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Banking, Commerce and Insurance Committee
January 27, 2014

[LB684 LB685 LB717 LB815 LB819]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 27, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB815, LB819, LB717, LB684, and LB685. Senators present: Mike Gloor, Chairperson; Kathy Campbell; Tom Carlson; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: Mark Christensen, Vice Chairperson; and Tommy Garrett.

SENATOR GLOOR: (Recorder malfunction)...Legislative District. I am Chair of the Banking, Commerce and Insurance Committee. We're going to have a few senators absent today, but we have a few more that I know will be here. But we'll go ahead with the "perfunctories" and I know that they'll be here in short order. Committee will take the bills in the order that they're presented posted on the agenda outside. We have a little board over there for your perusal that explains some of our expectations and the process we go through, but I'll reiterate some of the key points anyway. Please, I would ask you to turn off your cell phones. And if you have them on vibrate, that's fine, except if you notice there's a buzz as relates to your vibrating cell phone. It may be you. We seem to have a little sensitivity going on in the phone system in here with older type of cell phones. If you are, in fact, going to be testifying, we'd ask that you move up to the front just to kind of speed things up. The order of testimony would be the introducer, proponents, opponents, those in a neutral capacity, then the proponent...the introducer will give it a chance to close. Testifiers, if you are testifying, we would ask that you sign in, fill out one of the sign-in sheets, be sure and give it to the clerk when you testify. Please spell your name for us as you begin your testimony in front of us. It's not for us, we really don't need to know how to spell your name. We'd like to be able to pronounce it certainly, but it's for the transcribers who are going to be, in fact, taking all this down. We don't use a light system unless we're into a rigorous discussion on a bill, but would still ask you to try and keep your comments to about five minutes, if you would. If you're not testifying at the microphone but you have some issues that are important to you, fill out the white sheet that's there. You're welcome to leave information with us, we'll make sure to get that distributed. If you have handouts for the committee members, make sure you have ten copies. We need enough copies for everybody to have a copy. If you don't have ten copies, get one of the page's attention, they'll be glad to make ten copies for you before you give your testifying. To my immediate right is committee counsel, Bill Marienau. And down at the end of the table is Jan Foster who is the committee clerk. I'm going to ask the committee members to introduce themselves starting at my right down here with Senator Schumacher. [LB815]

SENATOR SCHUMACHER: Paul Schumacher, District 22, Platte, parts of Colfax and Stanton County. [LB815]

SENATOR PIRSCH: Pete Pirsch, District 4, parts of Douglas County and city of Omaha.

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[LB815]

SENATOR CAMPBELL: Kathy Campbell, District 25, east Lincoln and eastern Lancaster County. [LB815]

SENATOR CARLSON: Tom Carlson, District 38, part of seven counties so I won't name them all. I live in Holdrege. [LB815]

SENATOR HOWARD: Sara Howard, I represent midtown Omaha, District 9. [LB815]

SENATOR GLOOR: And our pages today are Emily Schiltz, Emily is from Sioux Falls, South Dakota, and Steven Schubert from Lincoln, right here in Lincoln. And if you need anything, they'll be glad to help you with those. The committee will take the bills in the order that they were listed outside on the agenda. And we will start with Senator Murante. [LB815]

DYLAN FREDERICK: Good afternoon, Chairman Gloor... [LB815]

SENATOR GLOOR: Good afternoon. [LB815]

DYLAN FREDERICK: ...and members of the Banking, Commerce and Insurance Committee. My name is Dylan Frederick, D-y-l-a-n F-r-e-d-e-r-i-c-k. I serve as State Senator John Murante's legislative aide. Senator Murante represents the 49th Legislative District here in the Nebraska Unicameral, which is comprised of Gretna, Chalco, and northwest Sarpy County. Unfortunately, Senator Murante had a scheduling conflict in which another bill came up in the Education Committee and so I'm here on his behalf this afternoon. But... [LB815]

SENATOR GLOOR: We're glad to have you, Dylan. [LB815]

DYLAN FREDERICK: Thanks. [LB815]

SENATOR GLOOR: But I'm forewarning you, we ask tough question. [LB815]

DYLAN FREDERICK: Yeah. I'm ready. So nonetheless, I'm here today to present LB815. LB815 is a bill that brings Nebraska state law into conformity with existing federal law regarding the handling of trust funds awaiting investment or distribution. There was a point last fall in which, during a joint examination of a bank trust department by the state Department of Banking and the FDIC, that the Nebraska Bankers Association, who you'll hear from here in a while, became aware of a conflict in which it realized that Nebraska state statutes was in opposition to existing federal law, and here's how. Provisions of the Code of Federal Regulations allow that funds awaiting investment or distribution are deposited...can be deposited in a commercial, savings, or

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another department of the bank in which fiduciary account funds are held. However, to the extent that the funds are not insured by the FDIC, the bank is required to pledge collateral as security, the market value of which must at all times equal or exceed the amount of the uninsured funds in the excess of \$250,000. So a bank fiduciary exercising investment discretion that makes a long-term investment in a self deposit is engaged in prohibited self dealing. Deposits that extend beyond one year are generally presumed as long-term investments. But according to our Nebraska state statutes of Chapter 8, a state-chartered bank may deposit or have on deposit funds of a fiduciary account controlled by the bank's trust department. These provisions of state law require all fiduciary funds, not just funds awaiting investment or distribution, to have collateral pledged set aside for security to the extent that the account balance exceeds the amount of the FDIC insurance. As a result, state law conflicts with federal law by requiring that state-chartered banks pledge collateral for long-term investment accounts consisting of fiduciary funds. So LB815, as I've said, would allow state law and federal law into conformity by allowing...by only requiring pledging for trust funds awaiting investment or distribution that are on deposit at the bank in which the trust department is located. And, I mean, pretty straightforward. With that being said, I really appreciate your time today. And I would ask that you would direct any questions to Mr. Bob Hallstrom who might be a little bit more versed in the technicalities of the subject than I am. [LB815]

SENATOR GLOOR: On the other hand, are there any questions? Senator Carlson. [LB815]

SENATOR CARLSON: Thank you, Senator Gloor. So Dylan, you're really wanting to pass off the responsibility to Mr. Hallstrom? [LB815]

DYLAN FREDERICK: Correct. [LB815]

SENATOR CARLSON: I understand. That's a good move. Thank you. [LB815]

SENATOR GLOOR: Seeing none, thank you for helping Senator Murante out. We'll now move to proponents. [LB815]

ROBERT HALLSTROM: (Exhibit 1) Senator Gloor, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB815. As Dylan indicated before he passed the buck to me when I got up here, this is a technical change to a statute to bring the law into conformity with the law that applies to national banks under federal laws and regulations. However, even though I used the word "technical," it does address a significant, substantive issue. And it is important for us to have conformity between the rules and the regulations that apply to trust funds awaiting investment or distribution that apply equally to state-chartered and nationally chartered banks. As

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Dylan indicated, there was a trust department joint exam by the FDIC and the state Department of Banking in which it was discovered that the state law and federal law were not, in fact, in conformity. To give you a little bit of background, some years ago we came before the Legislature and requested that a existing provision of law that had identified or defined trust funds awaiting investment or distribution very narrowly on a 30-day window, and with regard to, I believe, a limitation on the amount of funds that could be trust funds awaiting investment or distribution was changed because it did not conform to the national or federal law, which provides a little greater flexibility in terms of having short-term investments generally one year or less in duration. And in making that change, I think, at that time, the department attempted to conform the state law to the federal law. And they may have made some mistakes in terms of that conformity. And we missed it as well. And so we're back to you today to ask that that be changed to clarify that state and federal law both only allow or require the ability to pledge security for trust funds awaiting investment or distribution for the sums that are in excess of the FDIC insured deposit limit of \$250,000. By way of example, we're talking about funds awaiting investment or distribution as those, again, that are less than one year in duration that can, under these circumstances, be placed essentially in the same bank the trust department is located in. And the rules of the road are that under those circumstances, although there are other due diligence requirements, the main one that we're talking about under this bill, is that there be securities pledged to protect those funds expressly, and only those funds. So by way of example, if we had a nine-month certificate of deposit for \$300,000 that constituted trust funds awaiting investment or distribution, the extra \$50,000 would have to be secured by collateral of at least that amount. On the other hand, if we had a three-year CD that was for \$300,000, the law says that that cannot be self-deposited into the bank and, therefore, cannot be pledged for under any circumstances. And that is on page 3 of my testimony. I've tried to provide a little bit of additional meat on the bone, if you will, regarding what constitutes fiduciary funds awaiting investment or distribution. These are things if you've...a trustee has liquidated some assets and is awaiting a distribution that's coming up in two months and needs to liquidate additional funds to make those required distributions under the trust instrument, they may put those into a holding account as short-term awaiting investment or distribution type of account, liquidate more assets, and then have enough funds in that account to distribute out to the beneficiaries. Similarly, they may liquidate some assets, put them in a short-term holding fund knowing that estimated tax payments are coming up within the next quarter. So those would be some examples of where the trustee would have short-term funds awaiting investment or distribution, be able to place them within the same bank and if they're under the FDIC insured amount, all is fine and well. If they're in excess of the FDIC insured amount, they would have to pledge the securities for the excess. And I'd be happy to address any questions that the committee may have. [LB815]

SENATOR GLOOR: So...and thank you for your testimony, Mr. Hallstrom. So for "Jane and John Q. Public," is the issue here one of being able to protect those investments

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because of the FDIC limits? Is or and an issue of being able to come up with collateral? I'm trying to decide how this is going to make a difference to people as relates to banking in Nebraska. [LB815]

ROBERT HALLSTROM: Well, it has to do with the banks being in conformity and the trust departments being in conformity with what the rules of law are. The customers should be protected under the usual rules that apply with regard to FDIC insurance. We've also got pass-through insurance that applies when we're talking about fiduciary accounts, so there may actually be \$250,000 FDIC insurance coverage on a beneficiary-by-beneficiary basis. What we're talking about here is that we've got two main issues that are involved, Senator. The first one is, you can have self-deposits under the very...self-deposits being those deposits that are placed in the trust department in the same bank, provided that you comply with these rules that say those are trust funds awaiting distribution or investment and, thus, to the extent they're over \$250,000--I assume on a per beneficiary basis--that they've got adequate security over and above that. The second issue is, the state law, on its face, would seemingly allow, if not require, the bank to have for long-term investments securities that are pledged over and above the FDIC insured amount when, in fact, the national law says to put those long-term investments into your own bank is self-dealing. So they should be elsewhere, number one. And certainly, then, clearly not pledged or securitized. [LB815]

SENATOR GLOOR: Okay. Other questions? Senator Schumacher. [LB815]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony, Mr. Hallstrom. So what are we...it seems to me that this language is taking out those funds that are not awaiting investment or distribution, basically those funds that are deposited for more than a year. [LB815]

ROBERT HALLSTROM: That was the contradiction between what the federal law allows and what the state law, on its face, seemingly required. [LB815]

SENATOR SCHUMACHER: So under no circumstances, then, after--or even now--under federal law, can a bank trust department invest in itself for more than a year? Is that accurate? [LB815]

