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Banking, Commerce and Insurance Committee
February 10, 2014

[LB716 LB849 LB876 LB971]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 10, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB876, LB716, LB849, and LB971. Senators present: Mike Gloor, Chairperson; Mark Christensen, Vice Chairperson; Kathy Campbell; Tom Carlson; Tommy Garrett; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR GLOOR: Good afternoon. I'm Senator Mike Gloor, District 35. I am the Chairman of this committee. We will take the bills in the order that's listed on the agenda outside. Some rules of the road are listed over there. I'd ask you to adhere to those, if you would, to make sure that the meeting goes smoothly. Let me repeat some of those rules and some others that are information items. First of all, please check your cell phone to make sure that it's off or in a vibrating position. If you're going to provide testimony on any of the bills, I'd ask that you move a little further forward to keep things flowing. The order of testimony, although this looks like an audience that could recite this themselves, are the introducer, proponents, opponents, those in a neutral capacity, and then closing comments by the introducer. We'd ask all testifiers to please sign in, fill out one of the orange sheets, hand it to the clerk or the pages before you give your testimony. When you start your testimony, please give us your name and spell your name so that the transcribers get it accurately for the record. We don't use the light system. Or I should say, we sometimes use the light system. I don't see a need to use the light system today, but don't test me on that. So we'd ask you to still be somewhere around the five-minute mark if at all possible. This is a relatively new piece, and that is, we've had some problems with the transcribers being able to hear all the testimony so this is for the senators as well as for the testifiers. Please keep the microphone within your range of vision so that you're close enough so that your words can be picked up. We need written materials, ten copies for us so that everybody gets an appropriate amount. If you don't have those, let one of the pages know so we can be getting copies made for you. To my immediate right is Bill Marienau who is committee counsel. At the end of the table, Jan Foster who is committee clerk. Committee members, I'll have introduce themselves starting with Senator Schumacher.

SENATOR SCHUMACHER: Paul Schumacher, District 22, which is Platte and part of Colfax and Stanton Counties.

SENATOR PIRSCH: Pete Pirsch, Legislative District 4, which is parts of Douglas County and Omaha.

SENATOR CARLSON: Tom Carlson, District 38, I live in Holdrege.

SENATOR HOWARD: Sara Howard, I represent District 9 in midtown Omaha.

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SENATOR GLOOR: And a couple of the other senators are either introducing bills or delayed and I know will be here in a few minutes. Our pages are Emily Schiltz, she's from Sioux Falls, South Dakota, and Steven Schubert who's here in Lincoln. And they'll be glad to help you as well as help us. We'll take the bills in the order on the agenda starting with LB876. Senator Howard, you're on. [LB876]

SENATOR HOWARD: (Exhibit 1) Thank you, Senator Gloor. Good afternoon and for the record, I am Senator Sara Howard, H-o-w-a-r-d, and I represent District 9. Today I bring you LB876, a bill to prohibit homeowners insurance policies from including provisions that deny coverage for injury or damage resulting from carbon monoxide or other gases produced by or released from a heating unit or ventilation system. As a few of you are aware, I know Senator Gloor and Senator Campbell are aware of, I'm very concerned with the dangers of carbon monoxide. Over the past year, I've been working with stakeholders on LB427, which is my bill dealing with homes that have a risk of carbon monoxide poisoning. I'd like to share with you one of the most disturbing stories I heard in the course of that effort. And this story was the impetus for LB876. A pastor and his wife were residing in a house owned by the church in Clay Center, Nebraska, which is in Senator Carlson's district. He was very well known because he'd been with the church for 23 years and he was a frequent actor in Hastings Community Theatre productions. One morning when his wife did not report to work at the local public library, a neighbor called the police. And when the police arrived, they discovered the pastor dead and his wife was unconscious. Both had been poisoned by carbon monoxide that was released into their home through a leak in the heating system. The pastor's widow, with the support of the church, filed a claim with the church's insurer to recover damages. The insurer declined coverage and refused to pay because the policy contained a pollution exclusion. The insurance company argued that carbon monoxide was considered pollution and, therefore, excluded from coverage. I disagree with the idea that carbon monoxide generated from within a home should be considered pollution. I believe that when most Nebraskans think of pollution, what comes to mind are pollutants generated externally by a third party such as industrial pollution. This is particularly important to me because my district includes a lot of older homes, some of which have older furnaces which are capable of leaking carbon monoxide. I don't feel that the policy of this state should be one that denies insurance coverage to a person who reasonably thinks they are insured against a risk. There will be testifiers following me who can speak in more detail about the coverage issues and the insurance policies in question. I also brought an amendment that clarifies some of the work. It's not in amendment form yet, but this is what all parties have agreed to. Thank you, Steven. And I would be happy to try and answer any questions you may have, but I am staying for closing because I will definitely be here. [LB876]

SENATOR GLOOR: Thank you, Senator Howard. Are there questions for Senator Howard? Senator Pirsch. [LB876]

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SENATOR PIRSCH: Thank you, appreciate that. Could you, again...in the specific case in which you mentioned, what happened? What was the damage? [LB876]

SENATOR HOWARD: You know, that's a good question that I may save for a testifier because the pastor's wife is here. [LB876]

SENATOR PIRSCH: Okay. I'll wait then. I'm sorry. Yep, I don't want to jump the gun there, so. [LB876]

SENATOR GLOOR: Senator Schumacher. [LB876]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for introducing this bill. You should be smiling because I've got a question. [LB876]

SENATOR HOWARD: I know you do, big troublemaker. [LB876]

SENATOR SCHUMACHER: Are you talking about property insurance or liability insurance or... [LB876]

SENATOR HOWARD: Homeowners. [LB876]

SENATOR SCHUMACHER: Homeowners insurance. So that would be liability insurance. [LB876]

SENATOR HOWARD: Uh-huh. [LB876]

SENATOR SCHUMACHER: Okay. Thank you. That wasn't that hard. [LB876]

SENATOR GLOOR: And Senator Garrett has joined the committee. Senator Garrett. Any other questions? Senator Carlson. [LB876]

SENATOR CARLSON: Thank you, Senator Gloor. What was the outcome of the happening in Clay Center? [LB876]

SENATOR HOWARD: So the pastor's wife is actually here so she'll be able to tell you... [LB876]

SENATOR CARLSON: Oh. [LB876]

SENATOR HOWARD: ...exactly. [LB876]

SENATOR CARLSON: Okay. Okay, thank you. [LB876]

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SENATOR GLOOR: Other questions? Thank you, Senator Howard. [LB876]

SENATOR HOWARD: Thank you, Senator Gloor. [LB876]

SENATOR GLOOR: And we will move to proponents for the bill. Senator Christensen has joined us. Senator Christensen is the Vice Chair of the committee. Good afternoon. [LB876]

CHERYL GREEN: Hello. My name is Cheryl Green, G-r-e-e-n. I live at 102 East Thurber Street in Clay Center, Nebraska. And I want to thank Senator Howard for introducing this bill. I'm a widow. My husband of 28 years, John Green, was pastor of Clay Center Christian Church. We lived in the parsonage owned by the church where I still reside. John was killed and I was seriously injured in a carbon monoxide poisoning incident at the parsonage in November of 2009, caused by a malfunctioning heating unit. Though I may appear fine on the outside, the poisoning has left me with reduced brain functions, memory loss, and has affected my energy levels needed to function and increased levels of pain. These have affected how I live every day, including my ability to work. As a result, I'm unable to work a full-time job and now have to rely on disability for some of my financial needs. The church's insurance company, Church Mutual, knew within 24 hours of the incident that it was a carbon monoxide poisoning event. The insurance company hired a lawyer who contacted the church and myself and worked with the church and I for over a year on this matter. The church was told that these claims would be taken care of and was never informed that there was no coverage. My attorney submitted a demand for me, on my behalf and my husband's estate, to the insurance company on August of 2012. Soon after that, I had an evening phone call from an investigative reporter who wanted to interview me about a lawsuit against me in federal court. You can imagine my shock and horror as the nightmare that I had wakened to in November '09 became infinitely darker. If that reporter had not called me, the next evening a sheriff would have been at my door to give me a summons advising me that the insurance company had sued me in federal court, claiming that the carbon monoxide poisoning event was not covered due to a pollution exclusion in the church's liability policy. Subsequently, a federal judge entered a summary judgment in favor of the insurance company, finding the claim could be excluded due to a pollution exclusion in the policy. The case is now on appeal to the United States Eighth Circuit Court of Appeals. I do not think it is right that this claim was denied on the basis of a pollution exclusion. I have researched this issue and understand that pollution exclusions became common in policies beginning in the 1970s in response to federal laws regarding pollution. However, these exclusions were never intended to be applied to residential situations when carbon monoxide comes from a malfunctioning or poorly maintained heating unit within the dwelling rather than an outside source. If pollution exclusions, which I believe are standard in most homeowners policies, are allowed to exclude carbon monoxide events, then I do not believe anyone in Nebraska in a

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residential situation has coverage for carbon monoxide or other kinds of poisonings. It isn't right for the consumer buying insurance nor what they expect. Consumers buy insurance to feel protected, to cover accidents, and to help with losses they can't prepare for or recover from. I urge you to support this bill to prevent others, who might be in similar situations, from being denied compensation for their losses. Thank you so much for your time. [LB876]

SENATOR GLOOR: Thank you, Mrs. Green. And I'm sure we all join together in our sorrow over your loss. [LB876]

CHERYL GREEN: Thank you. [LB876]

SENATOR GLOOR: Let me ask a question, though. In your research on this, since you're probably one of the more knowledgeable advocates on behalf of yourself, is this movement to make this change pretty common now in other states in the Union? [LB876]

CHERYL GREEN: I honestly don't know how common that is. My lawyer is here if you'd like to ask him some of those questions. But I don't know. [LB876]

SENATOR GLOOR: Okay. [LB876]

CHERYL GREEN: Sorry. [LB876]

SENATOR GLOOR: That's fine. Thank you. Are there other questions? Seeing none, thank you for your testimony. [LB876]

CHERYL GREEN: Thank you. [LB876]

SENATOR GLOOR: Other proponents for (LB)876? Seeing no further proponents... [LB876]

MATT SCHAEFER: Good afternoon, Chairman Gloor, members of the committee. My name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, representing the Nebraska Association of Commercial Property Owners. Our association worked with Senator Howard, the Healthy Kids Alliance, and other stakeholders this summer on the carbon monoxide detector bill and came to an agreement on how to implement installation of those detectors in apartment complexes and other places. And so our members thought this was a helpful companion bill that would bring more urgency and attention to this serious health issue for Nebraska. Thank you. [LB876]

SENATOR GLOOR: Thank you. Questions? Matt, do you know, is this a common bill or a similar bill like this one that's... [LB876]

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MATT SCHAEFER: I don't know the answer to that. Sorry. [LB876]

SENATOR GLOOR: Okay. Thank you. Seeing no...Senator Carlson. [LB876]

SENATOR CARLSON: Thank you, Senator Gloor. I missed it, are you a proponent or opponent? [LB876]

MATT SCHAEFER: Proponent. [LB876]

SENATOR CARLSON: Okay. Okay. I don't know if you can answer this, I would have liked to have spoken with the attorney. But what's the legal position for a company to bring some kind of a lawsuit against the widow? [LB876]

MATT SCHAEFER: I probably shouldn't try to answer that. I don't know. [LB876]

SENATOR CARLSON: Okay. [LB876]

SENATOR GLOOR: Other questions? [LB876]

MATT SCHAEFER: Thank you. [LB876]

SENATOR GLOOR: Thank you. Other proponents? [LB876]

PETE WEGMAN: Good afternoon, Mr. Chairman... [LB876]

SENATOR GLOOR: Good afternoon. [LB876]

