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Banking, Commerce and Insurance Committee
February 13, 2012

[LB982 LB1026 LB1054]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 13, 2012, in Room 1401 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB982, LB1026, and LB1054. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Pete Pirsch; Ken Schilz; and Paul Schumacher. Senators absent: none.

SENATOR PAHLS: I think we're going to get started. We have a few people coming that are just running a little bit late. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls and I'm from Omaha and I represent District 31. We will take up the bills as posted: LB982, Senator Harr; LB1026, Avery; LB1054, McCoy. Well, I'd like to have you just take a look over at our procedures over there. If you'd follow those, it makes life much easier for all of us, including you. If you have pieces of information that you need to hand out to us, we need at least 10 sheets. Wave, seeing none, you're well-prepared. I'm already smiling; I appreciate that. And I want to make sure that you do fill out this form if you do testify, and you give that to Jan. What I'm going to do, I'm going to start right now with our senators, and we'll have them introduce themselves starting with Senator...

SENATOR SCHUMACHER: Schumacher. That's right, Paul Schumacher, District 22, Columbus.

SENATOR PAHLS: It's my strategy to make sure we're all awake, here. Thank you, Senator.

SENATOR LANGEMEIER: Chris Langemeier, District 23, Schuyler.

BEAU McCOY: Beau McCoy, District 39, western Douglas County and Elkhorn.

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

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial.

SENATOR PAHLS: And over here, we have Bill Marienau. He's our legal counsel, keeps us legally correct. And sitting over there with a big smile upon her face? Jan. Thank you, Jan. She makes sure that the words are put in the right place. I'd like to introduce...we have Matt McNally from Norfolk and also Michael Killingsworth from Lincoln. I think we are ready to begin, Senator Harr.

SENATOR HARR: Chairman Pahls and members of the Banking, Commerce and Insurance Committee, I will introduce myself now. I am Burke Harr, B-u-r-k-e; Harr,

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H-a-r-r. That's with two R's. I am from Legislative District 8, which is the heart of Omaha. I am here on LB982. LB982 changes the power of the Secretary of State regarding the removal of fraudulent financing statements. This bill allows those affected by fraudulent statements to recover damages from the person responsible for filing the statement. In addition, this bill expands the definition of a fraudulent statement. I brought this bill on behalf of the Secretary of State's Office, and I see the Secretary of State, Mr. Gale himself, he himself is here, but I would be willing to entertain any questions the committee might have. [LB982]

SENATOR PAHLS: Senator Schumacher? [LB982]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Senator Harr, thank you for being here. Do you see any...this is...the Secretary of State's Office is generally considered to be a ministerial office as far as the filing of these things are concerned. Do you see any problem here with the separation of powers in casting a decision-making role, as far as judicially determining the rights between two parties? [LB982]

SENATOR HARR: A good philosophical question. And the answer is while yes, they are an executive branch and not the judicial branch--and I understand the difference, the separation of powers as it applies--they are also the front line. And so they are the ones who see it, and so they will be obvious to tell that when Senator Christensen files a \$200 million lien against Senator Schumacher, they would know that that's probably not true. And so they understand it, they're there. There is still a judicial process of appeal. There is still notification that would go toward...to the party--the filing party, secured party--and then there would be an appeal process through the administrative review process. [LB982]

SENATOR SCHUMACHER: Now, during the time that appeal is taking place, how does...what's the status for priority of liens then? Is a priority retained or does another secured creditor sneak in ahead? [LB982]

SENATOR HARR: That is a very good question and one I asked myself, so...and the answer is you would remain...as I read it, the secured party would remain in priority and keep that...their place in line during the process of the appeal, and then at the end of the appeal, depending on how the judge rules is where you would end up. And I can already see your next question: What happens if they sell during that time? Then pay is off the secured...the party. Is that correct? [LB982]

SENATOR SCHUMACHER: You're getting warm. [LB982]

SENATOR HARR: All right, I'll let you ask it, then. [LB982]

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SENATOR SCHUMACHER: What happens if it sells first? (Laughter) [LB982]

SENATOR HARR: Well, that's a good question, and it would be similar to any other situation in front of the administrative review board--well, that goes up through the administrative review. It would be held in escrow, as to my belief. Obviously, at the end of the day, it's up to the discretion of the court to determine, but it would be my belief that it would be held in escrow until such time as the matter before the administrative review board is settled. [LB982]

SENATOR SCHUMACHER: Bona fide purchasers per value, how do they treat it? [LB982]

SENATOR HARR: Well, it would, I guess, again, it's case specific. So if, for instance, it's...if the lien is on equipment and someone says I have a lien against this equipment and it's obviously fraudulent and then they turn around and sell the equipment, I would think the proceeds would be what would be held, and that the new person would take in full title, yes. [LB982]

SENATOR SCHUMACHER: Thank you, Senator. [LB982]

SENATOR PAHLS: Thank you. Seeing no questions, thank you. [LB982]

SENATOR HARR: Thank you very much. [LB982]

SENATOR PAHLS: Proponents? How many proponents do I see? One? Okay, thank you. Secretary? Good afternoon. [LB982]

JOHN GALE: (Exhibit 1) Chairman Pahls and members of the committee, I'm John Gale, J-o-h-n G-a-l-e, Secretary of State. I'm here to testify in support of LB982 and I would like to thank Senator Harr for introducing that on behalf of the Secretary of State's Office. The bill, for those of you who aren't attorneys and haven't dealt with this in law school or in private practice, we are dealing here with the topic of bogus filings. The Uniform Commercial Code is a system that was created nationwide through the Uniform Law Commissioners, in order to have a somewhat compatible system from state to state for protecting interests of secured parties. For a legitimate filing with our office, a secured party would file a document with us in which they would name themselves as secured party and the borrower as debtor. They would have an underlying security agreement, which is required by law, which spells out the obligations of the debtor and the rights of the secured party. These statements are used for commercial purposes, to determine priority and provide notice to other lenders, and it works extremely well in 99.99 percent of the cases. In Nebraska, virtually all banks and lending institutions file their claims to a UCC-1 secured interest on-line because they are subscribers to a system where they're billed monthly, and so because they are legitimate and in the

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mainstream, those aren't even questioned; they don't even come before my clerical staff to be looked at. But the bogus claims, the bogus filings, are documents that are fraudulent and not legitimate UCC documents. They either come in the mail or they come across the counter. Ordinarily, bogus filers either pay in cash or they pay by a money order; they don't pay by check and they're very, very careful about not using credit cards, so there's a big distinction between those who are legitimate filers and those who are bogus filers under our system. We virtually know who they are when we get an envelope in the mail or we get somebody coming to the counter. Now, what is the problem with bogus filings? Well, under Revised Article 9 in 2001, the Uniform Law Commissioners recommended a revision to Article 9 that basically said that the filing clerks have no discretion to reject anything, and so the position was taken--across the boards, pretty much, by the secretaries of state as well--that we would accept that on the assumption that we're going to have virtually legitimate, all legitimate, filers. It's a very, very important system because banks who make loans on assets that are not real estate have to go someplace to protect their priority and their interest in those assets--like inventory, cattle, corn, collectibles, receivables, things that are untitled property--and they have to show and describe their interest in that property in order to keep their priority, if there's ever a default, and they have to go out and attach it and sell it to pay off the loan. It works very, very well. I'm very, very proud of this system and my staff, and we think we have a very, very excellent, timely, efficient, and very good on-line program for filing. But the bogus filers tend to be a small number of people who believe the Uniform Commercial Code is superior to the Constitution of the United States, superior to the Constitution of Nebraska, superior to any laws that this Legislature may pass. Their attitude is it's very odd, but they think that since they can come straight to the Uniform Commercial Code, that's a better remedy than going to any court in the land. And what do they want to do? They want to harass people. We had a lawsuit that had to be filed by the United States government last year in Nebraska because a fraudulent filing, bogus filing, had been made and received by us and filed by us against a federal judge, the U.S. Bankruptcy court, U.S. Trustee of Bankruptcy Court, several federal law enforcement authorities, as well as several other federal employees. We notified them immediately so they would know about it. Otherwise, they wouldn't have known about it, at least for some time, until one of them tried to get credit on a new house or a new car or someplace where this filing would have showed up and interrupted their creditworthiness. So the United States government brought a lawsuit and was able to get that voided and we were ordered to take it off the filing system. So it was a totally fraudulent filing, purposed to harass people. And it's not just federal employees, it's state employees as well. It's prosecutors as well as judges. It's elected officials as well as appointed officials. Harassment is the goal, and in many instances across the country, those who file these are prisoners in prison anyway, and they're doing it to harass courts who put them in jail or courts where they may be subject to extradition. It's strictly harassment, and we've had no authority to refuse those or remove those. This bill was negotiated with the Banking (, Commerce and Insurance) Committee. We originally were following the position of a number of states. Sixteen

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states have already taken this kind of action, either pre-filing authority, where they can reject it; it never gets on file. Post-filing administrative authority, like we're asking for, where we allow things to be filed, but once they're identified by us or by complaint as fraudulent, we can then give notice to both parties to allow them to respond under due process of law, let them explain their position, and if it's fraudulent, we can remove it. In other words, the burden is not on the victim. As it is now, if you're...if any of you are...have a fraudulent filing against you for millions, quadrillions, even say quadrillions of dollars, you have to go to court. You have to pay the court costs, you have to hire the lawyer, you have...that's the only remedy you have currently. We're asking for a post-filing administrative remedy where it gets filed, but once it's identified as fraudulent, we go through a due process system where we notify them and we can remove it. If they want to sue us, they can sue us under the administrative law, but at least the burden is not on the victim. The federal judge, well, we've had a number of district judges, chief justice of the Supreme Court of Nebraska has been claimed on...under one of these. They don't have to go to court. So by giving us this authority, which the banking association felt was more appropriate than allowing us pre-filing denial, they would prefer we not reject up front, allow it to be filed, and have the right to remove it later without anyone having to get a court order, as a victim, and pay all the expenses of that just to get it removed. So we've had...16 states have already done this. We would like the authority to do this. My understanding is that the banking association is comfortable with this. It would also help my staff situation. Over the last year, I've required that anything that appears to be a bogus filing, I want to know about or I want my general counsel to know about. And so when the bogus filers come in and they file these documents and they're put on hold while somebody else takes a look at it to see what it's all about, they get angry, they get controversial, they get difficult, they scare my staff, my staff is asking for more security in their office in order to protect themselves against these people--some are former felons. They're difficult, very contentious people, and they think they have an absolute right to do what they're doing and as a result, I'm either going to have to provide better security for my staff or, if I'm allowed under this bill to allow these to be filed, but have a post-filing remedy, then my counsel and I can determine the removal of them without my filing clerks having to get involved in controversy with these difficult people. So we think it serves a lot of good purposes, it doesn't clog up our UCC system. It helps us eliminate bogus filings that would otherwise be on the record for five years with a potential five-year extension. It also allows us to avoid the clogging up of the court system, with people having to go to court to remove these illegitimate fraudulent filings from our UCC system. So for these reasons, we would recommend that Senator Harr's bill be advanced. Thank you. [LB982]

