exhibit 5) Thank you. Yes. Proponents? Just a hand of the number of proponents...one, two proponents? Okay, two. Neutral, just give me...okay. Right now, just reading into the record, Voices for Children offered a letter of support of LB553. [LB553]

RICK CARTER: (Exhibit 6) Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Rick Carter, C-a-r-t-e-r, and I'm the executive director of the Human Services Federation of Lincoln and Lancaster County, and I appreciate the opportunity to be here today. The Human Services Federation is an association of more than 130 local nonprofit organizations, dedicated to the quality provisions of and delivery of human services in our community. In addition, the federation convenes a large group of faith community representatives from here in Lincoln and Lancaster County who meet to discuss common issues related to economic justice in our communities that both churches and congregations and communities of faith face along with human service providers. I'm here today on behalf of the federation to support LB553 which contains provisions related to the Nebraska Delayed Deposit Services Licensing Act. The Human Services Federation believes that LB553 will provide a much-needed protection to consumers while ensuring compliance with current state law concerning delayed deposit services. Our organization has recently conducted a study, the Alternative Financial Services Report, dated December 2010. The report provides important data analysis and recommendations related to delayed deposit services in our community. We surveyed more than 2,200 consumers who were accessing or applying for community, state, or federal benefits. For example, those who were accessing food pantry services in our community, housing assistance, or rent and utility assistance in the community. The intent of the report was to one, ascertain the extent of use of delayed deposit services by families who were seeking other community assistance. The family economic impact, both positive and negative, consumers of delayed deposit services perceived from their use, the impact on community service provider agencies in terms of service provision and identification of community actions that could be examined related to delayed deposit services. It's evident from both our formal research and anecdotal data that many consumers are unaware of all provisions of current law, and, thus, they don't know when they're entering into a transaction that may be in violation of that law. We support LB553 as a responsible step on the part of the state on behalf of consumers to ensure that current law is being followed and in force. Creation of a statewide database to track the number of delayed deposit transactions that one individual may have entered into at any one time in a real time format seems to be a reasonable step in the protection of consumers while at the same time, does not place an undue hardship on the part of delayed deposit service licensees. It's not incumbent on government to take the place of an individual's personal responsibility and their own financial responsibility. And that's where I think the efforts to increase financial literacy are important and an important step in this process. But I do believe that it is the responsibility of the state to ensure compliance with current law, and I think what we found here is that there's a gap that

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exists, is that it's very difficult to ensure compliance with current law when there's no way to tell how many delayed deposit services or payday loans an individual has at any one time. And I think that LB553 takes that step to begin to put in place a database that will then inform future policy decisions related to how we move forward with this. And I want to make it clear that I'm not here today to attack the delayed deposit service industry or those who function in that industry in compliance with the law and in a legal and ethical manner. What we're talking about is that individuals who, again, based on our research may have, at any time, upwards of ten loans out which is in direct violation of the law. And without a vehicle for the state or anyone else to monitor that, and if an individual doesn't know that it's not okay to have ten loans out, or that it's in violation of the law, this database provides that fallback and that vehicle to ensure enforcement. I appreciate, again, the opportunity to be here today, and I hope and ask that this committee advances LB553 to the floor for further discussion, consideration, and eventual passage. And at this point, I'm more than happy to answer any questions. [LB553]

SENATOR PAHLS: Senator Christensen. [LB553]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Thank you for testifying. Is there any notice given now when you go in and get one of these loans? Do you sign that you received any disclosure information, or is it just a cash transaction and delayed check and...? [LB553]

RICK CARTER: My understanding, and I'll look over my shoulder for other experts on this subject, but licensees are required to provide information related to the loan rates and fees applied to the loan. And I think that, again, in a situation like this where we're talking is, is that notification in a real time world updated? And I think that's where the issue lies is that even under that and the knowledge of an individual, you know, getting back to the personal responsibility issue. An individual could go out and seek ten loans over the course of a week, and what this does is allows that to not happen, because we realize that when that occurs, when an individual does that, they've entered into a cycle of debt that's going to be really hard for us to pull them out of. I think the other part of this that is important and is one to stress is that these 2,200 surveys that we completed and interviews with participants, these are people who are accessing other community benefits in our state whether they're paid for by the state or passed through from federal dollars, these taxpayer dollars that an individual should be using to pay a rent assistance that they may not be using to pay rent assistance with, because they've entered into one of these transactions. And I think it's incumbent on us to make sure that, you know, dollars that we process and make available in the state are being used responsibly. And I think this is one of those steps. So I don't know, and I'll let one of them tell you exactly what's contained in the information that is distributed to them. But I can tell you through anecdotal information in the report, is that people are not, if informed of that decision or if informed of current law related to two loans from a lender