PETE WEGMAN: ...Senators. Pete Wegman, I'm the attorney for Cheryl Green. And to respond to Senator Carlson's question, the insurance company filed a... [LB876]

SENATOR GLOOR: Could I...excuse me. Could I ask you to please spell your name out, for the record. sir? [LB876]

PETE WEGMAN: Oh, I'm sorry. Wegman, W-e-g-m-a-n. I'm appearing here as attorney for Cheryl Green. I work for the Rembolt Ludtke law firm here in Lincoln. I'm also appearing on behalf of the Nebraska Association of Trial Attorneys, which is supporting the bill. And to answer Senator Carlson's question, the federal lawsuit came about because Church Mutual, which is a Wisconsin insurance company, filed a declaratory judgment action in federal court asking the federal court to declare the terms and provisions and interpret the pollution exclusions in two different policies that were applicable here. It was in federal court because they could file in federal court because they were from a different state. Typically, we'd see this in a state district court. Any

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other questions about that specific case? [LB876]

SENATOR GLOOR: Go ahead, Senator Carlson. [LB876]

SENATOR CARLSON: Yeah, thank you, Senator Gloor. So the company was Church Mutual? [LB876]

PETE WEGMAN: Church Mutual Insurance Company. [LB876]

SENATOR CARLSON: None of that makes any sense to me. [LB876]

PETE WEGMAN: It doesn't make any sense to me either, nor does it make any sense to Cheryl Green and her family. [LB876]

SENATOR CARLSON: Well, thank you for what you're trying to do. [LB876]

PETE WEGMAN: Thank you, appreciate it. [LB876]

SENATOR GLOOR: Hang on just a second please, Mr. Wegman. We've got another question. Senator Schumacher. [LB876]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for trying to help us out with understanding this situation. So the owner of the house in question, was that the minister and his family or the church? [LB876]

PETE WEGMAN: The church. [LB876]

SENATOR SCHUMACHER: So the church had an insurance policy just like a landlord, basically, on the...something going wrong inside the house. [LB876]

PETE WEGMAN: That's correct. [LB876]

SENATOR SCHUMACHER: And something went wrong inside the house. [LB876]

PETE WEGMAN: And there was a separate, what I'll call, a typical umbrella policy. [LB876]

SENATOR SCHUMACHER: Okay. And something went wrong inside the house and that led to the claim for liability, and then the church's, not the individual's, but the church's insurance company said, King's X, we have this nifty exclusion for pollution. Okay. [LB876]

PETE WEGMAN: That's exactly right. [LB876]

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SENATOR SCHUMACHER: So that's how it arises and why they did the declaratory judgment against the claimant. [LB876]

PETE WEGMAN: Correct. [LB876]

SENATOR SCHUMACHER: Okay. Now this particular exemption that's being talked about, what if it were a case...same case with this language in force and it was a suicide? Plugged up the chimney and the fumes went in and carbon monoxide killed the party. Is this exception overly broad or would the suicide exemption still remain? [LB876]

PETE WEGMAN: No. I think in that situation, given these are liability policies where the claim is that someone was negligent... [LB876]

SENATOR SCHUMACHER: Okay. [LB876]

PETE WEGMAN: ...in maintaining a furnace, for example. That would be an intentional act and that's going to be excluded. [LB876]

SENATOR SCHUMACHER: Okay. Is this bill premature if this case hasn't been decided by the Eighth Circuit? [LB876]

PETE WEGMAN: This bill, if passed, will not affect Cheryl Green's case because it would be required to apply retroactively and I don't think you folks can do that. [LB876]

SENATOR SCHUMACHER: But if the Eighth Circuit says, Cheryl is right, the insurance company is wrong, then we wouldn't need this bill. [LB876]

PETE WEGMAN: I think if you had this bill, it would prevent other insurance companies from doing what Church Mutual did. [LB876]

SENATOR SCHUMACHER: Okay. Thank you for your testimony. [LB876]

PETE WEGMAN: Thank you. Any other questions? [LB876]

SENATOR GLOOR: Senator Pirsch. [LB876]

SENATOR PIRSCH: Just a quick one. The umbrella policy, as well, you said a secondary policy. Did that also have some sort of a similar exclusion? [LB876]

PETE WEGMAN: Almost identical pollution exclusion language. Slightly different, but the court sustained Church Mutual's position on both policies. [LB876]

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SENATOR PIRSCH: Okay. On summary judgment. Okay. Thank you, nothing more. [LB876]

SENATOR GLOOR: Senator Carlson. [LB876]

SENATOR CARLSON: Thank you, Senator Gloor. The church owned the house. So was Pastor and Mrs. Green considered renters? [LB876]

PETE WEGMAN: I'm not sure what their legal status were. They were considered tenants. [LB876]

SENATOR CARLSON: Whether they paid rent or not. [LB876]

PETE WEGMAN: They were considered tenants. It was part of his package. [LB876]

SENATOR CARLSON: Well, I don't know about tenants, but there is such a thing as renters insurance. Was...did that enter in there that it was said that they should have had...or would that have made any difference? [LB876]

PETE WEGMAN: I don't know that that would have made any difference without seeing what policy it was. I can tell you that I think the amendment that has been worked out will be broad enough to cover homeowners policies, renters policies, any policy that covers people living in a residential setting. [LB876]

SENATOR CARLSON: Okay. All right. Thank you. [LB876]

PETE WEGMAN: Thank you. [LB876]

SENATOR GLOOR: I don't see any other questions. Thank you. [LB876]

PETE WEGMAN: Thank you. [LB876]

SENATOR GLOOR: Other proponents for this bill? We'll move to opponents. Any opponents to this bill? We'll, then, ask for those who would like to testify in a neutral capacity. [LB876]

JIM DOBLER: Senator Gloor, members of the committee, my name is Jim Dobler, that's D-o-b-l-e-r. And I am a registered lobbyist appearing today on behalf of Nebraska Insurance Information Service, which is a state trade organization of property and casualty insurance companies licensed to do business in the state of Nebraska. Our member companies write the majority of personal lines and commercial lines of property and casualty insurance in this state. I also appear today on behalf of the Professional

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Insurance Agents of Nebraska--this is an organization of independent agents; our membership is at about 1,000 licensed agents selling insurance products throughout the state--and appear today in a neutral capacity. I think it was clear to me that Mrs. Green's experience illustrates the importance of this committee in terms of looking into insurance issues on a regular basis. As you all know, insurance affects people's lives every day. And that's the kind of business that is the business of this Legislature. We always welcome the opportunity to provide this committee with any information we can about how our industry works to help you with decisions related to our products and our business. The current situation with this kind of exposure, it's been my understanding that most homeowners policies do not contain a pollution exclusion. So from a homeowner's side, I've not seen it. There's nothing like that in the Farmers Mutual homeowners policy. This is not to say that there might be a company or two out there that does it. I haven't seen it. The other part that this accident involves is a policy referred to as an owners, landlords, and tenants insurance policy. And the difference is, the homeowners policy covers an owner-occupied dwelling. The OLT policy covers a building that is occupied by somebody that's not the owner. So those are the two types of policies we have. In the case of the house with the congregation insured with Church Mutual, I have not talked to anybody at Church Mutual. I know some of those guys there, but I'm pretty sure it would be an OLT policy that applied to that particular house since it was not owner occupied. So the bill as amended provides two things. It says that a homeowners policy in which you live--you own it, you live in it--cannot have a pollution exclusion that would exclude carbon monoxide poisoning. At the same time, if you were living in a dwelling owned by someone else, this bill would provide that the OLT policy covering that dwelling cannot exclude carbon monoxide poisoning. The green copy of the bill, we didn't agree with the wording of it. We thought we knew where it was headed and what the intent was, but this gets at the policies that need to be addressed and it gets at the exclusion that needs to be amended to provide for that coverage. We felt the green copy was much broader, and this addresses the issue that was brought before the committee. I want to thank Senator Howard and her staff. We had a number of visits with them. They were very helpful. And I also want to thank the proponents. We had some conversations with them and I think it worked out well with the amendment that you have before you. With that, I'll conclude. [LB876]

SENATOR GLOOR: Thank you, Mr. Dobler. So if I can try and sum up what I think I heard, if it were just the green copy, you'd be speaking in opposition. If the green copy, in fact, included the amendment that's being proposed, you'd probably be here as a proponent. And as it is, since we're dealing with a proposed amendment, you're in a neutral capacity. [LB876]

JIM DOBLER: Yes. [LB876]

SENATOR GLOOR: Okay. Senator Christensen. [LB876]

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SENATOR CHRISTENSEN: Thank you, Chairman. Can you answer the question that was asked a little earlier about if they'd had a homeowners or a renters policy, would that have changed anything here? [LB876]

JIM DOBLER: No. No, it wouldn't. The renters policy would be the policy that insures the Greens. And since the death of Mr. Green was allegedly due to the landlord, the congregation, the renters policy...the liability coverage of the renters policy wouldn't be available for the congregation. And it couldn't pay anything to the Greens because they're not liable to themselves. [LB876]

SENATOR CHRISTENSEN: Well, that was the way I thought it would be, but I wanted to double-check that. Thank you. [LB876]

SENATOR GLOOR: We've got a question from counsel maybe you could help us with. [LB876]

BILL MARIENAU: Mr. Dobler, just to be real clear on the amendment that has been submitted, first of all, we understand this would replace the green copy. [LB876]

JIM DOBLER: Yes. [LB876]

BILL MARIENAU: Okay. The green copy provides for applicability to policies basically issued on or after January 1 upcoming. The amendment is silent on that, which means probably an effective date of mid-July. Is that something that should be addressed in the amendment? Would that come up too quickly? [LB876]

JIM DOBLER: That's a very, very good point. I hadn't thought about that. My inclination would be to approach it the way the green copy did. [LB876]

BILL MARIENAU: Okay. All right, thank you. [LB876]

JIM DOBLER: Yeah. Yeah. Good point. [LB876]

SENATOR GLOOR: And that's why he's committee counsel. [LB876]

JIM DOBLER: Yes. [LB876]

SENATOR GLOOR: Any other questions for Mr. Dobler? Senator Carlson. [LB876]

SENATOR CARLSON: Yeah, thank you, Senator Gloor. If I heard you right, and I think this could be important to the rest of the committee, too, that you said that most policies today would not have this exclusion. So if we advance this bill and pass it, it really isn't affecting a lot of companies other than, I'd call it, a second-rate company that shouldn't

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have had this in there in the first place. [LB876]

JIM DOBLER: That's certainly one way to describe it, yes. [LB876]

SENATOR CARLSON: Okay. Okay. Thank you. [LB876]

SENATOR GLOOR: Seeing no further questions, thank you for your testimony. [LB876]

JIM DOBLER: Thank you. [LB876]

SENATOR GLOOR: Is there anyone else here in a neutral capacity? [LB876]

TAD FRAIZER: Good afternoon, Senator Gloor and members of the committee. My name is Tad Fraizer, T-a-d F-r-a-i-z-e-r. I am local counsel for the American Insurance Association, a national trade association of property and casualty insurers. We are appearing...I guess you'd describe us as being cautiously neutral on the bill. There's been a lot of...there have been references to the amendatory language that's been going around. And we've seen some versions of it, but it was still being worked on this morning. So as long as it stays within the bounds of what has been described as limiting it to homeowners and owners, landlords, and tenants policies, I think this is something that most of our members can live with. We would have some concerns if this turned into a wide-open attempt to revoke the pollution exclusion since that is a portion of a number of commercial policies and such as well. But on the basis of what we've seen so far, we're neutral on the bill. And I'd try to answer any questions you would have. [LB876]

SENATOR GLOOR: And Mr. Fraizer, thank you for your testimony. Would that include the need for a date change (inaudible)? [LB876]

TAD FRAIZER: I think that a specific date would make it more workable as far as companies making sure their policies were in compliance. [LB876]