SENATOR PAHLS: Any questions? Senator Pirsch. [LB982]

SENATOR PIRSCH: Well, I do appreciate the proposal here, and in the...so this would have a...and I've got to testify full disclosure here. I have, as a former prosecutor, also have undergone this type of harassment in the past and it does take some...if for no

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other reason, it takes a large amount of time both, you know, just to handle these clearly harassing type of actions, and both on our...you know, and then our civil side, I was working for the city as well, and so this can really slow down governmental operations and serves no other...no legitimate purpose, but its serving to harass and so I appreciate the goal. With respect to the 16 other states, do they have a postfiling type of structure to theirs as well? [LB982]

JOHN GALE: They're not all identical. Each state is, as Nebraska is, taking its own unique look at this. North Carolina has prefiling administrative remedy; they can refuse, they can reject. They have also postfiling administrative remedy, and they also have a court relief system that makes it clear that any harassed or intimidated citizen who has been...had a wrongful claim filed against them, that they can go to court. They can go to court, really, anyway under the common law, but North Carolina also includes civil penalties. If the person has to go to court to get one of these released, that it's not just court costs, it's also a fixed \$10,000 civil penalty, and they also have criminal provisions and they've made it a crime for someone to make this filing. North Dakota, on the other hand, does not have any prefiling or postfiling remedies, but they do have civil damages, civil penalties, injunctive relief, and civil court remedy. [LB982]

SENATOR PIRSCH: Okay. And the...Senator Harr, the introducer, kind of offered his thoughts as to what happens if one is removed and there is...it puts you in line, so to speak. So in terms of if somebody feels aggrieved that they shouldn't have been removed, there's a big...there's remedies for that, correct, Secretary? [LB982]

JOHN GALE: Correct. Postfiling administrative remedy, I have to agree with the banking association, is much less subject to any kind of abuse than a prefiling rejection. What they are concerned about, and legitimately, is they don't want some proper, appropriate lending institution lien not get filed and then not have any priority. So with the postfiling remedy, everything gets filed, and then we get a chance to take a look at it. We may not even know it's bogus up front. They may name a judge and we don't even realize it's a judge until the judge later tells us, hey, why is this on the record against me? And that's the time, then, we can notify both parties, give them a chance to respond, and explain the situation. And if the debtor has not signed off, if the collateral is not properly pledged, if there's no security agreement, then we have a firm basis to have it removed. Now obviously, that individual can still go to court if they want to insist that it be restored, but I know one secretary of state office in the northeast who doesn't have statutory authority of rejectees, but they're so blatant and they're so obvious that he won't allow any of them to be filed. And his attitude is, to the bogus filer, if you don't like it, sue me. And it's a big state and they've had quite a few of them filed and no one's ever sued him, so the bogus filers aren't apt to seek judicial relief. They're not really out to spend a lot of money to prove a point or they probably would not appeal once they've had the due process. [LB982]

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SENATOR PIRSCH: Yeah. Well, this does happen in Nebraska, so thank you. [LB982]

JOHN GALE: Yes, it has, yeah. [LB982]

SENATOR PAHLS: Senator Schumacher? [LB982]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Thank you, Mr. Secretary, for being here. [LB982]

JOHN GALE: Senator. [LB982]

SENATOR SCHUMACHER: Just some rough questions. First of all--not rough questions, but just questions--the...do we have any criminal penalties for doing this? [LB982]

JOHN GALE: We don't currently. You'd have to work at it as, I guess you say, falsification of a public record, but there's not a specific statutory criminal penalty for this act. [LB982]

SENATOR SCHUMACHER: Okay. Then the statute, as proposed, is fairly minimal. It says after giving notice and an opportunity to respond, you may remove from filing the files. Should we specify the nature of the notice or how long they have to respond or anything like that in the statute? So somebody doesn't say, you know, it's 10 years later, but I'm responding, I'm here. [LB982]

JOHN GALE: Well obviously, once we have a complaint or once we've identified a document as a bogus filing, we would give notice immediately. You know, sometimes the difficulty is finding the bogus filer. They're not always easy to locate, but obviously we would send a notice by certified mail to the last known address of which was contained on the instrument that was filed. The secured party would be the bogus filer and their address would be contained on that. We'd send a certified mail to that address. I guess it would be... [LB982]

SENATOR SCHUMACHER: Should we say that? [LB982]

JOHN GALE: ...in your discretion, if you feel like you need to specify that. I guess we would use all due diligence and promptness in making sure it happened. [LB982]

SENATOR SCHUMACHER: I could see how somebody reading this...says after giving notice, that that would require actual notice, and so maybe we should specify by certified mail or by, you know, however mechanism that you'd like to do that, so that actual notice could interpret it as being required. Anything that we should have in here about a burden of proof or the presumption of the validity of your determination on any

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subsequent appeal to the courts or the EAPA? [LB982]

JOHN GALE: Well, I guess if you're asking my philosophy, Senator, these things are so extreme and they're so fraudulent, I guess my thought is to give minimal, but reasonable protection to the bogus filer. But, for example, to require a full-blown hearing with a court reporter and a transcript, I think wouldn't serve any useful purpose. But, we felt it was quite reasonable to give them notice and have them respond, give them a chance to respond. Who we really want to hear from, actually, is the named debtor. We know the secured party thinks they have a claim. We know they think that they're entitled to be filed. We know that from the document that we've put on file. What we want to know is: Is the debtor truly the obligated party? Have they truly pledged the collateral that's named? So that's the key to the disposition. Isn't the bogus filer; the key to the disposition is hearing from the debtor. [LB982]

SENATOR SCHUMACHER: Should we require whatever party you rule against in your hearing or your review, before they proceed, to have to post a bond of some kind? [LB982]

JOHN GALE: Pending a bond...? [LB982]

SENATOR SCHUMACHER: If they appeal it or pending...how long after you make your ruling do they have to appeal? There seems to be a lot...not very much procedural stuff in here as to what you do. [LB982]

JOHN GALE: Well, if you wanted to address that, Senator, you probably would say that any appeals would be pursuant to the Administrative Code. [LB982]

SENATOR SCHUMACHER: Thank you, Mr. Secretary. [LB982]

SENATOR PAHLS: Thank you for your testimony. [LB982]

JOHN GALE: Thank you, Mr. Chairman. [LB982]

SENATOR PAHLS: Any more proponents? Seeing none, any opponents? [LB982]

RICHARD HEDRICK: (Inaudible, from the audience.) [LB982]

SENATOR PAHLS: Proponent means you're for; opponent means you are against it. Okay. Neutral or...? [LB982]

KATIE ZULKOSKI: Oh, I'm an opponent. [LB982]

SENATOR PAHLS: Opponent? Okay, thank you. [LB982]

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KATIE ZULKOSKI: Good afternoon, Chairman Pahls, members of the committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying on behalf of the Nebraska State Bar Association. We certainly understand the concerns that this bill is trying to address and sympathize with those that...to Senator Pirsch that this has happened to, and we do certainly want to work with Senator Harr and Secretary Gale on a solution to this. We are concerned, however, about the judicial role that this bill does give to the Secretary of State's Office when it is not traditionally known to handle the judicial role of the state. We have talked to Senator Harr about this and there is...we do...this is an addressable concern, we do think, perhaps if there is more procedurally put into the bill, more about an appeal process. Currently, the bill provides for an opportunity to respond. Beyond that, there is no real clarification of what happens. If I think my filing really is a good one, it's removed by the Secretary of State, where do you I go from there? This bill is not clear on that process and perhaps something about an appeal procedure would help that out. And with that, I am happy to take any questions. [LB982]

SENATOR PAHLS: And to my understanding, you have already talked to the senator about your concerns. [LB982]

KATIE ZULKOSKI: We did not give him much notice, but he does know of our concerns. [LB982]

SENATOR PAHLS: Okay, okay. Seeing none, thank you for your testimony. [LB982]

KATIE ZULKOSKI: Yeah. [LB982]

SENATOR PAHLS: Any more opponents? People in neutral? [LB982]

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. I am either for it or neutral; it doesn't make much difference. My experience with false liens is with Waverly. I've been fighting with conservators in Waverly some six years over a false lien on my property north of Waverly. The conservative mayor and city council notified me that I had a nuisance on my property. I had some hired help and my son spent a month cleaning up the alleged violation. I had it cleaned up. The city council hired an individual to work on my son's property, which was north of my property. The mayor and city council were told by letter, and otherwise by myself and Randy, that the property they were on was owned by Randy, not myself. Mayor and city council did not tell the person not to take the property from Randy's land. Randy took the city of Waverly to court and obtained a settlement of some \$7,000 to \$10,000 for the taking of his property. Sometime, the conservative mayor and city council put a lien on my property. They maintained that they spent 10 minutes on my property, so they could use \$8,000 that they paid for on my son's property. I know some of the time of...as I did not know or tell somebody that the lien was bogus, I did not have a say why they could not take me to court for the

