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Banking, Commerce and Insurance Committee
February 01, 2011

[LB43 LB44 LB90 LB196 LB268 LB410]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 1, 2011, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB410, LB268, LB196, LB43, LB44, and LB90. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Dave Pankonin; Pete Pirsch; and Dennis Utter. Senators absent: None. []

SENATOR PAHLS: Good afternoon. I think we will get started. We do have a couple of people who probably will be arriving a little late because of functions they're at. I guess we have one of them coming in right now. I want to welcome you to Banking, Commerce and Insurance. My name is Rich Pahls. I happen to be the chair of the committee, and I represent District 31 in the State Legislature. We'll take the bills up as they were posted--(LB)410, (LB)268, (LB)196, (LB)43, (LB)44, and (LB)90. Just to make the thing run effectively, you see the smaller chart over there. There's some of the procedures we like to abide by and for those, I think, it almost looks about everyone here has testified before our group before. They're relatively the same in all the organizations. The only thing I ask is try to provide us with new information instead of just repeating what we've already heard. Now, if you have written material to give to us we need at least ten copies. Right now, if you don't have ten copies wave your hand, because then I'll have one of the pages go and get your information from you. I see no one raising their hand, so it looks like we're all prepared. I think we can get started right here. Most of you know Bill Marienau. He's the person behind the scenes who makes this thing work. And Jan Foster sitting over there--she makes us all work whether we want to or not. She's that type of person, very efficient. We appreciate that. I think I'll start over here with senators. []

SENATOR UTTER: I'm Dennis Utter, District 33, Hastings. []

SENATOR PANKONIN: Dave Pankonin, District 2. I live in Louisville. []

SENATOR LANGEMEIER: Chris Langemeier, District 23. I live in Schuyler. []

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

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

SENATOR PAHLS: As you see, we're from all across the state, so we think statewide, right? You can say right (laugh). []

COMMITTEE: Yeah. Yes, it is. Right (laughter). []

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SENATOR PAHLS: Keep them awake up here. Okay, all the way over there we have Tom Kelly from Sutherland and Matt McNally from Norfolk. Well, I think without further adieu we are ready to go. Senator Utter. []

SENATOR UTTER: Thank you very much, Chairman Pahls, and good afternoon, members of the Banking, Commerce and Insurance Committee. I am Senator Dennis Utter of District 33. That's spelled U-t-t-e-r. Today I'm here to introduce LB410. LB410 would adopt the Appraisal Management Company Registration Act and subject appraisal management companies to regulation and supervision by the Nebraska Real Property Appraiser Board. Appraisal Management Companies or AMCs play a critical part in the mortgage lending process and have done so for many years. However, with the implementation of the Home Valuation Code of Conduct by Freddie Mac and Fannie Mae, passage of the Dodd-Frank Act and appraisal guidelines adopted by federal regulators, the use of and need for Appraisal Management Companies has been enhanced in recent years. Given the significance of maintaining independence in the issuance of appraisals for mortgage lending purposes, an appraisal management company offers a number of advantages. Appraisal Management Companies held increase efficiencies and lower operational costs for both lenders and appraisers. AMCs also add professional expertise to support the appraisal process. In particular, due diligence and quality assurance services provided by AMCs improve the overall reliability of the appraisal process, thus benefitting appraisers, lenders, loan services, and homeowners. You will note in looking at your information that there is a fiscal note with this bill, a dreaded fiscal note. I will tell you that before the heartburn begins over the fiscal note, that there are amendments that will be offered this afternoon to this bill that will take care of the fiscal note, so that it should be a neutral fiscal note. It changes the fee structure a little bit other than that in the original bill. There are also other amendments that will also be offered and be explained by testifiers that are following me. So I'll be happy to answer any of your questions. However, Bob Hallstrom from the Nebraska Bankers Association and others will follow me with a more detailed testimony and will be able to answer many of your technical questions. [LB410]

SENATOR PAHLS: Seeing no questions, I think we are ready for the proponents. And just as a reminder, for those who are going to testify, we do need this sheet filled out and handed in to Jan. We are ready for the proponents. Welcome. [LB410]

DONALD KELLY: Thank you, Mr. Chairman, members of the committee. I'm Don Kelly, K-e-l-l-y. I'm the executive director with REVAA, the Real Estate Valuation Advocacy Association, which is a national association of management companies and valuation companies across the country. We have about ten members, and our members together represent about 75 percent of the industry as far as the volume of transactions that go through their companies. Following the chairman's advice of being concise, I will be concise, and I won't repeat what the senator just talked about, about the efficiencies of AMCs. But clearly we're at a point with the Dodd-Frank bill, that legislation is

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necessary. There is a window of opportunity...three years to enact it and essentially for state legislatures to consider two major propositions. One is the driving force behind a lot of the appraisal issues of HVCC and that's appraiser independence. Most of that, as you know, has been accomplished or at least directed to the Federal Reserve Board and the agencies, and the new consumer bureau in Washington. In fact, the interim final rule has been published which outlines the independence provisions under TILA and other provisions of Dodd-Frank. The other provision that Dodd-Frank directed was that there be a registration program in the states for AMCs, and that is what I am a proponent of here today--a reasonable registration with fees collected from management companies, so that the appraisal board can manage and make sure that the companies are providing services consistent with the law requiring licensed appraisers and conforming with USPAP. It's my understanding that there has been negotiations with the board and others, and that the bill with its amendments is up for a vote, and REVAA, our association, very much supports the bill. So if members have any questions, I'd be glad to take them. [LB410]

SENATOR PAHLS: You support the bill with amendments? Is that what I heard?
[LB410]

DONALD KELLY: Yes. Yes, sir. [LB410]

SENATOR PAHLS: Okay. I see no questions. Thank you for your testimony. [LB410]

DONALD KELLY: Yes, sir. Thank you. [LB410]

SENATOR PAHLS: Proponents? [LB410]

ROBERT HALLSTROM: (Exhibit 1) Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB410. As Senator Utter has indicated, this bill would provide for regulation and supervision of appraisal management companies as dictated by the provisions of the Dodd-Frank Act that was passed by Congress. This should not be a completely new issue to the committee. Last session Senator Langemeier had introduced LB931 which in many respects was quite similar to the bill that's before you today in the form of LB410. Some of those provisions that had been opposed last year by the banking industry and others have been taken off the board by what was passed and included within the Dodd-Frank Act, so this bill is, again, quite similar in many respects to what you had seen last session. I've got some lengthy testimony, and since the senator...the chairman was trying to wake up the members of the committee earlier, if you read all of it, it might put you to sleep, so I'm not going to go through that exercise. But I do have, for your reading entertain, some background and history on the AMCs with regard to the services that are provided. I think, primarily, as Mr. Kelly indicated, the driving force is

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the issue of appraisal independence under Dodd-Frank and also as it existed under the Home Valuation Code of Conduct and the federal regulations governing appraisals that have been in existing for some time, particularly in smaller institutions where the staffs are smaller and retain independence between the loan functions and the appraisal selection function. AMCs can provide a very valuable service in that regard. Mr. Kelly covered the reasons that are important for this legislation as directed by Dodd-Frank, so I'll move into the part of my testimony starting on page 4 with regard to the specific provisions that are contained within the legislation and then follow up with a brief description of the amendments thereto. In general, we have a definition of appraisal management companies under section 2 of the bill which is significant. More specifically, the AMCs that are required to be registered under this act are those that provide appraisal services for consumer credit transactions secured by the principal dwelling of a consumer. That is as far the extent to which Dodd-Frank requires registration at the state level, and that's as far as the legislation before you goes. We also have the requirements for information that must be submitted in connection with an application. Most significantly are a number of certifications that the appraisal management company must make that they have systems and policies in place to ensure that they are in conformity with the requirement of the Truth in Lending Act and the various requirements for no coercion of appraisers for reasonable and customary compensation for appraisers and things of that nature that have been handed down again by the federal act. There are exemptions from coverage, the most specific of which is one for AMCs that are owned or controlled by a federally regulated financial institution. That, again, is an express exemption or exclusion that is allowed under the provisions of the Dodd-Frank Act. We have fee requirements. The bill sets up a biennial registration and biennial renewals which I think is more commonplace now with regard to industries that are regulated by state agencies, and that's pretty much the substance of the bill with the exception of due process protections for appraisers if they are removed from a panel. There are provisions there that allow them to submit complaints to the board to be acted upon by the board. There are mandatory reporting requirements, again, handed down by Dodd-Frank that are addressed in section 20 of the bill, and, finally, as originally introduced, the AMC industry would have a specific representative on the appraiser board. The amendments that are attached to my testimony, and that I've provided separately to committee counsel have come about after extensive discussions and negotiations with the appraiser board, individual appraisers, the realtors association, and other parties that are interested in the legislation. They start on page 8. We are removing the automatic board representative for the AMC industry. We are including a surety bond requirement for \$25,000 to provide some protection for appraisers who may not be paid by an AMC that might be rendered insolvent. We have changed the fees. There is now a specific fee that was not in the original bill for applications capped at \$350. The initial registration fee for a biennial registration, two-year registration, is capped at \$2,000, and the renewal fees for two years also are capped at \$1,500. I would note for the committee, as addressed by Senator Utter, there is a fiscal note. Now that fiscal note was based on the original fees

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which were capped at \$500. The math that we have done and the information that was submitted by the appraiser board would lead me to believe that the increase in fees that are provided for under this amendment would remove the fiscal impact and any need to have to consider any infusion of General Funds. Maximum fines were originally set in LB410 at \$5,000. That has been revised to \$5,000 for first offense maximum, and a maximum of \$10,000 for any second and subsequent offense. We've provided a clarifying amendment with regard to the requirement for licensed appraisers who are conducting appraisal reviews to be licensed or credentialed in this state. And with regard to the mandatory reporting issue, Dodd-Frank has a standard at what needs to be reported by appraisers, by the appraisal management company when an appraiser violates the law or the USPAP standards involves a material failure to comply based on valuation of a consumer's principal residence. We have taken out the material failure to comply standard which will allow the board to set the standards by which reporting will be governed. The last two things on the final page...disclosure of fees. There's a provision in the amendment that does not allow an AMC to prohibit the disclosure of the fee that's earned by an appraiser in the appraisal report, and we have also included a provision for timely payment of appraiser fees which would require them to be paid within 60 days of completion and submission of the appraisal assignment report. Again, with that, we would urge the committee to adopt the amendments and advance the bill to General File. I'd be happy to address any questions of the committee. [LB410]

SENATOR PAHLS: Senator Pankonin. [LB410]

SENATOR PANKONIN: Thank you, Chairman Pahls. Mr. Hallstrom, just a couple of questions. First of all, the background on...we all know Senator Utter is one of the most capable legislators in the body, but as far as writing this bill and working on it, and how did this kind of come about? Did you take the lead or did...? [LB410]

ROBERT HALLSTROM: Well, actually, Senator Pankonin, as I indicated when I started out, it's not terribly different from what Senator Langemeier had put together last year. There are model acts that are out there from both the appraisal management company industry and on behalf of the appraisal industry. I guess we started with the framework of the model act that the appraisal management companies had come forward with, and through the negotiations and discussions with the appraiser board, and others, have integrated some of the provisions from the appraisal industry model act to kind of blend the two in some form or fashion. [LB410]

SENATOR PANKONIN: Second question is, on that section form when they talk about the exemptions and the second one is an appraisal management company that is owned and controlled by a financial institution. How can you have independence with the Dodd-Frank provisions and that be an exemption? [LB410]

ROBERT HALLSTROM: My understanding, Senator, and maybe Mr. Kelly would have

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been better served to visit about this, but I think there are restrictions on what the appraisal management company that's owned by that financial institution can do for that specific financial institution. But I will find out and get that answer to you. [LB410]

SENATOR PANKONIN: Okay. [LB410]

ROBERT HALLSTROM: But Dodd-Frank has basically said that these companies, if they're exempted under state law will be subject to federal regulation, and you may see some of them that will decide that they may be interested in being subject to the state regulation even though that exemption is included. [LB410]

SENATOR PANKONIN: Well, knowing that the Dodd-Frank the issue is appraisal independence, it just seems ironic to me that you would have as an exemption a bank-owned AMC when that's one of the issues to try and have a fire wall between that process so. [LB410]

ROBERT HALLSTROM: Yep. I'll find out some additional information for you. [LB410]

SENATOR PANKONIN: Thank you. [LB410]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. Next proponent. Good afternoon. [LB410]

KATHERINE POLICKY: Good afternoon, Chairman Pahls and members of the committee, my name is Katherine Policky. I am the director of the Nebraska Real Property Appraiser Board. I am here today to testify on behalf of the Nebraska Real Property Appraiser Board in support of LB410. Under this act, the appraisal... [LB410]

SENATOR PAHLS: Kathy, could I have you spell your name for the record? [LB410]

KATHERINE POLICKY: Yes. Katherine, K-a-t-h-e-r-i-n-e Policky, P-o-l-i-c-k-y. [LB410]

SENATOR PAHLS: Thank you. [LB410]

KATHERINE POLICKY: Under the act, the appraisal management companies would be subject to regulation and supervision by the Nebraska Real Property Appraiser Board. LB410 meets the requirements of the Dodd-Frank Act for oversight of the appraisal management companies by the state and gives the Nebraska consumer additional protection in the area of mortgage reform. We appreciate the opportunity to be here today and to testify. I know you have an agenda, and it's snowing, but I'd be happy to answer any questions you might have. [LB410]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. Thank you.

