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Banking, Commerce and Insurance Committee
March 10, 2015

[LB193 LB348 LB395]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, March 10, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB395, LB193, and LB348. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Joni Craighead; Mike Gloor; Sara Howard; Brett Lindstrom; and Paul Schumacher. Senators absent: None.

SENATOR SCHEER: Good afternoon. It is past the appointed time so we will start the hearings and welcome to the Banking, Commerce, and Insurance Committee hearing. My name is Jim Scheer. I'm from Norfolk and represent the 19th District. I serve as Chair of the committee. The committee will take up the bills in the order they are posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on any of the proposed legislation before us today. The committee members will come and go during the hearing. We have to introduce bills in other committees. And, please, don't take that as disinterest on our parts of any of the bills being considered today. To better facilitate today's proceeding, I would ask you to abide by a few simple procedures. First of all, if you could either shut your phone off or turn them on silent so at least we aren't bothered by the continual rings. Order of testimony today will be the senator that is introducing, the proponents, the opponents, those in a neutral capacity, and then the introducing senator will close. Testifiers will sign in. You need to sign in on a pink sheet of paper. And when you come up, if you will, please, hand it to Jan on the end and as you start your testimony if you would, please, say your name and then, please, spell your first and last name for the transcribers so that they have that as they start to do the public record. I would ask that you be concise in your testimony. If somebody has already said what you are going to say, that's fine. You can simply say that you agree and your thoughts were already expressed if you would like. But we really don't need to hear the same thing four or five times. We're really...we're dull and we're a little off, but we're not that unsharp. So, you know, three or four times, we'll have it, believe me, honest to God. So if you are testifying, please, speak into the microphone and I would caution our members as well that as they are asking questions of the testimony to speak directly into the mikes as well. If you have written material that you would like to be disseminated to the committee, make sure you have ten copies. If you do not have ten copies...is Jake over there?

JANICE FOSTER: He went to get cups.

SENATOR SCHEER: Okay. We do have a page who will be back momentarily. He will be glad to make those copies for you and it would be better to have those in advance of your testimony so at least we have them while you're talking. It may spur some interest or some questions relating to your testimony. We have...our committee counsel is Bill Marienau. Our committee

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clerk is Jan Foster. Our page is Jake Kawamoto from Omaha, who will be joining us later. And I will have the rest of the committee introduce themselves. We'll start with Senator Gloor.

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

SENATOR CAMPBELL: Kathy Campbell, District 25, Lincoln.

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

SENATOR WILLIAMS: Matt Williams, District 36, Dawson County, Custer County, and part of Buffalo County.

SENATOR SCHUMACHER: Paul Schumacher, District 22. That's Platte, parts of Colfax and Stanton County.

SENATOR SCHEER: And this is Jake that just came in. And as we get ready to start, this is our last hearing day of the year and I would publicly like to thank both Jan and Bill, our staff on the committee. They have just done an outstanding job. This is my first year. It made it very simple. And to be quite honest, if they had not been willing to stay on, I probably would not have been willing to serve. They are that good and that well respected. So on behalf of myself and, I'm sure, the committee members, I want to take this opportunity to thank you both publicly because you've just done a great job. So thank you very much. And with that, we will start today's hearing with LB395, Senator Schilz. [LB395]

SENATOR SCHILZ: Good afternoon, Chairman Scheer. Members of the Banking, Commerce, and Insurance Committee, my name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm here to introduce LB395. LB395 offers funding capital to business in the final site selection process. The key is the investment in capital infrastructure providing security and assets for return on investment. This is a deal-closing fund that creates capital incentives that are critical for Nebraska to compete. Local leaders across Nebraska can work to recruit business, utilizing the strength of state resources. LB395 will attract new and diversified businesses, in turn broadening local tax base and relieving the burden on property taxes. You could say it's an indirect tax relief program. But it truly is an economic development tool that many other states are using. LB395 requires that jobs and investment targets be established before a grant may be awarded. If the targets are not met on time, grant funds must be paid back with interest. Nebraskans will have clear, usable assets as a result as these businesses lay down roots and expand economically. Over 40 states currently have funds similar to what the Legislature would be establishing under the Nebraska Enterprise Act. This makes LB395 critical to Nebraska remaining competitive in the

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nation with economic development. The act as established by LB395 is similar to business recruitment funds in competing states. LB395 would make grants available to business of all types and sizes in all areas of the state for relocation, capital improvements, and infrastructure development. The capital grants would allow companies to focus on their core business while putting together the necessary pieces to get the business moving and creating jobs as soon as possible. The Enterprise Fund would be a valuable tool in closing business recruitment efforts much like those in place in Tennessee and Georgia which, as we may know, are currently recruiting an iconic local Nebraska business. Nebraska Enterprise is a critical mechanism that tips the balance in favor of the state when the business is in the final three selection stage of the decision. For example, Texas has successfully lured Nebraska businesses like TD Ameritrade and Cabela's to establish service centers and retail stores in the "Lone Star State". Nebraska Enterprise Act would give local communities a valuable tool in business recruitment to create capital investment. Communities could work with prospective business recruits to apply for grants under the act for capital and infrastructure improvements necessary for the business to locate in a community. The Nebraska Enterprise grants would be awarded by an authority composed of nine unpaid members appointed by the Governor working within the Department of Economic Development. The authority would be empowered to negotiate with recipients to ensure the most beneficial use of grant funds. It's important to note that while the funds awarded are, in fact, grants, and not loans, funds would have to be paid back with penalties if specified performance targets such as job creation are not reached. The Nebraska Enterprise Act represents a much-needed incentive that will improve business recruitment, enhance job creation, create a multiplier effect for investment, and broaden the tax base for local communities and the state. And with that, I would be open to questions. And there will be others that follow me that can directly testify to how the act and the funds would directly impact them and how their experience with other states' enterprise funds could very easily translate to opportunities in Nebraska. Thank you very much. [LB395]