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more money, some \$8,000 they were charged for cleaning up, and some \$34,000 interest. The case was heard on other grounds by the Nebraska Supreme Court a month ago and we are waiting for their decision. There was some individuals on my...I heard on the public radio that they had put in false liens on this person's property and there wasn't much he could do with them. I'm not sure why, but I don't...couldn't remember exactly what happened on their situation. But he...that man puts the liens on, false liens, he was put to jail. But then, after he got out of jail, he was still putting the liens on, so evidently there is some problems there for some reason, I don't know. Thank you. [LB982]

SENATOR PAHLS: Okay, thank you. Seeing no questions, thank you for your testimony. Thank you. [LB982]

ROBERT HALLSTROM: (Exhibit 2) Chairman Pahls, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association, to testify in a neutral capacity on LB982. We did appreciate the opportunity over the interim to work with the Secretary of State and his staff in considering and reviewing the drafts of this legislation. And since we met with our bankers, we've been battling the age-old problem that we have internally in terms of trying to balance the interest in making sure that these illegitimate or bogus fraudulent liens are not staying on the record versus the concern that legitimate filings might either be rejected, if the law would allow that, or in this case be removed from the record. We've fought this issue for many, many years, going back to the mid '80s during the ag crisis with the posse comitatus groups that surfaced, that were filing on a much more prevalent basis these types of bogus liens and at that time, the NBA affirmatively looked into trying to put legislation together to address that particular problem. We could never come to a suitable solution. We do appreciate the efforts of the Secretary of State. We've reviewed other state laws, and in response to some of the questions that the committee asked, there are other states that have done nothing, there are states that have an expedited civil proceeding involving...including the ability to recover costs and attorney fees to minimize the cost to the party that's been wronged in these particular situations, and some states either have only criminal penalties or have both civil procedures and criminal penalties to address these particular issues. We do have on the books from 2003, legislation that addresses the filing of nonconsensual common law liens in a similar fashion to the manner in which bogus liens would be addressed under LB982. That legislation does not apply to UCC liens and also involves judicial intervention, which again brings in the extra cost although cost and attorney fees can be recovered under that. I think one item that hasn't been addressed here doesn't completely resolve the issue, but at least the committee should be aware that there are some provisions under the Uniform Commercial Code that address these types of situations. The general rule under the Uniform Commercial Code, under section 9-510, relating to the effectiveness of a filed record, is that only a person authorized to file a financing statement may do so. So clearly, in these situations that the Secretary of State

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is trying to address, those are unauthorized filings. They do not have any effectiveness. They are null and void and of no effect. The issue that you have that arises is that there is also, under UCC section 9-518, the ability to put what's called a correction statement on record. The downside of that is that a correction statement does not change the effectiveness of the bogus filing. But it at least puts a red flag on the record that the debtor in this case could file, suggesting that they were not the party, they had not authorized the filing of that in any search, or should certainly beware because that particular effectiveness of that recorded financing statement is being questioned, and the accuracy and effect of it is being questioned. So with that, we would continue to pledge to work with the Secretary of State in terms of continuing further fine tuning of the legislation. The Secretary of State and the Bankers Association, along with Senator Harr, I think after the introduction of this legislation, received a draft that was not a model or a uniform law by the National Conference of Commissioners on Uniform State Laws, but something that some of the members had put together. I think that approach is worthy of further consideration and we would pledge to work with the Secretary of State in trying to perhaps build a better mouse trap to address both the adverse impact of these bogus filings and the legitimate concerns that a real, live, proper filing could be removed from the records. I'd be happy to address any questions. [LB982]

SENATOR PAHLS: Apparently, it sounds like we're on the way to developing a mouse trap? [LB982]

ROBERT HALLSTROM: Well, I think we're on the right track and I think we just...we probably need to be able to overcome those age-old concerns of the bankers that legitimate filings could be removed. I think a major step was the acceptance of the Secretary of State in acknowledging our concerns over being able to reject the filings up front because then you have the obvious concern that if you reject it and it never makes its way onto the records if it was legitimate, then you've really provided a problem for someone that should have had a security interest perfected and prioritized, but it never saw the light of day, so that is a...is definitely a positive step and we appreciate the Secretary of State acknowledging that. [LB982]

SENATOR PAHLS: Okay. [LB982]

ROBERT HALLSTROM: And I think some of the procedural issues, Senator Schumacher, when we talk about some of these liens being filed for a "quajillion" dollars, I think is what Secretary of State Gale indicated, perhaps that appeal bond should be set in the amount that the...(Laughter)...the amount of the debt that's reflected on these things to dissuade those appeals. [LB982]

SENATOR PAHLS: Okay. Senator Schumacher? [LB982]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Thank you, Mr. Hallstrom, for

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being here today. What...refresh my memory a little bit on...wasn't there a time when the UCC-1s had to be signed by the debtor, or is...? [LB982]

ROBERT HALLSTROM: Yeah, they...with the advent of electronic filing and those types of things, the Uniform Commercial Code has been modernized to accommodate filings that don't require the signature. However, the code requires you to have an authenticated record and that authenticated record, for example, could be a security agreement that is signed by the debtor. The security agreement is what attaches the security interest and the financing statement is what perfects it and gives public notice regarding the perfected status and establishes the priority based on the timing of that filing. So you still would have a signed document, presumably, or a signed record that authorizes the filing of the financing statement in your records, but it doesn't have to be the filed document with the Secretary of State because of electronic filing. [LB982]

SENATOR SCHUMACHER: Are the problem filings, are those electronic filings or something that some prisoner sends in, paper ones? [LB982]

ROBERT HALLSTROM: I could not address what the Secretary of State receives. I would imagine some people walk these in. I'm not sure that they'd be electronic, but they very well could be. [LB982]

SENATOR SCHUMACHER: Thank you. [LB982]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB982]

ROBERT HALLSTROM: Thank you. [LB982]

SENATOR PAHLS: Any more in the neutral? If not, we are ready, Senator, for a closing. [LB982]

SENATOR HARR: Thank you, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. I want to thank Secretary of State John Gale for coming to testify today and really providing some depth and knowledge to this issue and problem that we have in Nebraska, and I'd also like to thank Mr. Hedrick for coming to testify and showing an individual that there can be a problem. I would agree with Mr. Hallstrom. We need to appeal bonds for the amount, and that might discourage individuals from filing appeals. And we probably need to clean up the language just a little bit to say that the appeal should go to administrative review procedure. No sense reinventing the wheel or, to use another analogy, rebuild the mouse trap. We have a mouse trap, so why build a better one? What Mr. Hallstrom talked about, I guess I have some issues, and I guess while there is--again, going back to the mouse trap analogy, out there that someone's trying to build one, a better mouse trap. We have a good mouse trap right here that works. Now, someone else may have a different one, but this

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works and this is...was written by the people who do this work every day and they understand it. You know, we can say that if it's fraudulently signed, it's null and void. That's all good and well, but you're not going to get a loan from a bank if they see hey, they're still on a priority, you have a corrective sentence on the statement on there, they're just going to say you've got to clear it up before we're going to give you a loan; we're not going to give you a loan until you clear it up. This is that mechanism to clean up a fraudulent loan, or excuse me, fraudulent filing. And, you know, we have individuals who know what they're doing. I think it was Justice Brennan on an unrelated, but just as stimulating statement, comment, or subject said: I know it when I see it. And I think the office knows when they see a fraudulent and they can waive those, and then they can give proper notice. So I would ask that you please advance LB982. I will be coming within the next couple of days with some amendments to clear up some of the language issues that were brought forward, which is the beauty of the committee process, and I would ask that after that, you would please advance LB982. I will entertain questions. [LB982]

SENATOR PAHLS: Seeing none, make sure you get to the...Mr. Marienau. [LB982]

SENATOR HARR: I will get them to Mr. Marienau. [LB982]

SENATOR PAHLS: Okay. [LB982]

SENATOR HARR: Thank you very much. Appreciate it. [LB982]

SENATOR PAHLS: Okay, thank you. That closes the hearing on LB982. We are now ready for hearing LB1026. [LB982]

SENATOR AVERY: That's mine, right? [LB1026]

SENATOR PAHLS: Yes, Senator Avery. (Laugh) We'll wait until everybody sort of clears up. Just a show of hands, how many proponents? One of them? Any opponents? Neutral? [LB1026]

SENATOR AVERY: (Whispered) Consent calendar. [LB1026]

SENATOR PAHLS: (Laugh) Senator Avery... [LB1026]

SENATOR AVERY: I... [LB1026]

SENATOR PAHLS: Don't plug for it yet. You may begin. [LB1026]

SENATOR AVERY: My name is...thank you, Mr. Chairman. My name is Bill Avery, B-i-l-l A-v-e-r-y. I appear here on behalf of LB1026. This is a pretty simple bill. What it does is

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it addresses the Uniform Disposition of Unclaimed Property Act, section 69-1317. You may remember, back in 2009, we amended the Unclaimed Property Act in order to provide more privacy for individuals to protect from identity theft and things of that sort. In the process of doing that--and by the way, I supported that bill in '09, as I think most of us did--in the process of doing that, we...on page 3, if you go up to line 4 and 5, we put language in that said records concerning the social security number, date of birth, amount due, and last known address of the owner shall be treated as confidential. All of that is fine except the amount due. If the...if you have a professional locator or a professional finder and they have no way of knowing how much money is at stake, then they don't know if the search for that individual is worth the expense and the effort. We do specify in this act a 10 percent finder's fee, which is reasonable; but if you don't have the amount due in the public record, the finder has no way of knowing what is a profitable search. If you...if you're...sometimes it can take weeks to locate the person or persons that are due unclaimed property and the finder takes all the risks, spends all the money it takes to locate the individual, and then you may find out that it's only a \$500 claim and...or an unclaimed property worth about \$500. That's a \$50 fee for the finder, so it's really not worth his or her time to pursue something like that. They don't know that with this language in here now, so what I am proposing with this bill would be to take out amount due. That would not be in any way exposing the property owner to undue scrutiny, public scrutiny, or exposure. I can see that, the value of social security numbers being confidential, date of birth, things of that sort, last known address. The finders can, with the right kind of research skills, they can locate the individual, but they have to know whether it's worth the effort. If it's worth the effort, then they're to go and see if they could help these people be reunited with their property, and eliminating amount due would be helpful in that regard. You will note that there are some other changes in the bill that I did not ask for, but the revisors did, just cleaning up some obsolete language from the past. That's all I have, Mr. Chair. [LB1026]