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at any one time, it's not being followed. And I think that that's where it lays, is there a personal responsibility? Yes, but is there not also responsibility on the part of licensees to follow the law? And how do you do that is you ensure that they enter this in and find out whether or not this individual has two or more...two loans out. [LB553]

SENATOR CHRISTENSEN: One additional question now. If we put this into place, can they not go on the Internet and get the same thing out of state which would allow the personal responsibility that we're trying to put in, not be effective? [LB553]

RICK CARTER: My understanding is Nebraska law currently does not allow you to...doesn't allow a licensee to an Internet transaction, correct? Did I get a nod? [LB553]

SENATOR MCGILL: (from the audience) [LB553]

RICK CARTER: But a national piece. Now, I know...does it solve the problem? No. Is it a step in the right direction? I think so, and I think that, you know, we're not talking about caps. I recently retired 21 years in the Army and the Army National Guard, and I know that on the military side, you know, federal laws place caps on the amount of loans that you can give out to a member of the military and off of a post. And I don't think this is what we're saying, is we're not trying to take away the right of a mom and pop or a larger operator to do business. What we're asking them to do is to ensure that they're doing business in a legal manner, and I don't think that's too far of a reach for government to say, are you complying with current law? And I think that this allows us one way to ensure that. [LB553]

SENATOR PAHLS: Seeing no more questions, thank you. Thank you for your testimony. [LB553]

RICK CARTER: Thank you very much. [LB553]

SENATOR PAHLS: Additional proponents? [LB553]

JIM CUNNINGHAM: Senator Pahls and members of the committee, good afternoon. My name is Jim Cunningham. That's spelled C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Bishops Conference which represents the mutual interests and concerns of the ministries and instrumentalities of the Catholic Archdiocese of Omaha and the Catholic Dioceses of Lincoln and Grand Island. The Nebraska Catholic Conference has adopted a position of support for LB553. We look upon it as a measured, reasonable, and necessary reform of Nebraska's Delayed Deposit Services (Licensing) Act. It offers an enhanced enforcement tool that can help to protect the poor and the desperate and the vulnerable from exploitation and entrapment in a cycle of debt. In the teachings of our faith, we have many warnings about usury and exploitation of people in need. Lending practices that intentionally or unintentionally take unfair

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advantage of one's desperate circumstances are unjust. Catholic social teaching demands respect for dignity of persons, preferential concern for the poor and vulnerable, and pursuit of the common good. These principles, coupled with our teaching on economic justice, animate our concern with regard to delayed deposit lending practices and deficiencies in the regulation thereof. More typically than not, the vulnerability of those who are under financial and emotional distress leads to a cycle of debt and long-term debt. In our view, putting limits on the practices of delayed deposit services or payday lending are not only legitimate as a matter of sound public policy, but also a matter of basic justice in our society. We believe LB553 proposes an improvement in Nebraska's act and will go a long way toward accomplishing sound public policy purposes. We urge you to advance it to the full Legislature. Thank you. [LB553]

SENATOR PAHLS: Any questions? Thank you for your testimony. [LB553]

JIM CUNNINGHAM: Thank you. [LB553]

SENATOR PAHLS: Any more proponents? Opponents? [LB553]

WALTER RADCLIFFE: (Exhibit 7) Senator Pahls and members of the Banking, Commerce and Insurance Committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e, and I appear before you today as a registered lobbyist on behalf of the Community Financial Services Association in opposition to LB553. Let me begin with picking up on a comment that Senator McGill made, and that is, that this is not the same bill that she has previously introduced. That's true; it's longer. Look at...I seldom say, look at the bill, but when all else fails, look at the law, you know. There is...the first nine pages are the regulations, by and large, of what governs us now. The last nine pages that's all underlined is what it would take to implement what Senator McGill proposes with this registry. Now, first of all, as Senator Christensen pointed out, contrary to what Senator McGill said, that this would prevent multiple loans, it won't. It'll just simply drive people to the Internet. It's kind of like Internet gambling has driven people to the Internet instead of the local bookies, same principle, same deal. I have to agree there's no cost to the budget, because the industry and the consumers are going to pay that despite the fact that it says that it can't be passed along. Now, a number of states that have this do allow the cost to be passed along just as, in the telephone industry, Universal Service Fund, the various taxes are all passed along, and it says right on your bill, but this says, no, can't do it. One of the things that I really find interesting, Senator Utter, about the bill and you brought this out, is what kind of information is going to be stored by this third-party vendor, and we were told that it was basic information--just basic information like your name, your address, your Social Security number, your driver's license, just about anything that you...that might help to identify you to an identity theft. And what's your remedy if that database is broken into? Your remedy is a civil cause of action against a third-party vendor that the state contracts with. I sleep pretty easily knowing

