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Banking, Commerce and Insurance Committee
January 29, 2013

[LB147 LB209 LB210 LB336]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 29, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB147, LB209, LB210, and LB336. Senators present: Mike Gloor, Chairperson; Mark Christensen, Vice Chairperson; Kathy Campbell; Tom Carlson; Sue Crawford; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR GLOOR: I'm Senator Mike Gloor. This is the Banking, Commerce and Insurance Committee, to make sure you have gotten into the correct room. I am Chair of the committee. I'm from District 35 which is Grand Island. The committee will take up the bills today in the order posted. To better facilitate today's proceedings we have some general rules that are posted up there to your left, but I'll cover these--most of them anyway. Please turn off your cell phones. I know you think you turned them off. Just make sure, if you would. The order of the testimony will be the introducer, proponents, opponents, and those speaking in a neutral capacity, and then closing. We ask testifiers to sign in. Please take your sign-in sheet and hand it to the committee clerk before you testify, and spell your name for the record if you would, as you begin testifying. That's not for us. We don't care about spelling your name, but we need to make sure those folks who are taking the transcribing get it correct in the record. Please be concise. We have a light system in this committee, but I don't see any need to use that light system today. But I'd ask you to try and hold your comments to about five minutes. If you'll not be testifying at the microphone, but want to go on record as having a position on this bill, we have some white sign-in sheets and you can sign those and that will be part of some of the permanent information that we attach to the record. Written materials may be distributed to the committee members as exhibits before testimony. We ask that you have ten copies. If you don't have ten copies, the pages will be glad to make ten copies for you, so you might want to check and make sure that you do. If you have written testimony...sorry, I've already covered that. Committee counsel is on my right, Marienau--Bill Marienau. Committee clerk, Jan Foster, at the end of the table. The committee members with us today will introduce themselves and we'll start down on my right with Senator Crawford.

SENATOR CRAWFORD: I'm Sue Crawford and I represent Legislative District 45 which is Bellevue, Offutt, eastern Sarpy County.

SENATOR SCHUMACHER: I'm Paul Schumacher, representing District 22 which is Platte and parts of Stanton and Colfax Counties.

SENATOR PIRSCH: Pete Pirsch, Legislative District 4, Boys Town, parts of Douglas County, and west Omaha.

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SENATOR CAMPBELL: Kathy Campbell, District 25, east Lincoln and eastern Lancaster County.

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial.

SENATOR HOWARD: Sara Howard, District 9, midtown Omaha.

SENATOR GLOOR: Senator Carlson will join us later. And as most of you know, senators will come and go if they have bills to introduce with other committees. Our pages today are Will Rahjes who is seated over there, and Nathan Funk. Will is from Elwood and Nathan is from Norfolk. We'll take the bills up in the way they were posted and we'll start with LB210. Senator Harr, welcome to the committee.

SENATOR HARR: Thank you, Mr. Chairman. I had these in the opposite order so just a second. [LB210]

SENATOR GLOOR: We may use that clock system. [LB210]

SENATOR HARR: Mr. Chairman, members of the Banking, Commerce and Insurance Committee, my name is Burke Harr, H-a-r-r, and I am the state Senator from Legislative District 8, the true midtown of Omaha. LB210 would add procedures to the Uniform Code, Article 9 by which victims of unauthorized financing statements filing can obtain relief. Typically individuals are identified without authorization as debtors and financing statements filings with the Secretary of State for the purpose of harassment or retaliation. The victims are often public officials who must expend considerable resources in order to have the filing records corrected. This bill would establish procedures by which an individual who believes they are improperly identified as a debtor on a financing statement can file an affidavit with the filing office seeking termination of the statement with regard to that singular financing statement. The bill would further establish procedures by which a secured party of the record identified on the financing statement as to which the termination statement has been filed under the provisions bill, may bring an action in district court to challenge the termination of the statement. So what this does in reality is, if I am--make up a name--Mickey Mouse is very upset with what I've done. Mickey Mouse comes in and files a lien against me personally for \$1 million. It's probably going to be pretty self evident that that is not a valid financing statement. At which point then I can go and say, hey, this isn't...to the filing office and say this isn't valid. At that point there would be a termination, and it would say per the statute so that there would be notice to anyone who came afterwards that hey, this was filed...this was terminated per a fraudulent filing or believed fraudulent filing. If that secured party then says, no, no, no, Burke owes Mickey Mouse \$1 million, they can go to district court and then they return...after a hearing in the court it would be determined that, in fact, that was valid. I owe Mickey Mouse and Disney \$1 million for acting as a character without permission. And then you would retain your place in line

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as far as order. So fairly simple bill, but we have a real problem with people who go in and maliciously harass mainly elected individuals. It prevents them from getting financing on homes, cars, it can affect student loans, and so we felt it was necessary to have a remedy of this problem, and that's what this bill does. And I would entertain any questions you may have or comments. [LB210]

SENATOR GLOOR: Thank you, Senator Harr. Are there questions from members? Senator Schumacher. [LB210]

SENATOR SCHUMACHER: Thank you, Chairman Gloor. Thank you for introducing this, Senator Harr. It is a thing that everyone is struggling with a little bit. Some questions. Anyway, I understand the basic procedure being that somebody tries to file something, somebody comes in and says, look, this is not right. This is harassment... [LB210]

SENATOR HARR: Uh-huh. [LB210]

SENATOR SCHUMACHER: ...whatever, and you file this affidavit. And then if the original filer feels that that's not true... [LB210]

SENATOR HARR: Uh-huh. [LB210]

SENATOR SCHUMACHER: ...they can have a court battle over it. But some of the timing in here we maybe need to discuss a little bit so we're all clear on it. [LB210]

SENATOR HARR: Okay. [LB210]

SENATOR SCHUMACHER: On page 4, at line 7 it says that "A secured party of record identified in a financing statement...may, before, on, or after the termination...takes effect, bring an action..." So how long afterwards do they...would they have? I mean, the public official or whomever comes in and objects and files this and how long do you got to sit on pins and needles? Should there be a time frame in there? [LB210]

SENATOR HARR: Good question. Well, first of all I think--and I forgot to mention this--I am bringing this on behalf of the Secretary of State and we worked with his office, and with the uniform law committee, and also with the bankers to come up with this resolution. I want to thank them all for all their hard work. So you're asking how long does that Mickey Mouse have to sit on pins and needles before it's challenged? [LB210]

SENATOR SCHUMACHER: Well, I mean, it says that the secured party.. [LB210]

SENATOR HARR: The secured party...yeah...in my scenario that would be Mickey Mouse, correct? [LB210]

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SENATOR SCHUMACHER: That would be Mickey Mouse. [LB210]

SENATOR HARR: Yeah. [LB210]

SENATOR SCHUMACHER: But Mickey Mouse is usually not a bad guy. [LB210]

SENATOR CAMPBELL: Uh-huh. [LB210]

SENATOR HARR: Well, okay. [LB210]

SENATOR SCHUMACHER: Oh, Mickey. [LB210]

SENATOR HARR: Oh, Mickey. He's gone crazy. [LB210]

SENATOR SCHUMACHER: Yeah. So how long do I, as a public official or just somebody who...that Mickey Mouse got mad at, have to wait around? Shouldn't we have a period of time in there that, hey, if you don't bring this action in the courts within X days, it's over? I mean, this almost leaves it open indefinitely. [LB210]

SENATOR HARR: It does. That's a good question. I hadn't considered that. I'd be more than willing to work with you off...later on this. I think the argument is that we don't require the debtor a time period so the idea was probably we don't require a secured party. But I will say this, we can definitely talk about this. And there will be those coming after me who probably can address that issue better than I can. [LB210]

SENATOR SCHUMACHER: Okay, because that if it is truly just a fictitious harassment kind of thing then I would think the sooner we can put some finality to it the better. We just don't want to create a situation where the statute seems to say it can linger on forever. [LB210]

SENATOR HARR: That's a good...yeah. And that's the whole idea behind this to create finality so that if there is a fraudulent filing out there we can get it off that person's financing statement. Or...yeah, UCC. [LB210]

SENATOR SCHUMACHER: Then I do have a question on the definition of financial institution... [LB210]

SENATOR HARR: Where are you? [LB210]

SENATOR SCHUMACHER: ...and that's on page 6, on the...near the line 20. It says basically it's a person in the business of extending credit, including purchasing and brokering and selling loans, and where applicable, holds a license. Well, I would

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suspect there's some people that are in the business of making loans and things that are...don't have to have a license to do so. And so those folks this doesn't cover. So if I call myself the first credit agency of Mickey Mouse land and I file this, this doesn't...is that a way around this? [LB210]

SENATOR HARR: I'd have to think about that a little bit more. I don't know the answer offhand. I see Mr. Hallstrom is here, and this exception was carved out to help the bankers. And I think maybe that question might be best addressed to him. [LB210]

SENATOR SCHUMACHER: Yes. Thank you, Senator Harr. [LB210]

SENATOR HARR: Thank you, Senator Schumacher. [LB210]

SENATOR GLOOR: Senator Christensen. [LB210]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator, for coming. I did find my answer. I was wondering, but I will ask a little different question to the mailing address. It says to mail to the one that was filed. What if someone didn't see the lien and it's went multiple years and the person has moved? Are you required if you move to change addresses when you file a lien? How does that procedure work, because you may not be able to find the correct person that did put a legitimate lien that you filed to remove? [LB210]

SENATOR HARR: Uh-huh. If you are...this is you're talking about the secured party? [LB210]

SENATOR CHRISTENSEN: Yes, say Mickey Mouse filed it. Now Mickey Mouse has moved. [LB210]

SENATOR HARR: Uh-huh. [LB210]

SENATOR CHRISTENSEN: Does Mickey Mouse have to change his address? [LB210]

SENATOR HARR: Yes, he has a duty. Yes. Yes. [LB210]

SENATOR CHRISTENSEN: Is that the way that works? [LB210]

SENATOR HARR: On the UCC, yes. [LB210]

SENATOR CHRISTENSEN: Okay. Thank you. That was the question. [LB210]

SENATOR HARR: Thank you. [LB210]

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SENATOR GLOOR: Any more questions from committee members? A question I'd have, Senator Harr, if Mickey Mouse has filed against me and I file an affidavit, how comfortable can I be that the GMAC financing organization--when they find out that this has gone in--are comfortable that affidavit clears the way for me? I mean, what does the affidavit do for me that clears my good credit with them? [LB210]

SENATOR HARR: You're the debtor? Again, I think that's where we need to address the time line issue. But if you're the debtor and there is an affidavit filed, that cancels it automatically, okay? So that financing statement at that point is terminated. [LB210]

SENATOR GLOOR: Okay. [LB210]

SENATOR HARR: GMAC is probably--because they're a sophisticated borrower--if they come in and they see that, okay, there's a...they're going to look at the financing statement. They're going to be able to see what that prior financing statement is from Mickey Mouse that asks for \$1 million and probably going to raise a red flag. They're also going to see that there is a termination of that financing statement per the statute. They're going to look up that statute and see what it is. Then they're--this is where we get back to Senator Schumacher's why we probably should have a time limit in there--so that they say, okay, the time limit has come and gone. It's been more than, let's say, 30 days, 45 days. That financing termination is permanent. If not, then they're also going to look at that and say, this is...we can tell it's bogus. And if you're a sophisticated borrower, as GMAC is, you're going to have individuals that that's all they do, full time, is look at people's UCCs and what the priority of the liens are. And they're going to be able to figure out pretty quickly that, in fact, this is a fraudulent filing and to go ahead and lend the amount of money. [LB210]

SENATOR GLOOR: Okay. Other questions? Are you going to want to close, Senator Harr? [LB210]

SENATOR HARR: Yes. [LB210]

SENATOR GLOOR: Okay. [LB210]

SENATOR HARR: Thank you. [LB210]

SENATOR GLOOR: Thank you. Can I see a show of hands of those people who would like to speak to this issue either as proponents or opponents or in a neutral capacity? We have about a half dozen it looks like. Fine. We'll start with proponents. Good afternoon, Mr. Secretary. [LB210]

JOHN GALE: (Exhibit 1) Good afternoon, Chairman Gloor, members of the Banking, Commerce and Insurance Committee. My name is John Gale, J-o-h-n A. G-a-l-e. I'm