SENATOR GLOOR: Okay. Other questions? Seeing none, thank you. Anyone else in a neutral capacity? Senator Howard, would you like to close? [LB876]

SENATOR HOWARD: In closing, I'd just like to thank the committee for your consideration of this bill. I took up a carbon monoxide bill in my first year and learned a lot over the summer about negotiation and compromise in that journey. And so what you have before you is what I consider a lovely compromise. Everybody came to the table and worked it out, which was...I'm very grateful for. I'd be happy to try to answer any questions you may have. [LB876]

SENATOR GLOOR: Are there any final questions for Senator Howard? [LB876]

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SENATOR HOWARD: Senator Schumacher left, so. [LB876]

SENATOR GLOOR: That limits that potential, certainly. Thank you, Senator Howard. [LB876]

SENATOR HOWARD: Thank you, Senator Gloor. [LB876]

SENATOR GLOOR: (Exhibit 2) And that closes the hearing on LB876. And I will now turn the gavel over to Senator Christensen. [LB716]

SENATOR CHRISTENSEN: Thank you, Chairman. Feel free to open on LB716. [LB716]

SENATOR GLOOR: Thank you, Senator Christensen. Fellow committee members, my name is Mike Gloor, G-l-o-o-r, presenting LB716 for your consideration. All 50 states have either adopted the Uniform Electronic Transaction Act or a law of similar effect allowing consumers to elect to receive documents electronically. However, the applicability of these laws to insurance transactions is ambiguous given that insurance law typically includes specific means of delivering certain documents and notices, including the registered and certified mails. In an effort to bring clarity to this issue, 17 states have either enacted legislation or published agency guidance affirmatively declaring that insurers may meet policyholder demand for electronic delivery of documents. Electronic commerce laws, like LB716, provide that the decision to receive policyholder documents electronically is the choice of the policyholder. Policyholders must give prior approval to their insurer to opt in to electronic delivery of policy information, bills, and notices and then can, conversely, opt out if they choose. Similarly, an insurer that chooses to post generic policies on-line must also provide policies directly to the policyholder if the policyholder were to request it. Under these laws, statutory notice time frames still apply to electronic delivery. For example, if insurers are required to mail a document 30 days in advance, they are still required to electronically deliver the same document 30 days in advance. There will be people who will speak to this bill afterwards. I believe also, there are some questions or issues that have come up that may require an amendment. We'll see what happens with the testimony given on either side of this issue. Thank you. [LB716]

SENATOR CHRISTENSEN: Thank you, Chairman Gloor. Are there any questions for the senator? Seeing none, thank you. [LB716]

SENATOR GLOOR: Thank you. [LB716]

SENATOR CHRISTENSEN: We'll take the first proponent. [LB716]

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KORBY GILBERTSON: (Exhibit 1) Good afternoon, Senator Christensen, members of the committee. For the record, my name is Korby Gilbertson, that's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America, which is comprised of over 1,000 member companies. And they currently write around 45 percent of the P and C insurance in the state of Nebraska. I want to take a moment and thank Senator Gloor and your brilliant and ever so patient legal counsel for working with us on this legislation. Senator Gloor talked about an amendment. And I, in fact, typed this up about 1:10. So everyone, including the department, has not had a chance to review it, but I think it encompasses the concerns that we've talked about. But I want to talk about the bill overall first and then I'll go back to that for a little bit. LB716 would modernize the state's insurance laws and allow insurers to respond to the changing consumer preference for electronic communication over traditional mail services. Most of you have probably gotten requests from your credit card companies or utility companies and other companies, asking you if you would like to change from a paper statement to an electronic statement. What this would allow companies to do is to do some things in the form of an electronic notice and then other things for an electronic posting. And that's what I wanted to spend a little bit of time on because I think there are two things that can confuse people. One thing that the bill does is allow for "e-delivery". So this would be if you would request to receive your specific insurance documents that are specific to you and would have any personally identifying information or anything else like that. Those would be the documents that you would receive via e-mail and this is, as Senator Gloor said, something that you would opt in for. You would request to be receiving these electronically. That is different from what e-posting would be. E-posting would be if you say you no longer want to get that giant envelope in the mail every year that has all of the general policy information that is the same for all policyholders and the standard forms and things like that which, for me, go into the garbage until I worry about something. And then I make a call and ask for a copy of it. But that would allow insurance companies, then, to e-post those on a Web site and give you a link through e-mail to be able to access those documents that are the same for everyone. And with that you'd, if you request to the insurance company under the bill, you would also be able to get a paper copy of it. So I wanted to clarify that, because I think when people have looked at this bill, those two things have come up. Another issue that came up was a call from a health insurer that requested that we make sure that this is specifically just for property and casualty insurance. Mr. Marienau worked on an amendment to specify that and I believe that we would want to move forward with that. The amendment that I had passed out today is to specifically address issues where...I'll give you an example of a cancellation notice. If there are times in existing law where you would have to have an actual receipt or know that the person received the notice, then we want to add a specific step that they would then have to use a delivery method that provides for verification or acknowledgment of receipt. So then, in theory, it follows the same exact role that you do right now with the traditional mail service. Then another question that came up was, what would happen if you receive a bounced e-mail, something like that?

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If you send it to someone and it's not just a server issue, we wanted to make sure that if messages bounce, that then the insurer would have to go back and use the paper method until you then resolve that, and then go back to it so that the consumer would always still be getting notice of anything. And with that, I would be happy to try to answer any questions. [LB716]

SENATOR CHRISTENSEN: Thank you. Are there any questions from the committee?
Senator Carlson. [LB716]

SENATOR CARLSON: Thank you, Senator Christensen. On your 1:10, if you look at it...I may be reading it wrong... [LB716]

KORBY GILBERTSON: Okay. And I might have typed it... [LB716]

SENATOR CARLSON: ...but the third line from the bottom. [LB716]

KORBY GILBERTSON: Okay. [LB716]

SENATOR CARLSON: First word, is that supposed to be reasonably? [LB716]

KORBY GILBERTSON: Reasonably, yes. Sorry. [LB716]

SENATOR CARLSON: Okay. [LB716]

KORBY GILBERTSON: Yes. [LB716]

SENATOR CARLSON: Thank you. [LB716]

KORBY GILBERTSON: Sorry, that would be Korby's inability to type, not intentional. [LB716]

SENATOR CHRISTENSEN: Are there any other questions? Seeing none, thank you, Ms. Gilbertson. [LB716]

KORBY GILBERTSON: Okay, thank you. [LB716]

SENATOR CHRISTENSEN: Our next proponent? [LB716]

JIM CAVANAUGH: Senator Christensen, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh, C-a-v-a-n-a-u-g-h. I'm a registered lobbyist for the Independent Insurance Agents of Nebraska, the oldest and largest agents' association for property casualty agents in the state. I appear here today on behalf of them in support of the bill. We commend Senator Gloor for his innovative

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approach to evolving technology. The use of the Internet for all kinds of business applications is growing almost day by day. And this recognizes the fact that many people going forward are going to be using it for the bulk, if not all, of their business information, particularly in the area of insurance. The amendment that was offered, although I have not had a chance to review it, I believe it probably does a good job of fine tuning some of the aspects of this bill and, I think, might be something to consider as well. I'd be happy to answer any questions you might have. [LB716]

SENATOR CHRISTENSEN: Thank you, Mr. Cavanaugh. Are there any questions for...yes, Senator Schumacher. [LB716]

SENATOR SCHUMACHER: Thank you. Thank you for your testimony. Now one...as I gather, this is going to be notices would be sent out by e-mail if the party consented to receipt of notices by e-mail. Is there any restrictions or requirements that the sender's e-mail server will have to conform to? It's been my experience with, particularly with banks and with insurance companies or any large sender of commercial e-mail, that they often want to do it in the cheapest way possible. And they hire a company that may also be doing large-scale e-mails for all kinds of people, including spammers. And depending on the quality of the e-mail sending server, that server may be on any number of spam lists and may come on and off that issue...that number of servers through time. So if we just say e-mail and that e-mail server has problems getting through e-mail scanners, e-mail antispam devices, the fact that one got through or two got through is not indicative of them all getting through. So I guess what I'm trying to get to, any...do we need to have specific restrictions on the quality and the nature of the e-mail server sending this material? [LB716]

JIM CAVANAUGH: Specific to e-mail servers, I'm not sure. The Department of Insurance, as you know, has broad powers to regulate the forms, the literal forms that insurance policies take in Nebraska which, arguably, would apply to the forms whether they are in physical form or an electronic form. Though the fact that the form, itself, the contract for insurance, must reach the insured in a form that is, I guess, readable, would be something that if it were not, would be a matter for insurance department regulatory enforcement. I think it's in both parties' best interest, of course, to have that communication be complete. If for any reason it were not, I would think that both parties would have a real interest in making sure that that was corrected. And the insurance departments or the insurance companies, themselves, you know, motivated by the fact that they must have the policy completed...the policy transaction completed with the insured, would have an overriding self interest, I would think, to make sure that perhaps they didn't use the most inexpensive and possibly, therefore, not quality provider to do that. I think from what I know, what occurs in other states regarding this, the companies themselves are jealous of this process in that the contracting out to a third-party vendor would probably be something that they would be, you know, either very, very particular about or they wouldn't do at all. They would do it themselves. [LB716]

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SENATOR SCHUMACHER: Banks are having no difficulty in contracting out some of their e-mails to mass spam servers, but thank you. I realize it's a fairly technical question. Thank you for your response. [LB716]

JIM CAVANAUGH: You're welcome. [LB716]

SENATOR CHRISTENSEN: Thank you, Mr. Schumacher. Any other questions? Yes, Senator Pirsch. [LB716]

SENATOR PIRSCH: Someone, we're working off the green copy, right? [LB716]

JIM CAVANAUGH: Yes, the amendment is floating around but I haven't seen it. [LB716]

SENATOR PIRSCH: Yeah. So with respect to the green copy, on page 2 it says--and I haven't had much time with this--it says on line 15 on page 2, it says subject to subsection 4 of this section...I've not had a chance to really delve into that but it's, any notice to a party or any other document required under applicable law in an insurance transaction that is to serve as evidence of insurance coverage may be delivered, stored, and presented by electronic means so long as it meets the requirements of the Uniform Electronic Transactions Act. Are you familiar with the terms of that act, Uniform Electronic Transactions Act? [LB716]

JIM CAVANAUGH: Not in detail, Senator. [LB716]

SENATOR PIRSCH: Okay. And I think this might get back a little bit to the inquiry that Senator Schumacher had as to the...I'm wondering if that does help that act help to give indicia of reliability in terms of servers, you know, what types of e-mails. So maybe someone who comes up and testifies about this can shed some light on that topic. [LB716]

JIM CAVANAUGH: There probably is someone with more knowledge, Senator. But I do think it sets somewhat of a baseline that has to be met, you know, in order for the document to be delivered. Thank you. [LB716]

SENATOR PIRSCH: Thank you very much. [LB716]

SENATOR CHRISTENSEN: Are there any other questions? Seeing none, thank you. [LB716]

JIM CAVANAUGH: Thank you. [LB716]

SENATOR CHRISTENSEN: Next proponent. [LB716]