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[LB410]

KATHERINE POLICKY: All right. Thank you. [LB410]

SENATOR PAHLS: Any more proponents? [LB410]

KORBY GILBERTSON: Good afternoon, Chairman Pahls, members of the committee. For the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association and in support of LB410. The realtors had members that were very much involved in the development of the amendments and things, and I've been copied on many, many e-mails that tried to explain everything to me, and so I'm glad I wasn't having to explain it all to you as I think Mr. Hallstrom did a really good job. But the realtors are very much in support of the amended version of LB410 and would ask that you advance it to the floor. [LB410]

SENATOR PAHLS: Any questions? Thank you. Thank you for your testimony. [LB410]

KORBY GILBERTSON: Thank you. [LB410]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? Senator. [LB410]

SENATOR UTTER: Thank you, Chairman Pahls. Not much to say in closing on this bill except to urge its adoption and movement on to General File. Thank you very much. [LB410]

SENATOR PAHLS: Thank you, Senator. That closes the hearing on LB410. I think now we are ready for LB268. Senator Howard. Good afternoon, Senator. [LB410]

SENATOR HOWARD: Good afternoon. Gosh, this chair sits really low (laugh). Maybe people are just taller that come in here. Good afternoon, Senator Pahls and members of the committee. For the record, I am Senator Gwen Howard; that's spelled H-o-w-a-r-d, and I represent District 9. I'm introducing LB268 at the request of the grocers association. They will provide you with more details of the specifics of the issue, but LB268 is an attempt to fix a very solvable problem that is costing many businesses across the state. In the handouts that grocers will give you...that will be Kathy Siefken will supply for you. You will see copies of checks where the contact information is not readable because of the bank's stamp. If a bank stamp covers this information, there is no way for the grocer to contact the person who wrote the bad check. This is especially problematic if the grocery store receives a copy instead of the original check. When a copy is made, it is impossible to look through the layers of ink, because it's just a flat image. Additionally, LB268 calls for the entire document to be returned. This is because, as I'm sure most of you are aware, some grocery stores write the driver's license

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numbers or other important information at the top of the check. To compound the problem, some banks cut off the top of the check before returning them to the store. In these hard times, it's hardly surprising that bad checks are written to grocery stores across the state, but many of these stores are small mom and pop businesses with tight budgets who are struggling to have the means to pursue writers of bad checks. This is...and I'm not a banker or a grocer, but this seems like a simple problem that should have an easy solution. I thank you for your time and attention to LB268. And I'm going to leave you to the grocers and the bankers, and I'm going to return to the Education Committee. [LB268]

SENATOR PAHLS: Okay. So you won't be here for closing? [LB268]

SENATOR HOWARD: I won't be here for closing, but I think they'll do a fine job for you. [LB268]

SENATOR PAHLS: Thank you, thank you. Okay. Any questions for Senator Howard? Thank you. [LB268]

SENATOR HOWARD: Thank you. [LB268]

SENATOR PAHLS: And we will have our proponents. Just by a show of hands, how many proponents do we have? One. How many opponents? Two, three, four--three. Okay. [LB268]

KATHY SIEFKEN: (Exhibit 1) Senator Pahls and members of the committee, my name is Kathy Siefken, Kathy with a K, S-i-e-f-k-e-n, and I am the executive director of the Nebraska Grocery Industry Association, and we thank Senator Howard for bringing this bill to you today. She basically explained what our problem is. With Check 21 the banks are now scanning and they are encouraging stores to scan, because it is a method that is really efficient, and it makes the checks clear faster. And what's happening right now is they are scanning the checks, and if you take a look, I highlighted in yellow what's wrong with each one of these checks. And what's happening is when the return stamp is put on there, it's put over the top of the information of who wrote the check, and in addition to that, we're writing our driver's license and date of birth, so we can help identify anyone in case the check comes back. They're not part of the scanned document that we get back. And so I went to the bankers association a couple years ago and asked them if they could help resolve this issue, find a solution, and I was told that they couldn't. So I went to Senator Howard, and we again went to the bankers, and I talked to them as recently as this morning, and they are not able to help me, because frankly, I don't think you guys should have to look at this kind of stuff. I think this shouldn't even be an issue. But what I'm told is that they don't really feel that this is a problem, because all we as grocers have to do is ask for the original check back. What happens in the banking system is they scan the checks; there is no standard as to how

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long they need to hold that original check. And some banks apparently destroy those documents within sometimes days, sometimes weeks; other people hold them for 30 to 90 days. There is no standard. So it's very difficult to go back and get that original document. But in addition to that, every check that we deposit we have to pay a fee for them to process. And then if it's returned insufficient we have to pay another return fee, because it's insufficient. And if we do want to go back and get a copy if there is an original copy...well, there's an original copy someplace. If we want to go back and get that, banks charge us \$25 to \$35 an hour for research. We're paying them all the way through the system. We pay them to take our checks. We pay them to return our checks, and now we have to pay them to get a decent copy of a check back that we can't collect, because they failed to do their job to begin with, and that is to get a legible scan and to not stamp over the return address. And so, we are now looking for relief from the Legislature, so that we can collect bad checks. If you have any questions, I'd be happy to try to answer them. [LB268]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB268]

KATHY SIEFKEN: Thank you. [LB268]

SENATOR PAHLS: Any more proponents? Opponents? [LB268]

ROBERT HALLSTROM: (Exhibit 2) Chairman Pahls, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in opposition to LB268. Ms. Siefken has suggested that Check 21 provides a method by which checks may be processed efficiently and cleared faster. Those are things that provide benefits both to the banking industry and to the merchant community. This bill would provide roadblocks and problems in that particular process. Check 21 is handed down by the federal law and regulations. I have in my testimony a background of what Check 21 is, which basically involves the truncation of checks, converting them to an electronic process, takes the paper checks out of circulation, provides benefits to the merchants in terms of clearing checks faster, getting them access to their funds more quickly, and virtually eliminating kiting, check kiting from the system, again, a benefit to the merchants. With regard to the process of substitute checks, those substitute checks are to be scanned subject to federal regulations on the requirements, the front and the back of the check, what information that is valuable and vital that must be included on the checks including the MICR line that has to do with the account number and information that can be derived therefrom. There are warranties that are provided by the banks just as if the original check had been submitted and retained. I believe, contrary to Ms. Siefken's testimony, the banking department and the state of Nebraska has a six-month record retention requirement for banks. That seems to run a bit counter to the benefits that are being derived from the imaging of checks. However, that is the regulation that is on the books. When I talk about a substitute check or an image check being the legal equivalent of the original

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check, that also means that all of the Uniform Commercial Code warranties go along with that, and those warranties run not only to the customer who has issued the check, but they run to every other party including the payee of the check, in this case, the merchant. I have indicated that there are a number of reasons underlying our opposition to this bill. Briefly put, the legislation requires to return the physical item or the instrument to the payee. That runs directly counter to emerging technology and Check 21 which allows for the imaging of these checks. Secondly, there is a vague standard of legibility in the bill. It says, anything that identifies the drawer of the check. I would submit that that could include their signature. If the signature is placed on the check much like a physician might on a prescription, that you can't read, does that mean that the check is not legible, because you cannot identify the drawer of the check based upon the manner in which the signature has been placed on the check? The placement of the stamp...a couple of issues with regard to that. As you might suspect, all of this is done through an automatic process. The stamp in many cases is placed in a regular place on the face of the check by automation. Secondly, with regard to multiple stamps, the reason that there are multiple stamps on that check in the first place is because the merchant has chosen to redeposit and try to collect the check numerous times. Each time those checks go back without being paid, another stamp must go on the front of the check, and inevitably, one of those stamps may end up overlapping some of the information that the merchants think is important. With regard to the basic issue, that we have suggested that Ms. Siefken alluded to, I think it's a simple process for the merchant to go back based on the warranties that are given, that they go back ultimately to the bank that did the initial imaging under Check 21, and that the simple issue is that the merchant go back to their bank where the check was deposited. If that bank has scanned the check, they will have a copy of the check in its virgin form before any stamps were placed on it, and they should be able to get back a version of the check that will not have obliterated or overlapped any of the information that they feel is necessary to collect the check. Final issue I'd note is that the acceptance of checks is a voluntary act by the merchant. Their decision to put information anywhere on the face of the check is their decision, and with all the benefits that have been derived from Check 21 and the electronic processing of the checks, we do not see any reason to change the law, particularly as it would apply only to Nebraska financial institutions in an electronic processing arena that affects every bank in the nation. So with that, I'd be happy to address any questions that the committee might have. [LB268]

SENATOR PAHLS: I have a question. I noticed that on all the checks that were given to us as samples or examples, the return reason is always on the left-hand top corner. I mean, is that sort of standard practice throughout the United States? [LB268]

ROBERT HALLSTROM: That would be standard as would in banks that are using automation which would be the vast majority, if not all, that they will have a standard place where their software company will, through automation, place that stamp on there. I think it's also interesting to note that a number of those checks, if you have the same

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checks that I have reviewed, are payroll account checks which are being accepted by merchants that are not even issued by the party that's coming in to buy groceries, but by a third party which are inherently riskier than a check that you get from someone that's buying groceries at your store. [LB268]

SENATOR PAHLS: Well in Check 21, as I'm reading this, this was established in 2004? [LB268]

ROBERT HALLSTROM: I believe that's correct. [LB268]

SENATOR PAHLS: Through the Congress, I mean (inaudible). [LB268]

ROBERT HALLSTROM: Yes. [LB268]

SENATOR PAHLS: Okay. Is this problem throughout the United States or, I mean, is this...? [LB268]

ROBERT HALLSTROM: I have not heard of the problem being raised in any other states. I don't see any other merchant groups that are here today that are complaining about the process, and I would assume that all of them that accept checks would be in the same boat. If these problems are widespread I would suspect, Senator, as you might that with the vast volume of checks that are processed, that there's not a significant number of checks comparatively for which this problem, if it is a problem, exists. [LB268]

SENATOR PAHLS: Seeing no questions, thank you. [LB268]

ROBERT HALLSTROM: Okay. Thank you. [LB268]

SENATOR PAHLS: Next proponent or opponent. Proponent? Not to confuse you, this is opponent. I was confusing myself. Good afternoon, Director. [LB268]

JOHN MUNN: (Exhibit 3) Chairman Pahls, shall I proceed? [LB268]

SENATOR PAHLS: Yes, please. [LB268]

JOHN MUNN: 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, and I'm appearing today in opposition to LB268. Mr. Hallstrom touched on many of the points that are in my drafted testimony. Just two comments I would offer. It's actually the one, two, three, fourth paragraph of my prepared testimony. Along the path that a check takes before it is paid, there are several entities that receive that check. Check 21 allows any of these entities to convert the check into an electronic

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format, so there are a number of places where that original check might reside for a period of time. It is likely not at...is not held at the bank at which the check was drawn on. And the final paragraph, federal law makes LB268 impossible to enforce. The state is preempted from enforcing laws that contradict Check 21. At the same time, Check 21 does have inherent safeguards that allow a payee to pursue collection of an insufficient fund check. I'd be happy to respond to any questions. [LB268]

SENATOR PAHLS: I just have one. That last statement, federal law makes this bill impossible to enforce. That's what you're telling me. [LB268]

JOHN MUNN: Yes. [LB268]

SENATOR PAHLS: Okay. Thank you for your testimony. Opponents. Good afternoon. [LB268]

JULIA PLUCKER: (Exhibit 4) Good afternoon, Chairman Pahls, members of the Banking Committee. My name is Julia Plucker spelled P-I-u-c-k-e-r. I'm here to testify on behalf of the Nebraska Credit Union League. I'm providing a written testimony, a letter written by Brandon Luetkenhaus of the league, so I won't read that in detail. But we share many of the concerns raised by Mr. Hallstrom with regard to the fact that financial institutions will have liability, sometimes for a case that's not their fault. I'll just point out, an instrument may often be deposited in one financial institution sent to another, sent back to the depository institution, and then back to the merchant. That's a lot of places where we feel we don't have direct control. That original financial institution would not have direct control over that check. And then just to reiterate what Mr. Hallstrom said, many transactions are now being done electronically and routing information is sent via wire and imaging. So those are our concerns. I'd be happy to answer any questions. [LB268]

SENATOR PAHLS: Do you have any questions? [LB268]

JULIA PLUCKER: Thank you. [LB268]

SENATOR PAHLS: Thank you. Any more opponents? People in the neutral? And the good senator has moved on closing. That does conclude LB268. We are now ready for LB196. Senator Lathrop. [LB268]

SENATOR LATHROP: Good afternoon, Mr. Chairman and members of the Banking, Commerce and Insurance Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm here today to introduce LB196 and very simply, LB196 would increase the minimum limits on an auto insurance policy from 25 (\$25,000) per person, 50 (\$50,000) per accident to 50 (\$50,000) per person, 100 (\$100,000) per accident. As you know, we have mandatory insurance requirements in the state of Nebraska for auto insurance. You have to have

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insurance in order to drive, and Nebraska has historically led in setting the minimums. Our minimums for auto liability insurance are typically higher than most other states, and particularly, the states that surround Nebraska. We have not changed the minimum limits in the state in I'm not sure how long, but it's been quite a while. Yeah, a good long time. And what prompted me to bring this, and you might wonder, well, there's the trial lawyer from Omaha, so he probably wants a lot more people with deeper pockets out there for the work that I do. And that actually is not the case. Let me visit with you a little bit about what I see for those who are underinsured. If you...and there's a significant segment of the population, I think, that when they buy auto insurance, they call up the agent and say, give me the cheapest auto insurance I can get, and that necessarily means that they're going to get the minimum limits. And when you get the minimum limits, what you do is you buy \$25,000 worth of protection per person that you might hurt with your car, and what you...I think a lot of people don't appreciate is that if you cause more than \$25,000 in damage which is very common now, that you're on the line personally for it. And in order to...I look at LB196, not as providing a bigger pot for people to make a claim against, but rather protecting people who think they're getting protection and insuring themselves from an excess liability judgment. In reality, \$25,000 is nothing anymore. When I first started practicing law in 1981, you know, somebody would get in an accident, and generally, they would treat and they might have a couple of thousand dollars of medical expenses, and most claims would resolve for less than \$25,000. And today, you know, this is all tied to the cost of medical care, and I don't have to tell this committee what's happened to medical care. The cost of medical care is significantly greater than it was just ten years ago. So people that get hurt now have \$15,000; \$15,000 is not uncommon. A trip to the emergency room, if you hit your head in a car accident, you're going to have a bill that's \$8,000 just for the CT scans and the emergency room and the x-rays. And all of that drives these claims and, frankly, I would say that more claims are...most of them are worth more than \$25,000 than aren't. And so, I think it's incumbent upon the Legislature to, not as a matter of providing another resource for people that are making the claims, but to protect the people that think they're protected by a minimum limits policy to bump up the coverage. And my last thought on that would be, and I have...you'll hear from some folks that know more about selling insurance than I do, but when you buy an auto policy, the most expensive part of that is the minimum limits. Right? So, going from \$25,000 to \$50,000 doesn't double the cost of this. In fact, I think it raises it by 4 percent or something like that, because the cost of defending that case is worked into the very minimum limits of the policy. So it will, of course, cost people more to have more coverage, but they will be better insured and less likely to be exposed to an excess judgment. And I think that in itself is a compelling reason for the Banking Committee and the Legislature to lead on the issue. [LB196]