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Secretary of State of the state of Nebraska and Chief Business Administrator for the Secretary of State. I want to first thank Senator Burke Harr for introducing LB210. He introduced LB982 for our office last year which dealt with the same issue of bogus filing under the Uniform Commercial Code, and because of the concern expressed from several organizations to do some clarification and enhancement the matter went into an interim hearing for the course of the last year. And working under the guidance of Bill Marienau, your committee counsel, and working with the Nebraska Banking Association and working with the Nebraska Bar Association and working with the uniform law committee represented by Larry Ruth, we've spent the last year working and ironing out this bill to try to ensure that we cover every possible issue that might come up. The draft that you have before us...before you introduced by Senator Harr is the final result of that committee work and task force work, and I'm very delighted with it myself. I've been involved with this issue of bogus filing since 2002. It's not a new issue. The Uniform Commercial Code was proposed by the uniform law committee back in the 1960s in order to come up with a proposed state law that would consolidate and uniform and simplify dozens of laws in each state that contradicted each other. There wasn't any uniformity, and businesses and industries that wanted to grow into national companies needed more uniformity, particularly for security interests of financial institutions. And so the Uniform Commercial Code grew out of that and Nebraska adopted it, as I recall, late in the 1960s. By the 1980s when we were going into the banking crisis there was a new group of people--at that time it was Posse Comitatus. Since that time they've acquired other names, but they're individuals who are many times people under crisis--financial crisis--and they'll do anything desperate to try to avoid their debts. And they'll try to impair the mechanism of proper security and proper recovery of assets in any way they can. And they found an easy way to do that was by filing instruments with the Secretary of State under the Uniform Commercial Code, and those things became known as bogus liens, strawman filings, they have a variety of different names. And so through the 1980s there was a considerable amount of this and then the commercial code was changed in 2001. Article 9 which deals with security interests was revised. And since that time there's a new national group enhanced by the Internet, of course, like so many, called Sovereign Citizens which is a national organization. And our National Association of Secretaries of State has been studying this issue for the last ten years trying to propose and analyze and follow the developments. And as a result, a resolution and report adopted by the organization in 2010 said that states needed to be proactive and adopt laws that were either pre-filing administrative remedies or post-filing administrative remedies so that the victims didn't have to go to court and spend their own money on lawyers and court fees and witness fees in order to get these bogus liens removed. Now what kind of people had those liens filed against them? Well, two years ago one of our federal judges, the U.S. Marshal, an FBI agent all had a multimillion dollar lien filed against them in our office. And I could not refuse to file it because they did the technical details correctly. They gave me no discretion to say, no or to remove it--any process to remove it. So the federal court had to go to the U.S. Attorneys' Office and go to federal court in order to get that lien removed. So it not only

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attacks the credit of those who have had the lien filed against them, but it also clogs up the court if you're going to have a number of these cases that are going to have to be resolved in court. They take time, they take money, and meanwhile there are victims who are getting hurt by it. We've had one young lady as an attorney who was appointed to represent a defendant and didn't get a good result in his mind, he filed a multimillion dollar lien against her. And she didn't have the capacity of the U.S. Attorneys' Office or the federal judge to defend herself, and we were able to avoid that lien. But you wonder who are the people that do this? Well, in Nebraska we probably have 20 to 25 of these that come before us every year. It's not a great number, but the impact they have is hugely significant as a number over time because these are usually liens that are against innocent victims. Okay, how do they get filed? Well, when you talk about financial institutions, banks all file on-line. They are subscribers, and they are allowed by us to be subscribers so any legitimate financial institution files on-line automatically. The bogus filers, because they're Sovereign Citizens, don't believe in the federal government. They don't believe in the power of the federal government. They don't use credit cards. They don't use checks. And we do not allow individuals to be subscribers and file on-line. They cannot file on-line. They have to come into our office and they pay cash. That's just their attitude, that's just their approach on how they deal with these things. So they're pretty identifiable to us. Now when they file, if they've done all the nuts and bolts correctly, it will get filed. And we won't necessarily know that it's a bogus lien or not, although usually it's identifiable because of the nature of what they claim to be the security in that bogus lien or they call themselves a transmitting utility and individuals are never transmitting utilities. But it gives them a permanent record if we allow that to happen. What this does--through the work of Mr. Marienau, and the banking association, and the bar association--this, I think, is a model piece of legislation. I think if Nebraska adopts this, it will become a model for the National Association of Secretaries of State. Now 16 states have tried to deal with this issue, but for the most part they say, well, you can go to court and get it removed. Well, obviously, you can do that if you're a victim if you can afford it. Secondly, you can seek civil penalties. You're not going to find these people to be anything other than mostly judgment proof if you can find them at all to sue them. You're not going to get any civil relief, civil judgment, civil penalties from them. And thirdly, criminal convictions, but the same thing is true again. You're going to have to find a county attorney that's willing to prosecute, you're going to have to find the person in order to have them arrested. And whether or not you're going to ultimately end up in a conviction, that may give you some emotional relief, but it doesn't give you any reparation for all the costs and damages done to you because of the lien that was filed in the first place. So this bill is a fair bill. I think it deals with due process of law correctly because it allows the victim, the debtor who's claimed to owe some huge debt, to file an affidavit with our office on a form that we prepare. Not just any letter or handwritten note, but on a form that gives us the information to give us probable cause to know and believe that this was a bogus filing and allows us to then terminate it. And they still have the right to go to court. And they have the right to go to court--it probably exhausts, Senator Schumacher, in five years

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because a UCC-1 is only good for five years if it's not extended or renewed--and so after five years it's a moot issue anyway if they haven't gone to court to attempt to extend it or to prove up on it. But once we file the termination statement pursuant to the financing...the affidavit, it is removed so that you don't have a victim who is sitting there suffering consequences innocently with no remedy and no way to remove that lien against themselves and against their property. I will tell you from our national studies that prisoners in federal prisons particularly love this process. They have nothing better to do, and they file these bogus liens against the prosecutors, against witnesses, against anybody who they think has done them wrong. And there are many states who just will file those no matter what the amount of the claim is or how outrageous it is. And so these prisoners have an industry in which they file these on a regular basis in states to a much greater degree than in Nebraska. But I would like to see us get a handle on this and stop it before it grows, and let them know that in Nebraska they're subject to a post-filing relief pursuant with due process of law so that we can keep these off of the system. We have hundreds of thousands of these filed with us. They protect our farmers. And farmers couldn't get loans if they couldn't file these documents with us because the security is always untitled property. It's grain, it's equipment, it's inventory and banks have to know they have a first priority, and our system gives them that. But you start allowing the system to break down by allowing bogus filings and it's not a secure, safe, and foolproof system that we have without that kind of interruption. Thank you. [LB210]

SENATOR GLOOR: Thank you, Mr. Secretary. Questions for Mr. Gale? Senator Schumacher. [LB210]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Thank you for testifying, Secretary Gale. The...what do you envision as being the content of the form of this affidavit that your office would develop? Would it merely recite the items that appear on page 3? Basically, would it parrot those items or would it... [LB210]

JOHN GALE: Well, those would probably be essential things. You mentioned or somebody mentioned somebody using a financial name that's a bogus financial name as a secured party. Obviously, there would be some hesitance and doubt in our mind if someone comes in individually and attempts to file a lien on behalf of a financial institution because financial institutions do it on-line. They have such a volume they're on-line filers. Some individual comes in and says they're a financial institution, we have immediately reason to be suspicious, and the victim would raise the same question. So those are the kinds of things that we would like answers to in the affidavit is, why do you claim this to be bogus? What evidence do you have that you don't...that this is not a legitimate claim and that you have no indebtedness or owe nothing to this individual? So that's the kind of thing we...it would be the kind of thing you or I, as attorneys, would consider to be probable cause allegations. [LB210]

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SENATOR SCHUMACHER: Well, if, indeed, then that those are the kind of things that we need an explanation of why, you know, a person thinks it's bogus, shouldn't in the (A), (B), and (C) thing here, we require that in law because we're not requiring under...it says the affidavit needs to say...state that: the individual is identified as a debtor. The financing statement was not filed by a financial institution and was filed by a person not entitled to do so under sections of the UCC. Shouldn't we have a (D) there and state the reasons, because the statute is not requiring anything more than those three things to be in the form your office prepares? [LB210]

JOHN GALE: Well, Senator Schumacher, these are very clever, devious people who have enormous evil intention to do somebody harm. And so to keep up with the cleverness and ingenuity such as the way that they attempt to file as transmitting utilities, I would appreciate having the flexibility to draft a form that we think addresses the variety of issues that could come up. We're certainly intending to protect and preserve the Uniform Commercial Code system. If you say that's all we can ask for, it doesn't give us much discretion to require other information as well. I mean, you're saying you don't want us to have discretion to deal with the affidavit. I'm asking for you to allow us the discretion to draft what is needed in order to get the information we need to file the termination statement. [LB210]

SENATOR SCHUMACHER: But I think we've miscommunicated there. Right now there are only three things that you've got discretion to put in that affidavit: (A), (B), and (C), the things that we just did. There is not a catchall--and anything else the Secretary of State thinks is a good idea. That's not in there. And so that was...and this is the affidavit to be filed by the supposed good guy saying, hey, this is bogus. So that's an issue, and I'm just asking whether or not it would be a good idea to put in there that it give you authority to ask for an explanation of why it's bogus. That's not in here. The other side...the other flip side of this coin is the bad guy doesn't have to at any time in this process file an affidavit. I mean, if you played lawyer here a little bit and you say, okay, the good guy has got to file the affidavit. The bad guy just has got to come in and throw this UCC filing statement on your desk with the appropriate fee. And then the...at some point if we can try to streamline the procedure, shouldn't--in order to preserve his rights--the bad guy, the judgment proof guy who is sitting in the pen or someplace, in order to maintain the validity of this thing, have to file an affidavit so his fat is in the fire for perjury? [LB210]

JOHN GALE: It won't work, Senator. They won't do it. If they don't do it, then nothing happens and then their lien stays on file. You've got to have a method to remove it from the filing. Then if they want to go to court, that's up to them. They're the one who are claiming that millions are owed to them. Let them go to court and prove their claim. Don't make the victim. And it's not good guy, bad guy. It's victim versus fraud. The fraud is trying to do damage and harm to some individual who is a victim. And we're saying the victim can come forward under oath--it can be perjury if they haven't...if they swear

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to this is true--like the oaths you take. We all take oaths, and we're held to those and bound by those. They take an oath of an affidavit and they say, this is true. That gives us probable cause to terminate. I don't think they should have any right to respond at all because they won't. They know they can clog up the system by not responding. If you want to...I would say this to you. This is a result of a year's work between many attorneys who have had a great interest in preserving the institution of the Uniform Commercial Code which preserves the ability of farmers and ranchers to get loans and small businesses to get loans. The lawyers, the bankers, the uniform law committee which drafted this all say this will work. So I'm going to stand by this bill. I'm not going to ask for any changes to it. [LB210]

SENATOR SCHUMACHER: Thank you, Secretary Gale. [LB210]

JOHN GALE: Thank you, Senator. [LB210]

SENATOR GLOOR: Any other questions? Yes, Senator Howard. [LB210]

JOHN GALE: Senator. [LB210]

SENATOR HOWARD: Thank you for your testimony, Secretary. I wanted to know, who besides these nefarious individuals are applying in person for these liens or filing in person for these liens? [LB210]

JOHN GALE: Who are they? [LB210]

SENATOR HOWARD: No. Who besides them? Would it be easier to move everybody to an on-line system so that there wouldn't be the opportunity for these folks to file in person? [LB210]

JOHN GALE: Well, we don't want individuals to be subscribers. In order to maintain the security of the system, we allow financial institutions to be subscribers and to be billed on the volume on which they filed. We trust that that system is secure and honorable, and it has worked 100 percent for us. Individuals who are occasional filers--they're not people who file hundreds a month--occasional filers, and these people are occasional filers. If we get one from a prison in Nevada, it may be the only one we get in ten years. If we have local people filing, many times they're familiar faces to us so we don't want to open that. It just opens up a whole bunch of new problems if you start allowing individuals to be subscribers. And then these things will start coming on-line and we will not be able to capture them or transfer them. You see, there are other reasons we can reject these. And many times they get other things wrong and we can refuse to file them. So for example, they love to use the same name in small letters--small case--one way and large case in the other, and they think it's a different person. They think they're going to fool us. Well, your laws of this state allow us to reject that. They don't get that

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it's the one in the same person and that the law allows us to refuse that. So we do that whenever we can; refuse them legitimately for other grounds under the Uniform Commercial Code. But when you get something where they check all the right boxes and have all of the right names and we have to allow it to be filed...and we may not always capture that it's a judge, or its a prosecutor, or an FBI agent. And so there has to be some method for those people then to notify us and give us probable cause to terminate that lien without them having to go to court and spend all the money and the time to get it released. So we shift the burden back to the filer. If they think they have a good cause, well, let them go to court like anybody else who thinks they have a good cause in which they can claim money. But I tell you, none of these are a good cause. [LB210]