SENATOR SCHEER: Thank you, Senator Schilz. Are there any questions? Senator Gloor then Senator Campbell. [LB395]

SENATOR GLOOR: Thank you, Chairman Scheer. Senator Schilz, I'm just looking at the fiscal note. I know what you're hoping to come up with is \$3 million to \$7 million that can be given out for these grants, but why does the fiscal note talk about the operational cost, I mean, the expenditure cost, but doesn't talk about the actual grant monies themselves? [LB395]

SENATOR SCHILZ: Well, I think that part of it is that we haven't specified...and that's one thing that does need to be brought up. We are continuing to look for opportunities of where to find money for this project. And that has been, you know, as it is with any issue, that's been one of the things that we have continued to work on. I'm working with Senator Mello as well as others to try to identify some places to get money. I can't really tell you why the Fiscal Office does all the

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things that they do and how that comes out. I'm not sure, but I will check into that and find out. [LB395]

SENATOR GLOOR: But you are...you do need to come up with anywhere from \$3 million to...you're looking for \$3 million to \$7 million that... [LB395]

SENATOR SCHILZ: We would... [LB395]

SENATOR GLOOR: ...if this passed, we have to have something to work with and it needs to be in the \$3 million to \$7 million range? [LB395]

SENATOR SCHILZ: Right. It...well, that would be on...yes. We would...at this point, when we sat down...and we'll hear a number of different perspectives on what that level should be. And that's part of what we're trying to figure out as well... [LB395]

SENATOR GLOOR: Okay. [LB395]

SENATOR SCHILZ: ...is that in order to have a fund that is actually usable, what does that level need to be? And that is part of our exploration as well. [LB395]

SENATOR GLOOR: Okay. [LB395]

SENATOR SCHEER: Senator Campbell. [LB395]

SENATOR CAMPBELL: Thank you, Senator Scheer. Senator Schilz, is this Senator Janssen's bill from last year or part of it? [LB395]

SENATOR SCHILZ: Senator Campbell, this is Senator Schilz's bill from this year. (Laughter) But yeah... [LB395]

SENATOR CAMPBELL: Maybe I didn't say that correctly. My apologies. [LB395]

SENATOR SCHILZ: Yeah, no, but, Senator Campbell, you're fine. And it was...a version of this was introduced by Senator Janssen last year. [LB395]

SENATOR CAMPBELL: Okay. [LB395]

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SENATOR SCHILZ: But we have taken it and fixed many of the problems that that bill had and have brought more focused attention to what this bill could actually do. [LB395]

SENATOR CAMPBELL: And I apologize because I might have missed it in the bill, but is there a role here for...and we're all very aware because yesterday we had the hearing for the director of Economic Development. Is there a role for that person? [LB395]

SENATOR SCHILZ: I believe there is, absolutely. And we've actually sat down with Ms. Sorensen to talk about exactly what that should be and how that should go. So we are in conversations with them now. But I fully expect that there is definitely a role for the director and/or Economic Development. [LB395]

SENATOR CAMPBELL: So at this point, the final decision makers on the fund...the grants, would be the authority, the nine-member board inside? [LB395]

SENATOR SCHILZ: In the green copy, that is correct. But we are open to talking about...if the committee and the Legislature believes that we need to tighten that down to the director after that...with advice from the authority, we would be willing to look at that as well. [LB395]

SENATOR CAMPBELL: Some of the examples that we were given last year, and I'm sure we may hear them again, was where the Governor had the final...had the, really, basically, had the fund... [LB395]

SENATOR SCHILZ: Right. [LB395]

SENATOR CAMPBELL: ...and had that...the final decision in terms of what that...what the money would be. So that's very helpful. Thank you, Senator Schilz. [LB395]

SENATOR SCHILZ: Sure. Thank you. [LB395]

SENATOR SCHEER: Any other questions? Just clarifying, Senator Schilz: Essentially, until you get any money or you find the money, there really isn't a fiscal note because there's nothing for those people to do. [LB395]

SENATOR SCHILZ: Right. [LB395]

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SENATOR SCHEER: So from the vantage point of moving the bill forward, there essentially is not a fiscal impact... [LB395]

SENATOR SCHILZ: That's correct. [LB395]

SENATOR SCHEER: ...without finding a funding source. [LB395]