ROBERT HALLSTROM: That's my general understanding of it. And that's what was uncovered in the exam, as I understand it, Senator, was the bank, in accordance with what the state law seemed to allow, had a longer-term CD over the FDIC insured amount that was held in the same bank. And that was the problem, that by limiting the application of what can be reinvested or deposited in your bank to trust funds awaiting investment or distribution will cure that problem and bring the state law and the national law into conformity. [LB815]

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SENATOR SCHUMACHER: So basically, when the banker read this he said, oh my goodness. It looks like as long as I have security, I can take this money. [LB815]

ROBERT HALLSTROM: Any trust funds, not just those awaiting investment or distribution. [LB815]

SENATOR SCHUMACHER: Right, right, right. Any trust funds. [LB815]

BOB HALLSTROM: Yes. [LB815]

SENATOR SCHUMACHER: And the feds said, no, no, you can't. Now do we in any part of our law, then, restate what the fed says? Do we say, banker, this is a no-no because this simply carves out...inserts the words "awaiting investment or distribution." If the banker were only reading our law, would he trip across a paragraph somewhere that said it's a no-no to keep anything more than a year in your own account? [LB815]

ROBERT HALLSTROM: Well, not specifically or expressly in the law, Senator, other than on its face. Now it clearly says that the only ones that you can pledge for are trust funds awaiting investment or distribution. [LB815]

SENATOR SCHUMACHER: For clarification to help the bankers out, shouldn't we say that, and by the way, you can't do this? [LB815]

ROBERT HALLSTROM: I'd want to look at the federal law and regulation a little more closely. I don't know that the federal law has that express language in it, Senator. [LB815]

SENATOR SCHUMACHER: Well, then if it doesn't have that express language, where do we get the conflict? [LB815]

ROBERT HALLSTROM: Because right now, our law seemingly says that any trust funds are required to have pledging. And the federal law says only trust funds awaiting investment or distribution are required to have pledging. [LB815]

SENATOR SCHUMACHER: And the federal law presumably says, then, that it's a no-no to have anything other than awaiting investment or distribution. In other words, the more than a year stuff is a general term in your bank to begin with? [LB815]

ROBERT HALLSTROM: Correct, because that is self-dealing. [LB815]

SENATOR SCHUMACHER: Okay, so what we need to...before we proceed with this, we need to know what the federal law says and whether or not it's wise to restate that in our law or whether or not the bankers would be smart enough to read the federal law,

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too. [LB815]

ROBERT HALLSTROM: Well, I don't know that they'd necessarily have to read the federal law, but I would want to visit with the Department of Banking and make sure that they don't have any concerns in that regard. I certainly don't have any objections to proceeding in that fashion if we need to. [LB815]

SENATOR SCHUMACHER: Thank you. [LB815]

SENATOR GLOOR: Senator Carlson. [LB815]

SENATOR CARLSON: Thank you, Senator Gloor. Bob, we've had several bills in my time here that have come across and we sometimes call them housekeeping bills, but they're to make us in conformity, and that's what this is. In general, then, would it be true that the state has to conform to the federal government and you can't be more lenient than the federal government, but you can be more strict than the federal government? [LB815]

ROBERT HALLSTROM: In general terms, Senator, that would be correct unless the federal law has preempted state law in any particular area. Sometimes they cover the field and say state law may not regulate in a particular area. [LB815]

SENATOR CARLSON: Which I don't think there's anything that can be done about it. It's a little bit disturbing because many times we just think the regulation that comes from the federal is too strict anyway. But we really can't go the other direction because then we won't be in conformity. We can't go more lenient. [LB815]

ROBERT HALLSTROM: As a general matter, that could happen. You can be more restrictive, generally... [LB815]

SENATOR CARLSON: Yeah. Yeah. [LB815]

ROBERT HALLSTROM: ...unless it's preemptive would be my understanding. [LB815]

SENATOR CARLSON: Okay. Thank you. [LB815]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB815]

ROBERT HALLSTROM: Thank you. [LB815]

SENATOR GLOOR: Next proponent? Anyone here in opposition? Anyone who would like to provide testimony in a neutral capacity? Dylan, you're recognized to close, if you

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wish. Waives. That will close the hearing on LB815. Thank you all. We will now move to LB819. Welcome, Senator Wightman. [LB815]

SENATOR WIGHTMAN: Good afternoon, Chairman Gloor, members of the Banking (, Commerce) and Insurance Committee. For the record, my name is John Wightman, spelled J-o-h-n W-i-g-h-t-m-a-n. LB819 was introduced to make consistent and clarify the provisions of law governing the two types of legal instruments used for financing of real property. Future advances or additional funds that are loaned after a mortgage or trust deed are executed and filed. In summary, LB819 amends section 76-238.01 and section 76-1002 to conform provisions regarding the manner in which debts or obligations and future advances may be secured pursuant to a mortgage or trust deed covering an interest in real property. These statutes would also be clarified to allow for a mortgage or trust deed to secure optional future advances in any amount unless a maximum amount of total indebtedness to be secured is stated in the mortgage or trust deed. The legislation would also clarify the notice by a subordinate lienholder to limit optional future advances of a first lienholder must be sent to either the mortgagee, beneficiary, or beneficiaries set forth in the mortgage or trust deed or to the most recent assignee reflected in a recorded assignment of the mortgage or trust deed. Under current law, future advances under a mortgage are limited by either a percentage of the amount secured or a total amount secured, which must be set forth in the mortgage. Trust deeds have no such requirement. The arbitrary limit on future advances set forth in the current law on mortgages serves no real purpose. The relevant issue is the amount of money secured by the mortgage. The notice to limit future advances establishes a total amount securing...secured including future advances. Since the amount secured is unfixed, the borrower can seek additional funds from other sources. LB819 eliminates the inconsistency and unnecessary requirement. Under the practice in current lending markets, mortgages and unnecessary...and trust deeds are transferred to other lenders in the secondary market or served by another entity. Current law does not require notice to be sent to the appropriate entities in such cases. Current Nebraska law should be amended to require that the notice to limit future advances be sent to the address of the most recent assignee reflected in the recorded assignment of a mortgage or trust deed. Following me will be Bob Hallstrom who is more of an expert in the area than myself and who can answer any detailed questions that you might have on LB819. He has found some technical changes that should be adopted in the committee amendment to LB819, and I am in complete agreement with the changes which would be made by AM1690. Please advance LB819 with this AM1690 as a committee amendment. And while I can answer some questions on this, certainly Mr. Hallstrom can probably give you a lot more detail and more definite discussion and reasoning than I can. But I'll try to answer any questions you may have. [LB819]

SENATOR GLOOR: Thank you, Senator Wightman. Are there any questions for Senator Wightman? [LB819]

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SENATOR WIGHTMAN: I can see... [LB819]

SENATOR GLOOR: Senator Carlson. [LB819]

SENATOR CARLSON: Thank you, Senator Gloor. Now this is another example of becoming in conformity with federal requirements. Well, you used the term "conformity" early. [LB819]

SENATOR WIGHTMAN: Well, conformity between the two sections of Nebraska law... [LB819]

SENATOR CARLSON: Okay. [LB819]

SENATOR WIGHTMAN: ...not the state and the federal. [LB819]

SENATOR CARLSON: Okay. Okay. [LB819]

SENATOR WIGHTMAN: I don't think we're concerned over anything that is different in the federal law compared to the state. And I think we'd be in a position to have whatever we wanted in this regard. [LB819]

SENATOR CARLSON: I don't think I listened carefully enough. I heard "conformity" and I thought, here we go again. [LB819]

SENATOR WIGHTMAN: No. It would be conformity between the two methods of securing real property or liens on real property. [LB819]

SENATOR CARLSON: Good. Thank you. [LB819]

SENATOR GLOOR: Other questions? Thank you, Senator Wightman. [LB819]

SENATOR WIGHTMAN: Thank you. [LB819]

SENATOR GLOOR: We'll now move to proponents. [LB819]

ROBERT HALLSTROM: (Exhibit 1) Chairman Gloor, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB819. There seems to be a recurring theme here today in that the introducers are giving themselves far too little credit and, perhaps, giving me far too much, but I will try to address any questions that the committee may have when I've completed here. Senator Wightman noted the primary intent of the bill is to conform the provisions of state law regarding to mortgages and deeds of trust with respect, primarily, to the amounts of indebtedness that may be

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secured thereby. And also with regard to the notices that must be given when optional future advances are involved and a second lienholder is attempting to determine its priority and how much of the advances are in front of them in taking a subordinate or secondary lien. Practitioners brought to our attention last summer that there were some inconsistencies between the specific provisions of law that apply to trust deeds and mortgages. Mortgages were, obviously, used for many, many years before trust deeds came into vogue back in probably the 1980s. But we attempted at that time, before my time perhaps, to put the same types of provisions with regard to the manner in which debts and obligations and optional future advances and advances necessary to protect the security could be secured by a mortgage and a deed of trust. One of the items that was noted was that in the older mortgage statute, for example, there was a specific provision that said the mortgage must contain either a specific amount of limitations that could be advanced or a percentage of a total amount. That language was not adopted when the similar provisions of the trust deed law were enacted subsequent. And there's been some level of confusion, I guess if you will, among practitioners as to whether or not the silence in the trust deed statutes means you truly have unlimited advance authority or, because of the specific restriction in the mortgage statutes, that maybe that has some interplay with trust deeds. What we are doing under LB819 is to remove the language from the mortgages section so that there is an unlimited amount of advances that may be secured unless otherwise stated expressly in the mortgage or the deed of trust. Now lest someone be concerned about having unlimited future advances, obviously, those are optional. Nobody is forced to take money from a lender. If they need money and they request money, the lender has the discretion to make optional future advances and may do so under this bill, if adopted, in unlimited amounts. The second question that might come into play is, what if we have a second lienholder that is looking to extend financing to that same borrower, what is the current system for their protection and what are we doing to change that system in this bill? The current system says if I am a borrower seeking money from a second lender--I'll use an example that I have unlimited advances under this bill, but I currently have \$200,000 borrowed to that debtor or loaned to that debtor. If I have unlimited future advances, that second lienholder is going to want to come in when they find that out, when that title search is conducted when they're going to make a loan to that same borrower, they're going to find out and determine that there's \$200,000 outstanding, but the ability to make optional future advances either in an unlimited amount or in a specifically limited amount stated in the mortgage or the deed of trust. So they will send a notice and file their notice of record that says I'm taking a second lien, but I'm putting the first lienholder on notice that if you make any optional future advances in the future beyond the \$200,000 amount, they are going to fall behind me in terms of priority. And that system will not change. The only part of that system that we're changing is that the statutes currently say the only party that has to be given that notice is the original mortgagee or beneficiary stated in the mortgage or the trust deed, respectively. And with the market having changed in terms of loans being transferred, servicing rights being transferred, there may actually be an assignee of record who has replaced the original mortgagee

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beneficiary under that document. And we're simply saying if that original loan has been assigned of record and the assignment has been recorded, that the notice under this provision of law that I'm talking about needs to go to the most recent assignee of record so that the right party in interest is getting the notice that any of their future advances that are made optionally in the future are at risk of being trumped by a subordinate lienholder who has given the proper notice. And with that, I'd be happy to address any questions. [LB819]