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that. If you were serious, you'd give us the right under the State Tort Claims Act to go back against the state to hold it liable for the vendors it hires. No, this is a third-party course of action against a vendor that somebody hires. I want to share with the committee...if I might have a page, please, some exchange of letters last year in January and February that I was responding to an inquiry from Senator McGill and Senator Council regarding the costs associated with the database. And frankly, that's the last time we've heard from Senator McGill is after I responded to that letter and explained to her what the cost would be to implement a database, and what the cost has been in other states. And I'm not going to read that to you, but I think you can readily see what that cost would be. For instance, start with every business, it's going to cost them \$25,000 to set up the internal stuff for a database based upon other states. And the cost of entry for each individual entry runs from 43 cents per transaction up to a little bit over a dollar. Now, that figure fluctuates, because the cost is somewhat dependent upon the volume. So you can see it's very difficult to exactly say what this is going to cost. The one thing that I can't respond to at this time, although I'd be happy to, if I can get...when I get a copy of it...is the legislative research office's document, because I haven't seen that or didn't hear about it until today. Otherwise, I'd have at least been in a position to respond to that. I urge you not just to not advance LB553 but to kill it, which is kind of an unusual request, actually. But the reason I do that is so it doesn't show up as a floor amendment and need only 25 votes, because this happened two years ago. The Banking Department had its cleanup bill. Senator McGill had a similar bill in this committee that the committee graciously didn't kill, but we spent time with it as a floor amendment. So I would hope that if you see not fit to advance it, that you kill it, and at least put a burden of 30 votes on the floor for a possible amendment. I would end my testimony and be happy to answer any questions. [LB553]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB553]

WALTER RADCLIFFE: Thank you. [LB553]

SENATOR PAHLS: Opponents? [LB553]

KEVIN BERNADT: Hi, Senators. My name is Kevin Bernadt, B-e-r-n-a-d-t, and I'm one of these, what you can call a mom and pop shop, and actually, it's a family-owned business. It's my brother and I. Back in 1999, we were recent graduates of the university here, and wanted to take an opportunity, take a chance, stick our necks out there, and own a business and operate a business, see if we can be successful. And not knowing too much, you know, we did our research, and we opened up in the fall of '99, worked our regular jobs as we tried to build our business, as most small businessmen and women do. And, you know, eventually, we were able to pay some of our loans, because we took out quite a few loans to start this up, and we thought we were being pretty successful. We opened up our second store here in Lincoln in 2004. About a year after that, it was able to support the both of us. We were able to go down to just one job, and



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the reason I tell you that is just to kind of give you some idea of the difficulty of owning and operating a business and the work that's put into it. Now, specifically, with this bill, a couple of years ago, when it was first introduced--a similar one--I started talking to my customers. We treat our customers with respect, and we like to share information about this. Not one of them...I mean, I talked to hundreds of my customers...not one of them thought it was a good idea for them to be put into a database for others and to comply with this. We are already very heavily regulated, and we respect and appreciate that, my brother and I. We can't send any fancy compliance officer to you to talk to you or some national representative. We're just a small, little operation, and trying to soak these expenses up without the ability--listen, to pass this on--I don't want to give a lecture on economics, but when you produce a widget and fuel prices increase, and you have to transport that widget across the state or state boundaries, eventually, you're going to have to find ways to compensate for that increased cost to your business. That's how it works. And we just don't see any way that we as a family-owned business, small business here in Lincoln could absorb this expense. Again, I've talked to...I could probably line up all of my customers here. We've had lawyers; we've had Ph.D.s; we've had mechanics; we've had state workers; we've had a state senator; we've had legislative aides; we've had teachers, state workers, just everybody from small business owners on up that utilize our service. And I don't think this is something that they would appreciate, and internally we have our own policies, my brother and I, to see if they have other delayed advances out. Now, it's my interpretation of the law that I am not breaking the law if they say that, yeah, I do have another one out, and I give them an advance. It's my interpretation of the law, and I've been in business for almost 12 years that that is not in violation, and I have confirmed that with the examiners who come into our store once a year, thoroughly look over our records to make sure we're in compliance. So this is a difficult bill for us as small business owners. I don't think it's necessary, and I hope, you know, like the gentleman said before, I hope you kill it, and I hope you use it for...to keep warm (laugh) in these cold winter months. [LB553]