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SCOTT GUSTAFSON: (Exhibit 2) Good afternoon, Senator Christensen, members of the committee. My name is Scott Gustafson, S-c-o-t-t G-u-s-t-a-f-s-o-n, and I am testifying as a proponent of this on behalf of State Farm Insurance, where I work. I reside here in Lincoln, Nebraska. You know, I think a lot of information has already been discussed, but a couple of key things that I wanted to point out that are in the written testimony that you've got in front of you. This a consumer choice bill. It is not one where we are making all consumers take this option. It's an opt-in type situation where the customer chooses to do business electronically, similar to how they're doing business with LES or whatever it might be. Also, there are 22 states that have passed very similar legislation. This is becoming very common as consumers choose to do business electronically. Today, many of these same consumers are getting electronic bills and other things so it's not brand new to the industry, but this would certainly evolve and provide some additional opportunities for that customer choice. As we deal with our customers, Senator Schumacher, we certainly have the same concerns. We do not want anybody to have problems with spam. Otherwise their computers, like mine today, which has to go in because it's got some kind of virus that you get. So we're certainly not immune to that ourselves at home. So all steps are being taken to try and address that. Senator Pirsch, I'm certainly not an expert on the laws as it relates to the uniform measurements, but I will say this, that we will work with Director Ramege and all the folks in the insurance department to make sure we've got full compliance and are doing this in the safest possible way and meeting a uniform standard across the country to advise our customers if they choose to do this. With that, I will ask if there is any questions. [LB716]

SENATOR CHRISTENSEN: Thank you, Mr. Gustafson. Any questions from the committee? Senator Schumacher. [LB716]

SENATOR SCHUMACHER: Thank you, Senator Christensen. So would you have any problem with the bill having provisions in it that require these e-mails to be sent out by a server under the control of the sender rather than through a third-party commercial server? [LB716]

SCOTT GUSTAFSON: You know, I guess I don't want to answer for all companies. So I wouldn't be in a position to be able to answer that. I would say that, and I think you made the point, many companies use third-party vendors today, whether it's your insurance company or whether that's your, again, LES, whoever it might be. So I guess I wouldn't be in a position to answer that. I don't know why insurance would be looked at differently than all of the other industries, I guess. [LB716]

SENATOR SCHUMACHER: Well, except that you may be canceling somebody's policy electronically. They may think that they're getting their e-mail just fine. [LB716]

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SCOTT GUSTAFSON: Uh-huh. [LB716]

SENATOR SCHUMACHER: If the server is one of a commercial serving thing that suddenly tripped some spam standard on a blacklist or on a national service like Barracuda or some of those kind of services, they wouldn't know. Or maybe they installed some antivirus thing on their own computer and they wouldn't know. And the notice that your insurance went up, they renewed, they consented in good faith, they didn't understand that 90 percent of all e-mail is spam and is rejected by some screen along the way. And all of a sudden, they're without insurance. [LB716]

SCOTT GUSTAFSON: The way the bill is designed is that if it's a cancellation of insurance, there needs to be confirmation of receipt by that party. So they have to open it and review it. If they have not done that, then the insurance company will provide written notice. We'd attempt to try and make sure that got through electronically. If that didn't occur and there was not confirmation that that had been opened and reviewed by that party, then mail would be the way to go to make sure they have that proper notification. So we've tried to address that. [LB716]

SENATOR SCHUMACHER: So in all cases, it has to have a return receipt... [LB716]

SCOTT GUSTAFSON: Correct. [LB716]

SENATOR SCHUMACHER: ...an acknowledgment of receipt for it to be valid. [LB716]

SCOTT GUSTAFSON: Yeah. My understanding, yep. [LB716]

SENATOR SCHUMACHER: Okay. And that's not just on cancellations, but on rate increases, on new exclusions, on anything that's sent out this way? [LB716]

SCOTT GUSTAFSON: Any time there is a cancellation or a change in your coverage. Now a rate change, you get your bill. That's a separate type of notification. But if there's a restriction of coverage or your policy is nonrenewed, there needs to be specific acknowledgment of that provided. [LB716]

SENATOR SCHUMACHER: Thank you for your testimony. [LB716]

SCOTT GUSTAFSON: Sure. [LB716]

SENATOR CHRISTENSEN: Thank you. Senator Pirsch. [LB716]

SENATOR PIRSCH: Yeah. And towards that line of questioning, so on the green copy of the bill and at the bottom of page 4 and top of page 5, line 25, subsection (6), (ii)(6), "If a provision of Chapter 44 or applicable law requiring a notice or document to be

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provided to a party expressly requires verification or acknowledgment of receipt of the notice or document, the notice or document may be delivered by electronic means only if the method used provides for verification or acknowledgment of receipt." Is it...so the question I just have kind of follows on the heels of that, which is...it says if it's the kind of thing that law requires a notice or document to be provided to a party expressly with verification or acknowledgment. So I'm wondering what type of...so we said if it's a restriction or a nonrenewal or a cancellation, those clearly are things that there has to be some sort of acknowledgment that the recipient has to indicate that they have received that. Are there materially important type of communications that would go out that would not be subject to this acknowledgment by the recipient? [LB716]

SCOTT GUSTAFSON: I guess it's hard for me to understand what's...you know, your bill is material and important. [LB716]

SENATOR PIRSCH: Right. [LB716]

SCOTT GUSTAFSON: So I mean, there's a number of things like that. [LB716]

SENATOR PIRSCH: So the bill would not be. [LB716]

SCOTT GUSTAFSON: Correct. [LB716]

SENATOR PIRSCH: Okay. What are kind of the common type of communications, then, that you think are appropriate? Can you give me a flavor for what is this thing going to be used for where it isn't going to require acknowledgment of receipt? [LB716]

SCOTT GUSTAFSON: Yeah. The acknowledgment of receipt is really designed for anytime there is a removal of coverage, change in the policy conditions, or a cancellation, or nonrenewal. Those are really the primary methods where we need to make sure that we've got notification. An amendment to the green copy would...that we're working... [LB716]

SENATOR PIRSCH: Uh-huh. [LB716]

SCOTT GUSTAFSON: ...on would say that we need to have two notifications. And if there's still not an acknowledgment of receipt, then we would go back to using standard mail delivery for those notifications. [LB716]

SENATOR PIRSCH: Okay. Thank you. [LB716]

SENATOR CHRISTENSEN: Are there any other questions from the committee? Seeing none, thank you. [LB716]

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SCOTT GUSTAFSON: Thank you. [LB716]

SENATOR CHRISTENSEN: We'll take the next proponent. [LB716]

JAN McKENZIE: Senator Christensen, members of the committee, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e, testifying in support of LB716 on behalf of the Nebraska Insurance Federation. The legislative committee reviewed the bill and was involved in some aspects of the amendments. We appreciate the specific removal of health insurance that I believe has been discussed. I have not seen the amendment that you were given today, but I kind of understand the gist. So we just wanted to also be on the record supporting a move toward electronic forms of posting and interaction. [LB716]

SENATOR CHRISTENSEN: Are there any questions for Ms. McKenzie? Seeing none, thank you. [LB716]

JAN McKENZIE: Thank you for asking the people who could really answer them. I appreciate it. [LB716]

SENATOR CHRISTENSEN: Any more proponents? [LB716]

TAD FRAIZER: Good afternoon, Senator Christensen, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r, local counsel for the American Insurance Association, a national trade association of some 300 property and casualty firms. We just, generally, wanted to add our support to this bill. Obviously, times are changing and more and more people are switching over to forms of e-commerce. And as you know, as senators, even the Legislature, I think within the past two years, has required that most reports to the Legislature be in "e-version" rather than a hard copy. So we're just sort of following suit here. We think it gives a option to those customers who are comfortable with e-commerce and wish to receive information in this form. And as previously noted, it is an opt in so no one is forced to do this if they're not comfortable with it. And just to risk showing the lack of my knowledge, and Ms. Gilbertson will whack me upside the head if I state something incorrect, but as far as Senator Schumacher's concern about possible spam or something, I'll point out that in section 1(d) on page 4 of the bill, kind of lines 10 through 13, it does state that if there's some hardware or software issues that would make it...that would create a material risk the party won't be able to access or retain the notice, that the customer has to be given some notice of that and some options to, again, possibly opt out. And that may not fully address your question but it, I think, it shows the bill is kind of headed in that way. And, of course, there is the amendment that I think is tweaking some of the aspects of notice verification that may address it a little more fully. And I'd be happy to try to answer any questions you might have. [LB716]

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SENATOR CHRISTENSEN: Are there any questions? Senator Schumacher. [LB716]

SENATOR SCHUMACHER: Thank you, Senator Christensen. So you wouldn't object if we clearly amended this language to require a personal acknowledgment, not an automatic acknowledgment, but a personal acknowledgment by the recipient for the notice to be effective? [LB716]

TAD FRAIZER: I believe...as noted, the amendment has been being worked on up 'til just shortly before the hearing so I have not seen the latest version of the language. But I think it has at least some language going in that direction. I'd want to see what the exact language was, but we think verification is important. I'd just want to see exactly how the verification is supposed to be handled to make sure that it works well with whatever your notification system is. [LB716]

SENATOR SCHUMACHER: Thank you. [LB716]

SENATOR CHRISTENSEN: Are there any other questions for Mr. Fraizer? Seeing none, thank you. We'll take the next proponent. Any more proponents? Opponents? [LB716]

PETE WEGMAN: Senator Christensen and other senators, my name is Pete Wegman, P-e-t-e W-e-g-m-a-n. I appear here as a private practice attorney on behalf of the Nebraska Association of Trial Attorneys opposing the bill as it's presently drafted. Our biggest concern, and it may be partially addressed by this amendment which I just received a copy of, is that there are some notices that we think consumers really need to get in writing, ideally, certified mail: notices of lapse, notices of termination, notices of beneficiary changes, notices of cancellation. You know, there's language in here about hardware and software upgrades and all that. Well, with mailbox technology, you don't got to worry about that. Certified mail always works. And our concern is that if that's not fixed, it gives consumers less notice of important things and probably will increase litigation over lack of notices rather than decrease litigation. I looked at the Electronic Transactions Act that I think Senator Pirsch was addressing. And there's a clause in there that says it only applies to transactions between parties, each of which has agreed to conduct transactions by electronic means. And I suspect what will happen if this is adopted is that when you apply for an insurance policy, among the other things you are agreeing to do like arbitration you don't read about, is you're going to be agreeing to do these electronic things. And it seems to imply in the bill that somewhere down the road, consumers have to pay a fee to get a copy of their insurance policy. And we just don't think that's right. And I think...I know the gentleman, Mr. Gustafson from State Farm, called this a consumer choice bill. I think what it is, is a bill to save insurance companies money. And that's fine. But any time our organization sees bills that limit someone's rights, that attempt to provide immunity to someone, or limit notices to people, our antenna goes up. And I think this change, this amendment may address those

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concerns. But that's our biggest issue that there's just certain really significant notices that we need to make sure that people get. And that's all I have. Any questions?
[LB716]

SENATOR CHRISTENSEN: Are there any questions? [LB716]

SENATOR SCHUMACHER: Thank you, Senator Christensen. Thank you for your testimony. If you could get to the committee a list of those things that you find problematic that we should exempt from this type of thing. I share your concerns with...I mean, e-mail is a bulk process. There's many things that people don't realize in the process of delivering that e-mail. Consciously, it's easy to click delete unintentionally. And there are some things that are really important enough affecting coverage that should be in paper, should be with that green certified mail thing. And if you could get us those, if you can, of what you consider to be critically important that just are too important to fail. [LB716]

PETE WEGMAN: I will do that this week. Thank you. [LB716]

SENATOR SCHUMACHER: Thank you. [LB716]

PETE WEGMAN: Any other questions? [LB716]

SENATOR CHRISTENSEN: Any other questions here? [LB716]

PETE WEGMAN: Thank you. [LB716]

SENATOR CHRISTENSEN: Seeing none, thank you. Anyone else in opposition? Anybody in the neutral? Seeing none, Senator Gloor. He waives closing. That will finish the hearing on LB716. We'll open LB849. I'll turn the reins back over to Chairman Gloor.
[LB716]

SENATOR GLOOR: Thank you, Senator Christensen. And welcome, Senator Harr.
[LB849]