SENATOR PAHLS: Okay. Any...do I see any questions? Senator Langemeier. [LB1026]

SENATOR LANGEMEIER: Chairman Pahls, Senator Avery, I guess I've just a clarification question. On these finders, if I'm looking in the Sunday World-Herald--and maybe I'm thinking of this way too simply--but if I'm looking in the Sunday World-Herald and I see that that this...the unclaimed properties are published periodically... [LB1026]

SENATOR AVERY: Um-hum. [LB1026]

SENATOR LANGEMEIER: ...and I see there's Bill Avery's name in there and I call you and say hey, you've got money there, do I automatically get 10 percent? Because I just found you. [LB1026]

SENATOR AVERY: I don't think it works quite like that. [LB1026]

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SENATOR LANGEMEIER: I'm just curious. [LB1026]

SENATOR AVERY: Yeah. [LB1026]

SENATOR LANGEMEIER: I don't know how it works. [LB1026]

SENATOR AVERY: No, I think that it works a little bit differently, and there is one person here who is a constituent of mine that brought this to me and he does this. I don't know if it's for a living or if it's a hobby, but it has been in the past an income-producing endeavor of his. He knows how to answer that question, so I would defer to him. [LB1026]

SENATOR LANGEMEIER: Okay, thank you. [LB1026]

SENATOR PAHLS: Senator...? Seeing no more questions, thank you. [LB1026]

SENATOR AVERY: Thank you. I'm going to waive closing because I have other commitments. [LB1026]

SENATOR PAHLS: Okay, okay. Thank you. Okay thank you, Senator. Proponents? It appears we have one? [LB1026]

LES SOUTHWICK: Yes. My name is Les Southwick. That's L-e-s S-o-u-t-h-w-i-c-k, and I have been a finder for almost 16 years in the city, and Senator Avery pretty much spelled out everything I was going to talk about, but I will say that I did also have an independent contracting license to set tile and marble that I did for a number of years until 2008, when my...I was diagnosed with a herniated disc and was forced to quit doing that, and so this is what I am doing now. And unfortunately, the list that I am currently working on is from 2006, and so it's pretty well milked dry and I'm sort of left hanging at the moment. My expenses at this time are dwindling my bank account, and so I'm just looking to be able to get the situation restored so that I may continue to do what I have done for the last 16 years. The question that was asked about the finding, oftentimes, when I do pursue these claims, people will ask me: Does this have anything to do with the published lists in the paper and the advertising that I see? And I, at that point, I always tell them that it is, and I also give them the phone number and tell them the procedure to collect it on their own. One of the things that was changed in recent years was that we are, as finders, required to put that information into our paperwork, that they can claim this on their own for no fee. I've also had people, however, who have said that they would have never known about it had I not contacted them, because a lot of times these are relatives, there are people that have been deceased for sometimes decades, and they are a grandson or a granddaughter or a nephew, and I go to the work to locate wills, obituaries, and try and put together what I believe to be a list of heirs. And in some cases, that...some of the cases I'm working now, where the initial

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amount might be \$1,000 or \$2,000, if it gets split up five or six ways, it becomes a real difficult thing to do because I have to get a separate agreement notarized from each individual, I'm required to get a photocopy of driver's license, a photocopy of documentation proving social security number, and sometimes, as I said, wills, birth certificates. It becomes quite involved and expensive at times to do this, especially when it's a small reward at the end for my clients individually, as well as myself. But my main concern since I started this business was to just try and act as an adjunct to unclaimed property, and not as a, you know...don't work with them, but I worked through them, and I just want to get as many of these claims recovered and paid out to the proper owners as I possibly can, anyway I can. And if I can make a little bit of money and pay my bills at the same time, that's great, you know. But this situation, the way it is now, the list, I can still purchase a CD from unclaimed property, State Treasurer, for \$65, but under current law, it's totally useless to me without the amounts. And oftentimes, once I do gain permission from my client to pursue these claims on their behalf, I will find additional claims, and sometimes it'll add up to a lot more than the initial one. So I do what I can for my clients, and I've also been a member of the Better Business Bureau for over 10 years and I've always had their highest rating. I've never had a complaint, and I think that speaks to the fact that I do comply with the law and I don't give misleading information to people. And so again, by striking out that amount due in that initial paragraph, it would allow me to actually comply with the statute. The way it is now, it says in the first paragraph that they will not supply the amount due. In the second paragraph, it lists what finders are required to disclose to the owners. And back in there again, it's not the same exact wording. It says value of the property, which is the same thing. There's only one dollar amount on the finder's list, and that is the value of that particular claim. So they're telling me on one hand, they're not going to give me the amount, and on the second hand, they're telling me that I have to give it back to them. I can't...you know, the question is: How can I possibly give back to them what they have refused to give to me? So it's a Catch-22. It's...this just doesn't make any sense. And again, no one has purchased a finder's list since 2009 for this very reason. It's just totally useless, and there are still...there is still statute that claims, anyway, that professional finders can still do their work, but not under those circumstances. It just won't possibly pan out, so that's what I have to say and... [LB1026]

SENATOR PAHLS: Okay. [LB1026]

LES SOUTHWICK: ...I appreciate your time. [LB1026]

SENATOR PAHLS: Okay, thank you. Are there any questions? Senator Schumacher. [LB1026]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Just a question. Let's say that the amounts are made available. Are there any rules against somebody going through

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such a list, saying that the Widow Jones has got \$20,000, and then going out and locating Widow Jones and saying here, you know, here's \$500, I want an assignment of any claims you have in unclaimed property, and collecting the other \$19,500? [LB1026]

LES SOUTHWICK: Are you asking if there's anything in place? [LB1026]

SENATOR SCHUMACHER: Anything that would stop somebody from doing that if under the amount...it's like a cherry pick the Widow Joneses of the world? [LB1026]

LES SOUTHWICK: I really don't know of anything, but I think it would be pretty difficult to do because you still have to get the claim...you still have to get the funds from the State Treasurer, and they have their own legal team. And whenever I'm dealing with them, they can be very demanding on some cases, which I understand, and especially a claim of \$20,000. I have one pending right now that's been in process for eight months, and they're still wanting more information that I've not been able to locate. I have put together, oh, about a half-inch thick stack of paperwork for them. I know that I have the proper owner, but they're still questioning that I don't have an obituary on, it turns out, the sister of the actual owner, and so it can be a very long process and there isn't...there are a lot of checks and balances along the way as far as that goes through the Treasurer's Office, that I don't see how, unless that individual that this person went to--the widow--collected the money from the Treasurer's Office herself, and then paid this other person \$500 after the fact. I don't see how else...and it would be...that individual would not be able to do it himself. [LB1026]

SENATOR SCHUMACHER: Thank you. [LB1026]

LES SOUTHWICK: He...it would be caught along the way. [LB1026]

SENATOR SCHUMACHER: Okay, thank you. [LB1026]

SENATOR PAHLS: Okay, do I see any more questions? Thank you for your testimony. [LB1026]

LES SOUTHWICK: Thank you. [LB1026]

SENATOR PAHLS: Any opponents? Anybody in the neutral? Senator, did...? You waived. Okay, the senator waived, and that closes the hearing on LB1026. We are now ready, Senator McCoy. Just a show of hands. How many proponents? One? Two? Come to the front. Opponents? Neutral? Looks like we have two proponents. We are ready. [LB1026]

SENATOR McCOY: Thank you, Chairman Pahls and members. For the record, I am Beau McCoy, B-e-a-u M-c-C-o-y, and I represent the 39th District here in the

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Legislature. And I am here this afternoon to introduce LB1054 to the committee, which I believe is necessary to provide regulatory certainty regarding the sale of motor vehicle ancillary products. At most, if not all, auto dealerships in Nebraska, after a customer purchases an automobile, they are offered the opportunity to purchase additional products and services to protect their new vehicle. These ancillary products include alarm systems, interior protective coatings, protection for tire or windshield damage, and other products and services that provide consumers with peace of mind about their automobile purchase. The ancillary products are very popular with consumers and auto dealers in Nebraska are selling an increased amount of these products. However, the regulation of these products is uncertain. There is a risk that the ancillary products could be considered insurance under a broad reading of Nebraska's insurance law. This legislation is intended to define the types of ancillary products that may be sold by auto dealers and expressly exempt those products from regulation as insurance. I believe that LB1054 ensures auto dealers can continue to provide consumers with valuable ancillary products to protect their automobiles and gives those same auto dealers certainty about how those products are regulated. Thank you for your time, Mr. Chairman, and as you've already inquired, there are some proponents of this legislation behind me and at this time, I'd be happy to answer any questions if there are any. [LB1054]

SENATOR PAHLS: Seeing none, we are ready for proponents. [LB1054]

SENATOR McCOY: Thank you. [LB1054]

KORBY GILBERTSON: (Exhibit 1) Good afternoon, Chairman Pahls, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Motor Vehicle Ancillary Products Association, in support of LB1054. I'd first like to thank Senator McCoy for introducing this legislation and talk a little bit about what it does; and I don't know if everyone is familiar with what ancillary products are on your car. My first real experience with them myself was I hit a curb and blew out a tire and got to spend a lot of money on a tire, but then luckily I found out that the new tire I bought came with an ancillary product warranty that now protects me from road hazards which include curbs. I was really glad to hear that. So, it's things like tire warranties, dents damage, things for windshields, fabric protectants inside your cars, things that you buy at the dealership. If you get an additional audio/visual machine in your car, sometimes those come with an additional warranty. But what this bill does is it specifies that these are not insurance, that this is a warranty or a contract limited to the coverage that is enumerated in that said warranty. We did discuss this legislation with the Department of Insurance. They are not currently regulating these, they don't want to regulate these, so this actually helps provide some clarity as to what they are. I want to provide you with a letter. Loy Todd from the New Car and Truck Dealers Association was going to try to be here this afternoon and he is unfortunately caught in bad weather trying to drive back from Ohio.