SENATOR GLOOR: Thank you. Questions? Senator Schumacher. [LB819]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony, Mr. Hallstrom. When we...we're presuming in your discussion that a battle, if there is a battle, is between the first lienholder and the second lienholder. There are situations out there and I'm kind of curious to see how...if this affects these situations. Mom has four kids, dad's passed away. And one of the kids gets into financial trouble, comes to mom and say, mom, I need a loan and the banker won't give it to me unless you let him have a mortgage on the farm. And so mom's reluctant because she knows she's going to get the other three kids mad as hell. And so, okay, I'll sign. You know, you need \$50,000, I'll sign the mortgage. In the small print, the mortgage has the future advance things. Well, pretty soon sonny boy, without knowledge of mom even, goes down to the bank and borrows \$500,000 against the farm, eats it up. Does this allow him to do that? Is that mortgage good for the extra \$450,000 or do we...does mom need to say, I'd better go see a lawyer so that we put an absolute limit in the mortgage language? [LB819]

ROBERT HALLSTROM: Well, Senator, number one, I guess that could happen under a mortgage. As a practical matter, you're probably aware, mortgages are very infrequently used anymore so we probably don't have much exposure to that. But I would assume that if there was unlimited future advances in that document, that that scenario could potentially crop up. [LB819]

SENATOR SCHUMACHER: So under...if they use a deed of trust as security under existing law, what I just described is fair game, but it's not quite fair game under existing mortgage law? [LB819]

ROBERT HALLSTROM: That would be the way I understand it. And there's been some questions raised as to whether or not the specific reference in the mortgages somehow creeps over into the deeds of trust or the trust deeds' law. I don't buy that argument. I think the trust deeds is a separate statutory provision and there's no limitation currently in the trust deeds. And that would probably be the appropriate interpretation of the current state of the law as to trust deeds that there is no limit. [LB819]

SENATOR SCHUMACHER: Thank you. [LB819]

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SENATOR GLOOR: Other questions? Seeing none, thank you. [LB819]

ROBERT HALLSTROM: Thank you. [LB819]

SENATOR GLOOR: Oh, wait. Were you going to talk about the amendment or is somebody going to be? [LB819]

ROBERT HALLSTROM: Oh, I can. Yes. [LB819]

SENATOR GLOOR: Thank you. [LB819]

ROBERT HALLSTROM: I thought Senator Wightman had submitted them, but I can certainly talk about them. They truly are technical without any real substantive distinction on the bill. Page 2, line 12, we simply had left out the "to be secured" language that should apply in both situations. [LB819]

SENATOR GLOOR: I don't think we have copies, actually. [LB819]

ROBERT HALLSTROM: Oh, okay. It's attached to my... [LB819]

SENATOR GLOOR: Was it? [LB819]

ROBERT HALLSTROM: ...testimony, Senator. If it wasn't... [LB819]

SENATOR GLOOR: Ah. Got it. Thank you. [LB819]

ROBERT HALLSTROM: Yep. Yes. And on page 4, line 11, we had an erroneous reference to "trust deed" in the mortgage sections of the law which would be changed. And there is some surplus language regarding transfers of the deed of trust on pages 5 and 6 that we would simply take out that's not necessary either. [LB819]

SENATOR GLOOR: Why don't you give the committee just a second to look through this in case there are any additional questions. [LB819]

ROBERT HALLSTROM: Certainly. [LB819]

SENATOR GLOOR: Any further questions any committee members have? Seeing none, thank you. [LB819]

ROBERT HALLSTROM: Thank you, Senator. [LB819]

SENATOR GLOOR: Any other proponents? Any opponents? Anyone who would like to provide testimony in a neutral capacity? Seeing none, Senator Wightman, would you

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like to close? [LB819]

SENATOR WIGHTMAN: I'll waive. [LB819]

SENATOR GLOOR: Senator Wightman waives closing. That will end the hearing on LB819. Thank you, Senator Wightman. We're now moving to LB717. And since Senator Christensen was unable to be here, I'm going to pass the gavel over to Senator Carlson and ask him to chair the meeting. [LB819]

SENATOR CARLSON: Okay. We will move and open the hearing on LB717. So welcome, Senator Gloor, and the chair is yours. [LB717]

SENATOR GLOOR: Thank you Senator Carlson, fellow committee members. My name is Mike Gloor, G-l-o-o-r. LB717 comes to us from the Nebraska Real Property Appraiser Board. The bill would update our Nebraska Real Property Appraiser Act to bring it in compliance with the federal real property appraiser qualification criteria and become effective January 1, 2015. Our state board must adhere to the criteria to meet the requirements promulgated by the federal appraisal subcommittee under the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989. The Appraisal Subcommittee is authorized to take action against noncomplying states so if our laws were out of compliance, the Appraisal Subcommittee could remove all Nebraska-credentialed appraisers from the Federal Registry, resulting in no Nebraska appraisers qualified to appraise real property in connection with a federally related transaction. And to put that in perspective, that would amount to 80 percent to 90 percent of all mortgage loan activity in our state. So this small bill has some pretty significant ramifications. The Appraisal Subcommittee is charged with monitoring and reviewing the practices, procedures, activities, and organizational structure of The Appraisal Foundation which develops the real property appraiser criteria through its Appraiser Qualifications Board. The changes in this bill primarily affect qualifications for each level of Nebraska credential and also affect reciprocal credentialing and continuing education. There will be other testifiers behind me that I think are far better able than I am to answer questions, but I'm certainly happy to do so. Thank you, Senator Carlson. [LB717]

SENATOR CARLSON: Thank you, Senator Gloor. Brief introduction on a lengthy bill. Questions of Senator Gloor? Okay. Seeing none, thank you. [LB717]

SENATOR GLOOR: Thank you. [LB717]

SENATOR CARLSON: And we'll ask for our first testifier as a proponent. Welcome. [LB717]

TYLER KOHTZ: (Exhibit 1) Good afternoon. My name is Tyler Kohtz, T-y-l-e-r K-o-h-t-z,

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and I am the director for the Nebraska Real Property Appraiser Board. And I'll try to move past some of this stuff that Senator Gloor has already mentioned in terms of the federal requirements. I would like to begin by thanking the members of the Banking, Commerce, and Insurance Committee for this opportunity to speak on behalf of the real property appraiser board concerning LB717. The Real Property Appraiser Board was established as the Real Estate Appraiser Board on January 1, 1991, to carry out the requirements of Title XI of the federal Financial Institutions Examination Council Appraisal Subcommittee also known by its shortened name, the Appraisal Subcommittee. The Real Property Appraiser Act consists of qualifications for credentialing as well as standards for appraisal practice and appraisal conduct. The board's primary functions related to the Real Property Appraiser Act is to ensure...issue and renew appraiser credentials, develop and implement standards for appraiser credentialing, approve appraiser qualifying courses and appraiser continuing education activities, investigate and adjudicate grievances, and disseminate relevant information to the general public, credentialed appraisers, and appraisal management companies. The board's appraiser program is primarily funded by appraiser credentialing fees and no taxpayer money is used to support this program. LB717 updates the Nebraska Real Property Appraiser Act with the necessary requirements for compliance with the real property appraiser qualification criteria that becomes effective January 1, 2015. Specifically, the following changes would be made to the Real Property Appraiser Act: The dates for recognition of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 would be changed from January 1, 2012 to January 1, 2014. These acts contain the standards used by the ASC to monitor state appraiser regulatory programs. Also, LB717 changes the recognition of the Uniform Standards of Professional Appraisal Practice from the 2012-13 edition to the 2014-15 edition. USPAP is the quality control standards that appraisers are required to adhere to by state and federal law. LB717 adds definitions for accredited degree-awarding community college or university, completed application, complex residential property, 15-hour National Uniform Standards of Professional Appraisal Practice course, Financial Institutions Reform, Recovery, and Enforcement Act of 1989, jurisdiction of practice, and signature. These definitions help clarify the real property appraiser qualifications criteria updated in the act. LB717 changes the definition of trainee real property appraiser to remove part of the definition that was incorporated into the added scope of work. LB717 also removes requirements for applicants' Social Security numbers from the credentialing section of the application, and this change is to avoid unnecessary repetitiveness. LB717 clarifies that a credential is awarded only after proof of such qualification has been presented to the board and the completed application has been approved. LB717 adds background checks and standards for screening new and existing credential holders. According to the AQB, all candidates for real property appraiser credential must undergo background screening. State appraiser regulatory agencies are also strongly encouraged to perform background checks on existing credential holders as well. LB717 increases the college level education requirements for the licensed residential real property appraiser to 30

semester credit hours of college-level education from an accredited college, junior college, community college, or university or they must hold an associate's degree or higher in any field. LB717 increases the college-level education requirements for a certified residential real property appraiser to a bachelor's degree or higher in any field from an accredited college or university. LB717 allows the completion of a degree program in real estate from an accredited degree-granting college or university that has been reviewed and approved by the AQB to count towards qualifying education requirements for all levels of credentialing. LB717 clarifies the requirements for a trainee real property appraiser credential and adds a scope of practice to the trainee real property appraiser to define this appraiser's limitations. LB717 clarifies the requirements for the supervisory appraiser and requires that state-certified supervisory appraiser shall be in good standing and not subject to any disciplinary action within the last three years, and has not completed disciplinary action that affects the supervisory appraiser's legal ability to engage in appraisal practice within the last three years. LB717 requires that both the trainee real property appraiser and supervisory appraiser complete a course. The course will be oriented toward the requirements and responsibilities of the supervisory appraiser and expectations for the trainee real property appraiser. This course must be completed by the trainee real property appraiser prior to obtaining a trainee real property appraiser credential and completed by the supervisory appraiser prior to supervising a trainee real property appraiser. LB717 clarifies the scope of practice for a registered real property appraiser to include appraisal review. LB717 clarifies the requirements for the licensed residential real property appraiser credential and the scope of practice for the licensed real property appraiser credential to better match the definition found in the AQB real property appraiser qualification criteria. LB717 clarifies the requirements for the certified residential and certified general real property appraiser credential as well. LB717 changes reciprocal credentialing requirements to meet the AQB real property appraiser qualification criteria and the ASC policy statements concerning reciprocity, and clarifies that a credential status of a reciprocal applicant shall be verified through the ASC National Registry. LB717 changes the continuing education requirements to meet AQB real property appraiser qualification criteria and the ASC policy statements. LB717 adds acts and omissions which shall be considered grounds for disciplinary action or denial of an application to make the background check standards used for applicants applicable to the existing credential holders as well. LB717 updates the Nebraska Real Property Appraiser Act with the necessary requirements for compliance with the real property appraiser qualification criteria that becomes effective January 1, 2015. If the state of Nebraska is not found to be compliant with Title XI by the Appraisal Subcommittee, the Appraisal Subcommittee may remove all Nebraska credentialed appraisers from the Federal Registry, resulting in no appraisers qualified to appraise real property in connection with federally related transactions. This is approximately 80 percent to 90 percent of all mortgage loan activity. The Nebraska Real Property Appraiser Board supports LB717. Thank you for the opportunity to appear before you today, and please feel free to ask me any questions. [LB717]

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SENATOR CARLSON: All right. Thank you. And you pronounce it Kontz (phonetic)? [LB717]