SENATOR HOWARD: Thank you. Thank you, Chair. [LB210]

SENATOR GLOOR: Senator Pirsch. [LB210]

SENATOR PIRSCH: I really do appreciate this bill, Mr. Secretary. And I was wondering, are there possibly any additional measures that may be employed of a preventative or deterrence such as...these individuals by and large you've described come to the office and at that...at some point in time in filing it are they asked to show identification or...other than submitting the form, is there some low-hanging fruit, something that can be done that would, I guess, deter them from engaging that or making them... [LB210]

JOHN GALE: The only other issue we face with them, Senator, is a security button that we push whenever they become belligerent and difficult, which is not unusual. They're difficult people. And so we've had to have the Capitol Security come up and accompany them while they were in the office and until they leave. Other than that, I think this gives us the arrows in our quiver between the reasons that have already been cited in law that we can reject, which we'll do in front of them in front of the Capitol Security to say, no, you don't meet the standards. But this gives us the other arrow so the victims can have it removed later. I think we're in good shape. [LB210]

SENATOR PIRSCH: Well, thank you. [LB210]

SENATOR GLOOR: Other questions for the Secretary? Yes, Senator Schumacher. [LB210]

SENATOR SCHUMACHER: When somebody has one of these filed against them, does your office notify the person? Or how, if someone were to file against anyone, what's...how do they know that they've been filed against? [LB210]

JOHN GALE: They are notified, are they not? Don't we send a notice to them? [LB210]

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COLLEEN BYELICK: No. If we realize that it's a bogus filing we do. [LB210]

JOHN GALE: So if we have any questions about it, we will notify the victim. [LB210]

SENATOR SCHUMACHER: Thank you. [LB210]

SENATOR GLOOR: Yes, Senator Crawford. [LB210]

SENATOR CRAWFORD: Just to follow up on that though. So you're only notifying people if it's...if you think it might be bogus, but just in the general practice how do people find out if they have a lien? I mean, in other cases, how would someone find out? [LB210]

JOHN GALE: Well, in all legitimate cases when the financial institutions are filings these thousands a month, the debtor receives documents of the loan when they make the loan. So they know about it and they know it's going to be filed. They sign off on the document. So these that come in from people filing personally is a pretty small percentage of the total. And if it appears in all ways to be legitimate, we know that the debtor has copies of the underlying...there's an underlying note and underlying security agreement underlying that document. So there's a presumption, I guess, of honesty and integrity to the document that the person knows about it. If they don't know about it, it'll show up the next time they apply for a loan and somebody will say, hey, there is this other one on the record. What do you know about that? So it will get discovered eventually if it's bogus, but ordinarily our staff has a pretty good idea when they're bogus. There are just things that give them away. Although there are times that we know they're bogus and we have to file them anyway just because of the law. [LB210]

SENATOR GLOOR: Senator Campbell. [LB210]

SENATOR CAMPBELL: Thank you, Senator Gloor. And thank you, Secretary, for your testimony today. Your response to Senator Crawford would say that most times the office picks up that this is a bogus filing and notifies the people that might be there, but it's not every time. So it would seem to me that the "not every time" would go against some kind of time limit because you wouldn't want to say, well, you only have 30 days to come back. And if your office hasn't notified the person, they would never know and their chance would go away. Because Senator Schumacher had asked whether we need to put a time limit that the person could respond and say, this is bogus and file. But if they're not even notified...if the elected official, for instance, didn't know about it, I would want plenty of time for that person to find out somehow. [LB210]

JOHN GALE: For the victim to file their affidavit? [LB210]

SENATOR CAMPBELL: Correct. Correct. And if we put a time limit, that victim may not

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know that. Would that be true? I mean, if you missed notifying somebody? [LB210]

JOHN GALE: Well, honestly, it's going to show up on their credit record. Everyone seems to check their credit record on a regular basis for one thing or another. Most everybody is borrowing money or borrowing on credit cards for one thing or another, so it's going to show up on any kind of a credit report. And it's also going to show up any time they go into a bank or a financial institution and borrow money. It seems like there's a pretty fair chance they're going to find out about it. And that's what we're trying to protect and preserve is their credit and their ability to make that next transaction when they get there. Am I missing anything? Can I ask my general counsel to respond to that, Senator Campbell? [LB210]

SENATOR CAMPBELL: Sure. That would be fine. [LB210]

COLLEEN BYELICK: I think maybe some of the confusion is... [LB210]

SENATOR GLOOR: We need you to come up to the microphone so we can get it for the...please. [LB210]

COLLEEN BYELICK: Sure. For the record, my name is Colleen Byelick. It's C-o-l-l-e-e-n B-y-e-l-i-c-k. I think maybe some of the confusion...I think we want to let the debtor file this affidavit for the life span of the filing which is five years. I think maybe some of the suggestion is that once that original secured party gets notice that a termination statement has filed, should there be a time constraint on how long they get to take it to court? So I think maybe that's where a time frame would run. [LB210]

SENATOR CAMPBELL: Got it. So in other words, we're talking about the bad guy here having some time limit in which they could bring this forward. [LB210]

COLLEEN BYELICK: Right. [LB210]

SENATOR CAMPBELL: Got it. Okay. But otherwise the victim would have plenty of time. [LB210]

COLLEEN BYELICK: Right. And they do...you know, the initial financing statement is good for five years, and then it can be continued six months prior to that five-year expiration which you would hope that most of the time the bad guy has forgotten about it within that five-year window. So eventually these will kind of fall off the record after that five-year period. [LB210]

SENATOR CAMPBELL: That's helpful. [LB210]

SENATOR GLOOR: Thank you. [LB210]

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SENATOR CAMPBELL: Thank you, Mr. Secretary [LB210]

SENATOR GLOOR: Thank you. Since we...were you going to provide your own testimony? [LB210]

COLLEEN BYELICK: I was not planning to, but if you have any other questions I can... [LB210]

SENATOR GLOOR: That's what I was going to say. Since we have you seated there, does anybody have any further questions? Thank you for clarifying that. [LB210]

COLLEEN BYELICK: Thank you. [LB210]

SENATOR GLOOR: Mr. Secretary, did you have any further comments you wanted to make? [LB210]

JOHN GALE: Thank you, Mr. Chairman, members of the committee. It always pays to have good counsel. Thank you. Thank you. [LB210]

SENATOR GLOOR: Thank you. Other proponents? [LB210]

ROBERT HALLSTROM: Chairman Gloor, members of the Banking Committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB210. One of the advantages of being somewhat long in the tooth and gray in the temple is that we've dealt with these issues for going on 30 years and been in the legislative arena trying to consider a fix for probably 20 or 25 of those years. I will suggest that the bankers have been reluctant to come to the table over that period of time, and the reason is twofold. Most of the solutions have involved allowing the Secretary of State the discretion to refuse a filing up front. We were very reluctant to go along with that type of approach, and to the Secretary of State's credit and the other parties we've disbanded that particular approach. And the second issue is on the back end of the transaction. We are interested in making sure that the record accurately reflects the status of any liens. And so the ability to terminate financing statements that shouldn't have been terminated that then appear to be a clean record for a second lienholder checking the record were things that were very much a concern. I think through the hard work, and many thanks and kudos to Mr. Marienau for his efforts in putting up with all the give and take that took place in this process, we've come up with something that seems to fit the ticket in terms of addressing the issue of having a debtor with the right, through the affidavit procedure, to come forward and file something of record that is going to lead the Secretary of State to have the ability to file the termination statement while still providing the secured party of record the opportunity and, in terms of having referred to the

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secured party of record as the "bad guy," putting the impetus or the emphasis on that person having to come in and go to court to overturn that termination. The one key factor in this, that goes hand in glove with what we were talking about from the banking industry concerns, is the fact that this affidavit process will not apply to financing statements that are filed by financial institutions so that there will be no removal of record of anything that indicates that it was filed by a financial institution. Senator Schumacher, I would suggest a good issue raised with regard to the definition of "financial institution." Senator Harr handed off to me to address this issue and I would suggest, a little bit tongue in cheek, that our only interest is that the definition of "financial institution" include traditional financial institutions. So we were not focused on the part of the definition that you outlined on page 6, lines 19-24, but I would suggest that from our perspective, that is not essential to the bill. I think that there is a potential that if you don't put in there "regularly extending credit" that you could possibly have someone try to argue that they are a financial institution from just having done a de minimis amount of financing transactions. One of the issues, for example the mortgage licensing law in Nebraska, there is an exemption under both federal and state law if you don't do more than five loans. So there is a recognition that there has to be some regular extending of financing that might be a aspect that the committee would like to look at and Senator Harr. [LB210]

SENATOR GLOOR: Thank you. Questions? Senator Schumacher. [LB210]

SENATOR SCHUMACHER: So you're not lobbying for the first credit of Mickey Mouseville? [LB210]

ROBERT HALLSTROM: I am not. [LB210]

SENATOR SCHUMACHER: Okay. I do have one question with regard to...so we have the lien filed. We have the debtor, who isn't a debtor, come in and file this affidavit on this form, and then we have some unknown period up to five years in which the secured person claiming to be a secured creditor can file a lawsuit. And then it says that "A financing statement" on page 6 "whose effectiveness was terminated under subsection (c) and has been reinstated under...(g)." So this is...it's reinstated because a court agreed with the original secured creditor. "Shall not be effective as against a person that purchased...collateral in good faith between the time" of "the termination statement...and the time of the...reinstating the financing statement, to the extent that the person gave new value in reliance on the termination statement." Are you satisfied the banks are adequately protected there? [LB210]

ROBERT HALLSTROM: Yes, Senator. I think one of the issues that Senator Harr noted in his comments was, he used the terminology "red flag." I think because of this process and procedure we will certainly try to educate our bankers. We hope it's not going to have to be used very frequently, but when it is it obviously has significant impact on the

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debtor. But to the extent that it is, we will hopefully educate our bankers that when they see the termination that has stemmed up from a normal termination filing, but from the Secretary of State having done this special or unique filing, that they will do additional due diligence before they get involved in advancing financing. But that particular phrase is common language that's used to protect those that might not otherwise be able to discern from the record and go ahead and advance new monies either to purchase or to advance credit for the purchase of property that's subject to the lien. [LB210]

SENATOR SCHUMACHER: So just in a little bit of follow up on that then. So in the period, the debtor signs this affidavit saying this is bogus, basically. And now it is...nothing is happening, and we're waiting out the five years unless we make a change to this. And the banker sees this when someone comes in for a loan. To what extent is the fact that the banker might have to if somebody files the action to reinstate it, have to prove up what new value, in reliance on termination...in reliance on the termination statement, might have a court action to be in the middle of in order to prove his...whether or not he has priority? Is that going to impede that person getting a loan or complicate his life and complicate the banker's life? [LB210]

ROBERT HALLSTROM: It could, Senator, but that may tie into the issue that you've raised which I think is worthy of looking at is, if you have the affidavit filed there's a prompt termination. Then the loophole that may exist, if I'm capturing your question correctly, is do we want to move the secured party along who has the right to come in and invoke legal action to reinstate that financing statement if, in fact, the affidavit was bogus? Maybe we had a bad debtor in that case with regard to the affidavit. One thing that we did address was that we've got language in there that says the court is supposed to expedite the proceedings, but we haven't forced the secured party of record to expedite the filing of the action. And that may be a change that's worthy of looking at. [LB210]

SENATOR SCHUMACHER: Thank you. [LB210]

SENATOR GLOOR: Other questions? Thank you Mr. Hallstrom. [LB210]

ROBERT HALLSTROM: Thank you. [LB210]

KATIE ZULKOSKI: Good afternoon, Chairman Gloor and members of the Banking Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying on behalf of the Nebraska State Bar Association. We would like to add our organization to the list of those thanking committee counsel, Senator Harr, and his staff for working on this bill. Those of you that were on the committee last year will remember the process starting--and likely, long before that--but this particular process starting with LB982. And we do appreciate the work that those mentioned have gone to throughout the last year to work out those issues and come up with what we think is a much more workable and

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good piece of legislation to address this real issue. So the Nebraska State Bar Association does support this bill and the work that has been done on it. And I'm happy to answer any questions. [LB210]

SENATOR GLOOR: Thank you. Questions? Seeing none, thank you, Ms. Zulkoski. Other proponents in the audience? Opponents who would like to testify? Those who would like to testify in a neutral capacity. Welcome. [LB210]