SENATOR SCHILZ: That's right. The only... [LB395]

SENATOR SCHEER: So you could put the committee or the act in place without funding it. We just...at some point we'll have to find a funding source. [LB395]

SENATOR SCHILZ: We could do that. I would say that it's always beneficial if we could find the money. But this is one of those tools that I think is necessary. And if it takes some time to put that in place...the main thing we want to do is put this bill out there in the best form that we can and make sure that we find the funding for it that fits best for it. And if that takes a little time, that's fine. But we...but I would be happy to and we would love to be able to work with the committee to try to identify some areas where we could utilize some funding. [LB395]

SENATOR SCHEER: Okay. Thank you very much. Thank you. Are you sticking around? [LB395]

SENATOR SCHILZ: Great. I will stick around, yep. [LB395]

SENATOR SCHEER: Okay. Thank you. We'll now open it to proponents of LB395. And if you could, while they're coming up, those that will be testifying, if you could move up towards the front two rows so that we can sort of have less time moving to the speaker's table. And that would help so we know when we're running out or how many more people we may have that are going to be testifying. Good afternoon. [LB395]

JESSICA KOLTERMAN: Hello. My name is Jessica Kolterman, J-e-s-s-i-c-a K-o-l-t-e-r-m-a-n. I come before you today on behalf of Nebraska Farm Bureau Federation where I serve as the director of state governmental relations. Nebraska Farm Bureau supports business incentives. We have policy that says that. We also support legislative efforts to target more business incentive programs in rural areas. At its core, this legislation focuses on growing and expanding business in Nebraska and we're supportive. From our perspective, any time we can grow business, you're going to broaden the tax base and you're going to bring in new dollars to counties around the state. At the end of the day, we see that as an important piece of Nebraska's economy and we're

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supportive of your efforts as you move forward in looking at this. I might just comment: Personally, over the last several months, I've gotten involved locally in Seward's economic development programs. And one of the things I learned when I was sitting at the economic development table is, you have these site selections that go on and people consider your area for something specific. And you get in the running with some really competitive groups and organizations around either the state or even outside of the state. And so one of the things we've tried to do is to say, what can we do specifically that's going to help set us apart and show these people who are considering our site that we mean business and that we really want them there? And, you know, when you're looking at small local projects, you might only be talking about a couple of...maybe \$1,000 or \$1,500 to, like, maybe invite them to come in and do a site visit or to say, here's some seed money that we can start working on, you know, something significant that can show that you really mean business and you want to make that difference in having them select you. At the state level, I think the gist of this program is to show that at a higher level. So I do think that makes a difference. I think that's something that is important and our organization stands in support. If there's any questions, I'd be happy to answer them. [LB395]

SENATOR SCHEER: Thank you, Ms. Kolterman. Senator Campbell. [LB395]

SENATOR CAMPBELL: Ms. Kolterman, thank you for coming today and your testimony. Can you...since...and I certainly do know that your organization has followed tax incentive programs and very supportive of them. What makes this particular authority different from the others that we have? What's unique about it that says to your organization, we really do need this? [LB395]

JESSICA KOLTERMAN: The way I understand the legislation is that this is a...let's just say it's a closer. There's some money there to close the deal that you can go and you can say specifically, you're almost there, but we want to give you just this one little more piece of incentive to close the deal and bring that business to Nebraska. I think that's what stands out with this one from my perspective, the way I read it. Now, other people might have differing views on that, but that's the way I read the bill. [LB395]

SENATOR CAMPBELL: Do you think that the way it's set up in the bill it can move fast enough to do that with a nine-member authority? [LB395]

JESSICA KOLTERMAN: I think...I'm just going to use my local experience. You know, we had a little...like, in Seward we were looking at something. We were competitive. We had a very small pot of money to be able to bring somebody in to look at our site, for example. So we could make that decision sitting around that room that night with the board we had present. And there wasn't a big deliberation of, should we get more people involved? We can make that decision right there at that moment. Maybe there's a way to build this in so it's a little faster, but that's

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something that we'd be certainly willing to work with Senator Schilz on, work with the committing on. I mean, in economic development my experience has been, you have to have those decisions made and you have to move forward fast because otherwise you lose out on the opportunity. [LB395]

SENATOR CAMPBELL: Right. And part of the reason for the question was, just looking at the fiscal note, I mean, the department itself is saying that it needs an economic development business consultant, an accountant and an auditor, an attorney, an economist. That's part of what, I think, Senator Gloor was...and so I began thinking, is this going to become too institutionalized? [LB395]

JESSICA KOLTERMAN: I don't think you want...and I can't speak for the department but just...I think you have to be nimble. And I think if you have too many people, you know, in a bureaucracy, you might lose some of that. [LB395]

SENATOR CAMPBELL: Good advice. Thank you. [LB395]

SENATOR SCHEER: Any questions? Seeing none, thank you very much. [LB395]

JESSICA KOLTERMAN: Thank you. [LB395]

SENATOR SCHEER: Next proponent. Good afternoon. [LB395]