TYLER KOHTZ: Kohtz. [LB717]

SENATOR CARLSON: Kohtz. [LB717]

TYLER KOHTZ: Yes. [LB717]

SENATOR CARLSON: Okay. Any questions of Mr. Kohtz? Senator Scuhmacher. [LB717]

SENATOR SCHUMACHER: Thank you, Senator Carlson. Mr. Kohtz, this bill would have nothing to do with the county assessors' mass appraisal operations, would it? [LB717]

TYLER KOHTZ: No, it doesn't. [LB717]

SENATOR SCHUMACHER: Thank you. [LB717]

SENATOR CARLSON: Thank you. Any other questions? Seeing none, thank you for your testimony. [LB717]

TYLER KOHTZ: Thank you. [LB717]

SENATOR CARLSON: Next proponent? [LB717]

ROBERT HALLSTROM: Senator Carlson, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist on behalf of the Nebraska Bankers Association in support of LB717. Our interest is quite simple. We want to make sure that those qualified appraisers in the state of Nebraska continue to be recognized as credentialed appraisers under the federal law and that our state law relating to the practice of appraisals with regard to federally related transactions is in conformity with the federal requirements. And I'd be happy to address any questions that you might have. [LB717]

SENATOR CARLSON: All right, thank you. Any questions? Is there a difference in federal and state appraisal laws that are significant? [LB717]

ROBERT HALLSTROM: We just have to make sure, Senator, that our provisions of law are in place to satisfy the requirements of federal law regarding the education, licensing of appraisers so they are credentialed and recognized as being able to conduct

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appraisals on federally related transactions, which are those that are over \$250,000. [LB717]

SENATOR CARLSON: So it pretty well follows state requirements above and beyond those at the federal can be more strict, but not more lenient. [LB717]

ROBERT HALLSTROM: Correct. [LB717]

SENATOR CARLSON: Okay. Any other questions of the committee? Seeing none, thank you. [LB717]

ROBERT HALLSTROM: Thank you. [LB717]

SENATOR CARLSON: (Exhibit 2) Any other proponents? Any opponents? Anyone testifying in a neutral position? Seeing none, Senator Gloor, you're recognized to close. He waives closing. And that closes the hearing on LB717. [LB717]

SENATOR GLOOR: Thank you, Senator Carlson. We'll now move to LB684. Good afternoon. [LB684]

DAN WILES: (Exhibit 1) Good afternoon, Chairman Gloor and committee members. I am Dan Wiles, D-a-n W-i-l-e-s, sitting in and pinch-hitting for Senator Christensen who could not make it here today. LB684 was brought to us by the appraisal board, Real Property Appraiser Board. And it addresses many issues concerning the administration and enforcement of the Appraisal Management Company Registration Act, which has been in effect since January 1, 2012. Its primary purpose is to provide clarity for administrative issues recently faced by the Nebraska Real Property Appraiser Board. If the bill isn't passed, the Nebraska Real Property Appraiser Board will continue to have difficulty administrating and enforcing the act regarding the items related to the changes found in this bill. I too, in the spirit of conformity, will punt or pass the buck to the expert behind me. And that will be Mr. Tyler Kohtz. But if you have any other questions, I'd be glad to try and answer them. [LB684]

SENATOR GLOOR: Thank you, Mr. Wiles. Are there any questions? Yes, Senator Campbell. [LB684]

SENATOR CAMPBELL: Thank you, Senator Gloor. Mr. Wiles, did you prepare the summary that's in front of us? [LB684]

DAN WILES: Tyler did. Yeah. [LB684]

SENATOR CAMPBELL: Okay. Thank you. [LB684]

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DAN WILES: I just provided it for you. Hopefully, it won't... [LB684]

SENATOR CAMPBELL: No, it's pretty helpful. Thank you. [LB684]

DAN WILES: Okay. [LB684]

SENATOR GLOOR: Other questions? Seeing none, thank you. [LB684]

DAN WILES: You bet. [LB684]

SENATOR GLOOR: We'll now move to proponents. Good afternoon, again. [LB684]

TYLER KOHTZ: (Exhibit 2) Good afternoon. Once again, my name is Tyler Kohtz, T-y-l-e-r K-o-h-t-z, and I'm the director for the Nebraska Real Property Appraiser Board. I'd like to begin by thanking Chairperson Gloor and the members of the committee for this opportunity to speak on behalf of the Nebraska Real Property Appraiser Board concerning LB684. The Nebraska Real Property Appraiser Board was established as a Real Estate Appraiser Board on January 1, 1991, to carry out the requirements of Title XI, which was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law on July 21, 2010. The Appraisal Management Company Registration Act was established on January 1, 2012, to carry out the additional requirements mandated by Dodd-Frank, giving the Nebraska Real Property Appraiser Board authority to register and oversee appraisal management companies in Nebraska. The board's primary functions related to the Appraisal Management Company Registration Act are to register and renew registrations for appraisal management companies, develop and implement standards for appraisal management company registration, investigate and adjudicate grievances, and disseminate relevant information to the general public, credentialed appraisers, and appraisal management companies. The board's appraisal management company registration program is wholly funded by appraisal management company registration fees, and no taxpayer money is used to support this program. It is important that the board's program serves the best interests of the citizens of Nebraska, and operates in a manner that is efficient, consistent, and equitable. Now that the Appraisal Management Company Registration Act has been effective for two years, the board has identified areas of the act that require additional clarification for the optimal administration and enforcement of the act. LB684 changes the definition of appraisal management company to include all third-party companies that provide the services described. Currently, only those companies that provide described services in connection with valuing residential real property are appraisal management companies. Peer states are seeing commercial and agriculture appraisals being offered to appraisers through appraisal management companies. The board currently does not have jurisdiction over companies offering agriculture or commercial appraisal assignments to appraisers, which would result in no protection for those appraisers accepting these types of assignments. LB684 adds

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definitions for appraisal management company client, third-party assignments...and third-party assignments to provide clarity within the act and to differentiate the meaning of client and assignment between the Appraisal Management Company Registration Act and the Real Property Appraiser Act. LB684 removes the Office of Thrift Supervision and adds Consumer Financial Protection Bureau to the definition of federal financial institution regulatory agency. The Office of Thrift Supervision no longer exists and has been replaced by the Consumer Financial Protection Bureau for this federal agency. LB684 clarifies the Real Property Appraiser Board's ability to issue cease and desist orders related to unregistered appraisal management company practice. Section 3 in this bill is modeled after Nebraska Revised Statute 81-885.03 in the Real Estate License Act. LB684 adds "administer and enforce" to implement regarding information required by the board so it reads, "implement, administer, and enforce the...Act" in lieu of just "implement the...Act." LB684 limits the validity of an appraisal management company application to one year. LB684 limits the amount of funds that may be transferred from the appraisal management company registration fund to not less than a minimum fund balance established by board policy. The Nebraska State Auditor recommended that the board establish a minimum fund balance through a policy after its 2012 financial audit. LB684 limits the length of time that an appraisal management company would have to refrain from employing an appraiser that has had certain action taken against his or her credential. Previously, there was no time limit placed on this provision, which implies that the requirement is effective for the rest of the appraiser's professional career. LB684 prevents an appraisal management company from requiring that an appraiser indemnify the company concerning any liability, damage, losses, or claims arising out of the services provided by the appraisal management company. Indemnification language has become common in AMC appraiser contracts, and the majority of residential appraisers obtain the majority of their work through appraisal management companies. There have been instances in peer states where the appraisal management company held the appraiser liable for issues not completely related to the appraisal services performed by the appraiser. The majority of independent fee appraisers cannot afford this liability. Many other peer states are introducing or considering similar language. The board also agrees that the language in this bill should be amended to include "and not the services performed by the appraiser." And this was a recommendation by Bob Hallstrom and the Nebraska Bankers Association. The board will work with Senator Christensen's office and Mr. Hallstrom to make any amendments to the bill that's needed for this. LB684 changes the investigation and hearing procedures to more closely reflect those found in the Real Property Appraiser Act. This change establishes consistency for the board enforcing and administering both the Appraisal Management Company Registration Act and the Real Property Appraiser Act. In addition, LB684 adds violations that the board anticipates may be common in the future. These additions reflect many of the appraiser violations found in the real Property Appraiser Act. Once again, the board also agrees that this...that the language in this bill should be amended to remove "including dismissal with settlement" as another recommendation by Bob Hallstrom and the Nebraska Bankers Association. And

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once again, the board will work with Senator Christensen's office, the committee, and Mr. Hallstrom to make any changes...draft any changes to the bill. Finally, LB684 expands the board's use of the appraisal management company fund to include fees for special examinations and other services provided by the board. The board agrees that this bill should be amended to remove the expanded use of the appraisal management company fund, another recommendation by Bob Hallstrom and the Nebraska Bankers Association. And once again, the board will work with Senator Christensen's office and Mr. Hallstrom and the committee to ensure that these amendments or the drafted language amends the bill. If this bill is not passed, the Nebraska Real Property Appraiser Board will continue to operate without the statutory guidance needed to effectively administer and enforce the act related to the items identified. The board wants this bill to be transparent and supported, and will work with any entities that may have concerns about language contained in the bill. And we actually started with the drafting of putting all this together by putting a panel together to gather input from many different outside entities. So we want it to be supported. As mentioned, the board is currently communicating with Mr. Hallstrom to ensure that the Nebraska Bankers Association's concerns are addressed. Each year, one board member's term expires and another is appointed, which allows for inconsistent interpretation of the act by the board. To be proactive, the board would like to address the concerns before they become an issue which is the purpose of this bill. The Nebraska Real Property Appraiser Board supports LB684. Thank you for this opportunity, and please let me know if you have any questions. [LB684]

SENATOR GLOOR: Thank you. And so the amendment that we were passed out, assuming we wanted to follow your narrative along with the amendment... [LB684]

TYLER KOHTZ: Yes. [LB684]

SENATOR GLOOR: ...referenced back and forth into... [LB684]

TYLER KOHTZ: Uh-huh. [LB684]

SENATOR GLOOR: Any other questions for Mr. Kohtz? Senator Schumacher. [LB684]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Does this particular bill have anything to do with the use of appraisers for mass appraisal by the county assessors? [LB684]

TYLER KOHTZ: No, it does not. [LB684]

SENATOR SCHUMACHER: So you would have no problem if we specifically exempt from the activities that are regulated herein, activities done by folks engaged in mass assessment by the county assessors? [LB684]

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TYLER KOHTZ: This bill is related to the Appraisal Management Company Registration Act. This is overseeing appraisal management companies that really, in terms of regulating appraisers, has little to do with it. So it wouldn't be related to the subject that you mention. [LB684]

SENATOR SCHUMACHER: Okay. I just was looking at page 3 where it says, "appraisal management company client means the party or parties who engage, by employment or contract, an appraisal management company in a specific third-party assessment." That kind of sounded to me like what the assessors were doing. But as long as we know that's not your intention, we could fashion an amendment to say that. [LB684]

TYLER KOHTZ: No, this is referring to an appraisal management company that is contracted with a financial institution to provide appraisal services. So what they do is put a panel together of appraisers, fee appraisers, and select one off of that panel to do the appraisal for the bank. Basically, the appraisal management company acts as a blanket between the financial institution and the appraiser. [LB684]