SENATOR HARR: Chairman Gloor, members of the Banking, Commerce and Insurance Committee, I am Senator Burke Harr, H-a-r-r, and I represent the true midtown Omaha. I want to thank you for inviting me back here again and to let you know that this bill is only 14 words long. Last year I introduced LB316 before this very committee. LB316 changed statute preventing an insurance policy from limiting or reducing or otherwise altering coverage because the person making the claim was the named insured or residing in the household with the named insured. It passed on final reading 44 to nothing and...or nil, as they say in England, and was signed into bill...law by the Governor. LB849 prevents an automobile liability policy from excluding, limiting,

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reducing, or otherwise altering liability coverage under the policy solely because the driver of the insured vehicle is a permissive user of the vehicle. A permissive driver is simply someone you allow to drive your car. The problem with the current law is, insurers are including provisions that limit coverage for permissive users. A person might have a policy providing \$100,000 in coverage, but the insurer includes a provision that denies coverage because a driver is a permissive user. The coverage would only be for, say, \$25,000. Under that scenario, if I drive a pickup to lunch...if I drive to pick up lunch and I'm involved in an accident, I would be entitled to \$100,000 in coverage. But let's say I give my keys to my LA and he is involved in an accident. He would only be entitled to \$25,000 in coverage because he is a permissive user. I ask that you please advance LB849 out of committee and I would be happy to answer any questions you may have. Thank you. [LB849]

SENATOR GLOOR: Thank you, Senator Harr. Questions? Senator Schumacher. [LB849]

SENATOR SCHUMACHER: Thank you, Senator Gloor. As a practical matter, does this happen often that people think they have \$100,000 and they let an associate or someone drive their car to fill it up with gas or go to the drugstore and they end up having less coverage? [LB849]

SENATOR HARR: Good question. If you're asking, does it happen a lot across the country, not as often because, generally, the coverage goes with the vehicle, not the individual. In Nebraska, that's not necessarily true. So does it happen in Nebraska? Yes. Often? No. There are...most insurance companies do not do this. There is or are some bad actors. [LB849]

SENATOR SCHUMACHER: So this is... [LB849]

SENATOR HARR: I would characterize it as bad actors, I guess. It's a contract. [LB849]

SENATOR SCHUMACHER: So it's an insurance company practice in the case of a few insurance companies that have this in the small print? [LB849]

SENATOR HARR: Yes. [LB849]

SENATOR SCHUMACHER: Thank you. [LB849]

SENATOR GLOOR: Senator Pirsch. [LB849]

SENATOR PIRSCH: To your knowledge, is this a longtime industry practice or do you not know, this two different schedule of the insured and then permissive... [LB849]

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SENATOR HARR: I wouldn't call it a longtime practice. I wouldn't characterize it that way. As I said, there are only...there aren't many...most insurance companies, the vast, vast majority, do not have this clause within their insurance policies. [LB849]

SENATOR PIRSCH: Do you know what the stated reason is for having the differentiation of those who use it? [LB849]

SENATOR HARR: I would be assuming. But I'm assuming it's in there to make their rates appear lower. [LB849]

SENATOR GLOOR: Other questions? Seeing none, thank you, Senator Harr. [LB849]

SENATOR HARR: Thank you. [LB849]

SENATOR GLOOR: Are you going to stay to close? [LB849]

SENATOR HARR: I will, thank you. [LB849]

SENATOR GLOOR: Okay. We'll move to other proponents of this bill. [LB849]

PETE WEGMAN: Good afternoon, again. Pete Wegman on behalf of...speaking in support...Pete, P-e-t-e W-e-g-m-a-n, here on behalf of the Nebraska Association of Trial Attorneys. This is not a usually significant, in terms of raw numbers, issue in Nebraska. I don't think the reputable automobile liability insurance companies in the state have step-down policies, but I personally have handled one in the last three or four years. We have a member out in west-central Nebraska that's handled a couple. So there are policies in Nebraska that still have these step-down provisions. And our concern is just about consumer expectations. I think when you buy an insurance policy and then decide to take the socially and financially and personal responsibility of getting more than the minimum limits, I think you have the belief that anyone that uses your car is going to have the benefit of those limits. And that's just not the case. You know, if I loan my vehicle...one of my vehicles to my spouse, to one of my daughters, to someone living with me like a high school exchange student, they're going to get the benefit of my higher limits. But if I loan the car to one of my business partners, one of my parents and they have an accident, they don't get the benefit of all the extra liability coverage I purchased. And I don't think the dec (declaration) pages, which is probably the most important document we consumers get which is a summary of our coverages, of the vehicles, and the amounts, I don't think that sets forth if there's a step-down provision. So we just want to close a loophole that has a few companies taking advantage of Nebraskans when these issues arise. And we just are strongly in favor of this bill and getting rid of those step-down provisions. And to answer one of your...maybe Senator Schumacher's question, I would think the insurance company industry may oppose this because when they underwrite policy coverages, they can look, for example, at my

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family, my family's driving history and so forth and underwrite a policy appropriately. You know, they don't know who I'm going to loan my car to and I think that might be the concern. But this is a pro consumer legislation and would be in favor of it. Any questions? [LB849]

SENATOR GLOOR: Okay. I think you gave an example, but could you give me a definition of step-down? [LB849]

PETE WEGMAN: Yes. Step-down means that, for example, if I have purchased \$100,000 of liability coverage, step-down provision says that if someone who is using my vehicle is not in my...is not a named insured, not a member of my family, doesn't live with me, then my liability coverage limit steps down to the state minimums, which is \$25,000 in Nebraska. So this presumes that someone has bought higher...done the responsible thing by buying higher than statutory limits coverage. This is liability coverage in case someone driving the vehicle makes a mistake. So step-down would allow it to step down. This prevents that from happening. [LB849]

SENATOR GLOOR: Okay. [LB849]

PETE WEGMAN: Any other questions? Thank you. [LB849]

SENATOR GLOOR: Thank you, Mr. Wegman. Other proponents? [LB849]

JIM CAVANAUGH: Senator Gloor, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh. I'm the registered lobbyist for the Independent Insurance Agents of Nebraska here today in support of this bill. The idea behind this bill... [LB849]

SENATOR GLOOR: Mr. Cavanaugh. Mr. Cavanaugh, could you...yeah. [LB849]

JIM CAVANAUGH: Oh, I'm sorry. Cavanaugh is C-a-v-a-n-a-u-g-h. [LB849]

SENATOR GLOOR: Thank you. [LB849]

JIM CAVANAUGH: The idea behind this bill is simply good public policy. We sell insurance coverage to people and we want people to be covered for as much potential liability as possible. Consequently, a majority of folks, probably the majority of you, have coverage on their automobiles that exceeds the state limit. And that's for a good reason. Accidents are more expensive than the state limit. We have been before you before in previous years advocating for an increase in the state limits for that very purpose. But if you're responsible enough to recognize that on your own and buy coverage in excess of the minimum state limits, you should not then be penalized by the fact that some companies, I think a tiny minority actually, might interpret it in their own benefit to be

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step-down coverage for purposes of permissive drivers. When all of us are buying insurance, we want insurance essentially to be the level that we purchase it at, whether it be the \$25,000 minimum or the \$100,000 that maybe most of us would purchase, and not to have--probably not apparent to most consumers--lesser limits inside that because you're going to be paying the premiums on that higher coverage. You're not going to be paying the premiums that you would if you had purchased simply the bare-bones, minimum policy. Consequently, this recognizes that fact of life and we would urge you to take favorable consideration of this bill. I'd be happy to answer any questions you might have. [LB849]

SENATOR GLOOR: Thank you, Mr. Cavanaugh. Questions? Seeing none, thank you for your testimony. [LB849]

JIM CAVANAUGH: Okay. [LB849]

SENATOR GLOOR: Any other proponents? Anyone who would like to speak in opposition to this bill? [LB849]

KORBY GILBERTSON: Good afternoon, Chairman Gloor and 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 and local counsel for Property Casualty Insurers Association of America in opposition to LB849. Last year's bill that passed extended the coverage to household members. And Senator Harr talked about that, about the overwhelming support for that legislation. I know last year he made a statement on the floor to establish some history...some legislative history that there were concerns about further ability or further restrictions on the right to contract. And that is our overwhelming issue with this bill. One of the proponents also talked about underwriting issues. And when insurance companies write policies, they look at the potential drivers of a vehicle and then set the rates accordingly. So I know I have a lot of friends that have children and I have a niece that turned 16 today, and her father is looking at insurance for her on a car, and it's significantly more expensive than the insurance for her father to pay on his car. And so I think to automatically assume that you're only going to be loaning your car to a very responsible business partner or someone else like that is, of course, looking at things very limitedly. But I'd ask that you also consider the fact that there might be instances in which a car would get loaned to someone who would be less than responsible or maybe not even have a driver's license or something like that or uninsurable. Those issues should also be considered when you're looking at this type of legislation. With that, I'd be happy to answer any questions. [LB849]

SENATOR GLOOR: Ms. Gilbertson, do we have a lot of cases where, as an example, a father may take out a policy on a car where their intent really is to turn the car over to somebody who might be more challenged to get an affordable insurance policy on their

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car? [LB849]

KORBY GILBERTSON: I actually know people that have done that. I mean, that's not as in my professional role. But I do know of people that have done that because their kid...the insurance on the particular vehicle that they bought for their child would be very expensive. So then they list themselves as the primary driver to get around that. [LB849]

SENATOR GLOOR: Okay. Other questions? Senator Christensen. [LB849]

SENATOR CHRISTENSEN: Thank you, Chairman. But don't they have to declare them on a vehicle and get the higher rating anyway on at least... [LB849]

KORBY GILBERTSON: You'd have to claim them on... [LB849]

SENATOR CHRISTENSEN: On some vehicle. [LB849]

KORBY GILBERTSON: But you don't necessarily have to claim them on any one. If they're now under the household exclusion, they would be covered. [LB849]

SENATOR CHRISTENSEN: Okay. I see where you're going. Thank you. [LB849]

KORBY GILBERTSON: I'd just ask you to look at all of those issues. [LB849]

SENATOR GLOOR: Senator Schumacher. [LB849]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony. As I understand the testimony from today so far, some insurance companies do this step-down thing, some don't. [LB849]

KORBY GILBERTSON: Right. [LB849]

SENATOR SCHUMACHER: Any data as to what difference this makes in rates? Is it...does it amount to anything? [LB849]

KORBY GILBERTSON: I do think...yeah. I don't know. I can find that out and I can ask if there's data on that. PCI has over 1,000 member companies so some of their member companies do do that and that's why they asked for me to do this today. [LB849]

SENATOR SCHUMACHER: Thank you. [LB849]

KORBY GILBERTSON: Uh-huh. [LB849]

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SENATOR GLOOR: Senator Christensen. [LB849]

SENATOR CHRISTENSEN: Thank you, Chairman. So you're saying you...what you would like see, if you're going to have this protection in here, which there is some value to this, that you could still somehow rate every licensed driver or... [LB849]

KORBY GILBERTSON: See, I don't...Senator, I don't know how you would do that. And I haven't...that was not something that has been discussed amongst my client members, so. But I can take that back to them. [LB849]

SENATOR CHRISTENSEN: Okay. Thank you. [LB849]

SENATOR GLOOR: Seeing no further questions, thank you. [LB849]

KORBY GILBERTSON: Thank you. [LB849]

SENATOR GLOOR: Other opponents to this bill? Anyone who is here in a neutral capacity? Senator Harr, would you like to close? [LB849]