SENATOR PAHLS: Senator Utter. [LB196]

SENATOR UTTER: Senator Lathrop, thanks for coming to present this bill. Just a

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question for you. Do you feel that increasing the limits which naturally increases the cost of the insurance is going to lead to an increase in uninsured motorists because of this...increased cost of the insurance? [LB196]

SENATOR LATHROP: Well, that's a great question, and I suppose that you can talk to some of the insurance agents. I think you'll probably hear from people in the insurance industry that can answer that. I would like to tell you no. Heck, no, we mandated it, and these people are going to buy the insurance, and now we're going to have them better covered. But any time you increase the cost of something, there's probably somebody on the margin that finally gives up and says, I'm not going to buy it. That would be my best estimate. [LB196]

SENATOR UTTER: Thank you. [LB196]

SENATOR PAHLS: Senator Pirsch. [LB196]

SENATOR PIRSCH: Thanks for your testimony. I think you stated and tell me if I'm wrong. Most claims are, on average, are for more than \$25,000 a year. I'm sorry, \$25,000 (inaudible)... [LB196]

SENATOR LATHROP: My experience...my average, I would say my experience would be that the average is about \$45,000. [LB196]

SENATOR PIRSCH: Okay. And that... [LB196]

SENATOR LATHROP: That would be the average if you...if I looked it up. [LB196]

SENATOR PIRSCH: Yeah. [LB196]

SENATOR LATHROP: A given year or across my...through my office. [LB196]

SENATOR PIRSCH: And that's based on your own experience, right, and added on? And you've been doing it awhile. [LB196]

SENATOR LATHROP: My personal experience, yeah. [LB196]

SENATOR PIRSCH: Now, that's the total claim. When it comes to actual, you know, settlements--I assume most of these things settle out, right, before trial? Is... [LB196]

SENATOR LATHROP: Yeah, the greatest share of these kind of claims settle without being tried. That's true. [LB196]

SENATOR PIRSCH: Do they typically settle the policy limit or do they...or is there some

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sort of a...? [LB196]

SENATOR LATHROP: If you have a...good question and I don't want to put you to sleep, but I'm going to visit with you a little bit about underinsured. If you have a claim and let's say that you cause an accident, Senator Pirsch, and you're carrying \$25,000 in limits, and the person you hit has \$30,000 worth of medical care. They would make a claim against your policy for the limits. They would look to you, look you over financially, and say, you know what? He may have \$25,000 in coverage, but he has a home with a bunch of equity in it or has assets, or he and his wife both work, and we can get something over and above the \$25,000. So that's the risk when you're underinsured. The other thing that can happen at that point is I can choose to accept your \$25,000, and go through what we call the 30-day letter process, give notice to your underinsured motorist carrier, and then make a claim against your underinsured motorist carrier who has the option of going after you personally as a tort-feasor. [LB196]

SENATOR PIRSCH: Is there any objective source of...I guess one of the...to me, one of the things that we should be looking at with respect to...if there's an increase that's necessary. Is there any objective source...I know you've given me an anecdotal type of experience, and you've been in the...for a long time. But I think your claim is that it's insufficient, right, the amount in light of today's...? [LB196]

SENATOR LATHROP: \$25,000 is not enough money to cover most claims. [LB196]

SENATOR PIRSCH: Is there an objective source that states specific that...can be looked at to...? [LB196]

SENATOR LATHROP: I would say that my experience is statistically significant. All right? My law firm, that's all we do. And I can tell you that we keep track of it, and I have a pretty good idea of what the...I can tell you exactly what the average is. Now, if somebody calls with an accident, and you know, it's a small matter, and they treat for a couple of days, we'll give them advice, and they don't work their way into my average. But of the cases that we work on, it's just short of \$50,000. [LB196]

SENATOR PAHLS: Senator, you may not have this answer, but you're telling me that my first \$25,000 is where I pay mostly for that. Then anything up there is...it's not like double. It's a first... [LB196]

SENATOR LATHROP: No, no, no. And the reason for that, Chairman is this, that when you buy a policy, when you buy an auto policy, it's a promise by the auto insurance carrier to do two things. One is to defend you, so as soon as they provide \$1,000 worth of coverage, they also have the obligation to defend you, and that means hire a lawyer, pay a defense lawyer to represent you, and that and some administrative things make the first \$1,000 in coverage the most expensive. As you add more coverage on there, all

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you're doing is adding the second promise which is the promise to pay damages, whatever they might be. And that is the less expensive portion of the policy. And I think you'll hear from Dan Loring, who's going to testify today on the bill about what it would cost a typical 35-year-old married person to go from a \$25,000 policy to a \$50,000 policy. [LB196]

SENATOR PAHLS: Okay, that's...seeing no more questions. Are you going to stick around for closing? [LB196]

SENATOR LATHROP: I'll stick around, yeah. Thank you. [LB196]

SENATOR PAHLS: Okay, okay. Proponents. It looks like we have two proponents. Oh, okay, four proponents? Just by a show of hands, how many opponents? Two. Okay, thank you. You may begin. [LB196]

DAN LORING: (Exhibit 1) Thank you for letting me speak today. My name is Dan Loring, L-o-r-i-n-g. I am speaking in favor of the bill on behalf of the Independent Insurance Agents of Nebraska. By way of introduction, I've been in the business for 40 years. I hold three professional designations. I'm a student to the business, and I sit on a regional board that recommends consumer-driven issues and changes to policies. The current minimum premium of \$25,000 bodily injury for any one person is too low. As an independent agent, I am a strong advocate for my clients who are inadequately compensated by a negligent driver with these low limits. Hospital costs frequently exceed \$25,000. Therefore, the injured party is forced to submit a claim under the uninsured and underinsured motorists section of their own policy. A properly drafted personal auto policy will have uninsured and underinsured motorists limits of around \$500,000. Here's one of the questions I believe Senator Pahls asked. The premium for a sample family that Senator Lathrop mentioned, 35-year-old couple, no tickets or accidents with a reasonable credit score will pay \$194 per car for the base limit including the initial defense costs loading. That premium will increase by \$28 to bring it up to \$50,000 each person; \$100,000 each occurrence; and \$50,000 for property damage. I believe Senator Utter had a question on that, and I'll be happy to answer that later if you so choose. Some insurers may oppose this as low limits reduces their exposure to larger claim payments. Conversely, those agents and insurers who pay the excess amount under the uninsured/underinsured motorist section of the victims' policies are unfairly penalized. Damages should be paid by the negligent party, not the innocent victim. It's simply inequitable for the victim to collect from their own policy. A couple of examples I have experienced in my career, I think, address this very clearly. About four or five years ago, we had a client traveling down the interstate when the at-fault driver crossed the median, striking him head-on. He was involved somewhat in his employer's business, and he collected workers' compensation, and he also collected some under his own insurance under the uninsured/underinsured motorist. The total medical costs for that claim were \$188,000. Another one, an at-fault driver ran a red

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light, striking our client broadside, again, inadequate limits. The total medical on that under the uninsured/underinsured motorist was \$331,000. Kind of, I heard Senator Lathrop comment earlier if both drivers, the at-fault and the victim have minimum limits of \$25,000, everybody has a problem. I just ended it with the property damage portion. It's currently \$25,000 for property damage. The new bill sponsored by Senator Lathrop increases that to \$50,000 which more adequately, I think, pays for today's expensive automobiles. I tried to keep it short, and once again, I thank you for your time, and I'll be happy to answer any questions you may have that I might be able to answer. [LB196]

SENATOR PAHLS: Senator Utter. [LB196]

SENATOR UTTER: Thank you, Mr. Loring, for your testimony. Let me ask you the same question I posed to Senator Lathrop. What's your feeling with regard to the \$28 increase in the insurance premium as to what that may do to the number of uninsured motorists that we'll see on our roadways? [LB196]

DAN LORING: It's a guess on my part, Senator Utter. I don't think that a driver paying \$194 is going to drop his insurance for a \$28 increase. It's kind of a guess, and no more so than the cost of the car or the cost of the gas or anything else, it continues to escalate. We have had a nice trend of fewer uninsured motorists over the past five or six years, so there's fewer of them on the road. There's still...probably guessing again, 10 percent, maybe less, but I wouldn't think the \$28 would drive people to drop their insurance. I don't know that, I just wouldn't think so. [LB196]

SENATOR UTTER: I have one further question, and that would be is whether or not you're familiar with what happened...what the limits are in other states, the comparable limits with regard to minimum limits are in surrounding...the states surrounding Nebraska, other states in the country? [LB196]

DAN LORING: I think that most of them are in the \$25,000 and \$50,000 range that we currently have. I think there might be one or two even less than that. When we increase to \$50,000 and \$100,000 which we're contemplating, that would put us in a handful of states--probably ten. I kind of like Senator Lathrop's suggestion that, you know, we've always been kind of leading the charge on having adequate limits. But to answer your question directly, we'd clearly be in the minority of all the states. [LB196]

SENATOR UTTER: Thank you. [LB196]

SENATOR PAHLS: Senator Pirsch. [LB196]

SENATOR PIRSCH: Thank you. A little bit different question. I think Senator Lathrop testified that most of the claims now, more than \$25,000--how often is it that this is kind of the baseline, that 25/50/25? How often is it that...and maybe you can tell me

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anecdotally through your clients, but what's the percentage of people who exceed that baseline? [LB196]

DAN LORING: Difficult for me to answer. We made a decision within our firm not to write minimum limits under any circumstances. Based on claims history and kind of looking around, I would think that a very small percentage of drivers have low limits like that--\$25,000 and \$50,000. I would think it would be a very low percentage. Our clientele all have \$500,000 so I don't have any firsthand experience. I don't know if that helps a little bit. [LB196]

SENATOR PIRSCH: Okay. [LB196]

SENATOR PAHLS: Senator McCoy. [LB196]

SENATOR McCOY: Thank you, Chairman Pahls. Thank you, Mr. Loring. For purposes of the record, when you had said, average family would have a premium of \$194. Are you speaking annually or monthly? [LB196]

DAN LORING: Yes. I'm sorry, Senator McCoy. Those are annual premiums. I think that's a clearer example of cost. [LB196]

SENATOR McCOY: So you... [LB196]

DAN LORING: Yes, those are annual premiums. [LB196]

SENATOR McCOY: For purposes of your testimony, you're thinking or your guess would be is that that would increase \$28 a year annually from your example that you gave, correct? [LB196]

DAN LORING: That's correct. That's an exact premium. [LB196]

SENATOR McCOY: Okay. Thank you. [LB196]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB196]

DAN LORING: Thank you very much. [LB196]

SENATOR PAHLS: Additional proponents? [LB196]

LARRY JOHNSON: Good afternoon, Senator Pahls, members of the Banking, Commerce and Insurance Committee. My name is Larry Johnson, L-a-r-r-y J-o-h-n-s-o-n, and I'm the president and registered lobbyist for the Nebraska Trucking Association. We're a trade and lobby group representing over 700 of the 13,500

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licensed motor carrier companies that are located in the state. Collectively, these companies license approximately 815,000 pieces of power equipment here. Thank you for this opportunity to provide testimony, and thank you to Senator Lathrop for bringing it to the forefront this session. We are in support of LB196 which would raise our state's minimum liability limits from our current of 25/50/25 to 50/100/50. The current minimum limits are just not sufficient to cover the price of the new trucks, trailers, refrigeration units, and additional green equipment that we are required to have on our truck fleets. With the starting price of just a bare bones fleet type of tractor, it starts in the \$100,000 to \$110,000 range. A trailer starts in the range of \$50,000, and a refrigeration unit starts in the area of \$35,000. That's not to mention the potential loss of the vehicle while it's being repaired. Many sectors of the trucking industry were relying on somewhere between \$3,000 to \$5,000 in weekly revenue, and that's just to cover our expenses of fuel which is going up, labor, and their own insurance expenses to cover their equipment. As consumer prices have risen, it's not unusual for a trailer's cargo to be upwards of \$1,000,000 in market value of the contents. Considering all of these expenses, it doesn't take much of an accident to quickly exceed an individual's current liability for property damage coverage if they only purchase it at minimum levels. As an industry that is out on the nation's roads in every kind of weather, congestion, and every hour of the day, delivering all of our nation's goods, we are under considerable risk of being involved in a mishap with a private motorist. I'm proud to say that I do represent an industry that's taking great strides in making our highways safer by investing in maintenance, state-of-the-art technology, and professionalism of our drivers which does result in considerable more cost to the operators of those truck lines. The outcome of that has been that we are experiencing record new lows of truck related accidents in a large number of accidents that typically only occur because of the fault of the other motorists. Although a move to the 50/100/50 level is clearly not enough to cover a trucking company's exposure, it will help minimize the current losses we are experiencing under the current minimums. These factors combined with the fact that the limits have not, from what I understand, been increased for the past 28 years. I hope you guys will all agree that this might be something we want to undertake this session. So I'd answer any questions. [LB196]