TIM O'BRIEN: Good afternoon. Chairman Scheer and members of the committee, my name is Tim O'Brien, T-i-m O, apostrophe, B-r-i-e-n. And I'm here in support of LB395 on behalf of the Nebraska Economic Developers Association, or NEDA. We thank Senator Schilz for bringing this to the committee. In the big picture, a targeted tool such as this will fill the needs gap for job investment growth across Nebraska and broaden our tax base. I saw this firsthand by spending several years working for the Nebraska Department of Economic Development leading our business attraction efforts and now I lead economic development efforts for the Omaha Public Power District. The structure created in this bill is important because it provides flexibility and the ability to meet the needs addressed quickly with regards to industry clusters to retain/grow high wage, high investment, or important businesses without our state. The things I hear frequently from employers when I travel my area and the state come down to a few things that probably are no surprise to you but talent, innovation, reduction of property or income taxes, and certainly outside of the metropolitan area, housing. When we talk to community leaders, economic development leaders, I hear the same thing, but a desire, of course, to attract high wage, high impact, and broaden the tax base or move existing employers up the value curve.

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Many projects need unique requirements and often fall outside of the traditional toolkit we have in Nebraska such as different things. They may not...entities may not be able to meet job creation components or investment components or cater to low- and moderate-income individuals. Some additional gaps may be for improvement or modernization, job retention outside of the large Nebraska Advantage incentive program, perhaps funding for employee recruitment or employee relocation, maybe unique things. I grew up in the small town of Ord, Nebraska and bringing folks back to that area is really important and so, you know, how do we work, maybe, with businesses to, you know, house interns or different things like that? This funding could maybe do those kinds of things to close a deal. It goes on and on. It could even be funding for other federal programs to bring deals here. There's, you know, federal TIGER grants for transportation infrastructure, all those different things. So I think this is a component that could add to that or push that deal through. So I'll give you a couple examples about some projects. For larger, aggressive states, utilizing funds such as this are important as projects look at a net present value to assist with needs to close the deal or often infrastructure. States and communities are sometimes eliminated from the competition for these projects before they even know they're being considered. The fact of the matter: Incentives do play a role in the site selection process. Recently Mike Mullis, probably the highest-profile large deal site selector who has sited projects from Caterpillar to Toyota to other big names, visited the Omaha area and spent a couple days with us. We learned a lot from him. He told us three main things to be competitive...to continue to be competitive in Nebraska: Develop a fund such as proposed in this bill, modernize incentives that reflect a competitive net present value for projects, and continue the flexibility in funding for job training. Many states in our region have funds similar to this with Oklahoma most recently creating a fund. And as Senator Schilz mentioned there's about 40 or so states that have similar type funds. Here's a specific example of a large project that I actually had the opportunity of working on twice; they came and looked at us twice. It was a Fortune 500 IT company looking to hire over 1,000 employees with modest investment in a new building. Their model was based on a ten-year NPV with minimal investment except for the...of course the building that they needed. Both times we put together one of the most competitive incentive packages that I've seen and really did some unique things with our higher education institutions, both two year and four year, to help with the growing need to the company. We were able to satisfy their pipeline needs, but when they looked at their net present value of their capital expenses for their business, etcetera, we ended up losing that fund...or losing that project twice-- they had two similar ones--to two other states that utilized a discretionary fund such as this. In short, I'll give you a couple examples on smaller projects. There are a lot of hurdles that...as I mentioned before where companies may not be able to meet job creation incentive or simply may not fit the business types in our current incentives. So I've spent the last couple days just catching up with a lot of our economic developers and hearing, you know, what are some challenges? What I heard are some things...some people are simply not able to invest enough, create enough jobs, or even target at industries and Nebraska Advantage is missing some of the components that may be...like, for example transportation and warehousing. That's a big

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component across our highways and interstates. It's tough for those projects to qualify under our current incentives programs. Something like this could make that happen. There's lots of examples. The next folks that will testify behind me can give you some more specific ones. But again, I think this proposal creates a discussion, adds another economic development tool that fulfills a need, is flexible, targeted, and I think you can measure the return on investment. I thank the committee for the time and I will be open to any questions you may have. [LB395]

SENATOR SCHEER: Thank you, Mr. O'Brien. Senator Schumacher. [LB395]

SENATOR SCHUMACHER: Thank you, Chairman Scheer. You mentioned that one of the things that I believe the gentleman from Caterpillar--or one of them--told you was, we need to modernize our incentives. Where are our incentives not modern at? [LB395]

TIM O'BRIEN: Good question. Certainly it really depends on industry segment as you probably recognize. One of the overall challenges is the net present value. So our incentives being performance based, it may take time for you to realize the benefits. And so depending on how your model looks, we may be uncompetitive compared to other areas that may start with potentially a sales tax exemption up front or personal property tax exemption. It depends on timing and different industry segments, but for the...for a lot of projects, we are very competitive. The example I cited that was a very large IT employer, the investment was very little compared...because they just needed office space essentially. And so a deal closing fund of, you know, whatever that number looks like, a few million dollars, could really sway that net present value to make their business model work for their opportunity. [LB395]

SENATOR SCHUMACHER: Well, and let's take that specific example of an IT type outfit that just needs a bunch of desks with computers basically...I suppose computer line. But it needs 1,000 IT type people? Where are we going to find those here? [LB395]