SENATOR SCHUMACHER: Briefly, could you describe what is the existing problem? What is this trying to address? What practical problems have been experienced where something has gone wrong? Why do we need this? [LB684]

TYLER KOHTZ: The reason why we need this is just over the past two years, the board has implemented and begun enforcing and administering this act. And things have come up...questions that don't have answers to it that could be found within the statute. So a lot of it is to just clarify terms and give the board direction as to how it should proceed with some of these regulations. [LB684]

SENATOR SCHUMACHER: Thank you. [LB684]

SENATOR GLOOR: So let me repeat that again in my own way, which is none of this has been brought to us by the Appraisal Subcommittee. This is really internally. [LB684]

TYLER KOHTZ: Internally. [LB684]

SENATOR GLOOR: Now that we've had a couple of years under our belt to work with this, these are changes that are important, but not vital the way (LB)717 would be, could be, vital to us. [LB684]

TYLER KOHTZ: That is correct. [LB684]

SENATOR GLOOR: Okay. Thank you. Senator Campbell. [LB684]

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SENATOR CAMPBELL: Thank you, Senator Gloor. But LB717, LB684, and LB685 are all somewhat related, are they not? I mean, you've... [LB684]

TYLER KOHTZ: They're related in that... [LB684]

SENATOR CAMPBELL: They touch upon each other because they come under the purview of the appraisal board. Is that accurate? [LB684]

TYLER KOHTZ: Yeah. Yes, that is correct. Yes. [LB684]

SENATOR CAMPBELL: So...but they touch upon different constituencies affected by what the appraisal board oversees. Would that be accurate? [LB684]

TYLER KOHTZ: Yes, that is correct. [LB684]

SENATOR CAMPBELL: Okay, thank you. [LB684]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Kohtz. [LB684]

TYLER KOHTZ: Good. Thank you. [LB684]

SENATOR GLOOR: Next proponent, please. [LB684]

TOM KUBERT: Senators, thank you for your time. Senator Gloor, members of the committee, my name is Tom Kubert, T-o-m K-u-b-e-r-t. I currently serve as vice chair for the Nebraska Real Property Appraiser Board. I'm here today in support of this bill. I also am here in support of Tyler Kohtz which has presented. The board is in agreement and support of all things that Tyler had just presented as well as the amendments that were brought before you today that Tyler discussed. We have discussed those, we know the importance of working with the banking community and the banking industry. We are cognizant of their input. They have had input from the beginning on this process to give us input on our drafts as well as our final legislation. And so we are representative of that and hopeful that, with the changes, that they will find their support in this bill. I also would want to point out that the AMCs do not deal with mass appraisal in any way. I know that was brought up. And then I want to thank you for your time and then answer any questions that you may have. [LB684]

SENATOR GLOOR: Questions? Senator Campbell. [LB684]

SENATOR CAMPBELL: Mr. Kubert, but they would affect the individual appraisers that a board might use as a referee because that's how you and I know each other. [LB684]

TOM KUBERT: Yes, specifically to referees that would work within the board of

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equalization process, the AMC's will have no part in that regulatory process. [LB684]

SENATOR CAMPBELL: Okay. [LB684]

TOM KUBERT: This deals specifically with an AMC working with a bank in order to be, if you will, the middleman in providing appraisal services that they require for their lending purposes. [LB684]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Kubert. [LB684]

TOM KUBERT: Thank you for your time. [LB684]

SENATOR GLOOR: Other proponents? Anybody in opposition? We'll move to neutral capacity or neutral testifiers. [LB684]

ROBERT HALLSTROM: Chairman Gloor, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the Nebraska Bankers Association in a neutral capacity on LB684. The NBA has, as the most recent testifier alluded to, been involved since the inception of AMC registration from a couple of years ago and in this particular project with regard to being a participant on the panel or the task force that looked at the three initial drafts that have come before you in the form of LB684, (LB)685, and (LB)717. My comments, obviously, with respect to (LB)684 were submitted to the initial draft, I should say, were submitted, considered a few of the recommendations that we had at that time were adopted and incorporated into the bill that was introduced before this committee. Some were not. We have, after continuing dialogue with the Real Property Appraiser Board, narrowed down our concerns to three particular items. If the amendment that was circulated addresses those three items I would note for the record--and Mr. Kohtz is aware that I have not seen those amendments--I only provided an e-mail with a general description of the issues that we would like to have addressed. Specifically, they relate to pages...page 13, lines 1 through 7, to delete the additional fee authority that would be given to the Real Property Appraiser Board. When the bill was originally put together a few years ago, some of the fees for registration were set higher than in other industries because, I believe, the board was concerned about how many AMC's were going to crop up in the state of Nebraska. They wanted to have additional potential funding to adequately supervise and regulate the AMC's. I don't know that there's been anything that would lead them to need additional, what I would suggest are, somewhat vague and ambiguous fee-setting authority under those particular provisions. And they have indicated their willingness to delete those particular provisions from the bill. The second item that Mr. Kohtz related to on page 14, line 8, we take no exception with regard to prohibitions against the AMC trying to have an appraiser indemnify them for activities of the AMC, but wanted to clarify that if the appraiser him or herself has any responsibilities that would give rise to the need for indemnification back to the AMC that

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those would not also be eliminated under the provisions of the bill. And finally, on page 18, line 13, to in some manner remove the entry of a dismissal with settlement from those provisions. In many instances, dismissal with settlement is not admitting any wrongdoing on behalf of either party, generally is going to be kept confidential in nature. And so we would like to remove that particular element from that provision of the bill. And if we can get those amendments drafted properly and in front of the committee, we would remain neutral on the bill. Be happy to address any questions that the committee might have. [LB684]

SENATOR GLOOR: Senator Schumacher. [LB684]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony, Mr. Hallstrom. Can you kind of explain at a higher level what's going on here? What role these people play? How that interacts with the necessity for this bill or lack of necessity for it? It's kind of hard just dropping some language to get the picture. [LB684]

ROBERT HALLSTROM: In terms of the general background, Senator, the federal law has recognized with regard to financial institutions selecting appraisers that there could, I guess for lack of a better way to describe it, there could be a potential that a lender could be accused of always selecting the same appraiser and hoping to get the same results type of thing if there was an appraiser, which I don't believe to be the case, but some might think there could be an appraiser out there that might be giving a different type of appraiser to get a result. And so one of the ways that the bank can do that in smaller banks is simply try to establish a panel of appraisers that they can select from. And some may go through a random sampling type of process to avoid any of those types of appearances, if you will. But it's also given rise to the development of an AMC appraisal management company industry that will come in and manage and coordinate and supervise those types of things. They also provide other services in terms of technical reviews of appraisers and things that smaller banks might have to do in-house and they have to make sure they don't have conflicts of interest with regard to people that are doing the appraisal reviews also being on the loan approval subcommittee and things of that nature. So the AMCs can perform a very vital and necessary function for many banks, irrespective of their size, by simply being that middleman that's going to ensure that there is a panel of providers or appraisers that are selected from to make sure that the necessary reviews that the lender is required to do under the federal and state law are performed properly and that's what the process, I guess, is all about in a nutshell. [LB684]

SENATOR SCHUMACHER: Thank you. [LB684]

SENATOR GLOOR: Other questions? Seeing none, thank you. [LB684]

ROBERT HALLSTROM: Thank you, Senator. [LB684]

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SENATOR GLOOR: (Exhibit 3) Anyone else in a neutral capacity? Seeing none, Mr. Wiles, will you wish to close? Mr. Wiles waives closing. And that will end the hearing on LB684. We'll now move to LB685. Welcome again. [LB684]

DAN WILES: (Exhibit 1) Good afternoon again, Senator Gloor and committee members. LB685 addresses, again, many issues concerning the administration and enforcement of the Real Property Appraiser Act. The primary purpose is to eliminate inconsistencies with the act and inconsistencies between the act and the Uniform Standards of Professional Appraisal Practice, the standards recognized by the Appraisal Subcommittee through Title XI of the Financial Institution Reform, Recovery, and Enforcement Act of 1989. In addition, this bill seeks to provide clarity for administrative issues recently faced by the Nebraska Real Property Appraiser Board. Nebraska Real Property Appraiser Board will continue to have difficulty administering and enforcing the act regarding the items related to the changes found in this bill if it is not passed. Again, I will pass the buck to someone that knows a whole lot more than I do about this topic. And...but I'll try and answer anything. [LB685]

SENATOR GLOOR: And we've been handed out a copy of amendments, proposed amendments, for this bill, too. Is that correct? [LB685]

DAN WILES: Yeah. That's...no, those are...that's a summary, I believe. That should be the summary. If I put in amendments...it should be this...it's an amendment to the act. That's what the bill is. I think that's how I stated it. Yeah. [LB685]

SENATOR GLOOR: Okay. All right. I understand. Okay. Any questions for Mr. Wiles? Thank you. [LB685]

DAN WILES: Thank you. [LB685]

SENATOR GLOOR: We'll now move to proponents. [LB685]

TYLER KOHTZ: (Exhibit 2) Once again, good afternoon. My name is Tyler Kohtz, T-y-l-e-r K-o-h-t-z. And once again, I'm the director for the Nebraska Real Property Appraiser Board. I would like to begin by thanking Chairperson Gloor and the members of the committee for this opportunity to speak on behalf of the Nebraska Real Property Appraiser Board concerning LB685. The Real Property Appraiser Board was established as the Real Estate Appraiser Board on January 1, 1991, to carry out the requirements of Title XI of the Federal Financial Institutions Examination Council Appraisal Subcommittee, also known by its shorter name, the Appraisal Subcommittee. The Real Property Appraiser Act consists of qualifications for credentialing as well as standards for appraisal practice and appraiser conduct. The board's primary functions related to the Real Property Appraiser Act are to issue and renew appraiser credentials,