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But for those of you who remember the National Warranty issue years ago, this helps provide some clarity as to the parties' responsibilities for both contracting sides of the parties for these types of products. And I know that Loy would have done it much more eloquently, but we think that this is a good move insofar as consumer protection for customers who buy this type of product because it clearly spells out now, in our statutes, what they are. With that, I'd be happy to try to answer any questions. Yes. [LB1054]

SENATOR PAHLS: Yeah. So I understand when you buy a new car, etcetera, etcetera. [LB1054]

KORBY GILBERTSON: Um-hum. [LB1054]

SENATOR PAHLS: This has nothing to do after you buy a car, then you get it from another company saying we can do this for you. This is strictly dealing with the car dealer? [LB1054]

KORBY GILBERTSON: There are...now, there are two that...there are different types of...you can buy an extended warranty for your car. [LB1054]

SENATOR PAHLS: Right. [LB1054]

KORBY GILBERTSON: I think that's kind of what...is that what you're talking about? [LB1054]

SENATOR PAHLS: That's where I'm going, driving for. [LB1054]

KORBY GILBERTSON: And that is not this. [LB1054]

SENATOR PAHLS: Okay. [LB1054]

KORBY GILBERTSON: An extended warranty generally covers a myriad of things. [LB1054]

SENATOR PAHLS: Okay. [LB1054]

KORBY GILBERTSON: This would be just an ancillary products warranty, so for like my example, it's just limited to if I hit, have a road hazard and blow out my tire, they pay for a new tire; I don't have to worry about that. [LB1054]

SENATOR PAHLS: So when you buy the car, it's all done right there. [LB1054]

KORBY GILBERTSON: You...a lot of times, yes. [LB1054]

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SENATOR PAHLS: Most of the time. [LB1054]

KORBY GILBERTSON: In my case, it was done when I blew out a tire and went to go buy a new tire and they said that they now offered this and it actually came free with the really expensive tire, but...(Laugh)...but I was happy it did. [LB1054]

SENATOR PAHLS: Okay, okay. Senator Pirsch? [LB1054]

SENATOR PIRSCH: So this doesn't guarantee a particular just part per se; it's a number of different parts. [LB1054]

KORBY GILBERTSON: There are a number of different things and you can see in the bill it lists a number of things, but you'll...they'll be...there's different ones for windshield cracks, dent removal, tire damage, fabric protection. I know they are available for audio and visual equipment inside the car, theft protection systems. So if you buy an after market...have an after market theft deterrent system put in, they will come with a specific warranty. [LB1054]

SENATOR PIRSCH: And I'm sorry, too. Did you say that you had a handout from the Department of Insurance, a letter indicating they had interest in regulating? [LB1054]

KORBY GILBERTSON: No, I had a letter from Loy Todd. [LB1054]

SENATOR PIRSCH: Right. [LB1054]

KORBY GILBERTSON: But we have had...the Department of Insurance has signed off this language. We vetted it through them from day one. [LB1054]

SENATOR PIRSCH: And... [LB1054]

KORBY GILBERTSON: And trust me, they'd be here if they didn't like it. [LB1054]

SENATOR PIRSCH: (Laugh) Yeah. With respect to, I guess, just the general process, who stands behind these products if there's a problem in any...whether it's this, that, or the other, that you mentioned, type of things? Say I...it's a guarantee for a period of time, right? [LB1054]

KORBY GILBERTSON: Or a warranty for as long...different warranties last different. I know...I'll give you an example out of the motor vehicle world. If you go buy a television, they'll sell you an extended warranty or something like that, so this can go...and there's someone from an actual company that does this behind me, so I'll let them talk more specifically about what different warranties cover, but it can be different for different

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types of products. [LB1054]

SENATOR PIRSCH: Right. But you mean whichever entity stands behind the ultimate payout or correcting...say, for instance, five years down the line, within the terms of the warranty, you experience some problem on something that you've paid extra at the time you bought the car, and so the question I'm trying to get at is... [LB1054]

KORBY GILBERTSON: Um-hum. [LB1054]

SENATOR PIRSCH: Is it always...because of this law, it must be the actual dealership that sold you the car that is the actual entity that is warranting to you that... [LB1054]

KORBY GILBERTSON: No, the actual company...it doesn't necessarily have to be the dealer. The dealer can sell these warranties, but the actual party to the contract would be the warranty, the company that is covering it. Does that make sense? [LB1054]

SENATOR PIRSCH: Okay, and so they...is there any restrictions then all...like remember, National Warranty was a Bahamian off-shore... [LB1054]

KORBY GILBERTSON: Right. [LB1054]

SENATOR PIRSCH: Do we have any protections or anybody then looking out for that type of angle, that the company will be around in five years or 10 years? [LB1054]

KORBY GILBERTSON: It's my understanding--this is why I wish Loy was here--that by having this language in the statute, it more clearly defines what these warranty companies have to do, that...for instance, you can't just--one of the discussions we had--you can't just sell somebody a piece a paper and say we're going to cover this, but then not do anything that you say you're going to cover. This clearly spells it out and because of that, we feel that it will help protect against companies like a National Warranty from coming into the state and selling things and not being able to back them up. [LB1054]

SENATOR PIRSCH: Well, and that's the concern. Is there anything on here that says you can't be an offshore? [LB1054]

KORBY GILBERTSON: No, there is not. [LB1054]

SENATOR PIRSCH: And who is checking to make sure that you have adequate reserves and you're, you know, you're amortization schedules are such that you have adequate calculations 3, 5, 10 years down the line for payoffs? [LB1054]

KORBY GILBERTSON: Right, and I...that is not covered in this statute or in this

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proposal. [LB1054]

SENATOR PIRSCH: Okay. Is there anything that...other than that, you know, kind of goes piece by piece of the car as opposed to a general grouping of, you know, extended warranty, all the pieces together. [LB1054]

KORBY GILBERTSON: Um-hum. [LB1054]

SENATOR PIRSCH: But is there something then unique about piece by piece as opposed to just a general warranty in terms of in one you have to guard against it with regulation and the other, you don't need the Department of...? [LB1054]

KORBY GILBERTSON: Well, those extended contracts aren't...I believe those are not considered insurance, either. We worked on a piece of legislation a number of years ago, so I think that those aren't, either. [LB1054]

SENATOR PIRSCH: The National Warranty type of situation. [LB1054]

KORBY GILBERTSON: Type...right, the overall warranty. [LB1054]

SENATOR PIRSCH: How are they currently regulated right now? Say the National Warranty or the...or for that matter, you have mentioned TV and extended warranties. How are those regulated in this state, or are they? [LB1054]

KORBY GILBERTSON: I don't think...I don't believe they are. Now for this, the Director of Insurance would have the ability to allow...you'll see that there is a laundry list in this proposed legislation. If you wanted to have other services or other things come into the state to provide different types of ancillary product warranties, those would have to be approved by the director. They just don't regularly oversee the contracts. [LB1054]

SENATOR PIRSCH: You mean, so there's a laundry list of specific listing of item by item in here and if it isn't on there, then you have to go get specific approval by the director of the Department of Insurance to add it to the list? [LB1054]

KORBY GILBERTSON: Right. If you look on page 3... [LB1054]

SENATOR PIRSCH: Okay. [LB1054]

KORBY GILBERTSON: ...subsection (i), the repair or replacement of tires, removal of dents, dings, body panels, sanding, body or painting, and also your chips and cracks, keys or key fobs, and then other services approved by the director. [LB1054]

SENATOR PIRSCH: Oh, so this is above line 16? Okay. [LB1054]

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KORBY GILBERTSON: Right. [LB1054]

BILL MARIENAU: Yeah, right here on...it's what's in the contract. [LB1054]

SENATOR PIRSCH: So... [LB1054]

KORBY GILBERTSON: If you...right. [LB1054]

SENATOR PIRSCH: And...go ahead. [LB1054]

SENATOR PAHLS: Senator Schumacher? [LB1054]

SENATOR SCHUMACHER: Thank you, Senator Pahls. So right now, as far as if this were to pass and maybe even if it doesn't pass, somebody who wants to issue you a contract that says if I lose my key clicker, they'll repair it or replace it rather, and the fees is \$50 or something up front when I buy the car... [LB1054]

KORBY GILBERTSON: Um-hum. [LB1054]

SENATOR SCHUMACHER: ...there's no requirements at all they have certain assets, they have certain reserves? They can just basically go belly-up a year later and I'm out? [LB1054]

KORBY GILBERTSON: Right. We don't have any...there's no definitions of what these types of products or these warranties or contracts are in our statutes whatsoever. And there was a question, as there was a number of years ago, with the other types of warranties on whether or not they constitute insurance. It is our opinion and the Department of Insurance's opinion that they aren't insurance and we want...that's what this bill does; it clarifies that they aren't. They're just like a little...they are a warranty or a contract for a specific service. [LB1054]

SENATOR SCHUMACHER: Thank you. [LB1054]

SENATOR PAHLS: Senator Langemeier? [LB1054]

SENATOR LANGEMEIER: Chairman Pahls, I want to follow up on that a little bit, is this...I'll be honest with you. I'm not grasping why we even have this bill. I don't grasp the problem, other than there's some...I just don't grasp why we have this bill. [LB1054]

KORBY GILBERTSON: Definitional issues with whether or not it is insurance; that is a problem. [LB1054]

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SENATOR LANGEMEIER: And so what is the...but what is the problem? [LB1054]

KORBY GILBERTSON: Because if it is determined to be insurance, these aren't insurance companies and you would have to change your business model. [LB1054]

SENATOR LANGEMEIER: But is that happening? Is the banking... [LB1054]

KORBY GILBERTSON: No, and we don't want it to happen, and so we're trying to clarify our statutes. And that's why we worked with the Department of Insurance to do so, so that people know that this is not insurance, so that it's clear that we don't fall under that. [LB1054]

SENATOR LANGEMEIER: When you say people know... [LB1054]

KORBY GILBERTSON: When you're buying and it... [LB1054]