TIM O'BRIEN: Yeah, we...that was a phased approach. So they wouldn't get to 1,000 day one. But we worked with the university...actually all of the university systems, the community colleges, built a pipeline: Here's what we can do over five years. Here's a tailored program. Here's how we can recruit talent. This company was also going to bring in some contract employees also. So they felt that they could meet the time frame, therefore, they came back to us twice. So I think we were able to meet that in that instance. [LB395]

SENATOR SCHUMACHER: What would have been the average wage of that... [LB395]

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TIM O'BRIEN: The average wage? I think it was about \$40,000-some, probably middle \$40,000s if I remember right. [LB395]

SENATOR SCHUMACHER: Okay. [LB395]

TIM O'BRIEN: Some were certainly higher. There was a lot in the \$60,000s, \$70,000s, and \$80,000s for kind of the work that they did. [LB395]

SENATOR SCHUMACHER: But generally the average wage would have been \$40,000 which is \$10,000 before median income? [LB395]

TIM O'BRIEN: Um-hum. [LB395]

SENATOR SCHUMACHER: Thank you. [LB395]

SENATOR SCHEER: Senator Campbell. [LB395]

SENATOR CAMPBELL: Thank you, Senator Scheer. Mr. O'Brien, as you've looked at some of the other states or you've followed this, was there an outside evaluation ever done of the program, of any of these programs, that you know of? [LB395]

TIM O'BRIEN: Of this program or with the ones we compete with? [LB395]

SENATOR CAMPBELL: Well, let me explain. Last year...well, actually the year before that, we started looking at our incentive programs in the state. And in fact, we did a performance audit... [LB395]

TIM O'BRIEN: Yep. [LB395]

SENATOR CAMPBELL: ...and published two reports on what was happening with our programs. And one of the issues was, we hadn't set enough of the benchmarks. And we had data benchmarks, but really, what were we trying to achieve and what were our goals from a policy standpoint and then how would you evaluate that, truly look at a total evaluation of advantage or superadvantage? And we printed two reports for the Legislature to take a look at those. To your knowledge, has any state who has had these funds long enough done that kind of an evaluation that we could look at? [LB395]

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TIM O'BRIEN: Yeah, I think so. I can't cite a specific one. I did some quick research obviously for preparing for this bill. But there's a lot that have similar metrics of... [LB395]

SENATOR CAMPBELL: Okay. [LB395]

TIM O'BRIEN: ...you know, reporting, you know, what are jobs, where is the fund going, etcetera? So I think there's some metrics based and other states have really focused this on specific target industries maybe that are changing or evolving. [LB395]

SENATOR CAMPBELL: Yeah. [LB395]

TIM O'BRIEN: And so I think there's some good models. There's...like I said, there's about 40 states that have similar things. So I'm sure a lot of us could work together to help you guys with the research that you need to understand that further. [LB395]

SENATOR CAMPBELL: That would be terrific. Thank you, Mr. O'Brien. [LB395]

SENATOR SCHEER: Any other questions? If not, thank you, Mr. O'Brien. [LB395]

TIM O'BRIEN: Yeah, thank you. [LB395]

SENATOR SCHEER: And I did not...while the next supporter comes up, I did not note, we are using the lights today which...there is a green light. That will be on for four minutes. There will be a yellow light that will be on for one minute. So you have a total of five minutes. If you get to red, you should be stopping. And if you don't have the ability to do that, we will help you that, so. (Laughter) Welcome. [LB395]

GIOVANNI INFANTE-STILL: (Exhibit 1) Good afternoon. My name is Giovanni Infante-Still, G-i-o-v-a-n-n-i, Infante-Still, I-n-f-a-n-t-e-S-t-i-l-l. My son is also named the same thing. He'll be a champion speller in kindergarten. (Laughter) I'm here representing myself today on behalf of LB395. I'm actually going to testify because I sit on the other side of the table of global experience and out-of-the-state experience in terms of being on the site selection committees. To some of the previous testimonies, yes, the incentives are very well evaluated from firms from the site selection committees--if you do a Google search, those are readily available--to also key consultants such as McKinsey and Deloitte. They look at these as key flags in terms of helping businesses relocate their business. For me, I am from Paxton, Nebraska. I've had the chance to work on these things around the world and I think this is one of the things that could benefit Nebraska greatly. Senator Campbell, you've asked some very good questions. And I think one of

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the things that, in terms of working with Senator Schilz, we're very open in terms of being...making sure that the bill is nimble, flexible, and making sure that the things that are going to be evaluated and benchmarked to create transparency is absolutely critical. And we're open to working through those. One of the things that you did ask a good question was, and I do not have ten copies, but I will hand one for Jacob, in terms of the very specific proponents, I think while Texas Enterprise has been the flagship of the deal-closing funds, I think they've actually created a good model for performance measurements in terms of transparency and the impact that these types of deal-closing funds can bring. With that, I'll be open for any questions or any further questions that have been answered previously. [LB395]

SENATOR SCHEER: Okay. Thank you. Any questions? Senator Schumacher. [LB395]