SENATOR PAHLS: Seeing none, thank you. [LB196]

LARRY JOHNSON: All right. Thank you very much. [LB196]

SENATOR PAHLS: Any more proponents? Good afternoon. [LB196]

MICK MINES: Good afternoon, Senator Pahls, members of the committee. For the record, my name is Mick Mines, M-i-c-k M-i-n-e-s. I'm here--I'm a registered lobbyist. Today I'm representing the National Association of Insurance Financial Advisors of Nebraska or NAIFA. As you've heard, first of all, we'd like to thank Senator Lathrop for introducing this legislation. Our organization fully supports, and we believe that the

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current levels of 25/50/25 are not sufficient to cover most of the claims that we run across. And we would urge this committee to advance the legislation. Thank you. [LB196]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. Appreciate it. [LB196]

ROBERT MOODIE: Mr. Chairman, members of the committee, my name is Robert R. Moodie, M-o-o-d-i-e. I am testifying on behalf of the Nebraska Association of Trial Attorneys. I am a personal injury attorney in Lincoln, practicing for 27 years, doing exclusively personal injury cases. And I am here to echo what Senator Lathrop has already told you about this practice. In our profession, we hear a lot about the need for one to take responsibility for one's actions, and I think that this body has an opportunity at this point to set a standard for what we expect the citizens of Nebraska to do as far as taking responsibility for their actions. I think...Senator Lathrop had suggested that one type of driver who carries the minimum limits, and that's the person who perhaps unthinkingly gets his vehicle and calls his insurance agent and says, I want the cheapest insurance I can without realizing that a \$25,000 policy limit does not really adequately protect his own self-interest in today's market forces. The other type of driver that we see who typically has the \$25,000 policy limit is your typical bad driver. It is the person who may have already been in two or three or four accidents, and are seeing their premiums increase because of their driving history. And because of those increases, they are seeking ways to reduce their costs, and they're reducing their costs by lowering their limits. Now these are exactly the people who ought to be required to carry higher limits. These are the people who have proven that they are the bad risks, and they need to carry the higher limits. It would be our assertion that this body can set the standard, and can tell us what we expect of ourselves, and what we expect of our citizens as far as being responsible for their own actions. And a \$25,000 liability limit on insurance is, quite frankly, just not responsible. I have nothing else. Thank you very much. [LB196]

SENATOR PAHLS: Senator. [LB196]

SENATOR GLOOR: Thank you, Chairman Pahls. Short question. Do you think your clients understand the difference between liability and collision? [LB196]

ROBERT MOODIE: Frequently not, frequently not. I get a lot of those questions both from clients and from people who are calling me who think that I can help them with something, and they don't understand exactly what the liability provisions of their policy say. [LB196]

SENATOR GLOOR: Yeah. I'm trying to decide whether that fits into my consideration of this or not, but clearly, we're just talking about the liability component. But I would think

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most consumers struggle understanding or don't care or don't pay any attention until they have to. [LB196]

ROBERT MOODIE: Well, and Senator Lathrop has kept very good statistics in his practice regarding what the value of certain cases are. And my office, I don't think we keep those statistics quite as well, and we may take a little bit lower value type of case from time to time than the senator does as well. But I think that we have, and Senator Lathrop has a good idea, how these claims stack up, how much medical bills can result, what an emergency room visit costs, what a CAT scan or an MRI scan costs, and how the value of a liability claim can escalate. And unless a driver has been through that, he doesn't understand, and he may be told, okay, well, a liability is a \$25,000 limit. And he's going to look at that and say, that's a lot. I'm never going to cause an accident that's going to cause more than \$25,000. He doesn't realize how easy it is to cause that kind of liability claim. [LB196]

SENATOR GLOOR: Thank you. [LB196]

ROBERT MOODIE: Thank you. [LB196]

SENATOR PAHLS: Any more testimony? Neutral? Senator. [LB196]

SENATOR LATHROP: You might have skipped the opposition. That's okay with me. [LB196]

SENATOR PAHLS: Oh, I'm in another world. Thank you. I'm seeing if you're awake (laughter). [LB196]

SENATOR CHRISTENSEN: A bill with no opposition. That's good. [LB196]

SENATOR GLOOR: These people were heading for the ADDs (laughter). [LB196]

SENATOR PAHLS: You can take that technique with you. The floor is yours. [LB196]

JIM DOBLER: (Exhibit 2) I feel like no one is interested in what I have to say (laughter). Senator Pahls, members of the committee, my name is Jim Dobler. That's D-o-b-l-e-r. I'm general counsel with Farmers Mutual of Nebraska. I'm also a registered lobbyist, and I appear today on behalf of Nebraska Insurance Information Service, and that is a trade organization of property and casualty insurance companies. And as a group, our member companies write in excess of half of the personal automobile insurance in the state of Nebraska. And I appear today in opposition to LB169 (sic: LB196). The cost of requiring higher minimum liability limits for automobile insurance will fall most heavily upon those who can least afford it: low income, elderly on fixed income, and probably high risk drivers. Those are the individuals that are going to be most inclined to buy the

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minimum limits, because they can't afford any more than that, or at least they feel they can't afford any more than that. If those are the folks that are going to have to pay more and they're on a limited income, as the price goes up, I would think there will be a good number that will be prompted not to buy it. I have no idea how many that might be, but my reaction is there will be more that will simply drop it and not pay for it. The other thing to consider about this proposal is, what is going on in other states? There are roughly 29 states that have the same minimum financial responsibility limits as Nebraska. There are three or four that have more, and there are roughly 16 that have less. Iowa is 20/40/15; Kansas 25/50/10; Missouri the same thing; South Dakota is the same as ours. Wyoming 25/50/20; Colorado 25/50/15. So Nebraska, I think, is in the mainstream of where most of the nation is for whatever that might be worth to you. Finally, it's not only important to consider the cost and the impact on people who buy 25/50, but you also need to consider the cost and the impact on the group of folks that currently have 50/100, because right now those are two separate categories of risk, and the experience in those two categories is different, and actually, the experience of those in the 25/50 category is a little worse than the experience of those in 50/100 primarily because a lot of the folks that buy the 25/50 as has been mentioned earlier, are high risk drivers and simply don't want to pay any more. When you combine that, and you put the 25/50 with the 50/100, all those folks will be grouped together in terms of figuring lost costs, and how you price that particular range of coverage. Over time, as the experience of the 25/50 policyholders mixes in with the experience of the 50/100 policyholders, that rate will likely go up, and that entire group will pay a little more. That's part of why we have those different rates. The exposures are different, and you want to give people different choices and alternatives. The more you put everybody together, the more everybody has to pay that combined rate which can involve essentially subsidizing some that maybe should be in their own category and paying their own rate. Beyond that, I'd like to turn to the exhibit and the handout that I provided the committee and go through that real quickly. The first page is a summary of our auto/bodily injury claims payment experience. And at the very top, you have the bodily injury UM and UIM experience. And I've run it for five years, and so within that group of years, the year 2006 will be the most credible, because that is the year in which the data has been out there the longest, and most of those '06 bodily injury claims have been closed. But I provided all five years there for you, and as you can see in '06, and it's put together on a calendar year basis, so all the claims in '06 sit in that year, and we just watch the development of those claims from that year up to now and see what we're paying out. And you can see incurred losses is about \$13.7 million. The claim count associated with those losses is 579 claims. The average incurred claim payment is \$23,723. The median is \$6,000. And looking at this my basic reaction is, it's really where it should be. And if we were running averages of \$50,000--huge--the premium, your premiums would be gigantic. You can't have a lot of big claims. It would drive the rate incredibly high, and the reality of it is, the run-of-the-mill stuff here are fender benders. They're little claims; they don't amount to too much, and they're settled quickly, and it's what keeps the average and the median as low as it is. Now, at the same time, I don't

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propose this as in any way disputing what Senator Lathrop said, regarding his firm. I think probably the difference is, Senator Lathrop is a very good trial attorney. His firm is very good at helping people with their bodily injury claims, auto accident claims. But the folks that tend to go to an attorney or seek legal advice oftentimes are involved in more serious claims, and they should get the advice of an attorney. So I would expect that within really a lot of the trial firms in Nebraska, they're going to see the more serious things, the things that require the advice of an attorney before a person attempts to negotiate a settlement with an insurance company. But in any event, this shows you what...it's just strictly our losses and this is what's produced. Next, I have an item that shows to the committee the rate differentials that exist between the 25/50 liability coverage limit and the 50/100 limit. Just from my own experience, I would say that from going to 25/50 to 50/100, the rate differential is going to run most companies between about maybe 8 percent and 15 percent, so that will be the percentage increase. But what I did here, and this is all available over at the insurance department. These are rate filings; they're public records. But I put together five of them just to show you what some companies are doing when you're looking at the rate differential for these two coverages. You can see on the first one, 25/50 is 1.0 to go to 50/100, and this will be on page one, it's a 24 percent increase. Page two, this company has a 10 percent increase. Page three, this company has an 8 percent increase. Page four, that company is at 20 percent. Page five, 9 percent. Farmers Mutual is down around 6 percent. Our rate for 25/50 is fairly high. Our focus is on family auto insurance. It's not on high risk. It's not on single individuals. We're looking for the traditional family auto policy, so our 25/50 rate, I think, is higher than what you might see with a lot of other companies. So that is why our rate differential is really pretty low...like I said, about, oh, 5, 6 percent. The next item I have for you are a couple of rating examples, and it's with my company, and so, again, this isn't big-time stuff. It's not high risk stuff. It's just some typical run-of-the-mill insurance risk exposures, and I did two of them. The first one is a family of four--husband and wife are in their early forties, and they have two sons, age 17 and 19. And I did this rate on our Lincoln rate. They have four cars, and an '09 Acadia, an '03 Impala, '04 Impala, and then a 2001 Mitsubishi. You can see on that front page there, this is a six-month rate, and to insure those four cars, and only one of them, the new one, has comp and collision on it. But to insure those at 25/50 for all four family members, the six-month premium is \$1,400. If you change this to 50/100, it would be an additional \$79 for six months of coverage. After the first page, I list--I'll show you, you can see the coverage increase for each of the four vehicles insured. I wrote it right down there where the liability coverage goes up from 25/50 to 50/100, so you can see the increase on each car. And then I...if you go back a little further, there is one more rating example, and on this one, I picked a...it's a fellow named Mark, and it's three pages, the last three pages. And he has the Mitsubishi, and this is a six-month premium here in Lincoln, but for this young man, again, age 19 or 20, he has a chargeable accident, and he's had some traffic violations, so this individual is a little more of a high risk exposure. And for coverage of 25/50 for six months on one vehicle, no comp and collision; this is liability coverage, it's \$636 for six months of coverage. If you go to 50/100, his premium

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will go up another \$39 for six months of coverage. Finally, the last item in the handouts that I provided is just anecdotal information. The state of Wisconsin, in '09 they increased their liability limits to 50/100. Now and in 2011, there's a bill in their legislature to put it back down to 25/50, and you'll see in the article, one of the--let's see, I think this is somebody in the house, but they mentioned when they were campaigning, they got a lot of complaints about it, and so now, Wisconsin--the bill passed the first round of debate and was voted on to the second round of debate, and they're contemplating moving their rates back down to what they were before. With that, I'll conclude my testimony and be happy to answer any questions the committee might have. [LB196]

SENATOR PAHLS: Senator Utter. [LB196]

SENATOR UTTER: Thank you, Chairman Pahls. Mr. Dobler, how often do you...or do you experience in your experience in your company, do people take out the insurance, go get their plates, because they have to show proof of insurance to get their plates and then cancel it? [LB196]

JIM DOBLER: Senator, I don't know how often that occurs. I know it does occur, and I know...and I'm sure we have had some policies where the coverage was taken out, and then two days later, a week later, that policy was cancelled. Again, I think you probably see that more often with companies that write the more high risk coverages. We write through independent agents, again, working for the family car situation. So a lot of our policyholders just don't fall into that kind of category. I do know it happens, though. [LB196]

SENATOR UTTER: I'm not sure that this actually addresses that issue, but would it be fair to surmise that because of an increase in the limits and an increase in the cost of insurance, we could see increased incidences of this? [LB196]

JIM DOBLER: Senator, that would be my guess as just my reaction. I mean, if you raised the cost, it may prompt more people to not buy it. How many? It's anyone's guess. [LB196]

SENATOR UTTER: Thank you. [LB196]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB196]

JIM DOBLER: Thank you. [LB196]

SENATOR PAHLS: Any more opponents? How many more opponents do we have? Okay. I see a number of you have testified before this group, because you know my procedures. Usually, I have you move to the front of the group. That way I don't leave out people. [LB196]

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JANIS McKENZIE: Senator Lathrop is scary (laughter). [LB196]

SENATOR PAHLS: The floor is yours. [LB196]

JANIS McKENZIE: Senator Pahls, members of the Banking, Commerce and Insurance Committee, for the record, my name is Jan McKenzie spelled J-a-n M-c-K-e-n-z-i-e. I'm executive director and registered lobbyist for the Nebraska Insurance Federation. My five property casualty insurers also wanted to be in opposition to LB196, and I would just reiterate one point. Those of you who have been on this committee for a number of years know that almost every year we have an uninsured motorist bill. It's unusual that we don't this year, to be honest, because that's one of those never ending issues as senators that you hear about a lot. Somebody hit me, my son, and they didn't have insurance. So I would just, I guess, focus your attention a little bit on while, certainly, I think there are compelling arguments in thinking about raising the limits, I think there are also often unintended consequences in a direction that we also struggle to try to find solutions for. There are basically a few kinds of people in the uninsured group, and those are people who are just totally irresponsible, so they choose not to take care of themselves. There are people who cannot afford it, and there are people who are struggling to make ends meet and go back and forth and hope they don't get caught. So there are a lot of people in Nebraska right now really who are struggling to try to make ends meet, and things are tough. So I would just reiterate that we need to be cautious about increasing the costs of something that for most people guarantees that they can get to their job and pay their bills and take care of their families. I'd answer any questions. [LB196]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB196]