SENATOR HARR: Thank you. I'd like to first thank all those who came and testified and for the questions asked today. The real issue here...I mean, what we heard was there might be a difference in rates we don't know how to value. Some insurance may not know how to value the different rates if we had this higher amount. Well, folks, we already have it, number one. You have it. How do you rate \$25,000, because it's already in there? So they figured out how to do it for \$25,000, why can't they figure out how to do it for \$100,000? As a matter of fact, the vast majority of the insurance companies have done just that. They've figured out how to do it for \$100,000. The real issue is, and it's what I talked about the concern on the floor, is the ability to contract. And so, I can speak personally to my own situation. I took out a new insurance policy on my vehicle last Friday. I did not read the small print. It was only in preparing for this, that I thought to call my insurance agent this morning and say, hey, by the way, is there this step-down? Most people don't know what that is. As a matter of fact, here we have...you asked earlier, Chairman Gloor, what is a step-down and what is the difference. Most buyers of insurance aren't sophisticated. Most don't know that, hey, if I lend this car...which, by the way, there are times when it's good public policy to let someone else drive your vehicle; often late at night. But there's good public policy to do that. We don't want to discourage that, we want to encourage that. And so what this does is, it says, hey, you don't have to read your policy. This is pro consumer. This is about making sure that if someone is injured, that there is proper and adequate insurance. So with that, I would ask that you please advance LB849. Thank you. [LB849]

SENATOR GLOOR: Other questions? Senator Schumacher. [LB849]

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SENATOR SCHUMACHER: Thank you, Senator Gloor. So did your policy have a step-down or did you luck out? [LB849]

SENATOR HARR: It does not. I lucked out. [LB849]

SENATOR SCHUMACHER: Thank you. [LB849]

SENATOR GLOOR: Thank you, Senator Harr. [LB849]

SENATOR HARR: Thank you. [LB849]

SENATOR GLOOR: And that will end the hearing on LB849. And we'll move to LB971. Senator Kolowski, welcome to Banking, Commerce and Insurance. [LB849]

SENATOR KOLOWSKI: Thank you, sir. Good afternoon, Senator Gloor and members of the Banking, Commerce and Insurance Committee. My name is Senator Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, representing the 31st Legislative District. And I am appearing for the purpose of introducing LB971. LB971 would change the state's current policy of prohibiting stacking or combining of uninsured or underinsured insurance coverages. Current law states that if a consumer has paid for or has available two or more policies providing coverage in a vehicle accident or if one policy covering multiple vehicles provides two or more policy limits, the consumer may recover, at most, the highest coverage of those policies. Current law also sets forth a method of determining which coverage is applicable. I believe that this policy is unfair. Why? Fundamentally, an insurance company takes on a risk in exchange for a premium paid by a consumer. The consumer pays a policy premium and the insurance company agrees to pay up to the limit of the policy if a covered accident occurs. But under the current condition of the statutory framework, the consumer pays a premium for each of multiple policy coverages, but cannot recover under all of these policy coverages. The consumer has paid a separate premium, but is not receiving separate coverage. This is not fair to the consumer. This is a technical area of insurance and there are others following me who can answer technical questions. But I would be happy to answer any questions about what the state's public policy should be in this area if you desire. I would urge you to advance LB971 to the floor. Thank you. [LB971]

SENATOR GLOOR: Any...are there any questions for Senator Kolowski? Seeing none, are you staying to close, Senator? [LB971]

SENATOR KOLOWSKI: Yes, I will. [LB971]

SENATOR GLOOR: Okay. We will move to proponents of the bill. [LB971]

PETE WEGMAN: Chairperson Gloor and other senators, my name is Pete Wegman,

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P-e-t-e W-e-g-m-a-n. I'm here on behalf of the Nebraska Association of Trial Attorneys. I will tell you as background that I have been practicing in the area of personal injury, car crash law with the Rembolt Ludtke law firm here in Lincoln for more than 30 years. We have a huge problem in this state with underinsured and uninsured drivers. This really is a victims' rights bill because when people get injured from someone else's negligence, from a driver who is uninsured or underinsured, if there's not enough insurance coverage available to pay for those damages, who pays? At some level, either the innocent victim of negligence pays or the state pays by people going on Medicaid or we all pay by medical bills being unpaid. Nebraska is in a distinct minority in not allowing consumers to draw on all the insurance company...all the policies they've paid. I know that Iowa, Missouri, and Colorado specifically allow the stacking of policies. And, as an example, again, I have well in excess of the minimum limits, knowing what I do about people out there driving. If I'm riding in one of my business partners' cars and we get hit by an uninsured or underinsured driver, there's no reason, there's no logical, economic, or any reason why I shouldn't be able to recover on my partner's underinsured benefits on his car. And then if my losses still are not compensated, why shouldn't I be able to recover from my own insurance policy if it's less than what my business partner has? It just makes no sense whatsoever. It's an antiquated law. It's a windfall to insurance companies because when these situations happen, when there's multiple uninsured or underinsured policies that people have paid for, the present law only allows the injured consumer to draw on one of those policies. And the insurance company that has collected premiums for those losses doesn't have to pay. And that's not right and that's not fair. This bill fixes this. Any questions? [LB971]

SENATOR GLOOR: But wouldn't it be safe to assume, Mr. Wegman, that that is figured into our premiums? The fact that this isn't a state that allows that kind of stacking may be a reason that we pay a lower premium. [LB971]

PETE WEGMAN: Well, as one who's relatively cynical about the insurance industry, I would be surprised if you pass this bill if premiums changed at all. I mean, this is a loophole that innocent, injured people who have bought coverages can't draw on those coverages. And that's just not right, I don't think. And our association doesn't think that's right. [LB971]

SENATOR GLOOR: Okay. Thank you. [LB971]

PETE WEGMAN: Any other questions? [LB971]

SENATOR GLOOR: Other questions? Senator Schumacher. [LB971]

SENATOR SCHUMACHER: Thank you, Senator Gloor. And thank you, again, for your testimony. Does this situation where stacking occurs, is that a common occurrence? [LB971]

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PETE WEGMAN: This happens a lot because almost everyone has some level of underinsured coverage. And when I say it happens a lot, it happens any time you're a passenger in a vehicle. It might happen if you're driving a work vehicle that your employer had the foresight to buy underinsured coverage. It can happen where, for example, I've got three or four vehicles. I pay a separate premium on each vehicle for underinsured coverage. Well, when I get injured by an underinsured or uninsured driver, why shouldn't I be able to draw on each of those underinsured policies that I paid for? I can tell you, the insurance limits are so minimal in this state, the cost of healthcare is so high, in the vast majority of the time, I'm dealing with cases where I tell the injured person right off the bat, odds are, we're not going to have enough insurance coverage here to pay for your losses. Then they say, well, what happens then? Well, you got to pay for it yourself or you can file bankruptcy and go on Medicaid. I don't think those are very good answers. A better answer would be to say, hey, we can get multiple insurance policies that have been paid for. [LB971]

SENATOR SCHUMACHER: A little follow-up then. Is there any risk of a windfall that somebody is collecting under two policies for only one bit of damage? [LB971]

PETE WEGMAN: Not in Nebraska. I mean, I've been doing this for 30 years and I've never seen a jury overpay on a claim, I've never seen an insurance company overpay on a claim. I mean, we still have to prove the damages to be able to access those coverages. [LB971]

SENATOR SCHUMACHER: And when we looked at the issue that you just spoke of that we do not require very high insurance limits in this state and they haven't been adjusted for 20-some-odd years, what we're told by the insurance industry is that if you raise the insurance levels from what we have now, people will just drop their coverage. Does that make any sense from your perspective? They just won't insure themselves, it's too high, too expensive. [LB971]

PETE WEGMAN: I think there's always that risk. I think one of the loopholes we have is that people can go and buy a car, buy insurance for a month so they can get the car registered and they drop it. I think we need to have a provision that requires insurance companies to notify the Department of Motor Vehicles when that happens. But I think you've always got that risk. Anytime rates go up, people elect less coverage or elect to go naked in coverage. But at least that's a small group of people, I think. I think, unfortunately, that group of people are probably where a lot of the bad driver claims come from. [LB971]

SENATOR SCHUMACHER: Thank you. [LB971]

SENATOR GLOOR: Other questions? Seeing none, thank you. [LB971]

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PETE WEGMAN: Thanks for your time, I appreciate it. [LB971]

SENATOR GLOOR: Other proponents? People who would like to speak in opposition to this bill? [LB971]

SCOTT GUSTAFSON: (Exhibit 1) Good afternoon, Chairman Gloor. Again, my name is Scott Gustafson, spelled S-c-o-t-t G-u-s-t-a-f-s-o-n. Appreciate the opportunity to visit with the committee this afternoon. I'm a section manager in our underwriting department for State Farm Insurance here in Lincoln, Nebraska. State Farm is the leading insurer of autos in Nebraska with approximately 24 percent of the insurance market. We have 173 agents and roughly 1,400 employees in this state. We would oppose LB971. This is going to eliminate provisions of stacking, as was already discussed, whereby you could combine the policy limits of multiple policies in the event of an under or uninsured motorist situation. I think one thing I want to point out is that there would be an increased cost to consumers if this bill passes. Our information shows, and we insure vehicles in many states, that that would be about a 30 percent increase in the cost of what it would be for that portion of the premium for un(insured) and underinsured motorists. I did just a little research today. According to the Nebraska DMV Web site, there's 2.2-plus million vehicles registered in Nebraska. The cost to consumers if this bill would pass, would be \$8-plus million. Insurance companies do set their rates based on the losses and exposures that we have. So if this bill would pass, it changes the policy provisions and, thus, what expected payments would be and, in turn, there would be an increased cost to consumers. Another thing I'd like to point out is that we really view this as fundamentally unfair. If you're someone that only has one vehicle, you're only entitled to collect once for this coverage. If you're somebody that has three vehicles, you could collect on three policies if this passes. So to a certain degree, you should have more cars to stack your limits to have more coverage available. And I'd also point out that everyone can choose the limits of coverage they have. It's not unusual, as was discussed, to have \$100,000. But we have many customers with \$250,000, \$500,000, \$1 million, and some with even more, of uninsured and underinsured motorist coverage. So consumers can choose that today even without stacking, to make sure they have adequate coverage limits available. You know, I think one thing I would also point out is that we've got a very healthy insurance climate in Nebraska. If this bill passes, we really feel it would not be in the best interest of the citizens of Nebraska and would ask that...appreciate your opposition to this. And I would pause for any questions, Senator Gloor. [LB971]

SENATOR GLOOR: Thank you, Mr. Gustafson. Questions? Senator Christensen. [LB971]

SENATOR CHRISTENSEN: Thank you, Chairman. To make sure I just understand what you just said is, you know, if I got three cars insured with State Farm, it would

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allow me to take the limits off all three of them into one accident? [LB971]

SCOTT GUSTAFSON: If this bill passes, you would add the un(insured) and underinsured motorist coverages, add them up, and would have all those coverages available. Today, as was stated, you have the highest limit that you have under one policy. [LB971]

SENATOR CHRISTENSEN: Okay. I guess I'm not even sure why...do you have to keep all three cars the same or if that... [LB971]

SCOTT GUSTAFSON: You do not. [LB971]

SENATOR CHRISTENSEN: ...if you can choose the highest one, why wouldn't you insure one with an extremely high and everything else for the minimum? [LB971]

SCOTT GUSTAFSON: That's a great point. People have options. And depending on what your car is...you may have one car you use 95 percent of the time and you carry higher limits on that car, for example. [LB971]

SENATOR CHRISTENSEN: But let's say an example I give, you've got one with \$500,000 and the others are the minimum. And I wreck one of them with the minimum on, I can pull the highest one? [LB971]

SCOTT GUSTAFSON: That's correct. [LB971]

SENATOR CHRISTENSEN: I've not been buying insurance the right direction... [LB971]

SCOTT GUSTAFSON: That's how the bill... [LB971]

SENATOR CHRISTENSEN: ...because I raise...I've got all mine up in the \$250,000, \$500,000. And you're telling me I need to have one of them up there and the rest down. [LB971]

SCOTT GUSTAFSON: Or what's even more concerning is if this bill passes, you would be able to insure one vehicle with, like you say, the highest limits and then have the others with a lower premium and stack the coverages and have even more coverage available. [LB971]