TOM JEFFERS: Good afternoon, Mr. Chairman Gloor and members of the Banking Committee, my name is Tom Jeffers. I am an attorney here in Lincoln, Nebraska, at the Crosby Guenzel law firm. I'm here on behalf of the Nebraska Cooperative Council. The Nebraska Cooperative Council has as its members numerous farmer-owned cooperatives from across the state that provide agricultural services to agricultural producers. In addition to representing the Nebraska Cooperative Council though, my firm also represents the vast majority of the east Nebraska cooperatives. So I'm here on behalf of the Nebraska Cooperative Council, but I also am expressing concern directly on behalf of these cooperatives. We're here in a neutral capacity because we do think that there's good intent behind this bill. We have a minor issue with the bill which I would like to address with you, and I do believe that there's any number of ways to amend the bill to address this situation. And if we could find such an amendment we would, in fact, support this bill. The primary concern--and I'm going to go back to what Secretary Gale had brought up. He had mentioned the Posse Comitatus--the primary concern that we have is the Posse Comitatus using this bill as a weapon to do the same kind of thing that they're doing with the current filing system. My understanding is under this bill a debtor could file an affidavit. And I believe Senator Harr testified earlier that there would then automatically be a termination filed with respect to a financing statement. Thereafter, the creditor would get notice. The creditor would have an opportunity to go into district court and seek a determination that, in fact, the creditor had a valid filing. The provision we're concerned about is the provision on page 6 that was just discussed regarding the good faith purchaser provision. And so let me give you a scenario that we see as being quite possible and maybe not all that common, but when it does happen it's going to be a big deal for my clients. And that is...and I will tell you, I personally have dealt with Posse Comitatus members in the last couple of years. They do farm, they do handle grain, and sometimes they do some very fishy things in the context of my clients' businesses. So the concern we have is that one of our cooperatives would go and file a nonconsensual lien. It's a statutory lien that would be provided pursuant to Nebraska law where they provide inputs on say an open account. And they go, they file the financing statement, and you get one of these members go and file the affidavit. Thereafter, an automatic termination is filed. Thereafter, I get the call. I go to district court. Well, it's, frankly, up in the air how quickly a district judge would rule on that, and it probably depends on which court you're in. But during the pendency of that proceeding, there's this provision that says anyone that buys the collateral, from the time of the filing of the termination statement until the date of the court ruling, would

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purchase free and clear if they're a good faith purchaser. So the scenario we would have is that we have a financing statement on file with one of these Posse Comitatus members. And, in fact, we do have some members that have those filings with members...with individuals like that. The individual goes and files the affidavit with the Secretary of State. The termination statement is filed. Before we can even get to the court the debtor, who really is acting in bad faith at this point, drives down the street and sells the grain to say Cargill. You know, at that point, Cargill can rely upon this section. They're a good faith purchaser. They looked at the financing statement public record. They saw that there was a termination statement. And while, you know, I can send demand letters to them and say, look, this was a bogus affidavit and it shouldn't have been terminated, they're going to cite to this and say, we were a good faith purchaser, and now my clients all have a problem. So that really--boiling it down to the core--that's the problem we have with this bill. And just to give you a little bit more background about what the cooperatives do, they not only are involved with nonconsensual statutory liens, but they buy and sell grain. So they could be on the receiving end of this problem as well, every time they buy grain. Most times, there's some other name that needs to go on the check whether it be a bank or some other input financier. So the scenario would be where the grain comes in the door, they do the records search, they see a termination statement, they write the check to the individual. And then, you know, weeks, months later they get a letter saying you've converted our collateral. That was a bogus affidavit. The termination statement shouldn't have been filed. We now have a court judgment that says that the financing statement was legitimate and our lien was legitimate. At that point, I'm citing to this section saying my client is a good faith purchaser. I would expect in response, we end up in court. It's quite a burden to put on my client. The third way they've become involved is, again, not as a nonconsensual lienholder, but directly as an extender of credit just like a bank. They don't meet the definition of a financial institution. But I will tell you, more sophisticated farmers actually go into these cooperatives, they sign security agreements, they reach an agreement regarding interest, how much money, and my clients' fund, you know, the springtime inputs that are going into these fields, and so they'll file financing statements. So, there again, we don't have the benefit of the exemption that the banking industry has. So we're concerned that a debtor acting in bad faith would use this affidavit process as a weapon basically to free up his collateral and either refinance a loan or sell the collateral free and clear. And, you know, once the grain is gone, the money is gone. I would speculate that a debtor doing this probably doesn't have the ability to pay back any judgment or anything like that if we were to go directly after them. So with that said, I would take questions from the senators. And, like I said, I do envision this...I mean, I've looked at this and I believe that there are numerous amendments that could be made. Senator Schumacher, you raised an interesting question about the time limit that a creditor would have to challenge an affidavit or a termination statement. That was one of the ways I looked at, you know, potentially revising this legislation. It would be simple to put in a provision that once a termination statement has been filed pursuant to one of these affidavits, a creditor, who is required to receive notice, will have so many

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days--say 120 days--after which to challenge the termination statement. And if they fail to do so, the termination statement is forever valid. That would allow creditors...legitimate creditors getting notice to look at it. They know they've got a window of opportunity. If they truly have credit extended they can challenge it. It would probably require an additional filing with the Secretary of State's office to put other creditors on notice that there's a challenge, but that is one concern that I also have regarding that time frame. I do think there are other ways to amend the bill, and we are working with Senator Harr's office, and he has at least expressed the willingness to listen and look at amendments. So that's part of the reason we're here in a neutral capacity. [LB210]

SENATOR GLOOR: In the interest of time, I wonder if we could move to questions. [LB210]

TOM JEFFERS: Sure. [LB210]

SENATOR GLOOR: Hopefully we might be able to cover it through questions. [LB210]

TOM JEFFERS: Absolutely. [LB210]

SENATOR GLOOR: Let me ask the first question. Are you not comfortable with the scrutiny of the termination process? Because it's not automatic. At least that's my understanding. [LB210]

TOM JEFFERS: Well, see to me, there's a little bit of ambiguity there. The affidavit gets filed and it says the Secretary of State "may file a termination statement." And, you know, if there was a more stringent standard or a more objective criteria set forth where we know that, you know, we're comfortable that if a bogus affidavit is filed by one of these debtors that the Secretary of State is going to reject it, then we probably wouldn't have an issue with the bill. But right now, you know, it's quite possible that a debtor files one of these affidavits and the Secretary of State has no reason to jump into the fight. And they say, well, we'll go ahead and file the termination statement and let the creditor fight the fight. And that's the scenario we're concerned about. [LB210]

SENATOR GLOOR: Okay. Other questions? Senator Schumacher. [LB210]

SENATOR SCHUMACHER: Would it be helpful--I mean, in one respect, the definition of "financial institution" may be overly broad because we don't eliminate the credit agency of Mickey Mouseville--would it be helpful to specify a description of the folks that you represent as being also people that are exempt? [LB210]

TOM JEFFERS: Thank you for that question. That actually is one of the amendments that I have proposed and I believe we've sent over to Senator Harr to review. He just

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received it so I doubt any of you have had an opportunity to review it. But as I said, we've got a number of our clients that extend credit to producers and would meet, for the most part, that definition until you get to the part talking about licenses. They're not licensed banks. So if you were to include in that definition a broader definition that would cover the operations of my clients, absolutely that would "alleviate" (phonetic) our fears and we would have no reason to have a problem with this bill. [LB210]

SENATOR SCHUMACHER: What...do you have some wording that would cover the specific...Senator Harr is indicating you probably do and we probably don't need to consume time on it. The other thing as I understand your concern, is that a debtor could come in and just mimic this language of (A), (B), and (C) and not use the Secretary of State's form because the Secretary of State's form is not mandatory under this language, and set this whole thing in motion. Now that requires your folks to go hire you--and that means legal fees and nobody likes those--to go into court. Is there any functionality to at that point in the proceeding require the--instead of forcing the creditor to run to court--make an interim step where the creditor, in order to preserve this process, has to file an affidavit under penalty of perjury so that if it is a bad guy, they put some fat in the fire--not civil fat, but penal fat--and then we avoid having to force those people into the courtroom because most of them will not expose themselves to a perjury charge? [LB210]

TOM JEFFERS: Well, in that scenario my advice to my clients would be that if the requirement to file a responsive affidavit would stop the effect of this good faith provision, that that would be an advantageous amendment to the bill and it would alleviate their concerns, because at that point you have an affidavit, a termination statement, notice going to my client. My client then would have, I assume, a fairly short window in which to file a responsive affidavit, and if that stopped this ability to purchase collateral free and clear or otherwise encumbered free and clear, then we don't have a concern. [LB210]

SENATOR SCHUMACHER: Thank you. [LB210]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB210]

TOM JEFFERS: Thank you very much, members of the committee. [LB210]

SENATOR GLOOR: Other individuals that would like to speak in a neutral capacity. Seeing none, Senator Harr, you're welcome to close. [LB210]

SENATOR HARR: Thank you. Mr. Chairman, members of the Banking, Commerce and Insurance Committee, thank you for the time today. Thank you for the discussion. We are working with the cooperatives on this. I would just...we're not talking about a great

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deal of cases here. Again, you heard the Secretary of State, who is much more eloquent than I am, who gave a great history of why we're doing this. It's 20 to 25 cases a year. So when these do come in, they are going to be scrutinized very closely. And we're going to...they're going to be able to tell a difference between the credit advisors of Mickey Mouse land versus a legitimate co-op. They also...it's "may," it's not "shall" file...this language. I do agree that we could probably tighten the definition of "financial institution" to include the cooperatives, however, they do extend credit. So you have that. I would also argue given the scenario, if I were the person filing the fraudulent affidavit who was the original debtor, you're not going to get money from anyone ever again going forward. You may have won that one time, but you are never ever ever ever getting back together again with anyone who lends you money because that notice is going to go out that this person does what they're doing. So, yes, it's a valid concern and we need to address it, and we are going to work on it. We're going to work on how we can, but I also want you to realize that this is a big problem we have. Twenty to twenty-five people and if you're on the receiving end of it, you feel very, very powerless. And so we're trying...and you're being abused by a system. So what we're trying to do is look at the system, look at the abuse, and figure out how we can fix that without creating new forms of abuse. Any time there's any system, there's going to be an abuse. I don't care what that system is. We see it every day. So, yes, there may be some point in there, but you look at the reality of what's going to happen in real life. If you file a false affidavit and you sell that grain, you are never going to borrow, you're never getting a red penny from anyone else ever again. You are persona non grata, I would argue. And then also when I am, again, if I am the Cargill who is buying that grain and I'm going to look and see what financing statements are filed against that individual, and I'm going to see that, oh, okay, I know that I do a lot of work with co-op from wherever. I know they're legitimate. So I'm going to say, wait, wait, wait. This says it was filed fraudulently. I know John over there. I might pick up the phone and say, was this fraudulently filed? Or probably more likely they're going to say, I actually think given what I know...and these are, again, sophisticated borrowers. These are sophisticated buyers. These are people...this is not, you know, John Q. Public off the street. These are sophisticated people who make their living making sure that financing statements are done properly. So they're going to look at that and they're going to say, I'm going to follow up on this; and probably have a duty to follow up on that. And so you can't act in good faith if all you do is look at that, I would argue. And I would probably make a record to that effect on the floor that there is a duty if you are buying when there's a termination, to make sure that that actual termination...where we stand in the process. I think Senator Schumacher's recommendation that we do have a shorter window for someone to appeal, that a notice has to be sent out probably to the address of the secured party, and from that date they have 30-45 days--probably a very valid idea. And I would be willing to work with his office on that, obviously, Mr. Marienau and anyone else. But this is a very good law...bill and I think it's very needed. We have a lot of people abusing the system and we must...we've tried for 30 years, we brought all the powers to be together, and I think we finally found a good solution. And we can't let

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perfect be the enemy of good. So with that, I would ask you to please advance LB210 with amendments that I will be bringing, I would assume, within the next day or two. Thank you. [LB210]

SENATOR GLOOR: Thank you, Senator Harr. That closes the hearing on LB210. We'll now move to LB209. Senator Harr. [LB210]