JANIS McKENZIE: Thank you. [LB196]

SENATOR PAHLS: Good afternoon. [LB196]

TAD FRAIZER: Good afternoon, Chairman Pahls, members of the committee. My name is Tad Fraizer, T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property and casualty firms. I'd kind of like to echo that which you've heard before. This is kind of a counterintuitive thing to see insurers come up and oppose this. You'd think our marketing and sales departments would be turning handsprings with the thought of the state of Nebraska making people buy more insurance. But I think the experience of insurance companies is that it doesn't quite work out that way as previously iterated. People who can't afford more buy more. I think Mr. Loring, from the independent agents, said, they don't even write lower coverage. I think any insurance agent worth their salt will counsel people as to the effect of buying the absolute minimum insurance. So I don't think they're realizing that they are not

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getting adequate protection and, hopefully, their insurance agents are doing the proper job and telling people what they need in a given environment. So that really those who can afford more are going to buy more if they have a grain of sense in their head. It is going to impact the people who are right at the margin and can't afford that additional amount. Again, I'd answer some questions that Senator Utter asked some of the previous testifiers. While I can't quantify it, I think it will tempt more people to go bare if they can't make the minimum when increased. That is a temptation to go bare without insurance, and it probably will have some tendency to cause people to buy insurance on a short-term basis to register vehicles and then drop the coverage which, obviously, doesn't serve people in the injury cases, and it, obviously, causes more administrative difficulties for insurance companies. And, again, I can't quantify it, but it seems that that would be the logical effect of pushing up the rates. And I'd be happy to try to answer any questions you might have. [LB196]

SENATOR PAHLS: (Exhibits 3, 4) Seeing no questions, thank you for your testimony. Any more opponents? Anyone in the neutral? Before I turn it over to you, I do want to read Patricia Hancock from Bob's Body Shop is opposed to LB196, and we have one that supports it would be Lyman-Richey, and could I have one of the pages pass this out to the...and the closing is yours. [LB196]

SENATOR LATHROP: Thank you, Mr. Chairman. Good hearing. And you know, now I think you can appreciate what the issues are when we talk about this, and I'd like to talk about...I want to focus on my closing remarks on what Mr. Dobler talked about, because I found it interesting, and I think if you listen carefully, it'd probably prove the point I'd like to make which is he went through some math with you, and said, let's take 2006, the average personal injury claim was \$23,723. And I wrote that down because in order to have an average of \$23,723, half of them have to be higher than that and half of them have to be lower than that, and that gets to the point. More than half of the claims that involve personal injuries even by their own numbers are greater than our minimums. And that means that some...when we sell these policies, we're exposing people to an excess judgment. And we're also exposing people, Senator Utter, and I appreciate...and you are the voice of fiscal conservative in the body, and so I know you're looking at it and saying, well, what about these people we...if we do this, we're going to have some people drop off. The question may be...to look at is, what's going to happen when the people in your district get in a wreck by somebody, and they get hit? And they call you up, and they say, are you kidding? The limits are 25? My bills are \$18,000, and the accident was four months ago. This won't cover it. These limits won't cover it. Another thing Mr. Dobler said that I thought also proved the point or the purpose in this, and that is that most of these policies are purchased by high risk drivers. High risk drivers, (laugh) they're the people we want to have running around with a million dollars in coverage if we could make them, because they're the ones that are most likely to cause an accident; they're the ones that have demonstrated through some process in underwriting that they're the most significant risk. And that means they're the most likely

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to cause an accident that exceeds the value of their own insurance at 25/50, and so I think it becomes even more compelling when you appreciate that the people with 25/50 are the highest risk drivers. And the last thing I'll say...well, two things. And I want to talk about Wisconsin. Wisconsin did pass a statute that increased the limits to 50/100, but it also put an escalator in there that said, 50/100 and next year it's going to be higher, and the next year it's going to be higher, the next year it's going to be higher, and they're taking another look at that, because that's not what we're talking about here. And so, I think it's a little misleading to suggest that the people in Wisconsin are in revolt, because their minimum limits went to 50/100. And the last thing I would say is, yeah, I appreciate Ms. McKenzie's remarks that things are tough, right? And it is difficult, and people are trying to make some tough choices--working people are trying to make some difficult decisions. But I think when we tell them that the minimum limits are 25/50, and you'll be adequately protected, we're misleading them. And if those same people that are working hard and trying to get to work and pay their bills, get in an accident, and somebody hits them, and they don't have the coverage. Let me tell you what happens, because I've seen it. There isn't enough money to pay the hospital bills, and this is driven by the medical doctors. And if you don't have adequate insurance coverages in this state for auto accidents, the providers go unpaid. And the unintended consequence? Well, the unintended consequences of leaving it at 25 are, we're not paying doctors, and where people are getting care in hospitals and not paying the bills. And that's just part of not having adequate insurance, and, then, of course, we're exposing people to an excess liability judgment they never understood might happen to them, and of course, we're talking about the highest risk population of drivers. [LB196]

SENATOR PAHLS: Senator Pankonin. [LB196]

SENATOR PANKONIN: Thank you, Chairman Pahls. Senator Lathrop, here's what I took from Mr. Dobler, and I think...well, two things, one of them being that that was an endorsement almost as good as your TV ad for your firm and yourself for being, you know,... [LB196]

SENATOR LATHROP: That was kind of him to say that. I think he was flattering me, because he once... [LB196]

SENATOR PANKONIN: ...if you've got a big problem,... [LB196]

SENATOR LATHROP: ...he once took me to Chicago to the Lions Den, and I almost got eaten alive by a bunch of insurance guys. [LB196]

SENATOR PANKONIN: But as brilliant as an attorney as you are, I think we've got to touch base on what average and median is. He talked about the average being \$23,723 in 2006, and you said that means half are higher and half are lower. That's the median. The median was \$6,000--correct me if I'm wrong. A median is the half...is the point

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where half is larger and half is smaller, and average is an average of all claims. [LB196]

SENATOR LATHROP: Well,... [LB196]

SENATOR PANKONIN: Wouldn't that be...is that a true statement or not? [LB196]

SENATOR LATHROP: Well, right. My point would be, in order to get a \$23,000 average, you're going to have somebody that has a...and let's call it \$25,000 average. In order to get a \$25,000 average, you're going to have one guy at 20 and one guy at 30, right? [LB196]

SENATOR PANKONIN: If there's... [LB196]

SENATOR LATHROP: You may have one at 10 and another... [LB196]

SENATOR PANKONIN: ...if there's two, but isn't median the midpoint? [LB196]

SENATOR LATHROP: Sure. [LB196]

SENATOR PANKONIN: Okay. So the median was... [LB196]

SENATOR LATHROP: Median or mode. I got to tell you I took statistics, and I did well at it, but it was about 35 years ago, so...(laughter). I know mean and average means the same thing, and... [LB196]

SENATOR PANKONIN: Okay. Well, I just want to correct the record that...I mean, median is the midpoint. Average is an average of numbers. I look at average as being there's a \$200,000 claim, and then a whole bunch of \$2,000 claims, and you get an average of 23. But the midpoint is 6,000 per their record for that company... [LB196]

SENATOR LATHROP: Sure, sure. [LB196]

SENATOR PANKONIN: ...just so we are understanding of the record, because there is a lot of small stuff. The point he was making is the people are seriously injured go to firms like yourself and, obviously, then that's where it gets in the forties and fifties and whatever, so that's the point I'm making. [LB196]

SENATOR LATHROP: All right. [LB196]

SENATOR PANKONIN: Valid? [LB196]

SENATOR LATHROP: Fair enough. [LB196]

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SENATOR PANKONIN: Okay. [LB196]

SENATOR LATHROP: Fair enough. And I wouldn't argue with that either, but at the same time, there's a lot of them over...a lot of them over \$25,000 and those people are drastically underinsured. And the other point may be, is that when you raise the minimum limits, you're raising the minimum limits on the underinsured and the uninsured, too. So people are effectively insuring themselves better as well from the underinsured and the uninsured driver. [LB196]

SENATOR PANKONIN: Thank you. [LB196]

SENATOR PAHLS: I think Senator Christensen... [LB196]

SENATOR CHRISTENSEN: Thank you, Chairman. All I can do is ask your opinion here. You made the statement, high risk need it more, the higher limits. I agree totally with you. Will we have a chance that more of them don't buy it, and I don't know how that affects the underinsured and overinsured... [LB196]

SENATOR LATHROP: You know, we talked about that at the...when I opened, which is, what effect does increasing the premiums 6 percent or 7 or 8, whatever that is, have on...at what point do people start falling off, and saying, if we doubled the premiums, I'd say, yeah, we're going to double the premiums. We'll have more coverage, but a lot of people will leave. I don't know, Senator Christensen, at 6 to 8 or 10 percent increase in premiums for double the coverage, how many people are going to leave? That would be speculation on my part, and I didn't hear anybody here say, do anything other than speculate. [LB196]

SENATOR CHRISTENSEN: Right. And I totally agree. The higher the risk, the more they need the limits. I'm with you there...I just don't know how to handle it. [LB196]

SENATOR LATHROP: Yeah, and I can tell you, I can almost tell what the policy limits are going to be when I look at the company. And Progressive...they're doing more standard stuff, but it used to be Progressive and Mid-Century. There's a number of them. You can tell; it's where they put the high risk guys, and they're all driving around on \$25,000 worth of limits. And a lot of them have an SR-22 filing requirement, so they really cannot drop their coverage if they're forced by the court, because they've got a DWI to do an SR-22 filing. [LB196]

SENATOR CHRISTENSEN: Thank you. [LB196]

SENATOR LATHROP: Okay. Thank you for your... [LB196]

SENATOR PAHLS: Thank you for... [LB196]

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SENATOR LATHROP: ...patience and I'll look forward to this one on the floor.
(Laughter) Yes, guys. Yes? Yes. Yes, Mr. Chairman. It's a simple bill. It's a simple bill.
[LB196]

SENATOR PAHLS: Well, you know how I skip...I skipped some of the procedures. I
guess we could just move it out (laughter). [LB196]

SENATOR UTTER: Next year maybe you could bring us a bill on remedial statistics for
trial lawyers (laughter). [LB196]

SENATOR LATHROP: Can we turn the camera off for a minute? (Laughter) [LB196]

SENATOR PAHLS: Yeah, I know. I... [LB196]

SENATOR GLOOR: You're both wrong. I have to say it median, mean, midpoint, and
mode. [LB196]

SENATOR LATHROP: Mode. [LB196]

SENATOR PAHLS: Okay. You're right. Okay. Thank you. That closes the hearing on
LB196. We'll be here all day, guys (laughter). Now we are ready for...we'll wait till the
crowd clears a little bit, so we get a little order back (laugh). Thank you. It's been good.
LB43, Senator McCoy. [LB196]

SENATOR McCOY: Thank you, Chairman Pahls. I am Beau McCoy, B-e-a-u M-c-C-o-y,
and I represent the 39th District in the Legislature. I'm here to introduce LB43 which
would clarify that the procedure for limiting optional future advances under state statute
(section) 76-1002 only applies to any future advances to be made at the option of the
parties and not to future advances necessary to protect the security. Bob Hallstrom with
Nebraska Bankers Association will be following me and can go into more detail from a
technical nature. And thank you, and I'll take any questions, if there are any. [LB43]

SENATOR PAHLS: Thank you. Proponents. [LB43]

ROBERT HALLSTROM: (Exhibit 1) Chairman Pahls, members of the committee, my
name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the
Nebraska Bankers Association in support of LB43. This is a fairly technical issue that
Senator McCoy is addressing under LB43. There's currently a statute under Nebraska
law, section 76-1002 that establishes a procedure by which optional future advances
that are secured by a previously filed trust deed may be limited, and the procedure is
set forth in my testimony. There's a notice that's provided by a potential subsequent
lienholder or the borrower to the first lienholder that essentially is provided to that

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lienholder, and in a nutshell, tells them if you have a future advances clause under your promissory note, that if you make any future advances pursuant to that authority, having received my notice, those future advances will be subordinated or made junior to my lien position. The example that I've provided in my testimony may serve to be of benefit. Let's assume that I've borrowed money--\$100,000 from bank one. They have a provision in their loan documentation that has a discretionary future...optional future advances clause. I go to borrow money from bank two. Bank two will do a title search. They'll find that there's a first lien. They will discover that there is an optional future advances clause contained within that first lien, and they will know that I have told them I only have a \$50,000 balance left on that first loan. In order for that second lienholder to feel comfortable that there is only \$50,000 indebtedness ahead of them, they will want to employ the statutory procedure, provide notice to the first lienholder, and therefore, limit the optional future advance to that \$50,000 figure that they were originally behind. And that's exactly what that procedure does. In the process of reviewing this statute, we had a couple of attorneys who contacted us, and there are two basic elements in this statute that are to be addressed. One is optional future advances, and the second is future advances to protect the security...things such as a lender paying real estate taxes, repairs and improvements, prior liens, things of this nature. And on a technical basis, the practitioner suggested that the way the statute was drafted, was not crystal clear that the procedure for limiting future advances only applied to optional future advances and not to advances necessary to protect the security. So, thus, LB43 was spawned to take care of that issue and clearly identify that the only advances that are cut off, if you will, by this notice procedure under (section) 76-1002 are those that are optional future advances, and not advances necessary to protect security. So I'd be happy to address any questions. [LB43]

SENATOR PAHLS: Seeing none. I'm glad you did give me a sample, so I could walk through it. Seeing none, thank you. [LB43]