SENATOR LANGEMEIER: When you pass this, the public is not going to know you passed this. They aren't going to know there's any difference in in this problem. [LB1054]

KORBY GILBERTSON: You know what? But the dealers do, and that's what matters. And you can ask Loy Todd; this makes a huge difference for his dealers, because he would not want to...and he said to us when we were working on this, I wouldn't...I would tell my dealers not to deal with people that don't follow what is written in these...in this statute. [LB1054]

SENATOR LANGEMEIER: Okay. [LB1054]

SENATOR PAHLS: Senator Schumacher? [LB1054]

SENATOR SCHUMACHER: But there isn't a whole lot written in this statute as far as obligations on the part of these contractors, and it almost looks like we're carving out a safe harbor in which we're telling a vendor listen, we don't care what you do, it's back to buyer beware. You don't even have to worry about a lingering exposure to, maybe, insurance regulation. Go out there, be underfinanced, write a bunch of contracts, pay yourself a big salary, and then be gone. [LB1054]

KORBY GILBERTSON: I think actually, based on my discussions with Loy Todd and other people who are involved in this, it does the opposite of that. [LB1054]

SENATOR SCHUMACHER: How so? [LB1054]

KORBY GILBERTSON: I...that's why I said I wish Loy could be here, because he could

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explain it in more detail. But my understanding is that once...because you have the actual definition of the responsibilities of the parties in these contracts. You say providing what services have to be put on there, what things can you have a contract for, what types of products the application of the product actually has to take place. That clarifies the law instead of letting someone come in and write a bogus warranty. [LB1054]

SENATOR PAHLS: Senator Pirsch? [LB1054]

SENATOR PIRSCH: Just a couple of questions, but with respect to how other states regulating... [LB1054]

KORBY GILBERTSON: Um-hum. [LB1054]

SENATOR PIRSCH: Are they...does it vary or is there an...? [LB1054]

KORBY GILBERTSON: The vast majority of states--and I don't have the number--do this. They clearly state in their statutes that it's not insurance. [LB1054]

SENATOR PIRSCH: And they have certain specified specific types of activities that...? [LB1054]

KORBY GILBERTSON: Yes. [LB1054]

SENATOR PIRSCH: Also then in (v), it says other services approved by the director. So do we give broad general grants of authority to the director in other areas in terms of determining what the director should be regulating and what...? [LB1054]

KORBY GILBERTSON: I can...I would defer to your legal counsel, but I do believe the Director of Insurance has some leeway in different products and things that they accept for insurance reasons and other things that they look at in the department. [LB1054]

SENATOR PIRSCH: Thank you. [LB1054]

KORBY GILBERTSON: But they have a general guideline from the Legislature, and then they can make more specific decisions. [LB1054]

BILL MARIENAU: But the bill says they're not subject to the insurance laws of the state... [LB1054]

KORBY GILBERTSON: Right. [LB1054]

BILL MARIENAU: ...and that's a bit circular. [LB1054]

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KORBY GILBERTSON: Right. [LB1054]

BILL MARIENAU: Yeah. [LB1054]

KORBY GILBERTSON: I agree. (Laugh) [LB1054]

SENATOR PAHLS: Senator Langemeier? [LB1054]

SENATOR LANGEMEIER: Are the dealers scared that okay, I go buy a new pickup and I decide I want a Rhino liner/sprayed-in bed liner... [LB1054]

KORBY GILBERTSON: Um-hum. [LB1054]

SENATOR LANGEMEIER: Are the dealers...is there some fear that I'm...I know that that Rhino liner is warranted by Rhino Liner (sic: Rhino Linings)... [LB1054]

KORBY GILBERTSON: Um-hum. [LB1054]

SENATOR LANGEMEIER: Are they scared I'm going to come back to the dealer when I'm--and I shouldn't say this in public, because they wouldn't want the advertising--but if it were to accidentally peel off because it wasn't installed correctly or something like that, are they scared I'm going back to the dealer thinking I had some insurance other than the warranty that Rhino Liner (sic: Rhino Linings) would have gave me? [LB1054]

KORBY GILBERTSON: I can't speak for the dealers, but based on my knowledge of what happened with National Warranty, they...those...a number of dealers in the state of Nebraska, that did not have to, stood up and honored all of those warranties done by National Warranty. [LB1054]

SENATOR LANGEMEIER: But that... [LB1054]

KORBY GILBERTSON: Obviously, money out of their pocket and that...and it is their opinion that this helps protect them from having that happen again. [LB1054]

SENATOR LANGEMEIER: But National Warranty was a total different deal. I was here. National Warranty, they said we'll give you a warranty that it covers every single thing on your vehicle until 100,000 miles from 35 to 100. [LB1054]

KORBY GILBERTSON: Right. [LB1054]

SENATOR LANGEMEIER: I mean everything. Seats, buttons, lights, you name it. This is an add-on product that you're adding on that isn't...well, let's use Ford pickups, for

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example. The TV/DVD system you put in is Sony; it's not a Ford product. [LB1054]

KORBY GILBERTSON: Right. [LB1054]

SENATOR LANGEMEIER: But anyway, I don't know. I still think it's pointless, but... [LB1054]

KORBY GILBERTSON: So you get an ancillary product coverage for that item. [LB1054]

SENATOR LANGEMEIER: Understood. [LB1054]

SENATOR PAHLS: Senator Christensen? [LB1054]

SENATOR CHRISTENSEN: Thank you, Chairman. And you can pass this or find me the answer, too... [LB1054]

KORBY GILBERTSON: Sure. [LB1054]

SENATOR CHRISTENSEN: But I guess my concern is you addressed a little bit of liability over here before; I don't see any way in here that any company is going to stand up behind anything. I think about siding on homes. There's all kinds of lifetime sidings and as soon as they're one year old, they cancel that company and start a new one. Are we got anything any different here? Nothing to...in this. Is this connected to another statute that I'm not finding or...? [LB1054]

KORBY GILBERTSON: Well, I could go...you can go back to contract law and if you have a contract. But obviously, if the company went out of business, I don't...you know, it'd be like any other business that went out of business. So I can find out what the experience has been in other states for you and let you know. [LB1054]

SENATOR CHRISTENSEN: Because, you know, I...that's my fear with this product, is the companies, as they have said over here, they're just going to sell, sell, sell, sell, and then close shop and open a new company and sell to a new group of people and not be... [LB1054]

KORBY GILBERTSON: Right, but the concern is that right now that can go on and no one knows what the product is. All this bill does is define what it is. [LB1054]

SENATOR CHRISTENSEN: So we're really not changing anything different there, it's just giving some clarification that it's not insurance for the insurance companies. [LB1054]

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KORBY GILBERTSON: It's not insurance, right, and not regulated by the Department of Insurance. [LB1054]

SENATOR CHRISTENSEN: Okay, thank you. [LB1054]

SENATOR PAHLS: Thank you for your testimony. [LB1054]

KORBY GILBERTSON: Thank you. [LB1054]

SENATOR PAHLS: Next proponent? [LB1054]

ERIC GREEN: Good afternoon, Chairman Pahls, members of this committee. My name is Eric Green, spelled G-r-e-e-n, just like the color. I'm general counsel for one of the companies that makes a couple of these ancillary products and perhaps I could answer a few of your questions. I don't pretend to be an absolute expert in the area of ancillary products, but I'll do the best I can. First, a bit about my company. I am general counsel for Cal-Tex Protective Coatings. We're an employee-owned company. We won last year, Inc. magazine's best small company award for innovation. We have also been recognized as one of the top employee-owned companies in the United States. As I said, we are employee-owned to the tune of 97 percent of the stock. We manufacture 35 different products here in the United States including a line of sealants, and we are the nation's first water-based line of nanotechnology sealants. We also manufacture and market window etch for vehicles, as well as body marking for vehicles that helps deter theft. And I wanted to thank the committee members for taking the time to hear this bill and to the extent that I can, I'll answer any questions you might have. [LB1054]

SENATOR PAHLS: Senator Christensen? [LB1054]

SENATOR CHRISTENSEN: Thank you, Chairman. What does this bill do for you? I guess I see what it does for insurance companies, but I guess I don't see what it does for anything else. [LB1054]

ERIC GREEN: That's a fair question. I'll be straight with you. The number one goal here is regulatory certainty, and I'll share a story with you. I told the folks who brought me up here that I just wanted to thank you for the time and be very brief. I didn't want to bore you to tears, but it seems like a little story might be in order. We do market our sealants across the nation and it's really interesting to see different states have different philosophies about what our products can and cannot do. In the state of New York specifically, I had a letter from an insurance investigator, and she claimed there is no way this product can do what you say it will do. And specifically, she said, you cannot create a sealant that will make fabric supple, so I don't see how you can prevent rips or tears. Well, I didn't mean to be disrespectful, but I could point her to my saddle soap for my boots and say well, yes you can, but it's a different product and a different item. So I

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wrote a rather extensive letter going into the chemistry--and I am no chemist, but I had to be for that letter--detailing why, if you put chemicals in there that inhibit UV damage, ultraviolet damage, from the sun, you can inhibit cracking of the fabric and/or leather and vinyl, and that our warranty was conditioned upon preventing cracking and tearing of the surfaces based upon UV damage. So we were simply promising in the warranty to the...that our product, if it failed to perform, we would go ahead and make good on it. Typically, as all of you are probably aware, product warranties are governed by the federal Magnuson-Moss Act and consequently, it would be odd, I think, to then turn around and make them insurance products. So it made sense to us to take this approach, to not call them insurance, but to clarify they were not insurance products, and that's why our company supports this bill. Does that make sense? [LB1054]

SENATOR CHRISTENSEN: Yeah, thank you. [LB1054]

SENATOR PAHLS: Senator Schumacher? [LB1054]

SENATOR SCHUMACHER: Thank you, Senator Pahls. So your company differs from--at least my reading--what this says and your company is selling an actual product, right? [LB1054]

ERIC GREEN: Correct. [LB1054]

SENATOR SCHUMACHER: And you're saying if this product doesn't work, then we will do thus and so. [LB1054]

ERIC GREEN: Yes, sir. [LB1054]