SENATOR CHRISTENSEN: Okay. I better understand this now. Thank you. [LB971]

SENATOR GLOOR: Other questions? Senator Schumacher. [LB971]

SENATOR SCHUMACHER: Thank you, Senator Gloor. But in the incident where you

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have three cars, you only have one policy. [LB971]

SCOTT GUSTAFSON: It depends on the insurance company. Some companies put them all on one policy, some have separate policies on each. So it varies by company. [LB971]

SENATOR SCHUMACHER: And in the incident, which is most cases, where you have one policy with all vehicles on the policy, this wouldn't be the case at all. You would have one. You wouldn't be able to stack your own internal coverage. [LB971]

SCOTT GUSTAFSON: Make sure I understand the question. So you're saying if there's one policy with multiple vehicles? [LB971]

SENATOR SCHUMACHER: Vehicles, right. [LB971]

SCOTT GUSTAFSON: If this bill passes, one policy, multiple vehicles, you would be able to stack it for all three as well. Correct. Regardless if it's one or multiple policies. The way this bill is written, you would be able to take \$100,000, for example, if that's your limit, and if you have three vehicles, it would allow you to stack all three even though you only have one policy. But if you have three cars, it would allow you to collect \$300,000. That's how the bill is written. [LB971]

SENATOR SCHUMACHER: And you're saying this is not the case, for example, if I had my own policy and I had an employer who had a separate policy. And then it would seem pretty clear, I should be able to stack because there's been two premiums paid. [LB971]

SCOTT GUSTAFSON: That's what occurs today. One policy is primary. The one would, then, be for the underinsured portion. That doesn't change with this bill. [LB971]

SENATOR SCHUMACHER: But if somebody pays for two separate policies...I pay for one and I drive Senator Pirsch's vehicle. He's paying for one. We both paid for a premium on that risk. And now, today, can we both...can we stack those? [LB971]

SCOTT GUSTAFSON: That doesn't change at all with this bill because Senator Pirsch's car would be primary, if it's his vehicle. Yours would be secondary. [LB971]

SENATOR SCHUMACHER: So if we...if, say, the limit was \$50,000 and we had a \$75,000 claim, it would be paid? [LB971]

SCOTT GUSTAFSON: Again, if you each had \$50,000 limits, yes. [LB971]

SENATOR SCHUMACHER: Okay. [LB971]

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SCOTT GUSTAFSON: You know, I think one other thing that I would point out is that this won't be a huge windfall to insurance companies. It will be passed on to the consumers from a cost perspective and it can impact the number of people that drive uninsured. If we increase the cost for insurance, that can happen. And it does happen, typically. When costs go up, consumers have to make choices whether they can pay rent, food, or their car insurance. And what we're proposing would be that this could increase those costs and have more uninsured people driving, which is actually the reverse of what this bill is trying to address. [LB971]

SENATOR SCHUMACHER: Well, I think your letter says \$8 million over 2 million, 2.25 million vehicles, that's only \$3 a pop so...a year, so... [LB971]

SCOTT GUSTAFSON: Thirty-six dollars a policy. [LB971]

SENATOR SCHUMACHER: Is that on a monthly figure? [LB971]

SCOTT GUSTAFSON: That's a annual basis. So it would be... [LB971]

SENATOR SCHUMACHER: Now we have \$8 million divided by 2 million, 2.25 million. [LB971]

SCOTT GUSTAFSON: Oh, I'm sorry. My math was bad. It's \$80 million then. [LB971]

SENATOR SCHUMACHER: Oh, that's \$80 million. [LB971]

SCOTT GUSTAFSON: Sorry. Bad math. [LB971]

SENATOR SCHUMACHER: Okay, well, then you need to get one of those self-correcting... [LB971]

SCOTT GUSTAFSON: That's right. [LB971]

SENATOR SCHUMACHER: ...computers that reads your mind. Thank you. [LB971]

SCOTT GUSTAFSON: It's \$36 on average per policy. [LB971]

SENATOR SCHUMACHER: Okay. All right. Thank you. [LB971]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB971]

SCOTT GUSTAFSON: Thank you. [LB971]

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SENATOR GLOOR: Others who...opposition. Good afternoon. [LB971]

ANN PARR: (Exhibit 2) Good afternoon. My name is Ann Parr, A-n-n P-a-r-r, longtime listener, first-time testifier. I am employed by Farmers Mutual of Nebraska, but appearing here today on behalf of the Nebraska Insurance Information Service, also known as NIIS. As Jim Dobler testified earlier, this is a state trade organization made up of member companies who write property/casualty insurance in the state of Nebraska. As a group, we write most of the auto policies that are written in the state of Nebraska. And as a group, we oppose LB971 which would allow for stacking of UM/UIM coverage. I'm going to go through just a couple of points that I had and then I would like to make myself available for questions. I'm thoroughly confused about what we currently have and what we're looking to have. So maybe we can, together, clear some of that up. This bill has actually been heard before in 2012. Some of you may have heard some of these arguments before, but I'm going to try to hit some of the highlights for the benefit of those of you who were not here then. Our current UM/UIM case law or law reflects state case law against stacking that has existed in Nebraska since the mid-'80s. The written materials that I passed out has a brief summary of some of that case law. The current prohibition against stacking that exists in section 44-610 of our statutes was adopted, in part, because that reflected Nebraska's case law, the court's opinions on that subject. Senator Landis put together the current statutory scheme in 1994 with that case law in mind and in collaboration with input from the insurance industry. The current law that we have that governs how UM and UIM coverages work reflects what our Legislature and our judiciary felt was the best for Nebraskans. And it's been working well for the people of Nebraska for many years. What is prohibited by these current statutes and what this bill seeks to change is the prohibition against stacking or adding together of UM and UIM coverage that's applicable to multiple autos insured under the same policy or the stacking of multiple policies, each insuring a separate auto for one policyholder. The current cost of UM/UIM coverage reflects the fact that stacking does not presently apply in these situations. If stacking is allowed, that cost would necessarily change, as Mr. Gustafson covered. The amount of coverage that would result if stacking were allowed as outlined in this bill, is seldom necessary. UIM coverage already applies as excess to the liability coverage, as our statutes dictate. This is a generous coverage requirement that is more than many states require. To allow stacking as described in this bill, could allow for very large sums of UM and UIM coverage to exist in many situations. Take, for example, an example near and dear to my heart, a family that's got two teen drivers and two adults and four autos insured all on the same policy. Yes, it's expensive. Even with my employee discount, it's very expensive. If UM/UIM limits on that policy are, for example, \$250,000/\$500,000, which means \$250,000 per person, \$500,000 per occurrence, then that coverage would be transformed to \$2 million per accident if stacking is allowed as per this bill. And that's just for an average family. I think of some of our larger farm accounts that might have seven or eight or nine vehicles insured under their policy. Or think of a commercial entity that might have 20 or 30 or 40

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vehicles operated. Those would all stack together. That's a lot of coverage to add together. That is not how UM and UIM coverage was designed to work and it's certainly not the kind of exposure that insurers anticipate when setting their rates. Knowing how these coverages add up, insurers most likely would never offer more than the maximum coverage limit of \$100,000/\$300,000 UM/UIM if stacking were allowed. It's our position that our current state law accurately reflects what our courts and our legislators feel was a sensible way for auto insurance to work in Nebraska. Our current law takes a reasonable and generous approach to coverage while helping to keep it affordable. Our current law doesn't need to be changed and we, respectfully, ask that you not advance LB971. Thank you. [LB971]

SENATOR GLOOR: Thank you, Ms. Parr. And am I to assume that the attached review is Nebraska law on this case? [LB971]

ANN PARR: That is Nebraska law, yes. [LB971]

SENATOR GLOOR: Okay. [LB971]

ANN PARR: Primarily case law. It also reflects some of the statutory things that have happened along the way as well. [LB971]

SENATOR GLOOR: Okay. Senator Christensen. [LB971]

SENATOR CHRISTENSEN: Thank you. I'm going to ask some of the same questions I did the last one to make sure I understand. [LB971]

ANN PARR: I don't know if I'll make it worse or better, but let's give it a try. [LB971]

SENATOR CHRISTENSEN: Okay. If you have three vehicles on one policy... [LB971]

ANN PARR: Yes. [LB971]

SENATOR CHRISTENSEN: ...you're paying one premium... [LB971]

ANN PARR: For each vehicle. [LB971]

SENATOR CHRISTENSEN: For each vehicle, yes. [LB971]

ANN PARR: Yes. [LB971]

SENATOR CHRISTENSEN: And the way it currently is, current law, if you have a wreck with an uninsured motorist, whatever is on that vehicle is what you're going to collect. You don't get the highest of the three, do you? [LB971]

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ANN PARR: You get the coverage that you bought for that vehicle. [LB971]

SENATOR CHRISTENSEN: Yes. That's my understanding. [LB971]

ANN PARR: Yes. [LB971]

SENATOR CHRISTENSEN: And what this bill would allow is to stack the three together, even though it's bought with one premium per vehicle. So if you had \$100,000 on each one, you could collect \$300,000 instead of just \$100,000. [LB971]

ANN PARR: And that's where my example came in. If the family that suddenly gets \$2 million worth of coverage because you add them all. Yes. [LB971]

SENATOR CHRISTENSEN: Right. Well, that's...I think I understand clearly. It was like I thought before, so thank you. [LB971]

ANN PARR: Maybe we should stop now. All right. [LB971]

SENATOR GLOOR: Senator Carlson. [LB971]

SENATOR CARLSON: Thank you, Senator Gloor. It would just seem like, over time, this would have to increase premium, wouldn't it? [LB971]

ANN PARR: I think it would. [LB971]

SENATOR CARLSON: There's no choice. [LB971]

ANN PARR: And I don't have access to the exact figures. I, you know, I can't guess what it would be. But, yes, I think, necessarily, it would have to be driving up the rates because the insurers would have much more exposure. And it's higher rates for coverage that most people don't need. You know, already we have...if you have the example of, I'm a driver who is injured in an accident through the fault of another. If that person has \$25,000, the bare minimum of liability coverage, I get that. And I have the bare minimum of underinsured coverage, I get that as well. That's \$50,000, bare minimum, available to pay my claim. That exceeds the value of most injury claims in Nebraska. Now granted, there are some that are more. But you always have the option of buying more UIM coverage if you feel that that's a risk for you. [LB971]

SENATOR CARLSON: Okay. Thank you. [LB971]

SENATOR GLOOR: Senator Schumacher. [LB971]

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SENATOR SCHUMACHER: Thank you, Senator Gloor. I think some of the proponent testimony said that we're really out of step with other states. Are we? [LB971]

ANN PARR: You know, I don't know. I...it was my understanding that the states are all over the board on this issue. Some allow for stacking, some allow for absolutely no stacking, some have modified versions of this bill, other bills. I think it really is a checkerboard from my understanding. But I haven't looked at it recently, to be honest. [LB971]

SENATOR SCHUMACHER: Thank you. [LB971]

SENATOR GLOOR: Other questions? Senator Carlson. [LB971]

SENATOR CARLSON: Thank you, Senator Gloor. I should have asked Mr. Wegman and if he doesn't skip away, I may go and talk to him. But it would just...I don't understand the logic of...and what is good about stacking. [LB971]

ANN PARR: Well, I'm not going to help you on that one. I think we may be on the same page. [LB971]

SENATOR CARLSON: Okay. Okay. [LB971]

ANN PARR: Thank you very much. [LB971]

SENATOR CARLSON: Thank you. [LB971]

SENATOR GLOOR: Thank you. Other opponents? [LB971]