ROBERT HALLSTROM: Thank you. [LB43]

SENATOR PAHLS: Any more proponents? Any opponents? People in the neutral? Senator. Senator waives LB43. That concludes that hearing. We are ready now for LB44. Senator McCoy. [LB43]

SENATOR McCOY: Thank you, Chairman Pahls. I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District in the Legislature. I'm here to introduce this afternoon to you LB44 which seeks to clarify that the person selling trust property under a power of sale contained within a trust deed need not be named in the trust deed, and that any error or omission in a trust deed concerning the designation of the trustee authorized to exercise a power of sale does not invalidate the trust deed or the ability of the beneficiary of the trust deed to appoint a successor trustee to exercise the power of sale. And Bob Hallstrom with the Nebraska Bankers Association will be following me,

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can go into some additional detail on this. Thank you. [LB44]

SENATOR PAHLS: Okay. Thank you. Proponents. [LB44]

ROBERT HALLSTROM: Chairman Pahls, members of the committee, my name is Robert J. Hallstrom. For Jan's benefit, H-a-l-l-s-t-r-o-m. I neglected to do that earlier this afternoon...registered lobbyist for the Nebraska Bankers Association in support of LB44. Senator McCoy has told you effectively what the bill does. I'll give you a little background on the reason why the bill is before the committee. There was a case in Douglas County District Court that was decided--specifically, the case of Charter West National Bank v. Wells Fargo Bank. In that particular case, Wells Fargo had filed a deed of trust and designated an attorney to serve as trustee under the deed of trust. Subsequent to that, the other bank, Charter West, had filed a second deed of trust in a second lien position. Litigation subsequently ensued, and the second lienholder took the position that the original trustee under Wells Fargo's deed of trust had never consented to serve as trustee, and having failed to do so, that that served to void the deed of trust from its inception, and thus, make the second lienholder become first in time. The Douglas County Court ruled that that was not the case, that even if consent was required, which they did not deem to be necessary, that the trust may have gone into a state of dormancy when it didn't have a trustee. But the fact that the trust deed's act provides for a system or procedure by which a substitute or successor trustee can be appointed, served to effectuate when Wells Fargo did designate a successor trustee to put the deed of trust back on a sound footing, and to retain its priority as a first lien. So the bill would try to, in essence, codify the court decision in the Douglas County Court action. What I am here to do today is to let you know since we have introduced this legislation, we have become aware that this case is up on appeal before the Nebraska Court of Appeals. As a result, not knowing what the ultimate determination is going to be, we would respectfully, for the moment, ask the committee to hold the case if there is a decision that provides us either an affirmation of the Douglas County Court decision or some alternative holding. We will be back and notify the committee of what has transpired, and whether or not there's a need to move forward any quicker with this legislation. [LB44]

SENATOR PAHLS: Okay. Thanks for that direction there. Seeing no questions, thank you. Any more proponents? Opponents? Neutral? Senator McCoy. Senator McCoy waives closing. That concludes LB44. I think we are ready for LB90. Just by a show of hands, how many proponents? Two? Okay. Opponents? Okay, that way...don't let me fall asleep on this one now. [LB44]

SENATOR HARR: He's neutral. [LB44]

SENATOR PAHLS: Okay, okay. Welcome, Senator Harr. The floor is yours. [LB44]

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SENATOR BURKE HARR: (Exhibit 1) Thank you, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. My name is Senator Burke Harr, B-u-r-k-e H-a-r-r. I am from Legislative District 8 which is in Omaha. I am here today to introduce LB90. I also have some cleanup language amendments for LB90 which I believe Mr. Marienau will address in exec session. It's merely cleanup language of a couple of typos. I'm here to talk about the UCC which is the Uniform Commercial Code. The goal of the UCC is to harmonize state law. It is important, because it is the prevalent form of law used in most commercial transactions that extend beyond one state. For example, goods may be manufactured in state A, warehoused in state B, sold from state C, and delivered in state D. The UCC therefore achieved the goal of substantial uniformity within the commercial laws. The UCC deals primarily with transactions involving personal property, which is movable property as opposed to real property and movable property. The UCC is a long and elaborate uniform act, originally started in 1952, we started to meet on it. It was approved in '61. There was a major change then in, I believe, 2001. The whole act deals with the following subjects: There's a general provision which provides for definition in rules; Article 2, which deals with sales; Article 2(a) which deals with leases; (Article) 3, negotiated instruments; (Article) 4, bank deposits; (Article) 4(a) fund transfers; (Article) 5 letters of credit; (Article) 6, bulk transfers and bulk sales; (Article) 7, warehouse receipts, bills of lading and other documents of title; Article 8, investment securities; and Article 9, secured transactions. So, needless to say, this is a large act. Matter of fact, if you look in your statute book, all of Chapter 6 is about the UCC. As I said earlier, a major revision was done in 2001 on the Article 9, and this is to update that further, and there were a lot of issues when there was an update, and I'll get into that a little bit. But the overriding philosophy of the UCC is to allow people to make contracts they want, but to fill in any missing provisions where the agreements are silent. The law also seeks to impose uniformity and streamlining of routine transactions like processing of secured transactions. The law frequently distinguishes between merchants who customarily deal in commodities and are presumed to know the business they are in, and consumers who are not. Article 9 governs how security interests may be obtained in personal property that a borrower and a lender agree will serve as a security for payment of secured debts. In Article 9, the borrower is referred to as the debtor, and the lender is referred to as the secured party. Fundamental concepts under Article 9 include how a security interest is imposed on property, how security interests are made complete or perfected, and what remedies are available to a secured party, the lender, if the debtor defaults on the payment or performance of the secured debt or obligation. In general, Article 9 does not govern real property, as I stated earlier. So that gets us to history of the UCC, very brief and very short. What this bill is, is it was introduced or originally the uniform law commissioners got together along with the American Law Institute, and they work on updating the law. On the UCC, as we said, it's very complex and there are a lot of changes in our society in the last ten years that deal, some of it with electronics and some just with our economy becoming more diverse. So they've gotten together and gone through and really looked at what were the problems, what can they do better, and then in addition,

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they've gone through and said, what can we do to adapt to today's society? It's very important that the UCC remain relevant. The UCC is the main law used in all transactions, so uniformity, again, is the key and relevance is the key. Otherwise, we have no way of dealing with transactions from state to state. Prior to 2001, you had to file security interests on the county level. Now, it's on the state level--it's streamlining. A lot of these issues are the same streamlining. A little history on myself. Before I came down here, I did some UCC work. I was lender counselor for a bank out...well, out of Scottsdale. Almost all of our lending occurred...we did equipment lending and real estate, but a lot of the equipment lending was to states throughout the United States. The bank was in Arizona; its headquarters were in Connecticut, and our borrowers were all over. So it was very important that we knew that we could...there was uniformity within the bill. This bill...and I have a statement of intent that I'll run through quickly. I know there are some issues in it. Basically, section 2 is amendments to definitions. Probably the most...well, originally, one of the more controversial was the update of the definition of an agricultural lien. We can talk about that more in detail if you'd like, but basically, all that is, is correction language, and it just states what the statute already says. There are controls on electric chattel paper--electronic. Basically, that's updated due to the fact that we do live in an electronic age. Location of the debtor. This is something that's interesting. Merely, what we're doing here is codifying with what federal law says, so it may appear controversial on space, but when you really investigate, it's just codifying with the federal law. Debtor change of location is another issue that may come up, and what this does is it provides that perfection by filing continue for four months after the jurisdiction. What this is, is if I move from state A to state B, it gives some time for the secure party to refile, and when they refile, they remain in priority on that filing. The biggest thing right now is the issue of the driver's license for determining who the secured party is, and that's the name of the debtor. Currently, right now, I always give the example of Bob Kerrey. If I were a lender looking to see the history of Bob Kerrey, I would look...the question is, do I look up Bob Kerrey; do I look up Robert Kerrey; do I look up J. Robert Kerrey or John Kerrey? These are all ways he signed official state documents, and there's no consistency as to what I should look for as a lender, and would have to look for all of those right now as it's currently written, and would also have to look at what is a natural spelling...what may seem natural inconsistency, so I'd have to look for typos. I'd have to look for Kerrey, K-e-r-r-e-y, any other spelling of the name. Senator Pahls, I'd probably have to look under P-a-u-l-s. And that's been an issue, and there have been priorities that have been screwed up because of that. So what this does is it says lender, grab the driver's license of this individual. Look at that driver's license. What is on the driver's license is what you use, and that way there's certainty. Now, there's going to be always some problems, but we can't let perfection be the enemy of good. This provides a greater amount of certainty than is available at this time, and so, going on, it's all very...a lot of this is very boring information, and I'd be willing to take questions. I guess my concern is...and this is going to be one of the issues that's brought up, so I'll just get to it right now, is this is scheduled right now to take effect January 1, 2013, and there are going to be those who

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argue, why are we in such a rush to pass this? What's the reasoning? These amendments were just distributed last July. Let's have a little time; let them ferment, read them over, and look at them. And there is some of a valid argument to that. The other side of that argument is, these have been looked over; people have had since July. This bill was introduced the first part of January. They've had a chance to look it over and study it. Let's get it out there, and let's pass this bill, so that there's certainty, and if there is a question or not that there's a question, but that way, lawyers and individuals can educate themselves on what the changes actually are. So that's going to be my argument as far as why I think it's important that we pass this. And at this point, I would open it up to questions. [LB90]

SENATOR PAHLS: Let me ask you a question here. So what you're telling me, because I know it's a complicated...and I think we visited some of these issues in the past if I'm not mistaken. I'm glad that this will get cleared up. I'm looking at...you're telling me we should send this out, and there's going to be some people who are going to say, hey, you ought to wait on it. And you're telling me, these people who will dive into it, have had the ability to dive into this for at least six months. [LB90]

SENATOR HARR: Yes. [LB90]

SENATOR PAHLS: They've seen that this is not new; you're not throwing something at them that they have not been able to digest. [LB90]

SENATOR HARR: Well, I guess what I would say is they've had the ability to look at it. I can't say they have. I'm not, by any way, inferring that they actually have, but has the ability been...has it been out there available since last July? The answer is yes. Now, maybe they haven't gone and looked at it, I don't know. But, obviously, so I can't speak for them, but I can say is it has been available since then. [LB90]

SENATOR PAHLS: Well, if it's been available, and they want more time, to be honest with you, I'll look at it and I'll say, where you been? If we can prove that this was ready to go. [LB90]

SENATOR HARR: Yeah. Yeah. [LB90]

SENATOR PAHLS: Okay. [LB90]

SENATOR HARR: Yeah. [LB90]

SENATOR PAHLS: Go ahead, go ahead. Senator Gloor. [LB90]

SENATOR HARR: No, I'm done. [LB90]

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SENATOR GLOOR: Senator Harr, welcome to the Banking, Commerce and Insurance Committee. [LB90]

SENATOR HARR: Thank you, Senator. [LB90]

SENATOR GLOOR: You'll find this a very fair committee given the technical nature, your bill, in particular, is a case in point. It may be a fair committee; we're prone to bouts of narcolism at times, as a result of the material. (Laughter) But remind me, who are our commissioners of Nebraska that participate in this process? [LB90]

SENATOR HARR: Who are the commissioners? [LB90]

SENATOR GLOOR: Yeah. [LB90]

SENATOR HARR: From Nebraska, I don't know specifically. I know there is one here today who will be testifying later. [LB90]

SENATOR GLOOR: Okay, good. [LB90]

SENATOR HARR: But I don't know who all the commissioners are. [LB90]

SENATOR GLOOR: He can answer that. [LB90]

SENATOR HARR: Okay, yeah. [LB90]

SENATOR GLOOR: That helps me with my comfort level when this finds its way to us. [LB90]

SENATOR HARR: Okay. [LB90]

SENATOR PAHLS: Seeing no questions, okay. You will stick around for closing? [LB90]

SENATOR HARR: All right. I better. Thanks. [LB90]

SENATOR PAHLS: Okay, okay (laugh). Proponents. Again, I'm just...just to keep me on...we have how many proponents? One, two, three. How many opponents? One? Okay. Thank you. [LB90]

ROBERT HALLSTROM: (Exhibit 2) Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB90. Senator Harr has done a nice job of going through some of the technical aspects of the bill. I do want the record to reflect that he's also done his homework. He went

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through what is close to a 90-page bill and found typos that were in the bill and brought them to our attention, so he is a quick study in that regard. Just a little background. LB90 adopts the revisions to the UCC Article 9, the so-called 2010 amendments that have been recently approved and recommended for adoption by a Joint Review Committee of the Uniform Law Commissioners and the American Law Institute. As Senator Harr suggested, it's been approximately ten years since the last major changes to Article 9. A lot has transpired since that time, although when you look at LB90 and the recommended amendments as a package, there is not anything near the complexity that was involved back in 1999 when we had transition rules that applied to virtually every filing, because we were changing from a local filing for farm products to a filing requirement at the Secretary of State. So the issues that the practitioners are going to have to look at along with the bankers are, hopefully, going to be a little less complicated this time. Having said that, I think there's going to be a great deal of need to both notify and time to educate practitioners and bankers on the changes that are going to impact their day to day practices. My testimony goes through most of the significant substance of the LB90. Again, Senator Harr has touched on those. I think the committee, since everybody is back from the past few years, as Senator Pahls suggested, is painfully aware that one of the major issues contained in this legislation is recommended by the Uniform Law Commissioners, and the ALI is addressing the issue of the individual debtor's name. And as I have suggested to this committee before, the problem that needs to be addressed is that the current Uniform Commercial Code Article 9, does not identify or give any concrete guidance as to how you determine what the individual debtor's name is to be. Senator Harr gave a good example with regard to former Senator Kerrey, former Governor Kerrey, and those are the very problems that we've struggled with. I have included in my testimony a reference to probably the leading Nebraska case which involved the determination as to whether an individual's name was Mike Borden, Michael R. Borden, or Michael Ray Borden. And in that case, the court determined that the actual legal name was Michael Ray Borden. Neither creditor in that case had used Michael Ray Borden, but by default, they said, Michael R. Borden was closer than Mike Borden and made a decision on that basis. Obviously, that provides little guidance or certainty to secured creditors either who are filing or who are searching the records to determine what are legitimate prior filings, and so Revised Article 9, after much input and study, has determined that the...at least from our perspective from the banking industry, that the preferred methodology is to use what is commonly referred to as the only if approach, which basically says, if there is a valid driver's license issued in the state of residence of the debtor, that you use the name that appears on that driver's license. Only if the name is used, are you both perfected and gain priority by using that name. If there is not an unexpired driver's license issued, then you fall back to either using the correct name which is the current standard and of not much help, or something that does provide additional guidance is to use the surname or last name and the first personal name of the debtor, so there's a little better guidance in those few cases where someone might not have an unexpired driver's license. I think, in closing, since we've talked about most of the substantive issues, I think a little historical