SENATOR SCHUMACHER: Okay. And so, you know, that's almost like a warranty under the UCC or under an express warranty; this is our product and this is what it does. Now, I was under the impression that this particular bill, it's somebody else's product. I...there's a Sony tape player in the car and for an extra \$50, I will guarantee that if your Sony tape player goes bad, I will fix it, okay? [LB1054]

ERIC GREEN: Right. [LB1054]

SENATOR SCHUMACHER: ...which is I didn't make the tape player, I didn't have anything to do with the warranty on the tape player. I'm just give me \$50 and your tape player is no worries to you anymore, unless I take off. And so is there a difference, then, between what you're describing and what this bill describes? [LB1054]

ERIC GREEN: I was wondering if someone was going to ask that question. Yes, there are two basic categories in this bill. There is an ancillary service contract, and then there is an ancillary protection product. Now, ancillary service contract, it's an intangible

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service, such as the tire and wheel product that the prior speaker spoke about. The warrantor behind that did not make the tire, but they provide a contract that says in the event that your tire is damaged and is not repairable, we'll replace it for you subject to certain conditions. So that's primarily a service, but it does affect the product for which the promise is made. That's the first category, ancillary service contract, okay? It's similar in concept to a vehicle service contract, but it covers a very specific item. And keep in mind, if you've ever had a vehicle service contract, typically what it provides is what is known as MBI, mechanical breakdown insurance. So if your transmission falls apart or throws a gasket, then you pull out your vehicle service contract and it takes care of that. But for an ancillary service contract, it's very product-specific. It's not generalized to the vehicle itself, okay? Now the second category, the products that my company makes, Cal-Tex, they're called vehicle protection products or ancillary protection products, and I would direct your attention to page 2, sorry, I'm having "long arm" disease, page 2, line 8, which talks about the definition of an ancillary protection product. And basically there, it's a product that is installed and it's designed to prevent loss or damage, okay? So in Cal-Tex's case, sealants basically are designed to prevent damage to the underlying surface to which it is applied, whether it's the outside painted surface or it's an interior surface such as fabric, vinyl, or leather. And so you have on one side, you have an ancillary service contract, and on the other side, you have an ancillary service product. Does that make sense? Okay. [LB1054]

SENATOR PAHLS: All in all, the insurance...if we had products, the insurance director must approve them, apparently; it's in the bill. Just who regulates you in the state of Nebraska? I'm just curious because if I buy insurance, I know that if I buy from State Farm, there's some...I know they're being somewhat regulated. But if I buy something from you, who would I go to? [LB1054]

ERIC GREEN: That's a great question, and that's really kind of the point of the bill, at least to say that, for one thing, the Department of Insurance does not regulate us, but... [LB1054]

SENATOR PAHLS: I understand that, I understand that. [LB1054]

ERIC GREEN: Okay. Well, keeping in mind that product warranties are regulated under the Magnuson-Moss Warranty Act... [LB1054]

SENATOR PAHLS: Right. [LB1054]

ERIC GREEN: ...passed, I think, 1973/74? So technically, we're regulated through the FTC, the Federal Trade Commission. Also, you have attorneys general, which also typically look at the product as well, and that's whenever there's a consumer dispute. In 26 separate states, the...some products are regulated as vehicle protection products and those are... [LB1054]

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SENATOR PAHLS: Well, for some reason, if I...if the insurance...I know that it doesn't fall under the jurisdiction of insurance, but I just...for some reason, there's a comfort level, when I know like the Department of Insurance is regulating some things. [LB1054]

ERIC GREEN: Right. [LB1054]

SENATOR PAHLS: And I understand this is not insurance, so I'm just trying to figure out who basically... [LB1054]

ERIC GREEN: Oversees the companies, I under... [LB1054]

SENATOR PAHLS: Yeah, oversees it. I know you said there's an organization. [LB1054]

ERIC GREEN: Right. Well, for instance, in the state...we're based out of Texas. We have the Attorney General's Office that investigates consumer disputes and you have the Magnuson-Moss (Warranty) Act, which is administered by the FTC. But otherwise, as with most product warranties, it becomes a contractual matter and also a consumer dispute matter. [LB1054]

SENATOR PAHLS: Right. [LB1054]

ERIC GREEN: I don't know whether or not Nebraska is a signator to UDAP, the Uniform Deceptive Acts and Practices Code (sic: Uniform Deceptive Trade Practices Act). Well Texas is, anyway. I'm sure that Nebraska does have several statutes in place that regulate deceptive practices by companies. [LB1054]

SENATOR PAHLS: Okay, thank you. Senator Pirsch? [LB1054]

SENATOR PIRSCH: So the products that you make...and the name of your company, I'm sorry, is...? [LB1054]

ERIC GREEN: Is Cal-Tex, C-a-l-T-e-x. [LB1054]

SENATOR PIRSCH: Are you the one that stands behind the products, then? Should a...you know, do you offer it for a certain period of time? You pay an up-front fee and then for some period of time, should there be a problem, you stand behind it, right? [LB1054]

ERIC GREEN: Correct. The product warranty is issued in the name of the warrantor, and typically that is Cal-Tex itself. [LB1054]

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SENATOR PIRSCH: Okay, but now you offer your services through new car and truck dealerships... [LB1054]

ERIC GREEN: Yes, sir. [LB1054]

SENATOR PIRSCH: And through other distributors, possibly, as well? [LB1054]

ERIC GREEN: No, sir. We offer really exclusively through new and used car/truck dealers. [LB1054]

SENATOR PIRSCH: Okay. And you don't actually have...your company which stands behind it doesn't actually have personnel at the new car and truck dealers, right? You have their personnel vend it, correct? [LB1054]

ERIC GREEN: That is correct. [LB1054]

SENATOR PIRSCH: Okay. And when they sell it, I mean, it's not an advertised, you know, the...and I'm sorry, the name of your company is? [LB1054]

ERIC GREEN: Is Cal-Tex, C-a-I-T-e-x. [LB1054]

SENATOR PIRSCH: Cal-Tex. So they don't sell it typically to the consumer; it comes in as Cal-Tex. They sell it...we'll offer you...I mean, typically they say we can throw in an additional coverage for this item, that item, or the other item for an additional \$5,800 or whatnot, right? [LB1054]

ERIC GREEN: Right. That's one of the ways to sell it. Correct. [LB1054]

SENATOR PIRSCH: Yeah. And so the question is: Does your average consumer understand, much as in the case of National Warranty, which a lot of people were...yeah, National Warranty, I'm not comparing your company to it... [LB1054]

ERIC GREEN: That's okay. That's fair. Go ahead. [LB1054]

SENATOR PIRSCH: But it's the thought that when they went--and because of practices which I'm sure your company does not employ--but the consumers who came into the dealerships or whatnot who purchased those were under the understanding that it was actually the dealership, the people, that they were...that the...you know, the physical bricks and mortar station there on 120th Street or whatever it is that was standing behind. So there was a lot of surprise, then, that the...you know, when the warranties went belly up and yet the companies with which they chose, selected, and did business with were still there, I think that there was a little bit of a disconnect in the minds of the consumers that, you know, how could this happen when I know that, you know, this is a

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reputable company that I've chosen to do business with. And so I wonder, you know, do you think that your...most of the concern, and not your company, but with all of these entreties of these services, that the average consumer understands that they're doing business with a company that may not be located in the state or even, in the case of National Warranty, headquartered in the United States? [LB1054]

ERIC GREEN: I do remember the National Warranty incidents. We did not do business through or with National Warranty, so my recollection of the circumstances are somewhat limited. I do recall that it had offshore connections and was perhaps itself an offshore company, but after that, I think my command of the facts becomes admittedly hazy. It is...I can only talk about my end of the ancillary products, which would be, again, window etch and sealants, and talk about what I am aware of regarding the other companies that are members of the trade association to which we all belong, MVAPA. But it is fairly commonplace for us all to have underlying reimbursement insurance to meet our liabilities. I know that Cal-Tex insures its products with Travelers and with Virginia Surety (Company) Warranty, both of which I believe are A or A-minus rated. [LB1054]

SENATOR PIRSCH: Oh, sure, and I don't have any doubt that your company is a company of integrity and very well sought. The only question is, you know, it's the outliers every industry may have. [LB1054]

ERIC GREEN: Oh, I understand, Senator, and I realize this committee is here to make sure that the people of Nebraska are not somehow cheated or given short shrift, so I don't take it personally. [LB1054]

SENATOR PIRSCH: Okay, good. Thank you. [LB1054]

ERIC GREEN: But it is common practice for companies such as ours to have our liabilities insured if only in order to meet, I believe, the satisfaction of our auditors and very often our bankers, to make sure that our contingent liabilities are being handled properly. And so it's simply a matter of good business sense to make sure that you don't fold and disappear in the night like National Warranty did. Every now and then you will see something like a National Warranty occur. There was, in the 1970s, a business failure called Rusty Jones (Inc.) out of Wisconsin, I think--Wisconsin or Minnesota--and so every now and then, it seems that our industry and perhaps all industries cycle through perhaps a 30-year learning curve and you have these horrific things happen and then you learn. And so companies like Cal-Tex, then, obtain reimbursement insurance to make sure that in the event that we fail, there is something there. I also happen to sit on the board of directors for the company and I have no desire to be personally sued for being negligent in my duties, so I'm very interested in making sure that liabilities are covered. [LB1054]

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SENATOR PIRSCH: This other failure you described from, what...? [LB1054]

ERIC GREEN: Rusty Jones, yeah. [LB1054]

SENATOR PIRSCH: Yeah, Rusty Jones. Was that just because they were actuarially challenged and not on sound footing or was that out-and-out fraud? Do you know? [LB1054]

ERIC GREEN: I think it was they were actuarially challenged. That occurred in the '70s and that was a bit before I got into the industry, and so my command of those facts is even more challenged, but it's my impression it was actuarial irresponsibility. [LB1054]

SENATOR PIRSCH: I see. Thank you. [LB1054]

ERIC GREEN: Thank you, Senator. [LB1054]