SENATOR HARR: Well, thank you very much. Thank you, Senator Gloor, members of the Banking, Commerce and Insurance Committee. My name is Burke Harr, H-a-r-r. I am from Legislative District 8 which is located in midtown Omaha. This was a bill brought on behalf of...I brought on behalf of the Bar Association. This is what we in the business refer to as cleanup language. What happened is we reviewed our statute a number of years ago and where we had requirements for county and state filings, we went through and said let's just make it with the Secretary of State. And that's what we did on UCCs which we just had a hearing on. What this does is say we're going to treat trade names the same way. A trade name, also known as a trading name or a business name, is the name which a business trades under for its advertising and selling purposes that is different from the legal name in its articles of incorporation or other organizing documents; LLC documents, for example. An example of trade names are the names...the name, well, what we used to call Kodak, but the company's legal name was actually Eastman Kodak Company or McDonald's whose legal name is McDonald's Corporation. A company may use a trade name for advertising and trading purposes. It is often the name the general public sees on signs, the Internet, and advertisement. So if someone wants to find the actual registered business they are working with, the Secretary of State's office would be the place they would look for such information. No one really looks on a county level. And so it's a quicker, easy, more efficient...because you have everyone in the state. So what we're doing is eliminating the need to go to every county. And it's a belt/suspenders issue, and the question is if the belt works why do you have suspenders or vice versa? And so we've chosen to make it the state the place of registration. It's very simple, like I said. The intent of LB209 is to streamline the statutory requirement for the registration of a trade name. The current law, (section) 87-219, requires that every duplicate of the registration of a trade name be published by the applicant once in the newspaper of general circulation published in the city or village where the business is located, or, if there is none in the newspaper of general circulation in the county. This requirement is intended to give notice that somebody is using a trade name. LB209 did not change this intent or requirement. Rather, the statute goes on to say that it has to be published with...there has to be proof of publication. It's just filed with the Secretary of State or the county clerk. We're eliminating the need for a county clerk. It's just file with the Secretary of State that proves that, hey, this company has gave proper notice where it's located that it's going to do business. Like I said, it's a streamlining issue. We're just taking it from eliminating that need to file with the county clerk. And I would be open to any questions you may possibly have. [LB209]

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SENATOR GLOOR: Senator Harr, I'm always interested in history. And why do we think the bill was established this way? Is this an anachronism that goes back to the days when getting to the Secretary of State's office was...needed to be physically done or done by letter or Pony Express or what's... [LB209]

SENATOR HARR: Yes. Yes. It was very common. That's exactly right. There was a time and date when all businesses...most businesses were within a county, maybe a state level--hardly ever any national businesses. Obviously, businesses have evolved. As we learn how to do something better or the best way, we find that you generally centralize that. Meaning and so there are less and less county and state owned, and it becomes larger, multinational...national, multinational companies. So there are fewer county, but back in the day, that's how things were done. And you always knew who your county clerk was, and you went down there. Now with the aid of technology and with the changes in our economy, it's much better and more efficient to have it on a state level. Thank you for that question. [LB209]

SENATOR GLOOR: Okay. Thank you. Other questions? Senator Carlson. [LB209]

SENATOR CARLSON: Thank you, Senator Gloor. I'm going to go back to the other bill since I have prerogative of doing that, because I think that LB210 is a good bill. That's not the point. I think you said something in your closing that maybe went in the opposite direction. So just clarify it if you would. [LB209]

SENATOR HARR: Okay. [LB209]

SENATOR CARLSON: You made the statement that this only happens 20 to 25 times a year. Then you said, I think this is a good bill because a lot of people try and take advantage of this. [LB209]

SENATOR HARR: Uh-huh. [LB209]

SENATOR CARLSON: So how does 20 to 25 equate with a lot of people trying to take advantage? Is the 20 to 25 probably a...and if it's 10, it doesn't make it a bad bill. [LB209]

SENATOR HARR: Yeah. I would say if you are one of the 20, you're a lot. Kind of like the old statement about a depression is when your friend loses a job...or a recession is when your friend loses a job. A depression is when you lose a job. Similar here. Twenty to twenty-five isn't, in the grand scheme of things, a lot. But it is...number one, when it affects you, as you said. But also it's probably one person. Twenty, twenty-five people filing liens and they may file more than twenty to twenty-five liens. But it's 20-25 people who are doing it and they file multiple. [LB209]

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SENATOR CARLSON: Good. Thank you. [LB209]

SENATOR HARR: Yeah. It's not a huge number, but it is a number out there and it creates concern. And it ruins the integrity of the whole filing system which we do not want to do. Thank you for that question letting me clarify. [LB209]

SENATOR GLOOR: Senator Schumacher. [LB209]

SENATOR SCHUMACHER: Thank you, Chairman Gloor. Just to build a little legislative history, Senator Harr. For...I see what might be a transitional issue here. For a trademark that is filed within 45 days of the effective date of this act. [LB209]

SENATOR HARR: Uh-huh. [LB209]

SENATOR SCHUMACHER: What rule applies? Do they have to file with the county clerk or can they blow that off? [LB209]

SENATOR HARR: Let's see. And you are on...where are you within... [LB209]

SENATOR SCHUMACHER: I'm in 209, on...well, I guess it's... [LB209]

SENATOR HARR: Page 2. [LB209]

SENATOR SCHUMACHER: Page 2 and 3 also kind of refers to it. So which rule applies to that guy who files 44 days before the effective date of this act? Do they have to file or not, with the county clerk? What's your thoughts on it? [LB209]

SENATOR HARR: Well, as an attorney what I would tell that party is let's go ahead and do a belt/suspender and do it in both places since it probably doesn't cost a lot and it'd sure save a lot of heartache down the road. As a policy maker, I would think if you...well, let me read it. I would think within the first 45 days you probably should file it both places, but after that 45 days and an act under this legislation, you're fine. [LB209]

SENATOR SCHUMACHER: So if you first file it...go down and file your trade mark registration with the Secretary of State and before the effective date of this act, our intention is that you then still have to file with the county clerk's office? [LB209]

SENATOR HARR: Until this takes full effect, yes. [LB209]

SENATOR SCHUMACHER: Can we fix that in any way in here? That doesn't quite seem to be the right outcome even though you're probably right. [LB209]

SENATOR HARR: We can fix that. I'm not sure if it's overly burdensome, but we could

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work on it. But I would prefer to...I think people would rather...let's talk political reality. We fix that, it's going to take a little while, and it moves slower down the line. And the end result it's going to be more than 45 days difference probably, if we file an amendment between the time this legislation passes and in the future. So we probably want to get this out of committee as quickly as possible so it can get on the calendar so it doesn't have to waste a priority or even a year from now if it doesn't pick up a priority. [LB209]

SENATOR SCHUMACHER: Thank you. I think that's sufficient legislative history to qualify the point. [LB209]

SENATOR HARR: Thank you. [LB209]

SENATOR GLOOR: Other questions? Thank you, Senator Harr. [LB209]

SENATOR HARR: Thank you. [LB209]

SENATOR GLOOR: Can I see a show of hands of opponents, proponents, neutral capacity? Just one. Please step forward. [LB209]

KATIE ZULKOSKI: Good afternoon, Chairman Gloor, members of the committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, I'm testifying on behalf of the Nebraska State Bar Association in support of LB209. And again, would like to thank Senator Harr and his staff for introducing this bill and the work they've done with the Bar Association to get this introduced. As Senator Harr stated, this is just simply to change the requirement of where your proof of publication is filed. It does not change the requirement that you need to have a...do that...give notice in the newspaper in the county in which the business is located. It doesn't change the notice requirement at all. It only changes where your proof of publication must be filed to filing that only with the Secretary of State, which is where most other business filings are and the proof of publication are filed. And I'd be happy to answer any questions. [LB209]

SENATOR GLOOR: Questions? Seeing none, thank you. [LB209]

KATIE ZULKOSKI: Thank you. [LB209]

SENATOR GLOOR: Any other proponents? Any opponents? Anyone in a neutral capacity? Senator Harr. [LB209]

SENATOR HARR: I'll waive. [LB209]

SENATOR GLOOR: Senator Harr waives closing. And that brings to an end LB209. We will now move to LB147. This bill was introduced by me on behalf of the Department of

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Insurance and my opening will be a very quick introduction of the director of the Department of Insurance, Mr. Ramge. [LB147]

BRUCE RAMGE: (Exhibit 1) Good afternoon. And good afternoon, Senator Gloor and members of the Banking, Commerce and Insurance Committee. My name is Bruce Ramge. For the record, that's spelled B-r-u-c-e R-a-m-g-e. I'm the director of Insurance, and I'm here to testify in support of LB147 which Senator Gloor was kind enough to introduce at the department's request. LB147 would implement a new federal mandate imposed pursuant to 2719(b)(1) federal Public Health Service Act which is part of the federal Patient Protection and Affordable Care Act or ACA, to adopt a process for external review. I have a copy of this section for you. The federal mandate requires state adoption, at a minimum, the consumer protections set forth in the Uniform Health Carrier External (Review) Model Act issued by the National Association of Insurance Commissioners. This model requires health insurers to subject their claims decision making to external review which allows policyholders to get an independent review of adverse decisions in such areas as admission, availability of care, and continued stay. The bill in front of you today adopts these uniform standards for the establishment and maintenance of external review procedures and would assure covered persons have the opportunity for an independent review of an adverse benefit determination. Because Nebraska does not have such a law in place, the federal government is operating the program under the authority of the Affordable Care Act as it does in 11 other states. Nebraska is one of fewer than five states without an external review law. Under current Nebraska law, consumers with serious medical conditions are sometimes denied access to promising treatment regimens when the insurer deems treatment experimental and investigative. Treatment may also be denied because the insurer determines it is not medically necessary or not provided in the proper setting. LB147 would allow insureds to have these denials reviewed by an independent review...party reviewer. LB147 requires that insurers notify insureds of the right to an external review. It sets out separate procedures for standard external reviews, expedited external reviews, and reviews of decisions denying coverage on the grounds that the healthcare service is experimental or investigational. The bill also adopts standards for independent review organizations and clinical reviewers. Nebraska currently has an internal review law requiring insurers to review their decision making internally. That law has been preempted to some extent by federal law. This has led to additional confusion for insurers in complying with state law. There are two levels of internal review required in Nebraska. Under federal law only one such level of review, a first level review, is allowed, and the second level internal review, currently required in Nebraska Revised Statutes 44-7309, would need to be repealed. The bill does that. The NAIC worked on adopting a model to comply with the federal law, and it is important to note that Nebraska served on that committee and received comments on that model from not only other state insurance regulators, but insurers and consumers as well. LB147 imposes no identifiable fiscal impact on the department. The department's role under LB147 is limited largely to assignment of independent review organizations under

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the bill. Insurers are responsible for reimbursing independent review organizations for that cost. Based on information regarding the current federal program in this area, the department expects a very limited number of external reviews to be requested under the bill. Therefore, the department believes this bill to have no fiscal impact. I ask that you advance the bill to General File, and I'd be happy to answer any questions that you have. [LB147]

SENATOR GLOOR: Thank you, Mr. Director. I want to go back to the sentence, "The department's role under LB147 is limited largely to assignment of independent review organizations under the bill." Specifically, what does that mean? What are the mechanics of that? [LB147]

BRUCE RAMGE: Well, first of all, independent review organizations would register with the Department of Insurance. They would basically get on a list of approved independent review organizations. We would make certain that they have received appropriate accreditation through one of the national accrediting organizations such as URAC or NCQA. When an individual then would have an adverse determination under their insurance policy, the insurer would notify them of their right for an appeal. The first appeal would be at the company level. The company would review it. If they then upheld their decision, they would have the notification of the right for this external review. And that notification or that request would come to the Department of Insurance. The Department of Insurance would notify the insurer and assign the case to one of the IROs on a rotational basis. And basically that's how it would work. We would probably also require notification of the outcome. [LB147]

SENATOR GLOOR: So you could have five external review organizations, you could have fifty, but you would rotate it. [LB147]

BRUCE RAMGE: Yes. Correct. Their turn up. [LB147]

SENATOR GLOOR: You know, every time the cylinder rotates the next one is up. [LB147]

BRUCE RAMGE: That's right. [LB147]

SENATOR GLOOR: I'm just curious. Do you hear within...with your counterparts, this is becoming a cottage industry? [LB147]

BRUCE RAMGE: You know, there is...they have an association, National Association of Independent Review Organizations, and when I check their Web site, I notice there's about two to three dozen organizations out there. Whether that many would register in every state, I don't know. I imagine there would be, you know, six to eight in a state of our size. [LB147]

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SENATOR GLOOR: Okay, thank you. Questions? Senator Pirsch. [LB147]

SENATOR PIRSCH: And thanks for that kind of background understanding. So of these two or three dozen organizations, they can't have any affiliations or relationships with any of the insurers? Is that... [LB147]

BRUCE RAMGE: No. That's right. They're totally independent... [LB147]

SENATOR PIRSCH: Okay. [LB147]

BRUCE RAMGE: ...and they would have to have access of appropriate levels of clinical expertise. [LB147]

SENATOR PIRSCH: Uh-huh. Even in states in which they're not currently operating as an insurer? Is that the nature of the independence that's required? [LB147]

BRUCE RAMGE: Yes. Yes. [LB147]