SENATOR SCHUMACHER: Thank you, Chairman Scheer. So basically, this fund functions as a last-minute kind of cash incentive and...to close the deal. Is that its basic function? [LB395]

GIOVANNI INFANTE-STILL: Yes. One of the things that's...when you're going through the site selection process and evaluating it, at the time of closing, cash is king. All right? It will be very important to allow the businesses to continue to function on their core business. So let's say if we're recruiting a manufacturing plant that they could, if they needed infrastructure such as a rail spur or things of an additional energy pipe or additional buildings such as the previous example, these funds could be used to do that in terms of the time that's actually pushed the incentive over the edge. But actually the key for the state in terms of looking out for what's best for the state is you in turn get a tangible asset in return for the assets to help bring the business locally. [LB395]

SENATOR SCHUMACHER: So are...is it a case where they don't have the cash or can't get financing or they're just looking for a bonus? [LB395]

GIOVANNI INFANTE-STILL: It's one of those things that the previous testifiers already mentioned: 40 other states are coming out so those monies are available. So it's part of it. So other states are offering it. Other community development programs are offering those things. So it becomes part of the decisionmaking criteria. [LB395]

SENATOR SCHUMACHER: Thank you. [LB395]

SENATOR SCHEER: Senator Campbell. [LB395]

SENATOR CAMPBELL: Thank you, Senator Scheer. Just as a follow up, and I know you testified last year and you probably answered this question, but in the Texas plan, isn't the Texas

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plan where the Governor has...is making the final decision in terms of the money and can move quickly? [LB395]

GIOVANNI INFANTE-STILL: Yes. [LB395]

SENATOR CAMPBELL: Am I thinking correctly? [LB395]

GIOVANNI INFANTE-STILL: Yes. So, yes, the thing about what...the Texas plan can't be implemented in the state of Nebraska because of our constitution. In the state of Texas, the Governor has sole authority, but also has to engage with the speaker of the house. That's not constitutionally viable in the state. One of the things that's the key around having the authority as it's labeled in the bill, and I think we're open to changing the word authority in there to kind of keep it more flexible, is by having the individual board, right, I think it should keep your costs down because as the Department of Economic Development...so Mrs. Brenda Hicks-Sorensen, she can guide the team to make sure that we're staying within the DED's overall objectives, but then you can keep your costs down by having the right business experts onto that working board, right? So in terms of creating that nine-member committee which I believe in the bill, five is a quorum, the key will be...is making sure that you have the right people selected on there so then they are in tune with what the business would need and so you can make quick decisions. [LB395]

SENATOR CAMPBELL: Thank you. [LB395]

GIOVANNI INFANTE-STILL: And may I add one other thing? The thing about that is, you have to balance transparency and confidentiality because as we want to recruit businesses, we want to make sure that the businesses don't have to disclose all of their strategies in the public light. And so that is the benefit of having that member within the DED. [LB395]

SENATOR CAMPBELL: Great. Thank you. [LB395]

SENATOR SCHEER: Any final questions? Seeing none, thank you very much. [LB395]

GIOVANNI INFANTE-STILL: Thank you. [LB395]

SENATOR SCHEER: Next proponent. Good afternoon. [LB395]

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DAVE RIPPE: (Exhibit 2) Good afternoon. Senator Scheer, members of the Banking, Commerce, and Insurance Committee, my name is Dave Rippe, D-a-v-e R-i-p-p-e, and I am the executive director of the Hasting Economic Development Corporation in Hastings, Nebraska. Thank you for the opportunity to speak in favor of LB395. When used with great care, LB395 has the potential to provide for a powerful economic incentive tool for Nebraska as well as rural and urban communities alike. My opinion is that the most critical component of LB395 is the importance it places on broadening the state's tax base, generating revenue for the state, and reducing the property tax burden. Our cost of doing business, whether it be building roads, educating kids, or allowing for a competitive salary and benefit package for those government employees that provide essential services, is not going to decrease. This fact is undeniable. The only viable long-term solution for property tax reduction is to increase the property tax base. Since 2007, our state has allocated close to \$1 billion in one specific property tax relief program with no measure of return on investment, no metrics for success, and no evaluation of any additional private equity leverage. We have essentially sent out coupons to property tax payers in our state and, no different than going to a grocery store, coupons do not change the long-term cost of your food. And our current property tax relief program does not impact the long-term rate of our taxes or change the long-term competitive environment for industry or agriculture. Currently, Ag Processing, Incorporated, is in the middle of a \$100 million expansion of their soy processing facility in Hastings. In 2014, the value of an irrigated acre of ground in Adams County is approximately \$6,000. At a total valuation in excess of \$100 million, AGP's facility will have the same tax base as nearly 30 square miles of irrigated farm ground, almost 20,000 acres. AGP's facility sits on just 150 acres. In 2008, our nonprofit development corporation invested in a 97,500 square foot speculative industrial building. Today the valuation of this building, simply a speculative metal shell sitting on 12 commercial acres, is \$713,710, as much as an entire quarter section of dry land ground in Adams County. Landing a client in our building and finishing it out will likely be a multimillion dollar undertaking but in doing so, we'll add significant value to our county's tax base as well as increase corporate and individual income tax returns to the state's General Fund. In 2010, our community competed for a DuPont Cellulosic Ethanol facility in tandem with the state of Nebraska. The proposed project was just shy of \$300 million in total capital investment. Ultimately, despite a more consistent corn crop and many other operational benefits, the company accepted a \$9 million grant from the state of Iowa's Power Fund and built their plant in Nevada, Iowa. The project, accounting for the equivalent of more than 70 square miles of irrigated farm ground, would have been of significant benefit to our city, county, and our local producers as well as the state of Nebraska. The state currently has no mechanism with which to compete with multimillion dollar closing funds. And in a community of 25,000, we certainly do not have the means to compete with the entire state of Iowa. A state closing fund would have likely been of great assistance in 2012...project we worked with a \$2.4 billion fertilizer plant that is currently in negotiations with another state and a \$400 million auto industry project that is still evaluating other states. Whether we like it or not, public participation in private projects is the accepted norm whether it is a multimillion dollar real estate