TAD FRAIZER: Good afternoon, Senator Gloor, members of the committee. Again, my name is Tad Fraizer, T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of some 300 property and casualty firms. Not to extend the testimony that you've heard already, but we would join in opposing this bill. As has previously been noted, insurance policies like all contracts, are written in terms of the law that is in effect at the time they're put together. And, of course, we currently have provisions against the stacking. And so insurance policies are written and rates figured with that in mind. If the liability, the number of times that a policy can be drawn on increases or the number of coverages under a given policy that can be drawn on increase, that is going to impact rates. It just...rates reflect the amount of claims, the amount of payouts. It's got to have some upward pressure. But I think you've had some more detailed testimony from Mr. Gustafson and some others. So I will stop at this point and try to answer any questions you might have. [LB971]

SENATOR GLOOR: Senator Campbell. [LB971]

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SENATOR CAMPBELL: Thank you, Senator Gloor. I'm going to try to go back to Senator Carlson's question. The stacking would occur or be most helpful in those extensive accidents where there is a number of injuries and high cost to that. Is that...I mean, are we really talking about the outliers here, not the average claim on insurance? [LB971]

TAD FRAIZER: I think, as Ms. Parr indicated, the average claim in Nebraska is somewhere in the \$25,000 to \$50,000 range. So there are always going to be outliers no matter how much insurance you put in place. If you required everyone to have \$1 million worth of coverage here in Nebraska, there's always going to be a case where someone has a more catastrophic injury that falls outside that range. So it's something of a policy decision. But in our experience, the experience of the industry in Nebraska, most claims fall within the current mandatory coverage of both liability and UM/UIM coverage. [LB971]

SENATOR GLOOR: Senator Schumacher. [LB971]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Should we think about this differently if, instead of one carrier being involved like in the...what Senator Christensen was describing, we have two different carriers? I mean, I'm betting I am going to be hit by an uninsured motorist and I'm paying my wager to the insurance company. And the insurance company is taking my wager and it's a \$50,000 wager. And then someone else, Senator Pirsch, he's betting the same thing on his policy. Two independent bets, wagers. And lo and behold, each of us got \$50,000 in coverage and there's a \$100,000 loss, okay, that both policies could...would be liable for if we stack. Since the insurance company has taken our money and we placed our bet and lo and behold, the dice came up right and we've had a \$100,000 loss, why should the insurance company not have to pay? Particularly, independent insurance companies. Not one, not one policy, two independent bets. [LB971]

TAD FRAIZER: Well, first, I'd kind of hesitate to talk about insurance as rolling dice. It's... [LB971]

SENATOR SCHUMACHER: Well, how is it different? You just have different actuaries to balance the dice. [LB971]

TAD FRAIZER: Could be, Senator. I would say that, you know, in any individual situation, you can always say that it differs. But, you know, insurance is a matter of large numbers so you take into account...the industry takes into account the experience across all series of losses. And I guess...I'm certainly not an actuary. If you've looked at the way I balance my checkbook you'd know that I'm probably not the best person to trust with numbers. But I think it's taken into account on a broad scale so that overall,

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the industry looks at what is the current state of law in terms of stacking being allowed or not being allowed. And I think that's a current reflection in the rates. If you're going to allow stacking, then a broader experience within the industry is going to be there's going to be larger payouts over time. And that's going to have to eventually translate into the bottom line that consumers see when they open their premium statement. I'm not sure that quite answers your question, but. [LB971]

SENATOR SCHUMACHER: Thank you. [LB971]

SENATOR GLOOR: Other questions? Seeing none, thank you. Other opponents? [LB971]

JIM DOBLER: Senator Gloor, members of the committee, my name is Jim Dobler, D-o-b-l-e-r. And I am a registered lobbyist appearing today on behalf of Nebraska Insurance Information Service. And I appear in opposition and I have only one comment related to Senator Schumacher. If you were driving your car and Senator Pirsch is in his car and you both have underinsured motorist coverage, if you're in a...put it this way. If you are in Senator Pirsch's vehicle as a passenger and he's hit and the person that hits him only has \$25,000/\$50,000, the minimum liability limits, and that negligent driver is 100 percent at fault, that negligent driver would pay \$25,000 to Senator Pirsch, \$25,000 to you. Then you could collect on Senator Pirsch's underinsured motorist coverage to the extent it was available and not used up by Senator Pirsch. But if his is all used up, you can then use your own. So there are situations where the coverage will stack. When you're in someone else's car and there isn't enough underinsured motorist coverage in that car, you can go to your own policy and collect under your own policy. What this bill gets at is a whole different scheme. It's a scheme of collecting multiple times on all the cars you insure that you own or collecting multiple times on all the cars you insure under separate policies. So it only relates to you and how much you potentially can get yourself. But that's the stacking issue that is prohibited. The stacking that can take place is when you are in somebody else's vehicle and whatever they have isn't enough to cover your injuries. You can go to your own policy and stack that on top of the policy that applies to the underlying vehicle that's being driven. So there's a distinction there. No further comments. [LB971]

SENATOR GLOOR: Any other questions? Thank you. Other opponents? [LB971]

JAN MCKENZIE: Thank you, Senator Gloor, members of the committee. For the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e. I'm here representing the Nebraska Insurance Federation in opposition to LB971. I would just make one additional comment relative to Senator Campbell's question. And the injured party's health insurance will also come into play in terms of physical injury and medical treatment. And often there is some relationship between the UI/UIM insurance payouts and the health insurance that's provided to cover any of those kinds of injuries. So that's a piece that fits into

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these instances, too, in case of physical injury. So multiple attempts in the other liability insurance to try to make a person whole in terms of the damages. [LB971]

SENATOR GLOOR: Other questions? Senator Howard. [LB971]

SENATOR HOWARD: Thank you, Senator Gloor. Thank you for your testimony. I apologize that I didn't think of this question sooner. If I have an auto insurance policy and I'm paying for it, but I purchase a second one just to be on the safe side, do either of my insurance agents have to tell me that I'm not able to stack on the second one that I'm purchasing from a separate provider? [LB971]

JAN MCKENZIE: You were...you should have asked an agent that. I'm sorry, Senator. [LB971]

SENATOR HOWARD: Thank you. [LB971]

SENATOR GLOOR: Other...Senator Carlson. [LB971]

SENATOR CARLSON: Thank you, Senator Gloor. I don't think...since I was active in the insurance business, like with health insurance, I don't think the principle has changed. If I have a health insurance claim and I've got two policies, I can't collect more on that claim than what my cost is. Correct? [LB971]

JAN MCKENZIE: Correct. Correct. [LB971]

SENATOR CARLSON: That's still the way it should be anyway. [LB971]

JAN MCKENZIE: Correct. And in health insurance there is a coordination of benefits. [LB971]

SENATOR CARLSON: Right. [LB971]

JAN MCKENZIE: If you have multiple policies, you have to report to your...both companies that you have multiple health insurance products. [LB971]

SENATOR CARLSON: So wouldn't it seem that coordination of benefits should be the same in automobile insurance? That's what you're arguing for, is coordination of benefits so you aren't paid more than what the damages are. I think. [LB971]

JAN MCKENZIE: I think. Shell shocked. [LB971]

SENATOR CARLSON: All right, thank you. [LB971]

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JAN McKENZIE: Stacked. [LB971]

SENATOR GLOOR: Other questions? Thank you... [LB971]

JAN McKENZIE: Thank you. [LB971]

SENATOR GLOOR: ...Ms. McKenzie. Anyone else in opposition? Anyone in a neutral capacity? Senator Kolowski. [LB971]

SENATOR KOLOWSKI: Thank you, Senator Gloor, members of the committee. I want to thank everyone who testified today. It was enlightening. In some ways, I really appreciated the conversation. And Senator Schumacher, you stole a little of my thunder on math because I also had that figured. And even if it was \$36 now instead of \$3 and change or \$3.60, that's about \$3 a month if that's a yearly policy difference that might go up. And my question to the...through the whole process was one of...no one asked a question, and I didn't think of this ahead of time, as to the direction we might go in finding out in the other states where there is stacking permitted, what percentage of those people would take multiple layers of contracts on their vehicles? That's just something I need to try to find out in the future as we look at this because it is permitted in some places. It does take place. You may go ten years paying on double policies. And you have one accident after ten years and there's a sizable gain to the company, of course, which you've paid over that time. And then when you do have an accident, what would happen as far as the payouts when you can stack, which is what we're asking for here? As I was sitting there also, I thought about life insurance. And I know this isn't a life insurance issue, but I was trying to think of the fairness aspect. And I thought of my 93-year-old mother, still living on her own in Illinois and doing very well, healthy and strong and I hope she stays that way. But if she had a policy, a life insurance policy, of \$50,000, \$40,000, \$30,000, \$20,000, and \$10,000--let's say she had those five policies--and something happens to her, she passes away, and if the companies would say you only get the \$50,000 and all the others drop off, that would really be unfair. And it seems like, what would happen to that other money after paying policies for all those years? And it's probably not a good analogy right now, but it passed my mind. I just thought I'd share it with you as we sat there asking for fairness in this, to the consumer, as they work to try to get something done to look at this particular issue. So I thank you very much for your time and dedication today. And I ask you for support of this particular bill. [LB971]

SENATOR GLOOR: Senator Christensen first and then Senator Carlson. [LB971]

SENATOR CHRISTENSEN: Thank you, Chairman. If I understood the example right, the \$36 per vehicle, say you had three vehicles. Well, then, you would be paying \$108 additional. Have you looked at that, instead of changing the policy to what would it be to raise the limits on the vehicle to equal that? I guess, what I'm wondering, can we do it

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now? Rather than pay an additional fee for the stacking, just spend the same amount of money on the vehicle and have it that way? And then with your analogy, a life example, if she has bought like four or five different policies, it's logical she's going to collect on all them. The difference I seen in it was, if you're buying on the same person for five different policies and buying on five cars is different. If you was buying five policies on one car, I agree you should collect them all. But if you're buying five separate policies on five different cars, would be different than buying five life insurance policies on one person. There would be my difference. And if you want to respond, fine. If not, I don't care. [LB971]

SENATOR KOLOWSKI: No. Sure. I said it was an analogy. I didn't say it was a good analogy. But it just came through my mind as I was sitting there. When it comes to insurance things, you certainly know this is not my forte. But the...this is why I have a daughter-in-law who is a lawyer who loves fine print on things. And she does a great job doing that for us. So I would just let it go at that. [LB971]

SENATOR CHRISTENSEN: Thank you. [LB971]

SENATOR GLOOR: Senator Carlson. [LB971]

SENATOR CARLSON: Thank you, Senator Gloor. You mother's five life insurance policies... [LB971]

SENATOR KOLOWSKI: Yes. [LB971]

SENATOR CARLSON: ...are probably five different buying occasions. Her human life value is worth probably far more than what the total of those policies are. And I think that just...that operates differently. [LB971]

SENATOR KOLOWSKI: Sure. [LB971]

SENATOR CARLSON: Disability insurance is another thing. If I make \$5,000 a month, I can probably get a disability policy that will pay me about half of that if I'm disabled. And so I can't go out and buy four different disability policies up to \$10,000, then go out and do something bad so that I can...that just doesn't make sense in insurance. And it seems to me like stacking gets into that category somewhat because we don't want reasons for people to try to get into accidents. And when it's bodily injury, you shouldn't. [LB971]

SENATOR KOLOWSKI: Uh-huh. [LB971]

SENATOR CARLSON: But it's kind of suspect, I think. That's my little lecture to you today. [LB971]

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SENATOR KOLOWSKI: Thank you. [LB971]

SENATOR CARLSON: Thank you. [LB971]

SENATOR KOLOWSKI: The biggest suspect I...a question I would have is the other states around us that do allow this and what is the difference and why? I'll have to look into that. [LB971]

SENATOR GLOOR: Other questions? Thank you, Senator Kolowski. [LB971]

SENATOR KOLOWSKI: Thank you very much. [LB971]

SENATOR GLOOR: And we will close the hearing on LB971. We will close this particular agenda for the Banking, Commerce and Insurance Committee. [LB971]