SENATOR PIRSCH: Okay. I appreciate that. With respect to just also the current lay of the land, so...and you noted in here that because--in your third paragraph--because Nebraska does not have a law in place, the federal government is operating the program under the authority of the Affordable Care Act. That program meaning a once...I mean, are we in that kind of transitional area where... [LB147]

BRUCE RAMGE: Yes, we are. [LB147]

SENATOR PIRSCH: ...they're...we're going from the old system into the new system that theoretically the federal government has authority to do the one and then review, but it's not actually being implemented or... [LB147]

BRUCE RAMGE: Yeah. Right now the insurers who have policies that are applicable to the Affordable Care Act are required to give notice of the external review, but the contact then would be someone at the federal level who then administers the expedited, or excuse me, the external review request. [LB147]

SENATOR PIRSCH: So as we speak here today, are there...is there just one level of internal review that insurers are conducting in the state or is it a matter of policy? Because we have the old statute on the book, are there two layers of internal review? [LB147]

BRUCE RAMGE: Because of the way the federal law would supersede the state law... [LB147]

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SENATOR PIRSCH: Uh-huh. [LB147]

BRUCE RAMGE: ...operationally they can only do one level--internal--before external. But our current law specifies two, so it's in conflict... [LB147]

SENATOR PIRSCH: The state statute. [LB147]

BRUCE RAMGE: ...or the state, excuse me. The state statute is in conflict with the Affordable Care Act. [LB147]

SENATOR PIRSCH: Well, and clearly this...I think the courts have established that the feds preempt the state and to the extent that if we have state language on the books that contradicts or doesn't work out with the federal system, it's not operable, it's not legal the courts would say. But I'm just wondering as a matter of what's actually occurring, is there one level of review right now in terms of internal? [LB147]

BRUCE RAMGE: Yes. [LB147]

SENATOR PIRSCH: And then it's going to these IROs as a matter of practice? [LB147]

BRUCE RAMGE: Yes. Yes. And it's our understanding when we speak to insurers that there aren't a large number. Each insurer is maybe having, you know, a half dozen of these a year. So there's not a great number, I think because they tend to work it out in the initial internal appeal. It raises it to a level where they take a closer look at the medical records. [LB147]

SENATOR PIRSCH: Okay. And thank you for...I'm just trying to get a...obviously, there's a transition in place... [LB147]

BRUCE RAMGE: Yes. [LB147]

SENATOR PIRSCH: ...since this...so I just didn't know where we are at in that step. So thanks for explaining. [LB147]

BRUCE RAMGE: No problem. [LB147]

SENATOR GLOOR: And I appreciate Senator Pirsch asking the question. I'd like to flesh it out a little more and that is, so what is the detriment to the department, to the state, by letting the feds do this rather than having the department do it? Because if we don't pass this bill, well, the feds will take care of it. Is that a problem for us? [LB147]

BRUCE RAMGE: Yes. I'd be happy to address that. I think really there's two things that

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make it beneficial for the state to take this on. First of all, from the perspective of the policyholders and the consumers out there, I think it reduces the level of confusion. They're really used to coming to our department. We have a very helpful Consumer Affairs Division that helps people walk through their questions and problems. And then all of a sudden, if now they have to shift from getting help from the Nebraska Department of Insurance and go to a federal agency, it's going to probably cause confusion or...you know, at a time when people are fighting a medical issue, they don't need that extra confusion to deal with. The other thing beneficial for our state agency is because sometimes these types of complaints can give us a good early warning that there may be a company that's operating off track or there's an issue that we feel like we need to be on top of and maybe dig a little bit, do a little more analysis. So it's a good analysis tool for us. [LB147]

SENATOR GLOOR: Okay. Thank you. [LB147]

BRUCE RAMGE: You're welcome. [LB147]

SENATOR GLOOR: Senator Crawford, did you have a question? [LB147]

SENATOR CRAWFORD: Yes, thank you. And thank you for your testimony and your work on this bill. Can you tell us, is the language in this bill and the steps and the processes, are they taken and copied directly from the federal law or did you make some adjustments or changes to fit or adapt to Nebraska in some way? [LB147]

BRUCE RAMGE: Yes. The language in this bill is the uniform model that was developed by the National Association of Insurance Commissioners. And then the federal law, the Affordable Care Act references this law, and we did not deviate them from the uniform model act. [LB147]

SENATOR CRAWFORD: Okay. Thank you. [LB147]

SENATOR GLOOR: Senator Campbell. [LB147]

SENATOR CAMPBELL: Thank you, Senator Gloor. Director, I'm going back to Senator Pirsch's question in that we were one of the few states without an external, but we had in place the dual level. [LB147]

BRUCE RAMGE: Yes. [LB147]

SENATOR CAMPBELL: So did we see that as equal of a protection for the consumer as a single review and that of an external? Was that the idea, that we'd keep it in here and... [LB147]

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BRUCE RAMGE: I think we were fairly early to the game in terms of the agreements model, and it had been in place since the...oh, I'd hate to guess the year because I've been at the department for a long time. But...and I just don't think we ever...because of the two levels, and again, because of the good work of our Consumer Affairs Division, I don't think we ever really saw a tremendous need to go to the external review. And...but I do believe that it provides a greater level of protections out there for some of these instances, such as where there can be difference of opinion on whether it's investigational or experimental. [LB147]

SENATOR CAMPBELL: Exactly. Thank you. [LB147]

SENATOR GLOOR: Senator Carlson. [LB147]

SENATOR CARLSON: Thank you, Senator Gloor and Director Ramge. I think that my question here is probably appropriate, and then I want to take it a little bit further. We talk about the internal review and the external review. What's the difference? [LB147]

BRUCE RAMGE: On the internal review, the insurance company personnel would actually be reviewing the appeal and making a determination. It would be generally separate, somebody different than who handled the original claim. And they would take a closer look at it to see if maybe the claim was denied in error or if they denied a precertification that there are circumstances that should warrant permission of that. And so with the external review, then it would go on top of that after an insurance company's internal review team had decided to uphold that original adverse determination or denial. Then it would go to an external review to make certain that the company was operating up to, you know, up-to-date parameters in terms of appropriate medical practices and that type of thing. [LB147]

SENATOR CARLSON: Who, for example, would conduct the external review? [LB147]

BRUCE RAMGE: There are teams or companies set up especially to do this, and they have medical expertise on staff. They go through a process of accreditation through one of about two different accreditation agencies, URAC, and, I'm sorry, I don't know the... [LB147]

SENATOR CARLSON: Well, having spent many years in the insurance business with life and health insurance, I know that health insurance...the company has a lot of expenses, and I know that they've got to try and control those expenses. But I know from the consumer standpoint that if you're denied a claim, you want all the opportunity you can if you think it's legitimate... [LB147]

BRUCE RAMGE: Yes. [LB147]

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SENATOR CARLSON: ...it should be covered. [LB147]

BRUCE RAMGE: Yes. [LB147]

SENATOR CARLSON: And I have a fear of this whole healthcare bill and the way it might go because one of the arguments is it's going to lower costs. Well, we have to see whether it's going to lower costs or not and that it's not going to be unfair against the older people in our society, including myself. But I have a good friend who's at Madonna right now after a stroke and is in rehab. The original insurance company has stopped coverage. And I don't know whether there was a possibility of an external review of that or not. But you can imagine somebody being at Madonna and if their insurance isn't covering it, that family's going through a really difficult time. And so we don't want to get to a place in our society where we decide, well, somebody's a certain age and we're only going to spend so much, and then that's it. You think this...that could possibly be an example where an external audit would be appropriate? [LB147]

BRUCE RAMGE: I think that it can, because on some of these serious diagnoses people have different medical situations. And rather than having a decision being made on a routine basis, this provides an opportunity for experts to look at that individual situation to see if their medical condition really warrants a special type of treatment or...you know, an example might be an insurance company may require a step therapy in certain pharmaceuticals before someone can get the more expensive drug. But because their condition is fragile, their doctor doesn't feel that they should try those lower-level drugs first. And this would give an opportunity for the physician to express their opinion or for someone with that medical expertise to review that individual's specific circumstances and say, you know, well yeah, they should make an exception and this should be allowed. [LB147]

SENATOR CARLSON: These are difficult areas because from an insurance company standpoint, they should want to keep their expenses as low as possible and still be fair. [LB147]

BRUCE RAMGE: Yes. [LB147]

SENATOR CARLSON: But when it's your family or a friend, then you think, yeah, but you've got to cover this. And so it's a tense situation, and hopefully this could help somewhat. [LB147]

BRUCE RAMGE: I believe it could. [LB147]

SENATOR CARLSON: Okay. Thank you. [LB147]

BRUCE RAMGE: You're welcome. [LB147]

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SENATOR GLOOR: Other questions? Yes. Senator Howard. [LB147]

BRUCE RAMGE: Hi. [LB147]

SENATOR HOWARD: Hi, Director. In section 11 you talk about the IRO's decision is binding unless there...the health carrier has other remedies under state law. Could you give me an example of that? Of when a circumstance would...they would...what other state law is available to the health carrier? [LB147]

BRUCE RAMGE: I'm not aware of any other. I believe that the decision would be binding. And I think that because again this is a model bill not drafted specifically for Nebraska, maybe there are other states out there who have other remedies such as...and I...I'm not aware of any at this time. We could certainly research that and let you know if you would like. [LB147]

SENATOR HOWARD: That would be great. Thank you. [LB147]

BRUCE RAMGE: Okay. [LB147]

SENATOR GLOOR: Seeing no other questions, thank you for your testimony. [LB147]

BRUCE RAMGE: Thank you. [LB147]

SENATOR GLOOR: Can I see a show of hands of proponents...those that would like to speak in one capacity or the other? Only one. [LB147]

JAN MCKENZIE: (Exhibit 2) Just me. Senator Gloor, good afternoon. Members of the Banking, Commerce and Insurance Committee, welcome to our new members. For the record, my name is Jan McKenzie. That's spelled J-a-n M-c-K-e-n-z-i-e. I'm executive director for the Nebraska Insurance Federation. And I'm here testifying in support of LB147--and not specifically to the content of the legislation, but in support of what we believe is a domestic industry--and the companies that are regulated by our Department of Insurance; that everything that we do as an industry is affected by their ability to regulate us and keep Nebraska a strong insurance state; that we support model legislation that they introduce to keep us not only current with what's happening and required by federal law, but also to keep us modernized and on a level playing field, especially for our companies that do business in multiple states. You'll notice from the list that I have given you that we have property, casualty, life, health, title, and work comp members, and we cover the gamut. But, in particular, we are the one member...one group that you will hear from regularly who are Nebraska domestics or have significant regional presence here, such as State Farm. We support the department's efforts to create a business-friendly environment for insurance. It

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continues to be one particular area of possibility for economic development and growth, and we have in the past four or five years until the crash had some other companies who had possibly been looking at redomesticating to Nebraska, but that financial crisis kind of put everybody in a different light. And so basically, it was my opportunity to come before you today and express to you our appreciation for having an industry that works in an environment with a fair regulatory agency, and one where we are not at adversarial positions as is the case in many states. I think Nebraska companies feel fortunate that they have a department that they can work with and is responsive and addresses our company needs when we need them, but is also looking out to create a fair regulatory environment for the business that the companies conduct in the state. And so if you have any questions in that vein, I'd be happy to answer them. [LB147]

SENATOR GLOOR: Are there questions for Ms. McKenzie? Senator Carlson. [LB147]

SENATOR CARLSON: Thank you, Senator Gloor. Jan, it's interesting that you come forward in a positive vein here because you represent companies that have to be concerned about expenses. [LB147]

JAN MCKENZIE: Uh-huh. [LB147]

SENATOR CARLSON: And yet you feel that the external review, for example, and an insured's ability to request that is reasonable. And I'm glad to hear that so that... [LB147]

JAN MCKENZIE: Companies have actually, Senator...the three health companies that are members of the Federation have had those internal review processes, as the Director said, for I don't know how long. I know even though they have them, people get frustrated because as people appeal for something that was not covered, you know, it's frustrating. And I think sometimes this external review will give them a chance to feel like it was taken out of the hands of a particular company that might have a bias and looked at with fresh eyes. [LB147]

SENATOR CARLSON: Are you saying that the three companies you're talking about, they use external reviews? They don't? [LB147]

JAN MCKENZIE: No, I don't know. I don't know that. [LB147]

SENATOR CARLSON: They don't...you don't know. Okay. Thank you. [LB147]

SENATOR GLOOR: But you've just got me thinking of something I should have asked the Director, although maybe it's better to ask you. The question is, you're still going to, within individual companies, have some sort of internal review process, correct? [LB147]

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JAN MCKENZIE: Correct. Correct. [LB147]