SENATOR PAHLS: Any questions? Seeing none, thank you for your testimony.  
Opponents? [LB553]

KURT YOST: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, again, my name is Kurt, K-u-r-t Yost, Y-o-s-t. I am the registered lobbyist for M&M Finance, LLC, of Bellevue, Nebraska, and we appear here today in opposition to LB553. Not to beat or continue a conversation that's already been had, but Senator Conrad alluded to a point that caught my attention, and I wanted to comment briefly on it that she pointed out that unfortunately or fortunately, depending on how you look at it, the financial industry had a major rewrite of various and sundry regulations, etcetera, in 2010. When it ultimately was passed, it was known as the Dodd-Frank Wall Street Financial Reform (and Consumer Protection) Act. Part of that legislation was the creation of a Consumer Financial Protection Bureau. President Obama currently has a lady by the name of Elizabeth Warren, who is charged with putting the pieces together

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for this government agency which we would hope, we being those in the financial services industry, whether you're a commercial banker, or whether you're a payday lender, or whoever, we would hope that there are significant positive things that come from this Consumer Financial Protection Bureau. But we're not going to sit here and debate that today, but I merely want to point out that that does not become effective til July of this year, and we have in that piece of legislation and in that bureau, the payday lending industry is also included along with several other financial services agencies including commercial banks. But we don't know what's coming down on the federal level, but I would say it's safe to assume that the payday lending industry is going to get careful scrutiny from this bureau. [LB553]

SENATOR PAHLS: If it's under the direction of Elizabeth Warren, they will. Everyone will. [LB553]

KURT YOST: Well, Senator, she has the blessing of the president. She does not necessarily have the blessing of Congress at this point. She has made, what I personally would consider some good appointments, i.e. the director of banking from the state of Massachusetts to look after the commercial banking side. She appointed General Petraeus' wife to look after the...what is known as a predatory industry. So, time will tell, but that's my point. If nothing else, let's see how this evolves. [LB553]

SENATOR PAHLS: Okay. Any questions? Seeing none, thank you. [LB553]

KURT YOST: Thank you. [LB553]

SENATOR PAHLS: (Exhibit 4) Any more opponents? Anybody in the neutral? I will read into the record, the Department of Banking and Finance have a record to record in this hearing is a neutral position. We're ready for closing. [LB553]

SENATOR MCGILL: My turn? Thank you, Senator Pahls and members of the committee for being very attentive. I'll just address some of the things that came up from the opponents, and, again, I apologize for my lack of supporters here. They will be getting in touch with you to share more of their information. God bless the weather (laugh). First of all, I just want to clear up that I did not try to amend the banking bill. That was Senator Conrad. Another committee advanced one of her bills out that would have completely ended the industry in Nebraska, and she was the one who tried to amend that on there. I have never tried to make...do such a tactic. In fact, I would tell the committee that if this did get advanced out, I would pull the bill if there were any amendments that would attempt to get rid of the industry in Nebraska, because that is not my intention whatsoever. In fact, the database provider that we've been talking to quote, said that states that have balanced regulations see stable growth in the industry. And so, hey, these are the people who operate the database in other states, so as much as you're hearing from the industry that this is going to hurt us; this is going to destroy us; it's