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develop and implement standards for appraiser credentialing, approve appraiser qualifying and appraiser continuing education courses and activities, investigate and adjudicate grievances, and disseminate relevant information to the general public, credentialed appraisers, and appraisal management companies. The board's appraiser program is primarily funded by appraiser credentialing fees, and no taxpayer money is used to support this program. The Appraisal Subcommittee conducts an on-site compliance review of the agency's appraiser program once every two years, the last being in 2013. The Appraisal Subcommittee has the authority to disapprove a state appraiser regulatory program if the policies, practices, and procedures in place are inconsistent with the requirements of Title XI. It's important for the board's program to serve the best interests of the citizens of Nebraska and be compliant with Title XI, operate in a manner that is efficient, consistent, and equitable. LB685 eliminates inconsistencies within the Real Property Appraiser Act, which often reads like rings on a tree. Many changes were made to the act throughout the years without considering the effect on other provisions within the act. Some definitions and provisions, when read together, are confusing to interpret. LB685 also eliminates inconsistencies between the Real Property Appraiser Act and the Uniform Standards of Professional Appraisal Practice also known as USPAP, the quality control standards applicable to real property appraisal practice. Compliance with USPAP is the basis for approximately 90 percent of the board's investigations, and USPAP also contains the standards used to evaluate qualifications of an applicant for a real property appraiser credential. Finally, LB685 provides clarity for administrative concerns of the board. The following specific changes to the Real Property Appraiser Act will be found in LB685. Definitions are added for assignment, automated valuation model, client, credential holder, education provider, employee, instructor, person, scope of work, specialized knowledge, valuation services, and workfile to provide clarity within the act. LB685 changes the definitions for appraisal, appraisal review, real property appraisal activity, report, two-year education period, uniform standards of professional appraisal practice to provide clarity within the act and also provide consistency between the act and USPAP. LB685 clarifies the Real Property Appraiser Board's ability to issue cease and desist orders related to noncredentialed appraisal practice. Section 28 is modeled after Nebraska Revised Statute 81-885.03 and the Real Estate License Act. LB685 changes "real property appraiser" to "person" in (section) 76-2221(1) to clarify who this exemption applies to, and any elected officials and automated valuation models are added to the exempted activities. LB685 removes the requirements for the initially appointed board members, changes a quorum from four members to three, and expands activities that qualify for per diem payments, and limits the amount each board member may receive in per diem payments within a fiscal year. LB685 limits the amount of funds that may be transferred from the Real Property Appraiser Fund to not less than the minimum fund balance established by the board. The Nebraska State Auditor recommended that the board establish a minimum fund balance through a policy after its 2012 financial audit. LB685 adds real property associate credential for those wishing to be recognized within the appraiser community with a professional designation, but does not wish to become

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licensed certified residential, or a certified general real property appraisers. The credential may be utilized by county assessor's offices, banks, attorneys, and those in the real estate profession. The requirement will be similar to, but less stringent than the qualification for the licensed real property appraiser credential, and the scope of work will be limited to valuation services not requiring a credential as a trainee real property appraiser, registered real property appraiser, licensed real property appraiser, or certified residential or certified general real property appraiser. LB685 adds the requirement that a contract or letter of engagement showing a completion date must be submitted to the board's office prior to any temporary permit being awarded and removes the requirement that an appraiser must submit a letter of good standing from his or her resident state. The appraiser's standing will be verified through the Appraisal Subcommittee Federal Registry. In addition, LB685 limits the validity of an application for a temporary permit to one year. LB685 clarifies the board's authority over temporary permit holders. Currently, the board's authority is unclear after the assignment is completed and a complaint is filed against the temporary permit holder. At the present time, a complaint is filed, the subject appraiser does not hold a credential, the board would have no authority over that individual, even though they had a permit at the time to complete an assignment within the state. LB685 clarifies that a credential may be renewed for one year or two years, and better defines the renewal dates. LB685 adds inactive status for currently credentialed appraisers. Instead of having to let a credential lapse, an appraiser would have a set period in which he or she could continue to meet continuing education requirements, but not have an active credential. This ability would prevent an appraiser from being required to reapply and meet the current requirements for credentialing if he or she was unable to practice for a short amount of time. LB685 better clarifies who and when continuing education requirements must be met by appraisers and what continuing education...what the continuing education requirements are. LB685 removes the requirement that all rules and regulations shall be transmitted to each credential holder electronically. Currently, the board sends each resident appraiser a hard copy of USPAP. LB685 adds additional acts or omissions that shall be considered grounds for disciplinary action or denial of an application by the board and clarifies the board's investigative authority over noncredentialed individuals. It is the Nebraska State Attorney General office's opinion that the board does not have statutory authority to investigate noncredentialed individuals. LB685 removes the requirement for an appraiser to return his or her proof of credentialing to the board upon surrender, cancellation, suspension, or revocation, and requires that all credentialed appraisers designate and maintain a principal place of business and conspicuously display his or her proof of credentialing in such place, instead of just resident appraisers being required to do so. The Appraisal Subcommittee's position on reciprocal credential holders is that they should not be held to different standards than resident credential holders, and this change reflects this position. LB685 adds recognition for appraiser independence. Although the Residential Mortgage Licensing Act prevents appraiser influence by those in the mortgage profession, nothing is in place to protect appraisers from influence of nonmortgage people; for example, property owners. LB685 makes it

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unlawful for anyone to attempt to influence the independent judgment of an appraiser. Many states have similar language in their appraiser regulatory laws. LB685 repeals section 76-2211.01, consulting services, which is no longer recognized in USPAP. LB685 eliminates the inconsistencies within the Real Property Appraiser Act, and the inconsistencies between the Real Property Appraiser Act and USPAP, and provides clarity for administrative concerns of the board. If this bill is not passed, the board will continue to sort through its inconsistencies found in the act, and address administrative concerns the best it can without adequate statutory guidance. The Real Property Appraiser Board supports LB685. Thank you for the opportunity, and I'll address any questions you may have. [LB685]

SENATOR GLOOR: Thank you, Mr. Kohtz. [LB685]

TYLER KOHTZ: Yes. [LB685]

SENATOR GLOOR: You could help me. I'm trying to decide, it sounds like (LB)684 is a cleanup bill. It sounds like (LB)685 is a continuation of a cleanup bill. I mean, I'm...we talked on (LB)684 that with a couple of years of...under our belts, we have an ability to make it better. But on this, it sounds like the same thing. Or is this driven by the review at the federal level when they've come in? [LB685]

TYLER KOHTZ: A little bit of it is after our last federal review, they made some recommendations to us, and some of the things you'll see show up in here. But the majority of it is just the fact that when changes were made throughout the years, there's some things that weren't adjusted to make everything cohesive. So when you try...when the board is trying to consider an applicant or consider an enforcement action, sometimes they lead to roadblocks trying to interpret the act because maybe two provisions don't line up together and make sense when you read them together. So it makes it difficult for the board to make a decision when you have situations like that. And a lot of what the board wants to accomplish is just clean those types of things up. And then also on the USPAP side of it, USPAP's definitions change, you know, regularly. And that's what the board uses mainly for evaluating applicants and also it's basically the standards used in 90 percent of the enforcement actions that the board takes. So it's a very important document. And that is promulgated through the federal level by the Appraisal Foundation. Some of the definitions in USPAP have changed over the years and then the Real Property Appraiser Act has stayed the same. So what you have is different wording for the exact same terms. And the problem that arises with that is, you'll have the Real Property Appraiser Act, which is what the board statutorily uses when proceeding through investigations and into maybe a hearing, a formal hearing related to disciplinary action. And they use as one of its main tools for evidence is called a Standard 3 review. And it's basically taking the appraisal and verifying if it meets the USPAP standards, which there's that set of definitions. But then when you go to hearing or pursue the investigation, you have to use the board's definitions, which

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may be different than USPAP and it creates confusion between the two. So that's what a lot of it is, is just clarifying things, making it more cohesive. [LB685]

SENATOR GLOOR: We've got some questions. We'll start with Senator Campbell and work our way down the table. [LB685]

SENATOR CAMPBELL: Thank you, Senator Gloor. Mr. Kohtz, I just want to make sure for the record, the board is appointed by the Governor, are they not? [LB685]

TYLER KOHTZ: Yes, the board members. Yes. [LB685]

SENATOR CAMPBELL: And how many board members are there? [LB685]

TYLER KOHTZ: Five. [LB685]

SENATOR CAMPBELL: Five. And they have terms of service and so forth? [LB685]

TYLER KOHTZ: Yes, each board member serves one a five-year term. They can't serve consecutive terms, so they get five years and then they're replaced. [LB685]

SENATOR CAMPBELL: Okay. And they are licensed appraisers? [LB685]

TYLER KOHTZ: Four are required to be a credentialed appraiser. One is...does not need to be an appraiser. I can't remember if it was the broker or...it's the financial institution's rep does not need to be an appraiser, so. [LB685]

SENATOR CAMPBELL: Oh, okay. So the financial institution would have one representative on the board, and the board then administers the act. [LB685]

TYLER KOHTZ: That is correct. [LB685]

SENATOR CAMPBELL: Thank you. [LB685]

SENATOR GLOOR: Senator Pirsch. [LB685]

SENATOR PIRSCH: Can you speak to...one of the items you mentioned that...what'd you say? It limits the amount of funds that may be transferred from the Real Property Appraiser Fund and not less than the minimum fund balance established by board policy. And that was a recommendation, I believe, of the Auditor. [LB685]

TYLER KOHTZ: The establishing the minimum fund balance was the recommendation by the Auditor's office. The policy was something that board members brought to my attention as something they wanted to implement, if possible. A few years back there

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was a sweep of the funds and it put them in what they felt was an uncomfortable position in terms of operating. And I wasn't here, I don't know all of the history. And I think there's only one board member left from that period of time, but it's something that they asked to have incorporated into the act. And basically, if there's any kind of checks or balances that you would like to put in there, please feel free to do so. So it's not something that they...it's more of a protection than anything that the board is looking for in this situation. [LB685]

SENATOR PIRSCH: Do you have an idea of what that minimum fund balance is or would be? [LB685]

TYLER KOHTZ: Yes, we actually...the policy has been in place for two years now. And I would say...it's difficult to explain it because we have two separate funds for the AMC and appraiser act. I would say right now, we're probably pretty close to that limit. And I would say in the appraiser fund we're sitting at probably \$450,000. Basically, some of the things that are contained within that is, we put \$100,000 for potential legal fees in case something comes up. We had a case a couple of years ago that actually, from front to back, cost the board \$80,000. So it's something that they want to make sure if it ever happens again, at least they would have the funds if the situation came up. There's also some safety net put in there for technology-type purposes so if changes need to be made to the database or if there's some change that becomes a requirement at the federal level and is pushed down, at least the board has the ability to implement those without considering what affect it may have on the credentialing fees as they currently stand. I could actually--I don't have it with me--but I could get that policy to any of you if you want it in the future. [LB685]

SENATOR PIRSCH: Thank you. [LB685]

SENATOR GLOOR: Senator Schumacher. [LB685]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Mr. Kohtz, for your testimony. How many people are regulated by this board? [LB685]

TYLER KOHTZ: In terms of just appraisers? [LB685]

SENATOR SCHUMACHER: Yeah, the licensees. [LB685]

TYLER KOHTZ: Six hundred ninety-two. [LB685]

SENATOR SCHUMACHER: Okay. Again, for the record--and I know I've asked this question on a couple of the other bills--this is not intended to apply to anything to do with county assessments and their hiring of appraisers either in their office on staff or outside appraisers for mass assessment? [LB685]

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TYLER KOHTZ: In terms of mass assessment, I...there's nothing in this bill that is directly related, directly tailored towards that. There was a mention earlier that there's the associate real property credential. And that is something that has been put together that's come out of discussions with county assessors and others that are unregulated. And kind of a way to have a designation of some sort and training in the real property appraiser profession. So, in effect, it's not specifically for that, but it could be used for the mass appraiser side of it on...for assessors' offices if they chose to do so. [LB685]

SENATOR SCHUMACHER: If the county assessors objected to those operations being covered in any way by this act, would you have a problem with the committee making it clear that they were exempt and the people they were working with on mass appraisals were exempt from this? [LB685]

TYLER KOHTZ: Employees of counties are exempt already. [LB685]

SENATOR SCHUMACHER: A lot of them are too small to have employees. They use contractors. [LB685]

TYLER KOHTZ: In...if you're referring to contractors for appraisal services, that...those are individuals that are covered under this act, and the board would not support exempting those individuals from the act. [LB685]