SENATOR GLOOR: I mean, you're not scrapping what you currently do which is available to sit down and talk with clients, patients, and whatnot. [LB147]

JAN MCKENZIE: It's my understanding, Senator, that that will continue. But, honestly, I would have to double-check, but I can't imagine that the companies would change that first appeal process. That still is in state law and I don't believe that part is being repealed in the bill. [LB147]

SENATOR GLOOR: Oh, I think it is. I think we are talking about...but the question there, ultimately, is that one of-- I'll call it an expedited review--that is that the issue here is that that can't be held up for a prolonged period of time if somebody makes the request. [LB147]

JAN MCKENZIE: Correct, as I read the bill also. [LB147]

SENATOR GLOOR: When you get to a certain stage, it automatically goes to that external review and no longer continues to be, for want of a better term, held up within the review processes of the insurer. [LB147]

JAN MCKENZIE: That's the way I read the bill, too. [LB147]

SENATOR GLOOR: Okay. I may get some further clarification on that for my own edification before I present this to the body. [LB147]

JAN MCKENZIE: I would highly advise that. [LB147]

SENATOR GLOOR: Yes. Senator Crawford. [LB147]

SENATOR CRAWFORD: Thank you, Senator Gloor. Do you know from any of your members if they've had experience in this current transitional period with federal external review processes? [LB147]

JAN MCKENZIE: I do not, Senator. [LB147]

SENATOR GLOOR: Other questions? Thank you. [LB147]

JAN MCKENZIE: Okay. [LB147]

SENATOR GLOOR: Other proponents? Other opponents, just in case somebody changed their minds? Anybody in a neutral capacity? And I waive closing, so that will close the hearing on LB147. We'll now move to LB336. Senator Carlson. And, Senator

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Carlson, you're welcome to come back and join us after you've opened. [LB147]

SENATOR CARLSON: Thank you. Good afternoon, Senator Gloor and members of the committee. I am Tom Carlson, spelled C-a-r-l-s-o-n, representing District 38, here to introduce LB336. LB336 would require all rates for sickness and accident policies subject to the federal Patient Protection and Affordable Care Act to be approved by the Director of Insurance before they're issued in Nebraska. The bill specifically includes rates charged by out-of-state association group plans other than a certificate that's issued to an employee under an employee benefit plan of an employer headquartered in another state. In that case, the originating state would regulate the plan and we don't care to avoid...we want to avoid duplication. The federal Affordable Care Act requires states to approve health insurance rates, and if a state fails to do so the regulation falls to the federal government. Now, I'm not really in the habit of when I present a bill and I go back and sit down that I ask questions. So I'm going to tip off Director Ramage here, and maybe he'll answer this question. Some of the rest of you may have had it anyway. In his testimony he talks about that he has responsibility to look at unreasonable increases in premiums for health insurance coverage. And having been in the industry where I've sold insurance, I've been able, I think, to identify some plans that come along where I would say, this premium isn't high enough. They cannot cover what they say they're going to cover with this premium. And so I would hope that he kind of would handle that as a question as well. And does he have responsibility to check out plans in case the premiums look like they're not adequate to cover what they say they'll cover? And with that, Director Ramage will follow me, but I'll be happy to answer questions that you may have. [LB336]

SENATOR GLOOR: I think you can be assured that at least one committee member will ask that question on your behalf. So are there questions for Senator Carlson? Thank you, Senator Carlson. [LB336]

SENATOR CARLSON: Okay. [LB336]

SENATOR GLOOR: Proponents? [LB336]

BRUCE RAMGE: (Exhibit 1) Good afternoon again. Good afternoon, Senator Gloor and members of the Banking, Commerce and Insurance Committee. My name is Bruce Ramage. For the record, that's spelled B-r-u-c-e R-a-m-g-e. I'm the Director of Insurance. I'm here to testify in support of LB336 which Senator Carlson was kind enough to introduce at the department's request. LB336 addresses regulation of insurance rates and forms for policies under the federal Patient Protection and Affordable Care Act or ACA. Section 2794 of the Public Health Service Act as added by the Affordable Care Act, a copy of which I have for you, requires the Secretary of Health and Human Services in conjunction with the states to establish a process for review of unreasonable increases in premiums for health insurance coverage. The Center for Medicare and

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Medicaid Services or CMS, will adopt a state's determination regarding the reasonableness of a proposed rate increase if the state meets the criteria for an Effective Rate Review Program. As part of those discussions, federal officials indicated that in evaluating these criteria Nebraska would be in a stronger position if it were a prior approval state. The federal position was based on statements from Secretary Sebelius in May 2010. Existing insurance statute was broad enough to accommodate this reading, but the bill before you today includes specific prior approval language to simply clarify the point. In a letter dated July 1, 2011, a copy of which we have provided to you, we were informed that the federal government had determined that Nebraska had an overall Effective Rate Review Program. However, due to the federal government reconsidering their overall national position on association health insurance plans and their rating on October 19, 2011, the federal government determined that we did not have an Effective Rate Review Program for associations not domiciled in our state. A copy of this letter is in the materials we have provided you. Further discussion with the federal official overseeing our efforts revealed that we did not need to take jurisdiction over such plans issued to an employee under an employee benefit plan of an employer headquartered in another state where the policy is lawfully issued in that state. This avoids a circumstance where, for example, a policy is issued to an association of Iowa employers which is joined by a Council Bluffs employer with employees in Nebraska. That policy is currently regulated in Iowa, and we see no need to also regulate it. In addition, dual regulation in this area would lead to unnecessary confusion. Out-of-state associations provide an important means for coverage in Nebraska's market. Under current federal law, the federal government now reviews those out-of-state association plan rates. We believe it would be better if that oversight is done at the state level. State oversight improves consistency for insurers and consumers alike and adds clarity to an otherwise confusing and bifurcated approach. I ask that you advance the bill to General File. I would be happy to answer any questions you have. And the first... [LB336]

SENATOR GLOOR: A question comes to mind, yes. [LB336]

BRUCE RAMGE: Yes. A question comes to mind. Okay. Would you like me to go ahead and...yes. [LB336]

SENATOR GLOOR: Sure, would you please. [LB336]

BRUCE RAMGE: All right. In terms of...this also falls to one of the reasons why I believe it's better that the review be done here at the state level. And that's because we are the ones that are primarily responsible for company solvency, and we have the ability to review those companies' financial statements and determine if they are in a position where...that it's appropriate for them to issue those policies taking into account adequacy of premium as well as that it's not overcharged. [LB336]

SENATOR GLOOR: Let...the adequacy of premium, I'm assuming, you'd look at both

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ways. That is, somebody who freezes their...says they freeze their rates for two or three years may raise some suspicions that are they, in fact, overreaching in terms of trying to get market share and, in fact, jeopardizing their financial status. So it could work both ways? Not just... [LB336]

BRUCE RAMGE: Yes. It could work both ways. Some of the smaller health carriers have dropped out of the market for this very reason, because now there's this requirement of meeting specific loss ratio requirements. And if a company isn't able to fit their administrative expenses in what remains, then it's just not going to be feasible for them to stay in business. So we're able to evaluate that because of the financial statements that they file in addition to each rate filing that will have the actuarial justification to show, yeah, these rates are fair because we're paying out this many dollars in claims. [LB336]

SENATOR GLOOR: Okay. Other questions? Senator Schumacher. [LB336]

SENATOR SCHUMACHER: Thank you, Chairman Gloor. Just a couple of different questions here. On this...when you get presented with this possible policy, and then you have a period of time in which to either give your approval or disapproval, and the standard here indicates that you can disapprove it if it contains "benefits that are unreasonable in relation to the premium charged or any provision which is unjust, unfair, inequitable, misleading, or contrary to...law." Those are really hard things to figure out any standard for. What standard do you use when you say, whoops, this looks unfair? [LB336]

BRUCE RAMGE: In terms of the policies now that will be covered by the Affordable Care Act, we'll be evaluating those coverages to make certain that they contain the benefits that are established in that essential health benefit requirement. And those rules are being finalized at the federal level as we speak. [LB336]

SENATOR SCHUMACHER: So would it behoove us, since we're tailoring this particular provision to the Affordable Care Act, to be more specific here and say just what you said instead of these words that are really hard to understand? I mean, would that suffice do you think? [LB336]

BRUCE RAMGE: Well, I think that these are terms of art that the industry is going to understand. They're going to know that if they file a policy that doesn't comply with the Affordable Care Act or the Essential Health Benefit Act, it's not going to get approved. And, I mean, so personally I feel that the wording is sufficient for reaching, you know, the point that's being made. And then it also is applicable...it can be applicable to the policies that are not subject to the Essential Health Benefit Act, such as the dental and the vision policies, that really aren't as specified in terms of what the benefits must contain. [LB336]

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SENATOR SCHUMACHER: So let's go procedurally a little bit further along. You say, it looks unfair to me. No dice. [LB336]

BRUCE RAMGE: Yes. [LB336]

SENATOR SCHUMACHER: And the insurance carrier says, it is fair. [LB336]

BRUCE RAMGE: Yes. [LB336]

SENATOR SCHUMACHER: And now they go to a hearing before the banking department or, my mistake, excuse me, the insurance department? [LB336]

BRUCE RAMGE: It would be an administrative hearing that's governed by the Administrative Procedures Act. [LB336]

SENATOR SCHUMACHER: Who's presumed to be right there? Who's got to prove what's fair or unfair. Is that the department presumed to be right or the insurer presumed to be right? [LB336]

BRUCE RAMGE: I don't think there's a presumption at either, as I think that both sides present their case and then... [LB336]

SENATOR SCHUMACHER: I should say, who has the burden of proof? That probably, legally, is a better word. [LB336]

BRUCE RAMGE: Who would have the burden of proof? I believe they both would. I think that the hearing officer would have to be impartial and they would hear both sides and take the matter under advisement. [LB336]

SENATOR SCHUMACHER: And then assuming that somebody still disagrees with the hearing officer, it would go on to the court procedure. And there who has the burden of proof? [LB336]

BRUCE RAMGE: Yes, district court. That...I'm sorry, that's...I'm not an attorney so I'm not able to answer that. [LB336]

SENATOR SCHUMACHER: Okay. All right. Then one follow-up question. This quotation which really isn't part of the bill anywhere, but it is an interesting quotation, "To establish a process for review of unreasonable increases in premiums for health insurance..." policies. So this, theoretically, gives the department ability to establish a process for review of unreasonable increases in premiums for health insurance policy. To the extent you're a state agency and the state of Nebraska takes deliberate action to

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increase the cost of medical care, do you think that still meets the standard because we're reviewing ourselves? [LB336]

BRUCE RAMGE: There are going to be rate filings that are...meet the definition of unreasonable under federal standards yet are permissible, because the actuarial cost of those benefits supports those rates. So if...and this coming year is a good example of that, because the cost of health insurance is going to go up. And in many cases, it will be more than the ten percent threshold that the federal government deems unreasonable. But yet, in order to maintain the solvency of those insurance companies and that they can stay in business and provide these services, it's very likely that they'll have to have more than a ten percent rate increase initially. So, again, this all goes back to reviewing the actuarial justification. But at the same time, wherever possible, keeping those rate requests within the threshold where they maintain...where they're considered reasonable. [LB336]

SENATOR SCHUMACHER: Talk to me a little bit about this ten percent business. What...if the cost of the insurance goes up more than ten percent, what happens then? What penalties or what rules come into play? [LB336]

BRUCE RAMGE: It's the federal government can deem those rate increases as unreasonable. It's a label they put on it. However, they can't prevent the insurance companies from charging that rate because they don't have rate approval authority. [LB336]

SENATOR SCHUMACHER: Okay, now. Who eats it? Who eats the unreasonable cost? I mean, does...I mean, they...if it's unreasonable, what happens? [LB336]

BRUCE RAMGE: It's just...that's just a...that's a label. That's a label. If it's not...if it's unreasonable and also not actuarially supported, then we would decline it. We would deny it. [LB336]

SENATOR SCHUMACHER: So but if...I'm trying to understand this. If all of a sudden it looks like healthcare costs are going up because...and more than the 10 percent... [LB336]

BRUCE RAMGE: Yes. [LB336]

SENATOR SCHUMACHER: ...and the only consequence is if somebody writes "unreasonable" on a folder and puts it away on the shelf? [LB336]

BRUCE RAMGE: Yes. Well, or communicates it as unreasonable. We've seen press releases that the federal government has put out saying, oh, such and such company's rate increase as deemed unreasonable. And so it's... [LB336]

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SENATOR SCHUMACHER: And that's deemed unreasonable by, in this case, the department? [LB336]

BRUCE RAMGE: By the federal government. [LB336]

SENATOR SCHUMACHER: By the federal government. [LB336]