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background may be in order. Even though the operative date is July 1, 2013, that's done for a specific reason, and that's because we need to bring all 50 states on-board in order to have that uniformity that Senator Harr talked about as being so important to these multijurisdictional types of entities and transactions. As I suggested, this is not as complicated as the last time around the block, but nonetheless, I think it's important to get to the finish line, to get the legislation passed this year, and I think that's for two reasons. The first one is to get the notice out to the practitioners and the lenders and to allow sufficient time for education, but probably more significantly from a historical basis, Nebraska and other states in the Midwest have traditionally been the leaders in being out front and adopting revisions to UCC Article 9. Some of our brethren, who have not been engaged and involved in the process as much as we are, are a little bit less reluctant to jump in, if you will. By passing the bill in Nebraska, Kansas, Missouri, some of these bellwether states, we provide that impetus for our colleagues across the nation to go to their legislatures, and be in line with passage by 2013. I think also historically, while I'm sure it's been vetted by the bar association, I've been around about 30 years, I'm not sure I can recall a specific amendment to a UCC revision to Article 9 that has been proposed by the bar association. As was suggested, Senator Pahls, the final product has been out since July 21 of last year, I've got to imagine, given all the circumstances that that has been in the hands of the bar association; the American Law Institute was involved as a member of the Joint Review Committee. My suggestion to the bar association, perhaps to no avail, but has been that this doesn't have to pass in three weeks, but we would like to see it passed by the end of this year and put into place. That gives in addition to the time frame that has passed since July of last year, and in addition, I might add, all of these issues were on the table for at least 18 months, if not two years prior to that time. But it gives them another four months before this session is completed, and one would think that that is a reasonable, logical period of time for them to come forward, and if there are any amendments or changes that they would suggest, we will certainly, in good faith, visit with them on those and be more than willing to see if any changes are in order. Be happy to address any questions. [LB90]

SENATOR PAHLS: Seeing no questions, thank you. [LB90]

ROBERT HALLSTROM: Thank you, Senator. [LB90]

SENATOR PAHLS: Proponents? [LB90]

ROCKY WEBER: Mr. Chairman, members of the committee, my name is Rocky, R-o-c-k-y Weber, W-e-b-e-r, Crosby Guenzel LLP, appearing today on behalf of the Nebraska Cooperative Council in support of LB90. We appreciate the opportunity to testify in support of this bill today. We also appreciate the efforts of Senator Harr's staff in holding several meetings in which we were involved on behalf of the Cooperative Council. Mr. Marienau was involved, the Secretary of State's Office was involved, and the Bankers Association was involved to go over several issues presented by this bill.

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Nebraska is a little bit unique, because in Nebraska we have a series of statutory agricultural liens that also exist. These are nonconsensual liens that exist merely by the provision of inputs from an input provider to a farmer, and once that transaction happens, the input provider has--depending upon the material whether it be seed, fertilizer, fuel, a certain amount of days to file and perfect a lien, and the crops associated with those inputs. And this is a separate system from a Uniform Commercial Code secured transaction where security interest is actually given by a security agreement signed by the debtor. LB90 provides a change in the definition of agricultural liens, and our concern was that nothing in this bill change how agricultural liens are perfected or the priority of agricultural liens, from what the current statutory provisions are. These changes, I think, Bill, were done in 1999 when we brought the... [LB90]

BILL MARIENAU: Yeah, '01. [LB90]

ROCKY WEBER: ...'01? We brought the statutory liens within the Uniform Commercial Code provisions in Nebraska, and we also changed the forms in Nebraska, so that agricultural liens are perfected by using UCC forms with merely an attachment for the agricultural lien. After meeting with all the interested parties with the Secretary of State's Office, the Bankers Association, Senator Harr's office, and others, we are comfortable and agree that nothing in this bill changes our agricultural lien, perfection priority, or status, and that's the primary concern of the council. We also believe that the changes promoted by LB90 in terms of debtors changing location, and how to perfect security interest in collateral acquired after they change location, we think that needs to be updated. Many of our cooperatives have customers that they deal with in two states, and sometimes those customers do move back and forth, and we've had to deal with these change-of-location issues before. With regard to the driver's license issue, that's going to be a hurdle for the cooperatives, because most of the time they file their agriculture liens based upon the name on the account. And while we would hope that the name on the account is what's on the driver's license, my guess is that there will be a fair amount of divergence there, which is why the counsel also supports action on this bill this year if it is to be affected by January 1, 2013. I believe that we will need at least one, if not two, statewide educational efforts for the cooperatives and the people that handle these accounts and file the agricultural liens in order to get them up to speed, so that they're using the name on the driver's license. We believe that there's some consistency, and that the name on the driver's license protects us as well as the banking groups and any secured party, because we're all operating under the same set of rules then. So we would encourage the committee to move this on to the floor and actively encourage the entire body to pass this legislation this year. Any questions? [LB90]

SENATOR McCOY: Questions for Mr. Weber? Seeing none, thank you. Additional proponents for LB90? Welcome. [LB90]

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LARRY RUTH: (Exhibit 3) Senator McCoy and other members of the committee, my name is Larry Ruth, R-u-t-h, and I'm one of Nebraska's commissioners on uniform laws, and I appear today on behalf of the Uniform Law Commission in support of the bill. Having handed out a packet that I'll go over with you in just a few minutes, but let me make a few preliminary comments. First of all, Senator Gloor, the other members of the Nebraska delegation, if you will, to this national conference, our Eighth Circuit Court of Appeals, Arlen Beam, he's currently not in Nebraska. He's sitting on the bench out in California somewhere. Mr. Perlman, Harvey Perlman, Joanne Pepperl, Amy Longo, an attorney from Omaha, and Steve Wilborn, the past dean of the law school. I make comment about them particularly, not to say that they're an illustrious group, because they are...not myself included, but they are. And but to say that they are on the commission, but that doesn't mean necessarily they've given direct thought to this bill. I want to make that sure for you. There are a lot of uniform laws that we've been looking at, and we all take a turn at looking at different areas. This would not be one that would fall probably within any of their particular review, as it did not within mine. But the process is, that there are experts in the area of the law that draft in uniform law areas and bring drafts back to the group as a whole and go over it as a whole, and ultimately, after a two or three year period, they then act within an act on uniform laws. And we have uniform laws in the state of Nebraska, and there must be 55 or 60 of them that have passed on everything from fraudulent conveyances to Uniform Probate Code to even one that Senator McCoy is going to be working on a little later on. But this is the showcase area of the Uniform Law Commission. This is the big daddy. As the senator said in his introduction, all of Volume VI which is a volume that big is the Uniform Commercial Code. And your counsel and this committee has been very important to maintaining its relevance. And why is it important? It's really important for a couple of reasons. One is, if the state doesn't act in this area of commercial law, it cedes its jurisdiction; it cedes its authority in this area over the federal government. The federal government will provide leadership if the states don't. So one of the reasons that you really have these uniform laws is so that the states maintain an active role in maintaining work in a particular area. And I feel very strongly about that, that with the federal law you have one size fits all, but you can see that with the states doing uniform laws, it gives an opportunity for there to be a little bit of experimentation and often review. And that's what we're doing here. This is a review and an updating of Article 9 which deals with secured transactions. Now, let me give you a little background on this packet of information I gave to you. In the packet, it has a draft of the act which was actually approved by the Uniform Law Commission, and in it you'll find the six or seven people who worked on the bill specifically, and you'll also find, not only the language that was approved but the comments. Now the comments are really important. The comments is a commentary that runs on each of the changes in the law that are being proposed, and even though those comments don't become law, they become part of the legislative history. And so you have a large body of law, a large body of information that backs up what these words mean, and that's part of what you have. The second thing you have is a summary of the 2010 amendments to Article 9, and that was done to

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enable you to understand a little more about what's in this. And there's a good description of this Alternative A, the only if rule, and Alternative B, the safe harbor rule. And the introducers here picked one of the alternatives that we provided and, hopefully, that's going to resolve the issue of how you identify the debtor. It's been around here in the state of Nebraska for three or four years. Also, I think one of the most important parts of the packet is actually something that we did not prepare. It was prepared by CT Corporation which is a corporation that provides services to lawyers and all sorts of folks on corporate law. But if you look at the one that says, it's kind of got a blue background. There's two of them on the right-hand side, and one of them is the five or six areas where the 2010 amendments change in the Article 9, and debtors' names, forms, transition. Folks, this is difficult stuff. Saturday night I tried to sit down and read it. I read it before; I didn't understand it then. I got to tell you I read it on Saturday night, and that was perhaps the worst night to try to read something for content. Folks who put the time into preparing this are bright and important in the area, but here's the problem. Here's the problem as I see it. We are asking the practicing lawyers in the state of Nebraska to look at it and to accept it as something that they feel comfortable with. I don't think they feel comfortable with it right now. I think they're a good...I think it's a good product. But I also think as I have always done in front of this committee, that if we need more time to look at it, I would not object to that as a uniform law commissioner. It's not critical that it pass this year. It is critical--it is terribly critical that it pass next year, or that it be put in some position this year, so that everybody takes it seriously and studies it, so that on July 1, 2013, we're ready to go, because I think most of the other states will be ready to go. Now, how you want to fashion that timetable, I guess is up to you, but it is important that we have it ready to be put into operation on July 1, 2013. That's my principal concern. I don't have anything more to comment on at this time. I would just encourage you to get it passed at some point and be ready to go and have our practicing bar, and have the bankers on the same wave length on this as to what the law will be in 2013, be ready to implement it. Any questions? Yes. [LB90]

SENATOR PAHLS: Yes, I have a question. You know, I think Senator Langemeier and I could attest to the fact that debtor's name has been around for a while with just the two of us, so I'd like to put that to bed. [LB90]

LARRY RUTH: Absolutely, and I think Bob Hallstrom would like to put that to bed, too. [LB90]

SENATOR PAHLS: Even more so than I would. [LB90]

LARRY RUTH: Well, here's a little background on that. You know, that was something that if Bob and what others have done in this area lit a fire under the Uniform Law Commission to work on this area, and they have been. But, boy, I've been on telephone calls on this and meetings where it's very difficult to (laugh)...it's difficult to know how to identify somebody and have it done in a way that it is...can be uniform and also practical

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for the people who are doing it. We do need to put that to bed. And the one...what we did as a Uniform Law Commission is come up with two alternatives since we couldn't arrive at one required or one suggested alternative. It was two alternatives, and you decide what's right for your state. And Senator Harr and the proponents picked one of those alternatives and that was offered here today. As far as I know, that's a good alternative. [LB90]

SENATOR PAHLS: Okay, okay. Senator Utter, you had a question. [LB90]

SENATOR UTTER: Thank you, Larry, for coming to testify today. My question concerns the reservations that the bar association might have. Are those reservations...is there potential conflicts with existing statute? Is there...what causes those reservations to arise? [LB90]

LARRY RUTH: I certainly haven't heard all of the reservations. I've heard several of them. The reservations that the bar is raising, as best I can tell, would be about like the reservations that a lot of us sitting on the floor raised when we saw it for the first time. How does this work? Are we doing two systems here? Who has priority in certain areas? And it's really only when you get down and have the people who drafted this fully explain how it works that you truly understand it. I don't view what they're raising as superficial or auspicious. I do think they're serious, but I also think, and I'll say this out. I think as you work down through them, that you'll probably find that they have a...it isn't the first time they've been raised, and there's probably good answers to some of them, but not all of them. And with that much said, I've never believed there's been a perfect bill passed yet by this Legislature. And any of the ones that I worked on, they were not perfect. So in this terribly important area, it's also terribly important that you have a lot of good eyes looking at something and making sure it works right. Does that answer your question? [LB90]

SENATOR UTTER: Well, so this in its final form has been available since last July? [LB90]

LARRY RUTH: Well, yeah, it's been available... [LB90]

SENATOR UTTER: Have they been working on...has the bar association been working on it since last July... [LB90]

LARRY RUTH: I can't answer... [LB90]

SENATOR UTTER: ...or have they been...? [LB90]

LARRY RUTH: I can't answer what the bar association has been doing. This has been in the works for several years, but we have all sorts of review committees that work

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constantly. This passed by the Uniform Law Commission at its annual meeting in July, but it really wasn't in its final form in terms of being styled until, gee, I think the latter part of December, maybe even early January, because it has to be copyrighted. This is so important that the ALI as well as the National Conference of Commissioners on Uniform State Laws. They copyright it, make some money on it, because they have to make money in order to keep doing the work. But there is a slowdown in the process after we worked on it and got into its absolute final form. Now, Bob is going to say, and I think he's right, that an awful lot of it was out there. But in terms of having a final, final document, it would not have probably been completely available until...Bill, you might even have an answer, sometime when it was released in December. The gist of it is... [LB90]

SENATOR UTTER: This past December? Last month? [LB90]

LARRY RUTH: Yeah, right, right. [LB90]