SENATOR SCHUMACHER: But it's basically the board's opinion that they are covered by this act. Is that not correct? [LB685]

TYLER KOHTZ: They're...in order to provide the services, they need to be credentialed real property appraisers in accordance with the Real Property Appraiser Act. [LB685]

SENATOR SCHUMACHER: There's no court case that establishes that, and the county assessors are, in fact, contesting that. Isn't that correct? [LB685]

TYLER KOHTZ: I'm unaware of any court case in terms of it. The county assessors are against it. I do understand that they are not supportive of the board's position, but it doesn't mean they have a correct position. [LB685]

SENATOR SCHUMACHER: Okay. So there's some conflict on that issue, at least, with the County Officials Association? [LB685]

TYLER KOHTZ: I wouldn't go as far as conflict. I could say that it could be resolved. [LB685]

SENATOR SCHUMACHER: Okay. And finally, on...you create a Class III misdemeanor

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which is, I think, punishable by up to \$500 or \$1,000 fine and 90 days in jail, for any person improperly influencing or attempting to improperly influence through coercion, extortion, or bribery, the independent judgment of a real property appraiser or associate. Right now, if my memory serves me correct, extortion and bribery are felonies punishable by some time in the penitentiary and thousand-dollar-type fines. Is it your intention to reduce the penalty for those in connection with this? [LB685]

TYLER KOHTZ: I tell you what. I don't know what the legal implications were. The board would not want to do anything that is not within the law. So if there's something in there in terms of it that is currently a felony, we would want to address that. [LB685]

SENATOR SCHUMACHER: Generally, extortion and bribery are pretty nasty things with big penalties, and it struck me as unusual that you would make those a Class III misdemeanor under this law. I mean, is there some...is there a kind of mini-extortion or mini-bribery that might occur here? [LB685]

TYLER KOHTZ: No. And, in fact, I took that because where that penalty came from is that that's what the current penalty for uncredentialed practice is. That's what the basis of it was, to be consistent within the act. [LB685]

SENATOR SCHUMACHER: Okay. Thank you for your testimony. [LB685]

SENATOR GLOOR: I don't think Senator Schumacher was interested in re-referencing this to Judiciary, but interesting points. Senator Carlson. [LB685]

SENATOR CARLSON: Thank you, Senator Gloor. In your opinion, what would be the reason for the county assessor to be in opposite or in some conflict or difference of opinion with the Board of Appraisers? [LB685]

TYLER KOHTZ: The conflict comes from the fact that in order to provide appraisal services, you need to be a credentialed appraiser, and some counties are contracting for appraisal services with individuals that aren't credentialed as appraisers. And I believe the view is that they can't afford a credentialed appraiser within those counties. I...you know, that's the position that I've heard. I don't know much more than that. [LB685]

SENATOR CARLSON: Would a credentialed appraiser do a much more accurate job of appraising the value of property? [LB685]

TYLER KOHTZ: Yes, it would. A credentialed appraiser goes through 300 hours--what we're referring to mainly here is a certified general appraiser--300 hours of education outside of any formal education, so college. Three hundred hours of appraiser education and 3,000 hours of experience is required to become a certified general

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appraiser. And so there's a lot of work that goes into being able to set value in a nonbiased and accurate manner. And the board's concern and the appraiser community's concern is, if you allow individuals that are not credentialed to perform these mass appraiser or mass appraisals for ad valorem purposes, you run the risk of having individuals that maybe don't have that level of expertise or specialized knowledge, which would negatively affect the tax base because, obviously, the value set there directly affect what the taxes are. [LB685]

SENATOR CARLSON: Well, a county appraiser has the responsibility of valuing property for purpose of property taxes, so that's a pretty important assessment, isn't it? [LB685]

TYLER KOHTZ: Yes, it is. [LB685]

SENATOR CARLSON: And as a state, we can't afford to have everything done by credentialed appraisers, can we? [LB685]

TYLER KOHTZ: Can you clarify that "as a state?" What do you mean by that? [LB685]

SENATOR CARLSON: Well, it makes sense that a credentialed appraiser would be much more adept at valuing property. And I think there's probably some inconsistencies throughout the state on how property is valued at county level, which ends up affecting the property taxes that are paid. And that's unfortunate. I'm just taking that from what's being said today. That's pretty unfortunate because that may mean there's a real discrepancy from county to county in terms of what people end up paying property taxes on when there's perhaps quite a difference in the way a given piece of property would be appraised. [LB685]

TYLER KOHTZ: I don't know the answer to that. There could be, yes. [LB685]

SENATOR CARLSON: Okay. All right. Thank you. [LB685]

SENATOR GLOOR: Senator Campbell. [LB685]

SENATOR CAMPBELL: Thank you, Senator Gloor. Mr. Kohtz, how many assessors across the state are credentialed appraisers? [LB685]

TYLER KOHTZ: I don't know the answer to that. I know that Lancaster, Douglas, and Sarpy County have credentialed appraisers on staff. Many of the other counties actually contract with credentialed appraisers. We did some initial research and, I believe, we found that 60 percent of the counties were in compliance with the Real Property Appraiser Act. And that's not counting the ones that have appraisers on staff. So I couldn't give you that number. Actually, if I could have Tom testify next, he has a lot of

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this information. He gets directly involved with this so he'd have more of it to be able to provide to you. [LB685]

SENATOR CAMPBELL: Thank you, Mr. Kohtz. [LB685]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB685]

TYLER KOHTZ: Thank you. [LB685]

TOM KUBERT: Good afternoon again, Senators. Senator Gloor, members of the committee, thank you for your time today. My name is Tom Kubert, T-o-m K-u-b-e-r-t. I currently serve as vice chair of the Nebraska Real Property Appraiser Board representing Congressional District 1. I'm here to testify in support of LB685. In addition to Tyler's testimony... Tyler Kohtz's testimony--he does represent the board and the board's discussion--I am in full support of all the things that he has said so far. Several issues have come up related to this. We did, indeed, do some research related to mass appraisal based on the reports and opinions as published by the Tax Equalization Review Commission. In those reports, each county identifies any contracted appraisal services that they have within the state. We then cross referenced those providers with our list of credential holders. I believe nearly 70 counties were in conformance with Nebraska real property appraisal statute. There were approximately 20 counties that were contracting with individuals who are not credentialed. Of those 20 counties, there were approximately five to six providers. Those...the recognition of those noncredentialed people serving or providing appraisal services in our state has led to approximately five cease and desist orders from the Nebraska Real Property Appraiser Board. We recognize at our board level the importance of providing credentialed valuation services for our tax base. We understand that there is additional cost to hiring a credentialed individual to set those values. We understand that in all areas of life, to get a credentialed individual to provide services, that oftentimes costs more than someone who does not have any reporting requirements or any oversight. The oversight in the counties that use individuals who are not credentialed falls under the Department of Revenue through the property tax division. Clearly in their statutes, they recognize the Uniform Standards of Professional Appraisal Practice, USPAP as it's been referred to. They recognize that. There's a standard in there, Standard 6, that's recognized in their regulations. Within LB685 there was discussion about the associate credential. We have had feedback during our law rewrite and the committee members, that there is demand in our state for this credential. It is a credential that would primarily be used by people who are already exempt from our act, but yet want to be recognized for their knowledge base. This would be people, for example, in an assessor's office who are employed full-time or an assessor who is an elected official who would like to take the proper education and go through the proper education, perhaps examination, perhaps experience credentials to reach the point where they have a credential

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recognized by the state. This credential doesn't allow them to go out and all of a sudden provide appraisal services, but it allows them to work within their exempt category. In addition to assessment, we've heard from realtors who would support this credential as they go out and set price opinions and also from appraisal firms in our state. My firm has about 16 employees operating out of Lincoln, Nebraska. We recognize the demand for this. We have staff members who are exempt from the act, but we would like to get them base knowledge and have them have a goal to establish professional values. And this would allow them to do just that. It would give them no right to go out and be an appraiser and provide appraisal services, but would recognize that there is a very limited scope of practice associated with the associate credential. I think that it serves our state well. And I'm hopeful that this bill passes because I think that's important. There was a question about a court case regarding providing appraisal services without a credential. There is, actually, a court case in Lancaster County Court in 2012. There was a conviction--this came through the property tax venue--of a person who was providing opinions of value without a proper credential. This person was convicted of the Class III misdemeanor that's in the existing law and they received a fine. They have since stopped doing that, at least in Lancaster County. I currently serve as the referee coordinator for the Lancaster County Board of Equalization so I'm aware of this person and whether they're providing services. The problem with the mass appraisal side right now is that we actually have people who have let their credentials go to remove the oversight of the board so that they could go out and contract with counties. Under our existing law, they're only exempt from the law and supported by our policies and regulations when they're a full-time employee. Some of them want to do part-time employment and then be exempt from the law. The problem with that is that when...it opens up a big loophole for tax...what we might call tax representatives who represent taxpayers. There may be some very large properties where they could be employed for one hour as a part-time employee, be exempt from the act, and all of a sudden we don't have any oversight when they're coming in as an advocate for lower values. I think that jeopardizes our tax base in our state. There's no question that assessors need help. There really is not a question. They have a very difficult job. In many counties, they're dealing with some very high-end properties and they may not have the experience or credentials necessary to do that. We're simply asking that when they contract for help, that they contract with credentialed individuals who are professional, have oversight, have experience, examination, and education to provide those services. My last comment would be that the appraisal industry is shrinking. We have a reduced number of appraisers. What used to be over 1,100 appraisers 15-20 years ago, now we're down to 690. We're trying to find ways to get more people involved. We've had over a dozen trainees sign up in the last two months because of some changes that we've done at the board that we're recognizing those trainees and their experience. We're thankful for the people that are out there training them and doing them well, but as a trainee, they fall under the Uniform Standards of Professional Appraisal Practice. We think it's important, and we're hopeful that this committee will see that, too. I thank you for your time, and I'd be happy to answer any of your questions. [LB685]

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SENATOR GLOOR: Thank you, Mr. Kubert. Questions? Senator Campbell. [LB685]

SENATOR CAMPBELL: Mr. Kubert, do you know how many of the assessors in the state hold a credential as a licensed appraiser? [LB685]

TOM KUBERT: I'm sorry, I don't know that exact number. I believe it to be very few. [LB685]

SENATOR CAMPBELL: I would think so. [LB685]

TOM KUBERT: It's not a requirement of office. An assessor's certificate, as issued by the Department of Revenue, property tax, is a requirement--that's something that I have showing that credential--and that is a tested level. And so there is some testing available to establish your credential for assessors. [LB685]

SENATOR CAMPBELL: But it's not going...the assessors don't have the training and the number of hours that even what you're talking about an associate would have? Is that what you're calling the associate...? Am I saying that right? [LB685]

TOM KUBERT: Yes. The associate credential, it is less than the education and testing of an assessor. [LB685]

SENATOR CAMPBELL: Okay. Oh, less than. [LB685]

TOM KUBERT: It's actually less than. [LB685]

SENATOR CAMPBELL: Okay. Thank you. [LB685]

SENATOR GLOOR: Senator Carlson. [LB685]