SENATOR PAHLS: Thank you. Senator? [LB1054]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Just a bit of a follow up. You know, this bill seems to take the approach that, you know, there's no need or is no regulatory or reporting requirements on these particular companies, that it's kind of, honestly, hard capitalism. So if I buy a new electric car and I'm a little...you know, paid \$40,000 and I'm a little leery of the batteries because I know what a cold winter can do to batteries... [LB1054]

ERIC GREEN: Um-hum. [LB1054]

SENATOR SCHUMACHER: ...and the car dealer says oh, we've got this policy from Acme Battery Company that if these batteries ever go bad, no matter how old or long you own the car... [LB1054]

ERIC GREEN: Um-hum. [LB1054]

SENATOR SCHUMACHER: ...they will replace the batteries for you and the policy is \$2,000 for my battery replacement policy. [LB1054]

ERIC GREEN: Um-hum. [LB1054]

SENATOR SCHUMACHER: And I say gee, you know, I might take that deal, but I sure want to know that Acme is a good company. [LB1054]

ERIC GREEN: Sure. [LB1054]

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SENATOR SCHUMACHER: Is there any mechanism where I can look at the books or find out about their insurance behind the scene? Any disclosures? Any place where I can find, in order to make an intelligent consumer decision? [LB1054]

ERIC GREEN: Senator, I don't think there is in this bill. I'll be very honest with you. I am under the impression that while the members of MVAPA are quite willing to have to post insurance, proof of liquidity, that sort of thing, indeed, most of us are quite used to doing that if we are in the vehicle service contract business. And for ancillary service contracts, there's a reason it sounds very similar to vehicle service contracts. It's because a lot of the companies that belong to our trade association are vehicle service contract companies, and they're very used to being regulated and they're very used to having the insurance and filing the forms and doing that sort of thing, so...but it was our understanding that because of the upcoming mandates being proposed by the federal government or, I shouldn't say proposed, passed by the federal government, that the insurance department of Nebraska is hard-pressed to be able to supervise this area, and so they were familiar enough with these products as well as the players in this industry to feel like...that it was not necessary. And Loy Todd certainly is not looking to get his dealers in trouble by having a bill pass that would cause backlash against the dealers due to consumer fraud. So I think that's the reason why the insurance...a more active oversight is not there. It's not really not there, I think I can use a double negative in this sense. It's not really not there because the industry and my peers are not willing to submit to insurance oversight; it's more there because the insurance department has its hands full and really felt comfortable with this being written as it was. [LB1054]

SENATOR SCHUMACHER: Thank you. [LB1054]

ERIC GREEN: Thank you, Senator. [LB1054]

SENATOR PAHLS: Thank you. Yeah, thank you. I am concerned, though, the last couple statements, and I'm not asking for a clarification that the insurance company is shorthanded. That didn't...you know, that woke me up a little bit; it's like we're avoiding something because we may be shorthanded. But I do like the idea when you say that your company does have insurance to make sure that you guys don't go belly up. Thank you for your testimony. [LB1054]

ERIC GREEN: Okay, if I misspoke on the insurance department, I... [LB1054]

SENATOR PAHLS: No, you did not. No, no, you did not misspeak. Thank you. [LB1054]

ERIC GREEN: Okay. Any other questions? Thank you. [LB1054]

SENATOR PAHLS: Thank you for your testimony. Opponents? To the neutral? Senator? [LB1054]

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SENATOR McCOY: Thank you, Chairman. I'll close briefly by saying that as has been mentioned, that the original drafting of this legislation did have financial responsibilities as a component of it and the Department of Insurance desired not to have that piece in there. And I will say that certainly, as many of you know, dealing in the construction role that I deal in...and I think, Senator Christensen, you brought up a good point when you mentioned, you know, siding that has some sort of a lifetime warranty. I deal with this all the time, be it windows, siding, roofing products. I may sell a homeowner a shingle product, for instance. You know, we stand behind it with a material or a, I'm sorry, a workmanship warranty. The manufacturer may cover it with a manufacturer's warranty in some sort of a format that's a lifetime, or usually, lifetime is if you really read the fine print, not really a lifetime. But nonetheless, that's a whole another conversation for a whole another day. But, with the understanding there that that is subject to acts of God, other natural disasters, all that. I think if we want to have a conversation about regulation of warranties, that's something that's probably worthwhile to have at some point in time, and who should regulate these for all consumer products. Be they automobile products or, you know, home consumer products or whatever, or building material products in that case. But from what I deal with on a day-to-day basis and why I thought this legislation made sense is at the very least, we've clearly defined what is an insurance product and what is not. And if we want to have an overarching conversation about whether there should be some additional oversight and regulation of warranty products, maybe a good conversation to have in a future legislative session. But I do deal with this again, on a daily basis, and there is very little regulation on those warranty products. There's many times, especially in the building materials industry, with the economic downturn that we've been in the last four or five years, you've had an enormous consolidation of building material manufacturing. And in many cases, those warranties did not transfer during those consolidations and that's a troubling fact to a lot of homeowners I know, and it's certainly a troubling factor to me as a contractor. So I think LB1054, there have been a lot of good questions, I think, that were brought up. It's my hope, at least, and the committee may see fit otherwise, that at least this provides some measure of a record to say what is an insurance product and what is not. And if we do want to at some point decide to have a conversation about some additional oversight on warranties, be they automobile or otherwise, then perhaps that's a conversation that's worth having. Thank you. [LB1054]

SENATOR PAHLS: I have a question unless I'm reading it wrong. Then okay, let's say we pass, not a problem. Does the insurance department have anything to do if you add more products to this list? [LB1054]

SENATOR McCOY: Well, as I read it and as it was put together, the director would have...you would have to add that into statute. If we add to the addition...or, let me start...back up. What's lined out in page 3, I think it is, and it lists out those products. [LB1054]

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SENATOR PAHLS: Right. [LB1054]

SENATOR McCOY: The director would have discretion, or would have to be added to statute, to add to that list. So in other words, the products that, as I understand it, that are there would not be subject to oversight by the Department of Insurance, that the director would have the ability in...and if that was added to or expanded. [LB1054]

SENATOR PAHLS: So indirectly, the director is involved. [LB1054]

SENATOR McCOY: I would say in the addition of these products... [LB1054]

SENATOR PAHLS: Okay, all right. [LB1054]

SENATOR McCOY: ...which I don't know that that isn't a bad thing to me, because it gets back to what I said just a moment ago. If we want to have an overarching discussion over oversight on these warranty issues and whether the department might be shorthanded or not, I don't know in this regard, but I think it may be important to have the director involved at least to that degree. [LB1054]

SENATOR PAHLS: Okay. Okay, thank you. Senator Pirsch? [LB1054]

SENATOR PIRSCH: So the Director of Insurance would set policy as to what is covered or what is regulated and unregulated in the state? [LB1054]

SENATOR McCOY: Well, I think it's, Senator Pirsch, if it's an addition to the list that's outlined, I think it's page 3, to add to that list... [LB1054]

SENATOR PIRSCH: Sure. [LB1054]

SENATOR McCOY: ...the director would be involved in what would be added to that list or what would likely end up in resulting statutory changes. But if it's outlined, and that's why it's a fairly exhaustive list, if it's outlined in that list, it would not be under current oversight. [LB1054]

SENATOR PIRSCH: Well clearly, there is certain delineated things that this...that the Legislature, by passing this, the Legislature would set policy and say these are not things that we worry about. But then it goes on into (subsection)(iv) (sic: (v)) and says that the director himself, the Director of Insurance, not the Legislature, shall be the individual who can, in addition to these things that the Legislature was not concerned about, choose other things that the director is not worried about, correct? In terms of regulating? [LB1054]

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SENATOR McCOY: I don't know whether I quite understand what you're asking, Senator Pirsch, but I would say that if that is the case, and it seems to be contradictory in that regard, I mean, I'd stand ready to change that if need to be. I interpreted that it would be the director would be involved in determining if any other items need to be added to this list of items that we've now said, if this were to be enacted, would not be subject to interpretation as an insurance product. [LB1054]

SENATOR PIRSCH: But in the sub (f) that starts on page 2, in line 24, "Ancillary service contract means an agreement that is effective for a specified duration and paid for by means other than the purchase of a motor vehicle to perform any one or more of the following services" and then the (i), (ii), (iii), and (iv) lists it, and then it goes to sub (v) on page...on line 16 that says, "other services that are approved by the director," which would...and...so that...it doesn't seem to mean involvement. It means...it seems to be a delegation to the director to set policy with respect to any other additional areas of or types that, similar to (i), (ii), (iii), or (iv), that have been set forward, if we wants to. I mean, is that a correct interpretation? [LB1054]

SENATOR McCOY: It may be, Senator Pirsch. I...and again, if it is, that that causes some amount of concern in that regard, so that we don't have an incorrect interpretation of that, I'd stand ready to adjust that, with Mr. Marienau, to say otherwise. [LB1054]

SENATOR PIRSCH: Okay. And then the only other question I have: Are motor vehicles services contracts...do they require an insurance policy to back them up right now in the state of Nebraska? [LB1054]

SENATOR McCOY: Well, I think you...as I recall, a similar question was directed to the...to prior testifiers, and I guess I would defer back to that, as far as...now, if you don't mind repeating your question, Senator Pirsch... [LB1054]

SENATOR PIRSCH: Sure. [LB1054]

SENATOR McCOY: ...so I understand for sure what you're asking me. [LB1054]

SENATOR PIRSCH: Motor vehicle service contracts. So, do...are they...does the state of Nebraska require an insurance policy for those? [LB1054]

SENATOR McCOY: Well, I think if it's...as it's defined, Senator Pirsch, it would fall under direction of the Department of Insurance. As long as it falls under the Motor Vehicles Service Contract Reimbursement Insurance Act, then yes, it would be subject to oversight by the director and the department. [LB1054]

SENATOR PIRSCH: Okay. That's all the questions I had. [LB1054]

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SENATOR PAHLS: Okay. Seeing no more, thank you. [LB1054]

SENATOR McCOY: Thank you. [LB1054]

SENATOR PAHLS: That closes the hearing on LB1054. [LB1054]