BRUCE RAMGE: Yes, correct. [LB336]

SENATOR SCHUMACHER: So if the state of Nebraska does something to cause health insurance costs to increase by more than ten percent there's no consequence other than the federal government says, ah, looks unreasonable to us? [LB336]

BRUCE RAMGE: Yes. Correct. [LB336]

SENATOR SCHUMACHER: I don't have any further questions. [LB336]

BRUCE RAMGE: Okay. Thank you. [LB336]

SENATOR GLOOR: Other questions? [LB336]

BRUCE RAMGE: May I go back to that? [LB336]

SENATOR SCHUMACHER: Okay. [LB336]

BRUCE RAMGE: There can be consequences. [LB336]

SENATOR SCHUMACHER: Okay. Could you tell me about those consequences? [LB336]

BRUCE RAMGE: Yes. Yes, absolutely. Under federal law if there are new health insurance mandates that are required by a state that weren't in effect prior to, oh, I believe, last year, and those mandates cause insurance rates to go up for individuals in the...who obtain their insurance through the health insurance exchange which is now called the marketplace, the state has to bear the cost of that. And what we have learned is that insurers would calculate the costs of those extra benefits, and would basically just send the bill to the state for reimbursement. [LB336]

SENATOR SCHUMACHER: Now the baseline on that--and that's just what the cost of healthcare was the prior year or prior periods? [LB336]

BRUCE RAMGE: It wasn't based on cost, it was based on the required benefits. So we

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have some...our state wasn't really heavy in having mandated benefits on our laws. But if we were to add new ones that are not currently covered by the essential health benefit package, then those costs could be borne by the state. [LB336]

SENATOR SCHUMACHER: Just carrying a little bit farther so that I can try and understand the consequences of a bigger picture here... [LB336]

BRUCE RAMGE: Okay. [LB336]

SENATOR SCHUMACHER: We load the boat with cost on...tax cost on healthcare. What ramification does it have in this process? [LB336]

BRUCE RAMGE: I believe that it goes to benefits, not the cost of the benefits. I'd have to double check on the impact of tax. And maybe even that question might be better asked even of the health insurers. But from my understanding of the Affordable Care Act, whether or not the state is responsible is based on the procedures that are being required to be covered. [LB336]

SENATOR SCHUMACHER: If you can do any research on that I'd be interested in knowing, because that's going to be some of our discussion down the road on a lot of topics here. Thank you. [LB336]

BRUCE RAMGE: Okay. [LB336]

SENATOR GLOOR: We've got the whole side of this table lit up all of a sudden so I think I'll start with Senator Pirsch and then Campbell and then I'll go to Senator Crawford. [LB336]

SENATOR PIRSCH: Well, I'll be quick then, Senator Campbell. Was this also patterned off NAIC? [LB336]

BRUCE RAMGE: No, this is not. This is an existing bill that was just modified to address those two concerns: One, to clarify the prior approval; and two, to bring in the oversight over the out-of-state association plans. [LB336]

SENATOR PIRSCH: And specifically with respect to the language that Senator Schumacher had raised with regards to--in lines 22 through 25--"benefits that are unreasonable in relation to the premium charged...unjust, unfair, inequitable, misleading, or contrary to the law of this state." Is that...are those words...were they taken from some other area of statute, do you know? Or how they were selected? Are they from some sort of federal definition or state law definition or a court? [LB336]

BRUCE RAMGE: I'd have to talk to the attorneys in our department who drafted it.

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I...the wording sounds to me like it might have been designed to closely fit the Affordable Care Act. But, again, I need to double-check. [LB336]

SENATOR PIRSCH: Okay. I'd be interested. Thanks. [LB336]

BRUCE RAMGE: All right, thanks. [LB336]

SENATOR GLOOR: Senator Campbell. [LB336]

SENATOR CAMPBELL: Director, so there's a date in time in which the state...let's say, okay, we had the mandates of all insurance companies of the state of Nebraska that you will provide "blank." [LB336]

BRUCE RAMGE: Uh-huh. [LB336]

SENATOR CAMPBELL: So there's a date in time at which if we add to...if we add additional mandates after that date... [LB336]

BRUCE RAMGE: Uh-huh. [LB336]

SENATOR CAMPBELL: ...then we would have to pay for those out of state funds? [LB336]

BRUCE RAMGE: Yes. If those mandates exceed... [LB336]

SENATOR CAMPBELL: The essential.... [LB336]

BRUCE RAMGE: ...that essential health benefit package. Okay. [LB336]

SENATOR CAMPBELL: Okay. So the benefit...do you know what is that date, Director? Do you know? [LB336]

BRUCE RAMGE: I will have to... [LB336]

SENATOR CAMPBELL: I can't remember. [LB336]

BRUCE RAMGE: I don't want to misquote the date so we'll get back to you. [LB336]

SENATOR CAMPBELL: Okay, that's...because I think the senator is absolutely right. I mean, some of the issues that are coming before the committee and future bills may be affected. [LB336]

BRUCE RAMGE: So that might be good information for you. [LB336]

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SENATOR CAMPBELL: May be affected because they would exceed the essential benefit list that...because we've not mandated them to date. It might be helpful to know because if we mandate them in this session of the Legislature and then that's really after the date, we could be on the line for additional costs. [LB336]

BRUCE RAMGE: Correct. Okay, we will research that and make certain we have that. [LB336]

SENATOR CAMPBELL: That would be great. Thank you, Director. [LB336]

SENATOR GLOOR: Let me go to Senator Crawford and then we'll go back to Senator Pirsch. [LB336]

SENATOR CRAWFORD: I just wondered if you would just clarify the...it says...you know, your testimony talks about Nebraska being in a stronger position if we were a prior approval state. [LB336]

BRUCE RAMGE: Yes. [LB336]

SENATOR CRAWFORD: So I just want to clarify. What is that benefit or strength that we get from that and how the bill gets us there? [LB336]

BRUCE RAMGE: Yeah. There are different standards for filing of rates and forms. And the three primary types are prior approval, and that's where an insurance company would file the forms and the rates and they wait until we give them the green light and say, yes, this is approved to use. Pretty much our existing law made reference to that they being...they were filed, and that another standard would be file and use. And under a file and use standard, the company would file their materials and they would--after a certain amount of time--they would assume it was okay to use if they had not got a negative response from us. This is more consistent with what appears the federal government is reviewing as an appropriate standard. I think for all practical purposes, most of the companies were assuming that a prior approval was required, and I think they would wait to market these plans before they did get our go-ahead. So I don't think it would be a great change for the companies. It's just a matter of clarification in our law. [LB336]

SENATOR CRAWFORD: The 30-day waiting period is not new in that case? [LB336]

BRUCE RAMGE: Yes. No. [LB336]

SENATOR GLOOR: Senator Pirsch. [LB336]

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SENATOR PIRSCH: Well, no. I was just going to...I guess with respect to the date, we added a new mandated oral chemo drug parity last year, I think Senator Nordquist's bill, which said if you cannot charge more, did we not, as a...for oral chemo type of medications? My recollection is we were already past the...that that expense... [LB336]

BRUCE RAMGE: That would have been past. [LB336]

SENATOR PIRSCH: That that...so I mean, it makes sense, doesn't it, that at the time you're passing the Affordable Care Act and saying whatever essential health benefit we will pay...the federal government will pay, that you wouldn't...you'd probably want to freeze that early? So I guess the point is, that time...that day is already past? Maybe in 2011, I would suspect. Isn't that what we encountered with the oral chemo drug parity, that the Nebraska...Nebraskans are essentially paying for that? [LB336]

BRUCE RAMGE: That sounds right, yes. And it might have been that that was already a required benefit. So we'll...we can, again, look back into that if you would like. [LB336]

SENATOR PIRSCH: Okay. [LB336]

SENATOR GLOOR: Senator Campbell. [LB336]

SENATOR CAMPBELL: Director, do we have the final list of all the essential benefits and the definitions of them? [LB336]

BRUCE RAMGE: It is available and it's posted. The federal government has it posted, and we'd be happy to work with you or your staff to get you to the right area. [LB336]

SENATOR CAMPBELL: I mean, we've been looking at that and trying to figure out whether certain benefits are covered under that essential benefit. I mean, from the Health Committee's perspective, we've looked at some of those issues. And one is the definition of "rehabilitative." [LB336]

BRUCE RAMGE: Yes. [LB336]

SENATOR CAMPBELL: And what does that...and specifically, what does that include for the spectrum of autism? And, I mean, we have been doing some research on our side so whatever information you would have, Director, that would be helpful, I think, to this committee as well as to the Health Committee. Thank you much. [LB336]

BRUCE RAMGE: I'd be happy to answer your question, Senator, you bet. We've got, you know, individuals here in our department who have been working on the healthcare law, and so there are some of them that would be much more familiar with it than I am. [LB336]

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SENATOR CAMPBELL: Can I follow up? I have a different line. Director, my understanding is the two bills you have here...I mean, we need to put those in place to ensure that the Department of Insurance in Nebraska has oversight and can select. I mean, if we would choose not to do this, we then...the federal government would step in and say, yes, this is okay. Or are you assured as a department that you would be able to do that? [LB336]

BRUCE RAMGE: We have frequent communications with individuals in the federal...the CCIIO. So we communicate with them in terms of our...what we're doing in terms of these types of things. And as we go forward, how we will handle enforcement or market conduct and that type of thing. And work...it's our goal, and under the direction of the Governor, to work closely with them to make certain there's a smooth transition, and also to retain as much of the state authority as possible. [LB336]

SENATOR CAMPBELL: Right. And, Director, I think that's important. I mean, I'm glad to see the bills come forward and that we will have that attention because the department has had a long tradition of very fair and good practices in terms of working with companies. So we'd want to ensure that from a Nebraskan's standpoint, that regulation and oversight is still there. [LB336]

BRUCE RAMGE: Thank you. I'd just like to add that as we move forward, the National Association of Insurance Commissioners will be also working on updating many of their models. So we'll monitor that closely. It's very possible that there are other sections of our insurance code that might need to be addressed in the future. And so we're trying to stay on top of that. [LB336]

SENATOR CAMPBELL: I appreciate that. Thank you. [LB336]

BRUCE RAMGE: You bet. [LB336]

SENATOR GLOOR: Senator Schumacher. [LB336]

SENATOR SCHUMACHER: Thank you, Senator Gloor. One quick question. Didn't we have to file in Septemberish the time frame our essential health benefits declaration or whatever? [LB336]

BRUCE RAMGE: Yes. Yes. [LB336]

SENATOR SCHUMACHER: I thought that was... And did we file anything that wasn't included in the federal that we have to pick up the tab on? [LB336]

BRUCE RAMGE: No. No. We filed a plan that was basically geared toward a high

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deductible health savings account type plan. And we were told that that was not permissible. They didn't give the state that flexibility. And so they used the default plan which probably would have been our second choice anyway. So that is patterned after a Blue Cross small employer plan called BluePride number 5. [LB336]

SENATOR SCHUMACHER: Thank you for clarifying that. [LB336]

BRUCE RAMGE: Uh-huh. [LB336]

SENATOR GLOOR: Other questions? Thank you. [LB336]

BRUCE RAMGE: Thank you. [LB336]

SENATOR GLOOR: Other proponents? No more proponents. Any opponents? Anyone in a neutral capacity? Seeing no one, Senator Carlson would you like to close? [LB336]

SENATOR CARLSON: Thank you, Senator Gloor and members of the committee. In listening to the discussion and questions, we have premium and we have benefits. And it is the department's responsibility to determine at a given premium, can those benefits be provided, or should there be more benefits provided for the amount of premium charged? And it can work both ways, and that's a pretty serious responsibility that the department has. Any more, there's not a whole lot of freedom for companies to determine what benefits they offer. And this is a complicated area of insurance. But I think LB336 is a good bill, and I would rather have our Department of Insurance do what is in LB336 than have the federal government do it. And I think that way we can say we will do it the Nebraska way. But if the Affordable Care Act, whether we call it affordable or unaffordable, mandates what must be covered and what can't be covered, then the only variable for insurance companies is the efficiency in which they transact their business. And there's a lot of creativity that's lost, and I think that's kind of a sad deal. On the other hand, you don't want people buying insurance and they think they're covered for something and they aren't, and that's how we get in a lot of trouble. But I would ask for your support of LB336 and I'd try to answer any additional questions you might have. [LB336]

SENATOR GLOOR: Thank you, Senator Carlson. Any final questions for the esteemed Senator from Holdrege? Seeing none, thank you. And that closes the hearing on LB336. Yeah, we will go to Exec, but before we go to...and so, I would ask people to move outside the room... [LB336]