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redevelopment project, an existing industry expansion, or a new industry location, in a largely homogenous operating environment, private operations have the benefit of seeking out the greatest public investment in order to effectuate their project. Large-scale real estate or industrial projects are seen as especially risky in rural areas due to lesser absorption rates and a greater overall degree of perceived risk. As such, returns scheduled in private equity pro formas are greater, so the amount of public participation in order to mitigate the risk and guarantee these returns is greater as well. We need help. The flexibility of programs such as the state's Site and Building Development Fund has been tremendous, however, we were recently told that the fund isn't taking on any speculative development projects, one of the original purposes of the program, because the demand for first priority projects, those where a company is already identified, are so great. If we want to grow our tax base, if we want to truly impact long-term economic growth and tax reduction, and if we want to measure our effectiveness in doing so, we must consider new and different programs and investments. Thank you again for the opportunity to speak today and I would greatly appreciate your further consideration of this bill. [LB395]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you, Mr. Rippe. [LB395]

DAVE RIPPE: Thanks. [LB395]

SENATOR SCHEER: Next proponent. Welcome. [LB395]

JEFF HENG: (Exhibits 3 and 4) Thank you. Good afternoon, Chairman Scheer and members of the Banking, Commerce, and Insurance Committee. My name is Jeff Heng, J-e-f-f H-e-n-g, and I am the controller for Nucor Steel in Norfolk, Nebraska. Nucor Steel believes it is important to be an active member of not only our local community in Norfolk, but across the state. For that reason, we want to be a partner in attracting other manufacturing companies to Nebraska. We believe that the concepts created in Senator Schilz's bill, LB395, provide an economic development tool that is currently missing in Nebraska. Creating capital incentives that work with Nebraska Advantage Act would be a large step in making Nebraska an increasingly attractive location for other manufacturers. Nucor takes advantage of programs similar to those proposed in LB395 in other states. For example, in Louisiana, Nucor worked closely with the Louisiana Economic Development to locate a direct reduced iron facility in St. James. In 2010, through Nucor's coordination with the state of Louisiana, the company was able to secure a \$30 million performance-based grant, among other incentives, to locate a facility within the state. Details of this economic development strategy can be found in the case study I've provided to the committee. This economic development package was a strong determinant in Nucor locating a facility in Louisiana. Because we compete in the global marketplace, economic development packages like the one being considered today not only contribute to our location decisions, they also enhance our ability to compete on the world stage especially when we are facing unfair

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competition from countries that subsidize their steel industries. While we understand that this package is extremely aggressive compared to Nucor's...Nebraska's current incentives, we think that the concepts offered in Senator Schilz's bill provide an intriguing platform to begin having these discussions. Anything we can do to bring more high paying, highly skilled jobs to our great state is a benefit to all our residents. Recently we worked closely with state and city officials to attract Tejas Tubular to Norfolk, Nebraska. As discussed in recent media articles, that project is currently on hold due to uncertainty in the oil market. While we hope and believe that the project will still happen in the coming years, we learned a valuable lesson through the recruitment of Tejas. This state has the opportunity to be more aggressive with their economic incentives. As you all know, Nebraska is a great place to live and work, however, that alone will not attract quality jobs to the state. To compete nationally, more must be done. I appreciate the opportunity to testify before you today and we at Nucor hope to continue to be a partner with the state in identifying and attracting new business to this great state. Thank you. [LB395]

SENATOR SCHEER: Thank you, Mr. Heng. Any questions? Seeing none, thank you again. [LB395]

JEFF HENG: Thank you. [LB395]

SENATOR SCHEER: Thanks for coming down. Good afternoon. [LB395]