BILL MARIENAU: January 18. [LB90]

LARRY RUTH: January 18 of this year? Okay. So, it's...look, one of the reasons is that it's so complicated, it's got to be done right, and the people who are doing this final work for it are folks like your Joanne Pepperl where it's voluntary work, and you work it in as best you can. You can't get it done all the time, because there's an awful lot of volunteer work in on this. So that's one of the reasons there's been delay. [LB90]

SENATOR UTTER: Thank you. [LB90]

LARRY RUTH: Which is not unusual. It's a delay that accompanies all of our uniform acts. [LB90]

SENATOR PAHLS: Yes, I've found that to be true. Any other questions? Thank you. [LB90]

LARRY RUTH: Typically, it's been pretty good work. [LB90]

SENATOR PAHLS: Yep. Oh, yes, yes, I agree. Thank you. [LB90]

LARRY RUTH: Thank you. [LB90]

SENATOR PAHLS: Any more? [LB90]

COLLEEN BYELICK: (Exhibit 4) Chairperson Pahls, members of the committee, my name is Colleen Byelick. It's C-o-l-l-e-e-n B-y-e-l-i-c-k. I am the general counsel with the Secretary of State's Office. As most of you are aware, the Secretary of State's Office is

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the central filing location for financing statements filed pursuant to Revised Article 9. All of the financing statements are indexed according to the name of the debtor and are searched according to the name of a debtor, using a standard search logic which is often referred to as an exact match search logic. So you can see why it's critical for everyone to understand what the name of the debtor is. Currently, our database contains approximately 450,000 active debtor names. We believe that LB90 is a good step in promoting uniformity, which is one of the main focuses of the revisions, the 2001 revisions to Article 9. We do anticipate that there will be some additional costs associated with the bill for our office, mainly in the form of temporary staffing. Basically, we anticipate that because some of the financing statements will need to be amended to change the name of the debtor to the name on the driver's license for the individual debtor, that there will be an increase in filings. And we really don't know what that increase is going to be at this point. But the other side of that is that all of the amendments...there is a filing fee associated with amendments, and so we assume that the filing fee will be covering our increased costs. LB90 also modifies our statutory forms that are set forth in statute for initial financing statements and for amendments. And so, to that end, we will also have to modify some of our on-line programming and potentially, our internal database, to make sure that all of those systems still work with these changes. And we believe that given the operative date of this bill, that we'll have plenty of time to work out those issues and work out any issues we have with our rules and regulations, so we're not...we're just making you aware of those costs and things that we'll have to do internally to be able to administer the law. Finally, we appreciate being able to work with the various parties that have been working on this bill, and we think that this is a step in the right direction, and we hope that the committee advances the bill. I can try and answer any questions you may have. [LB90]

SENATOR PAHLS: I have one. Okay, you say this is a step in the right direction. Your office understands what this is all about... [LB90]

COLLEEN BYELICK: Correct. [LB90]

SENATOR PAHLS: ...and this is just off the top. You don't see any major flaws. There might be some things that need to be changed, but this is going down the right... [LB90]

COLLEEN BYELICK: Well, right. I mean, there's...looking at the driver's license is not a perfect standard for the name of the individual debtor. And, in talking with the DMV, you know, there's always situations where someone may have two names like Joanne, and that's...is that their first name? Is that their first and middle name? Or they may have multiple last names. So it's not...it's very difficult to come up with what the name of the individual debtor is. But at least what this bill does is it provides a mechanism for everyone to be able to go and look at the driver's license. And those records are also available for purchase on-line through the DMV as well, so there's mechanisms for people to be able to go and find what that individual name is. So that's where we're

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saying, this is not a perfect standard, but we're going in the right direction here. [LB90]

SENATOR PAHLS: Thank you. I just heard by the previous person that we have nothing that's perfect, so I can buy that. But you also say that you'd be ready to go. When the time comes if this is a process that we utilize, you're ready to go. [LB90]

COLLEEN BYELICK: Correct. I mean, we'll have to, you know, make changes to our systems and things like that, but we've got until, you know, July 1 of 2013 to make those changes. So we don't see that as being an issue. We'll also have to look at our regulations and make sure that there's nothing inconsistent in our regulations, but those are all things that can be amended and can be changed. So we don't see it as a roadblock to the bill. [LB90]

SENATOR PAHLS: Okay. Thank you. Senator Langemeier. [LB90]

SENATOR LANGEMEIER: Chairman Pahls, thank you and thank you for your testimony. On the fiscal note, the Secretary of State's Office concurs and has no disagreements with this fiscal note. Have you reviewed this or somebody else? [LB90]

COLLEEN BYELICK: Right, yes. [LB90]

SENATOR LANGEMEIER: Okay. It talks about increased costs which I understand, \$44,000 in labor and some software creation or modification, I should say. But it's projected up to \$711,000 increased cash into the Cash Fund. What do you do with that Cash Fund? [LB90]

COLLEEN BYELICK: It's just like you said. It's a UCC Cash Fund. Now, as I understand the budget process, we can only spend what we're appropriated to spend, but because some of the secure parties will have to amend their financing statements so that they have the name of the debtor as it is on the driver's license and the individual debtors, those filings...there's the fee associated with all of those filings. And so, we...I think based upon...we did a 5 percent to a 20 percent amendment rate, so at 5 percent of the 450,000 names that we have in our database have to be amended, that's where we came up with the low number. If 20 percent of the filings have to be amended, that's where we came up with the high number, and that was just a guess. And we really don't know how many financing statements will need to be amended. We're only looking at those individual financing statements, so we're taking out all of the organizational names. So, you know, just in trying to come up with a number, and we also thought that some of the secure parties may review all of their financial statements, and go through all of them and say, huh, you know, let's make sure that all of them are correct, and that may generate, you know, additional filings. So this is just kind of our best guess. [LB90]

SENATOR LANGEMEIER: So, of that money that we as a body allow you to spend out

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of that Cash Fund, what do you spend it on? [LB90]

COLLEEN BYELICK: To maintain those systems, staff,... [LB90]

SENATOR LANGEMEIER: Just maintain the records and your staff. Okay. Very good, thank you. [LB90]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. Proponents? Opponents? [LB90]

HERBERT SAMPSON: Good afternoon, Chairman Pahls, members of the committee. I am Herbert Sampson. That's S-a-m-p-s-o-n, known to most as Fritz, and I am here on behalf of the Nebraska State Bar Association to explain the position we have taken as regards to LB90, the 2010 proposed UCC revisions. The position of the NSBA is simply that the bill should not be acted upon until its effects are studied and known, which means it should come up in the 2012 Legislature. There are a number of changes that seem to be Nebraska specific, and since the effective date of the changes would be July 1, 2013, no harm would occur if the bill were passed in a latter year rather than an earlier. The thinking of the membership who read the bill is that if the changes proposed are a good idea this year, then they will be a good idea next year, after people have had a chance to digest the details. We wish to avoid unintended consequences. For example, there is this proposed change in the definition of agricultural lien. It appears innocuous, but when read in the context of lateral language in the bill, it's effect is unknown. It's good to know that at least one member of the bar has read the bill as far as agricultural liens is concerned, and we would love to have them on our committee to report to their general rank and file. But the ultimate question is, does the bill elevate the priority of someone or strip someone of priority, or strip priority from another where the positions of the parties are now known? And some of us think it does. The proposed amendment and most objectionable appears at page 81, new section (9-)803. This provision requires refile financing statements and reperfecting some security interest by July 1, 2014. Otherwise, the lien loses its priority. And, Senator Langemeier, you were talking about this money that was coming in. That means people are going to have to go out and refile perfectly valid liens--equipment dealers and banks. So, bar members felt that the rule must be that a security interest perfected and valid under the old law--the laws exist today remains perfected and valid under the new law without any action. You don't have to take...we felt that lawyers would have to reexamine the financing statements of thousands of transactions, and that this was setting up a trap for the unwary security holders used to doing things themselves under the current law. And there is a litany of other items. The change in the definition of authenticate which goes from cloudy language to overcast language, the question was raised, why change? Doesn't this work? The addition of a parallel or an alternative vehicular lien system that expands what is a certificate of title, the question is, now we have two equally authentic title systems. Which governs--the paper or the electronic? Nebraska has a paper title

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system with the information available on-line. Does this UCC change automatically validate an electronic entry that would omit the lien or vice versa? Should we add language in the Nebraska legislation to address this? Another item--the addition of the term, public organic record, makes sense in the context of identifying the name of entities just as the driver's license situation applies for human beings. But we refer to the term, public record, at least 11 times in Article 9 of the Uniform Commercial Code and have no definition. Once again, the question is, is the system broken? Why is there a need to protect business trusts in this manner? The change in definition makes a big difference. It changes a registered organization definition from entities formed in the United States, appearing on the undefined public record to such entities conforming to the very detailed public organic record. And those are just some examples. I would once again point to the fiscal note. My reading of the fiscal note is an admission that, indeed, this is not a costless change to the business community and especially those people taking security interests in property that moves across state lines. It's going to require that those people go out, actively look at all of their previously...their good paper, and come in and file new paper with the Secretary of State's Office. I want to emphasize that the bar association does not outright oppose the 2010 proposed amendments, quite the contrary. The members of the bar are usually the authors and proponents of the amendments, and there are many items that make sense. The only thing that the bar association did was when we read this bill, and I should say, we came to the table on this in probably late December. Before that, we were not at the table. But after we came to the table, our point is this. Let's take some time and read this and let's think about it and know where the sticky points are before we just adopt the commissioner's proposals out of hand. Especially for those items that might be Nebraska specific, it will not hurt at all to take a more leisurely look at it. The commissioners have had years and years to work on this. I don't know why the Nebraska Legislature and especially this committee, should have what, another 60 days, 45 days, to take a look at it that other people have worked on for years. So with that, I'd take any questions that you might have. [LB90]

SENATOR PAHLS: Senator Langemeier. [LB90]

SENATOR LANGEMEIER: I have one question. Thank you, Chairman Pahls. A little facetious. What do you have to do in the bar association to get the penalty to have to read this bill? (Laughter) [LB90]

HERBERT SAMPSON: An excellent question. What we do is we have a legislation committee, and some of us...we literally volunteer to take certain bills, and I'm on the business law committee, because I am general counsel for a corporation. And so I like to look at this stuff. And when LB90 came across, I said, you know what? This is something I should probably read because my employer might be interested in this. And lo and behold, I read the bill, and I read that magic language in section (9-)803 that said we get to refile, and we get to check all this stuff, and other people read it, and they

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said, we agree. And the red flags went up, and we said, so then the vote was taken. It went to the house of delegates; another vote was taken, and that was the position that we neither like nor dislike the bill. Actually, there's an enormous amount of good things in there, but we kind of like to know what we're signing onto, before it passes the Legislature. That's what it comes down to, Senator. [LB90]

SENATOR LANGEMEIER: Very good. Thank you. [LB90]

SENATOR PAHLS: Thank you for your testimony. [LB90]

HERBERT SAMPSON: You're welcome. [LB90]

SENATOR PAHLS: Any neutral? Senator. Senator, to be honest with you, I don't want to revisit...please sit down...is to have you counteract every argument, because I think maybe our legal counsel and you could talk some of these issues out also, because we're not going to pass this bill out tonight so. [LB90]

SENATOR HARR: Okay. Well, and I'll just quickly then. First of all, I want to thank those who came before me. I didn't properly thank them. They did the yeoman's work on this. I was merely the vehicle on this. This is a very tight, well-written bill, and I had very little, if anything, to do with this, so let's just start right there (laugh). I did read it, and I did have questions. And every single one of the questions I felt were properly answered, and just quickly, the 1/18. When was the last time it was final, final was 1/18 of this year. While that is very true, the changes made were de minimis. They were merely style and changes in comments, nothing of substance. I think that's probably the most important thing. I guess, you know, there's the issue of the cost. I want to address that, because that's not a legal issue, and the answer is, there is a cost to business. But it's a plus cost, because this cost is for certainty. By refiling...there was an issue before of, you know, there's a reason why there was a change made, and the reason was because there was an area of uncertainty. So, yes, there is a cost, but I think any major lender would tell you...or minor lender, or lender, or secured party...will tell you they want certainty. That's why they're filing, and that's what these refilings are is to add certainty. I would encourage you to vote for this out of committee, so that we can get it out and educate the public on this bill. And thank you very much. I appreciate it. Any questions? [LB90]

SENATOR PAHLS: Oh, we have one question, Senator. [LB90]

SENATOR GLOOR: Just one question. I'd be interested in your response or rebuttal to the timing issue. I mean, Mr. Sampson's argument, to me, makes some degree of sense. There seems to be quite a bit of time, and I understand the orientation, the need to get this out there. But we have members of the bar who have a very vested interest in this who are a little anxious, I would say, yeah. [LB90]

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SENATOR HARR: Well, first of all, I would argue that any time you get two lawyers together... [LB90]

SENATOR GLOOR: I wasn't going to say it (laughter). [LB90]

SENATOR HARR: There's going to be disagreement, let's start there. So that's part of it. You know, I guess my question is, why do we bother to have hearings right, if we introduce bills? Why when we sit there and say, all right, if you guys want to have a bill, you have to introduce it, and we'll hear it the following year? Now, I understand some bills are less complex than others, but the fact of the matter is, that's why we have public hearings. That's why it's made available to the public; it's published. I can't control when the bar association decides to meet to discuss these issues. That's on their time, and I guess the question is, does the Legislature want to go on the time of every special interest group until they've had proper time to discuss, debate, deliberate, decide? Or are we going to do it on our time and deliberate and discuss amongst ourselves would be my answer. [LB90]

SENATOR GLOOR: Thank you. [LB90]

SENATOR PAHLS: Thank you. [LB90]

SENATOR HARR: Thank you. [LB90]

SENATOR PAHLS: That closes the hearing on LB90. Thank you. [LB90]