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going to put some of us out of business, that's not what's happening in those other states with databases. It's not. There are a lot of fear tactics about the, you know, they're just going to turn to the Internet. Well, then, we may as well legalize gambling in Nebraska, because people can gamble on the Internet. To me, we still have a responsibility for the laws that we pass in our state, and right now the law says that you can only have a couple of payday loans out at once, and yet people are having multiple out. So if something...if we don't do a database, I'd urge the committee to come back next year and take that out of statute, and take maximum amounts out of statute, because right now there's no way to enforce what's in statute. And so, I would urge you to do the opposite then and take those things out if you're not willing to create a mechanism that can actually ensure that the laws of the state are being followed. In terms of the meeting, we did have communications last year between Senator Council and Senator Krist like the bill from last year even, and we were communicating with Walt Radcliffe, and we had to send several letters in order to finally...he kept pushing the time line back to give us information. And finally, we had a meeting, and I wouldn't bring this up if he hadn't talked about this discussion first, but he actually said in a meeting that the national organizations he represents would be able to absorb these costs. And the majority of the payday lenders in Nebraska...the vast majority, as you can see from the handout that I gave out aren't the ma and pa's. And if there's anything I can do to lessen that burden on them or allow some to maybe pass along a little bit of this onto some of their consumers and absorb the other half, I'm willing to talk about that. I'm very passionate about the fact that it's just not right, and it's a hurt to our society if problem gamblers are getting in debt thousands and thousands of dollars in something like this if, you know, college-age students like my constituent's daughter is getting into that kind of debt, that is also really hurtful to our society. And so, I would urge you to continue to take a serious look at this. I'm willing to work with the committee. This is something I would be interested in prioritizing. Again, I would not allow any amendments that would go any farther than this on the floor. I'm really concerned about personal security, financial security as some of our members and some introducing the bill in another committee to encourage better savings, so that families don't have to go to payday lenders in the first place, that they'll have a pocket of savings. So with that, I'll take any last questions. [LB553]

SENATOR PAHLS: Let me ask you this question, because earlier a testifier had indicated Elizabeth Warren. [LB553]

SENATOR MCGILL: Um-hum. [LB553]

SENATOR PAHLS: That she has some input at the federal level. I realize President Obama has done certain things to make her a...I'm using the word consultant. [LB553]

SENATOR MCGILL: Yeah. [LB553]

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SENATOR PAHLS: If there are things in work at the federal level, and apparently, it does appear that there may be some things...I don't know what they are. Waiting for that to happen is... [LB553]

SENATOR MCGILL: You could. I mean, that will likely put the industry out of business, you know, altogether. And...or it seems to be the route that that person would go, and that is not my personal intent. And I think this is something that we could be doing to at least be moving more in line with other states and to be responsible to our own citizens. Yeah, we could sit back and wait for them to do something, but I feel this is good. And one other thing I can mention real quick, and there's been talk about the database. You know, it's an easy scare tactic thing. I know Senator McCoy brought information on a database to track methamphetamines and who's buying, you know, certain drugs at a pharmacy. We have so many different types of databases, one introduced by a member of your committee, that it's just a pure scare tactic to throw out, all this information could get out. It's something that is becoming very common in trying to track criminals. And every day people who are buying, you know, cold medicine or whatever over the counter, it's a part of our society and the world that we live in right now. [LB553]

SENATOR PAHLS: Okay. Seeing no questions, thank you for coming in front of the committee. [LB553]

SENATOR MCGILL: Thank you. [LB553]

SENATOR PAHLS: That will conclude the hearing on LB553. Now we're ready for hearing LB462. Senator Pirsch. Senator Pirsch, you're chasing everybody out. [LB553]

SENATOR PIRSCH: (Exhibits 1 and 2) Chairman Pahls, I am State Senator Pete Pirsch representing Legislative District 4. I'm carrying this bill on behalf of the Secretary of State's Office. Apparently, a miscommunication occurred. The statement of intent submitted pertained to a different bill that was carried for the office last year. I am handing out the correct statement of intent. It is quite short in scope. It simply eliminates...well, it repeals section 87-220 of the trade name statutes and to include an additional statutory damages remedy for misuse of a trade name. Currently, section 87-220 provides a criminal penalty for failing to register a trade name with the Secretary of State's Office, and that would be eliminated. The existing penalty is inconsistent with common law trade name rights and case law on the subject matter. Now, I will be followed by counsel from the Secretary of State's Office who will have some remarks, so if you want to... [LB462]

SENATOR PAHLS: Okay. Thank you. [LB462]

SENATOR PIRSCH: Yeah, thank you. [LB462]

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SENATOR PAHLS: Proponents. [LB462]