SENATOR CARLSON: Thank you, Senator Gloor. Now, assessors who don't contract with credentialed appraisers would follow that pattern, I suppose, because they figure they don't have enough money. Would that be true? [LB685]

TOM KUBERT: The budget concern is one that we've heard from the assessors. And that we...and we understand. We understand they're under budget constraints. They certainly are contracting with people who are currently operating outside of Nebraska statute. [LB685]

SENATOR CARLSON: And, of course, an assessor is an elected position. So we don't have anything in law that says they have to be credentialed, and you've said that. If somebody who's in real estate, what kind of time would it take them--starting practically

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from scratch other than that they've sold some property--to become credentialed?
What's the length of time? [LB685]

TOM KUBERT: To achieve a certified general credential within the state of Nebraska--which you'd be qualified to appraise all kinds of property that you have the competency for--it's 3,000 hours and a minimum of 30 months of experience. So nearly three years. [LB685]

SENATOR CARLSON: Three thousand hours of... [LB685]

TOM KUBERT: Experience. [LB685]

SENATOR CARLSON: ...of experience. Well, what about course work? [LB685]

TOM KUBERT: Well, there are 300 hours, and that would be actual hours and not as calculated, maybe, at a university, but 300 actual hours of education. And there's a prescribed course list of qualifying education that the Nebraska Real Property Appraiser Board maintains in conformance with the federal guidelines. [LB685]

SENATOR CARLSON: If it was a three-hour course, it'd take 100 of those days or evenings, wouldn't it, to get through that 300 hours? [LB685]

TOM KUBERT: There are generally laid out in weeks and each week would be between 30 and 40 hours. [LB685]

SENATOR CARLSON: Okay. Okay, thank you. [LB685]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB685]

TOM KUBERT: Thank you for your time. [LB685]

SENATOR GLOOR: Other proponents? Anyone who wishes to speak in opposition? [LB685]

STEVEN SHULTZ: Hello. My name is Steven Shultz, S-h-u-l-t-z. And I am a professor of real estate and land use economics at the University of Nebraska at Omaha. And I also conduct a wide variety of research, funded research, on real estate valuation issues for local governments, state governments, and federal agencies. And I'm speaking today not on behalf of the university, but as a private citizen. And I have several concerns with the current and the proposed changes to the Nebraska Real Property Appraiser Act. Specifically, they focus on some of the discussions you've already had today, what is the restrictions on noncredentialed appraisers, if they are too

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strict, and that is my opinion. Specifically, it's because the scope of practice has become too broad over the years. Originally, and something I totally agree with, is that the appraisal industry should be highly regulated in terms of lending, securitized, collateralized lending, and that was the traditional role of the appraisals. But over time they've expanded, expanded. And I think you all know the language now, but basically, it's anything related to valuation services. So you decide what the value of a property is or trends in values, a whole wide range of things. And, in fact, I have done research over the last nine years. I've attained approximately \$600,000 of externally funded research grants through the university. And reading the exact text of the LB685 and the language before it, most of that would be illegal. So I have technically probably broken the law in Nebraska. No one has ever challenged me or sent me a cease and desist order. And I happen to know other consulting companies and economists who also do similar work. So we see a situation where the law is not being across the board followed. And there's maybe selective cases of when people are asked to cease and desist. So it's my request that before this bill be approved or put...continued, that either some clarifications on exemptions be made...for example, there is a possibility that I might be exempt because as a employee of the university I may be considered to be a state agency employee. However, the language is not so clear because I think the language specifically states you have to be a state agency employee of an agency that actually does appraisals. And the university, although it does support research and teaching related to appraisal, we don't really do that as our main course of business. So either that language needs to be clarified to make people like myself exempt or, better yet, the whole focus of noncredentialed appraisal activities, I think, needs to be brought back. And I think this is important because the experts in many forms of valuation research, including mass appraisal models, are not necessarily appraisers. For example, most of the federal government agencies who hire me, if they wouldn't hire me, they'd hire other experts from around the country, usually people who have their Ph.D.s and have been focused many, many years on statistical analyses on mass appraisals. They don't, generally, hire appraisers. So that's all I have today. [LB685]

SENATOR GLOOR: Are there questions for Mr. Shultz? Senator Carlson. [LB685]

SENATOR CARLSON: Yeah, thank you, Senator Gloor. You're statement you just made, they don't generally hire appraisers. [LB685]

STEVEN SHULTZ: Correct. [LB685]

SENATOR CARLSON: And that's because it costs too much? [LB685]

STEVEN SHULTZ: Because they're not seen to have the greatest skill level or level of expertise for the particular assignments, in all cases. For example, I'm currently working for the U.S. Army Corps of Engineers on a national project. There's a team of six people. None of them are appraisers. None of them are certified credentialed

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appraisers. [LB685]

SENATOR CARLSON: And yet you would say they're very capable. [LB685]

STEVEN SHULTZ: Who is capable, appraisers? [LB685]

SENATOR CARLSON: Well, capable to carry out the work that they are hired for. [LB685]

STEVEN SHULTZ: Uh-huh. [LB685]

SENATOR CARLSON: People like you. [LB685]

STEVEN SHULTZ: I believe I'm capable to do the work that I'm hired for, valuation services. I don't believe that I'm capable or maybe not that I'm not capable, but I don't think it's appropriate for me to do fee appraisal work for lending purposes, for mortgages. Even though I could do it, I don't think that's right because I'm not credentialed. I should be credentialed. That should be restricted. But to do general valuation research, there are people who don't have their credentials that may have a master's degree or Ph.D., they may even just have a bachelor's degree, may have more skills to do the valuation work than an appraiser. [LB685]

SENATOR CARLSON: Well, we're hearing more about property taxes being too high and something needs to be done to address property taxes than any other thing... [LB685]

STEVEN SHULTZ: Uh-huh. [LB685]

SENATOR CARLSON: ...I think. Well, it gets down the appraisal of the property is pretty important. What would your recommendation be as to how we attack that problem? You're not going to lower property tax, but whatever property tax relates to, the appraisal should be accurate. What would you suggest? [LB685]

STEVEN SHULTZ: Well, in relation to what I heard before, it's my opinion that the--if I would say--the top five experts in the state in terms of doing mass appraisals--and this would be the mass appraisal of...for tax issuing purposes, assessment--are not necessarily appraisers in this state. They would be tax assessors or other experts, university professors. Not myself, but there's others at other universities that do research on it, because mass appraisal models are so complex. And if you look to the International Assessment Appraisal Officers, IAAO, which their regulatory or their professional association, they have a lot of courses and training and focus on improving their mass appraisal skills. And I think that the tax assessors in this state are really the ones taking the lead in that area. [LB685]

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SENATOR CARLSON: Okay. Thank you. [LB685]

SENATOR GLOOR: Senator Schumacher. [LB685]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony today. Am I hearing things right, that we almost have two worlds of appraisals? The world of--I think the word they're using is--fee appraisal which you take a specific piece of property, compare it to other pieces of property, and come up with a number based upon either income or replacement cost or sales comparisons. And that applies if your doing an appraisal for a mortgage at a bank or a loan that a bank is going to make to make sure that it's a good loan; or an appraisal value for an estate; or people arguing over what the...heirs arguing over what the price of an estate...buyout prices should be. That's one world of appraisal. And another is more of a statistical animal that looks at larger bases and tries to apply general statistical rules to a large number of properties or to some theorem that's out there as to what property should be worth. Is that kind of a right impression? [LB685]

STEVEN SHULTZ: Yes, that is a very accurate and well-put description of the two tracks of valuation research or valuation activities. [LB685]

SENATOR SCHUMACHER: So what we've seen today is a struggle between whether or not the rules of one world should apply to the rules of the other world. And making sure that the people in both worlds have some type of legitimacy and aren't just pulling numbers out of the air. [LB685]

STEVEN SHULTZ: That, and also to allow people who are not credentialed appraisers, for a variety of reasons, to be allowed to do that valuation research because that was not the...originally, that was not considered to be the area that needed to be regulated and protected. People are most concerned about appraisal fraud associated with mortgage lending. That's where, primarily, the need for regulation is generated, but they've slowly expanded the reach. And I think they're trying to do it to get market share. I don't really understand why they would object to someone noncredentialed to do valuation research. And the people who hire experts to do valuation research should be those who decide whether they're competent or not. Or a lawsuit or a court could decide whether testimony of one valuation expert is more or less valued than another person, not how many hours they've taken in continuing education or other background information that they need to become an appraiser. [LB685]

SENATOR SCHUMACHER: Thank you for your testimony. [LB685]

SENATOR GLOOR: Any other questions? Have you been here for all three bills that have had to do with appraising, appraisals? [LB685]

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STEVEN SHULTZ: I've heard the discussions on most of them. I think I came a little bit late, I missed the discussion of the first one. [LB685]

SENATOR GLOOR: On (LB)717? [LB685]

STEVEN SHULTZ: (LB)717. [LB685]

SENATOR GLOOR: Yeah, my question was going to be whether...I wouldn't see that your objection related to (LB)717 since that had more to do with what the Appraisal Subcommittee...what we're talking about in terms of federal requirements... [LB685]

STEVEN SHULTZ: Right. [LB685]

SENATOR GLOOR: ...and trueing up our state. [LB685]

STEVEN SHULTZ: Right. [LB685]

SENATOR GLOOR: But I see where your concern is as relates to the other two, I believe. Certainly this one. [LB685]

STEVEN SHULTZ: Yes, I reviewed (LB)717, and I have no problems with that. [LB685]

SENATOR GLOOR: Yeah. Any other questions? Thank you. Any other opponents? Good afternoon. [LB685]

KORBY GILBERTSON: Good afternoon, Chairman Gloor, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association in opposition to LB685. The Realtors Association met this...over the weekend and LB685 got a lot of conversation during our meeting because of all of the different things it purports to do, but what got the most conversation and concern was section 49 which appears on page 51, which is what Senator Schumacher brought up, just creating a new crime for improperly influencing any...and it goes on through either extortion, coercion, or bribery. I think during the proponents' testimony, they stated that this was necessary because right now the appraisers don't have any protection from this type of thing going on. I would argue quite the opposite. There's already existing statutes for bribery and extortion. If there's something going on at that level, there's already a remedy for it. Secondly, we feel that this might have an unintentional chilling effect on open conversations, right now, that go on between realtors and appraisers all the time. It is not uncommon for appraisers to call a realtor to ask them about a certain property or back and forth discussions to go on during the appraisal process. There were a number of realtors at the meeting on Saturday that said, you know, if this was in place,

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they'd be very leery of talking to an appraiser because they don't know what would be crossing the line or if, you know, at the end of the year they get a box of chocolates, that was considered a bribe or something like that. So with that, I'd be happy to answer any questions. [LB685]

SENATOR GLOOR: Questions? Thank you, Ms. Gilbertson. [LB685]

KORBY GILBERTSON: Thank you. [LB685]

SENATOR GLOOR: (Exhibits 3 and 4) Any other opponents? Anyone in a neutral capacity? Seeing none, will there be any closing, Mr. Wiles? Okay. He waives, closing. That will end the hearing on LB685. And that will end the hearing for the Banking, Commerce and Insurance Committee today. Thank you. [LB685]