COLLEEN BYELICK: (Exhibit 3) Chairperson Pahls, members of the Banking, Insurance and Commerce (sic: Commerce and Insurance) Committee, my name is Colleen Byelick, C-o-l-l-e-e-n B-y-e-l-i-c-k. I am the General Counsel for the Secretary of State's Office. As you're aware, the Secretary of State maintains the registry for trade names. We have approximately 19,000 trade names on file and approximately 2,000 trade names filed each year. The purpose of this bill is to remove a criminal penalty regarding failure to register. Currently, (section) 87-220 makes it a Class V misdemeanor for each day a person engages in business under a trade name without registering the name. Our concern is that this provision isn't consistent with other laws in the trade name statutes and case law in the matter. For example, (section) 87-210 provides that a person may file a trade name. It doesn't use the word "shall"; it uses the word "may." (Section) 87-210 also requires that a person lists how long they've been using a trade name on their actual application which seems counterintuitive if registration is required. It also then subjects someone to a criminal penalty if they fail to initially register their trade name and come back later and register the name, and truthfully put on their application that they've been using the name for some time. The question is, then are they subjecting themselves to a criminal penalty? (Section) 87-218 also provides that there are common law trade name rights, and there was actually a case in 2000, I believe it was, that the Supreme Court actually upheld a prior common law right to a trade name and cancelled a name that had been registered with the Secretary of State's Office. So due to all of these consistencies, our concern is that the penalty provision is unenforceable. We don't know of anyone that's actually been convicted of violating this crime or has even been prosecuted for the crime. We're also concerned that those that are more at risk for violating this crime are the small micro businesses that start out of their home and aren't aware of this criminal penalty provision. We think that it's unnecessary to subject those persons to a criminal penalty for failing to register a name they may be using. Our understanding is that most likely as those businesses grow and they'll seek professional advice and most likely, either formally organize as a business, or register their name. There are also other benefits of registering your name. First of all, that you're putting everyone on notice that you're going by that specific name and you're claiming rights to that name. It also gives you the ability to pursue litigation if someone misuses your name, and it also brings value to your business, and that that name is part of the goodwill of your business, and should you go to sell, you will consider that as part of the value of your business. And so, all of these things make it desirable to register a trade name without having the threat of criminal conviction. In addition, I will mention that there is an additional statutory damage provision that is currently in the bill. I believe that there is an amendment circulating regarding that provision, because of some constitutional concerns with the original draft, and our office is amenable and agreeable to that amendment. And I will try and answer any questions you may have. [LB462]

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SENATOR PAHLS: (Exhibit 4) Seeing none, thank you for your testimony. Any more proponents? Opponents? Neutral? Closing. [LB462]

SENATOR PIRSCH: Thank you, Mr. Chairman. I wasn't going to close, but I think I just wanted to point out with respect to the amendment...that's AM156 to LB462 that was handed out, and that stems from just a need to be precise. There's a case in Abel v. Conover, and because of the way it was originally drafted, there became an issue of whether there was a penalty provision...whether it was a punitive type of fee in there. So the way it's rewritten, I think is more in accord with the intent of the bill, and so on that basis, I'd ask that that amendment be included. Thank you. [LB462]

SENATOR PAHLS: Thank you. That closes the hearing on (LB)462. We'll now open it on LB396. [LB462]

SENATOR McCOY: Thank you, Senator Pahls. [LB396]

SENATOR PAHLS: Thank you, Senator McCoy and members of the committee. My name is Rich Pahls, R-i-c-h P-a-h-l-s. I represent District 31. I introduced LB396 for NACO, the county officials. It is truly a technical bill. It changes one word. If you look at the bill on page 3, line 5, strike the word "clerk" and insert the word "treasurer." The County Officials Association explained to me, we are changing the statute to reflect the way the documents are actually handled on the county level. Basically, we've gone from the paper bond to the county officials here who are here behind me to explain what actually is being done. [LB396]

SENATOR McCOY: Thank you, Senator Pahls. Any questions? Seeing none, proponents for LB396? [LB396]

BETH BAZYN FERRELL: Good afternoon, Senator McCoy, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n Ferrell, F-e-r-r-e-l-l. I'm appearing for the Nebraska Association of County Officials in support of the bill. We'd like to thank Senator Pahls for introducing this bill on behalf, and it is just what he says. It's just intended to be a cleanup bill. It used to be that when a county had excess deposits, the bank would give an actual specific kind of instrument to cover those excess deposits. Now, banking practices have changed, and so it's really a nonnegotiable receipt that's issued for those excess deposits. Back in the day when it was an actual instrument, then it was appropriate to have that in the office of the county clerk, so that there was no opportunity for mischief or any ability to liquidate that, if you will. With the way banking practices are now, that receipt is not negotiable. It just makes sense to be able to have that in the treasurer's office and, in fact, that's what a number of counties are already doing. I'd be happy to try to answer questions. [LB396]

SENATOR McCOY: Questions? Seeing none, thank you. Additional proponents for

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LB396? Opponents? Neutral? Senator Pahls waives. I'll turn it back over to Senator Pahls. [LB396]

SENATOR PAHLS: That will close the hearing for today. Thank you. [LB396]