CHERYL BRANDENBURGH: Good afternoon, Senator Scheer. My name is Cheryl Brandenburgh, C-h-e-r-y-l B-r-a-n-d-e-n-b-u-r-g-h. I'm a certified economic development professional which is a...which for our industry means I'm like a CPA if you happen to be familiar with those kind of terms so spent a lot of time doing a lot of education and keeping up with continual education in our effort to improve the economic development activities in Nebraska. Today the economic development activity in the environment has changed. There are fewer projects and we need to be competitive throughout those projects. The process and the timing is critical. I've got 25 years experience starting in Norfolk as the economic development manager then moving to the state of Nebraska and finally now at Black Hills Energy as economic development manager. So I have been fortunate to see this project. I worked on the project that Dave Rippe talked about, the DuPont project. I can say that that closing fund might have made the difference. The partnership that Tim alluded to with the IBM project, again, the closing funds that were used there went directly into the university. They didn't go to the company, but they went to the university which directly provided that benefit which made the tipping scale to go to Louisiana rather than Nebraska. Economic development is a capital investment and an employment opportunity for our states and then across the state. I think the Nebraska Enterprise Act provides us the means to fund and close those deals. The fund works for various industry clusters including manufacturing, the bioscience, certainly transportation

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and logistics. I think it does a good job of being broad enough to help us in many of those cases. This fund is different. It--talking to Senator Campbell--it is...I see it as a closing fund. It provides the money up front. In comparison to our Nebraska Advantage which is a great performance-based incentive program, we need that opportunity to be up front and to provide that extra push to bring projects to close. Certainly we talked about those various projects, but I think this fund could have made a difference. And again, Nebraska Advantage is a great program, but it's not enough in today's environment. If I...if you have any questions or if I can answer anything, I appreciate the time, but I'm certainly in support of LB395 for Senator Schilz. [LB395]

SENATOR SCHEER: Thank you. Wouldn't you say your favorite place had to be Norfolk? [LB395]

CHERYL BRANDENBURGH: Oh, of course, today, but I'm also hometown Columbus so I have to be careful for Senator Schumacher. I'm just going to say it. That's all. [LB395]

SENATOR SCHUMACHER: He's not the Chair. [LB395]

CHERYL BRANDENBURGH: I know, I know. (Laughter) [LB395]

SENATOR SCHEER: Any questions? Senator Schumacher. [LB395]

SENATOR SCHUMACHER: Thank you, Chairman Scheer. But I can ask questions. [LB395]

CHERYL BRANDENBURGH: Okay. [LB395]

SENATOR SCHUMACHER: You know, it seems like we have a puzzle. We have businesses saying, we want incentives. In this case, we might want a little extra cash up front just because. We could borrow the money. We have money sitting in the bank, but we...you know, incentives are always good, so give us some money. We have state in which we don't have a great excess of money in the state budget. We have people wanting property tax relief. The farmers really want it, really would like somebody else to pay for it. We want income tax relief. The sales tax people say, don't tax me any more. I'm just making \$50,000 a year. I don't want to bear the burden of this. And yet we have tremendous wealth. We have cash sitting all over the place. We have so much cash that farmland has been bid up to three times what it could possibly cash flow for. People are afraid of the stock market, don't like zero percent in the bank, and yet the cash is there. How do we put the thing together so that we have true economic development, not just this artificial shuffling of money? [LB395]

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CHERYL BRANDENBURGH: Well, Senator, I think you were on the committee that devaluated incentives last year. So you might have a better answer for that than I would as far as how our performance incentives stack up. [LB395]

SENATOR SCHUMACHER: You can do all the evaluation that you want. And in the end it boils down to, the other guy down the street is doing it so we better do it too or we're going to lose out. And it could be a program that just doesn't pencil out, but hey, if you want the business, you give us the cash. And at what point does that not make sense? [LB395]

CHERYL BRANDENBURGH: Well, I think we're very blessed to live in a strong economy in Nebraska that we have good fiscal responsibility. But we cannot position ourselves well to move forward in the future with quality jobs and quality investment and good companies, and this is positioning us for the future. That's really as I see this bill. We can't afford to be not on the cutting edge of new companies as they come and as they look. Our industries all have curves and life cycles. So I'm looking to those new companies to continue to keep us vibrant, to have that strong partnership with our ag economy to keep moving us forward. [LB395]

SENATOR SCHUMACHER: But at least in the rural community--I get a sense, perhaps, even in Omaha and Lincoln--we're at full employment. Realistically, we can't expect a whole bunch of people moving into the state, maybe a few people who left might return, but not in significant numbers. So the only way we're going to accomplish anything is trying to get a higher-paid job than the guy currently is which means that an existing business probably is not going to have an employee. So at what point does economic development become so elusive that it's not worth chasing? [LB395]

CHERYL BRANDENBURGH: I don't have a crystal ball to answer you that...or to answer that question, Senator Schumacher. [LB395]

SENATOR SCHUMACHER: Thank you. [LB395]

CHERYL BRANDENBURGH: Thank you. [LB395]

SENATOR SCHEER: Thank you very much. Oh, excuse me. Senator Williams. [LB395]

SENATOR WILLIAMS: Thank you, Senator Scheer. I want to probe back into some things that Senator Schumacher is talking about. This particular program is a grant program. [LB395]

CHERYL BRANDENBURGH: Yes, it is. [LB395]

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SENATOR WILLIAMS: So this is not a giveaway program. Is that correct? [LB395]

CHERYL BRANDENBURGH: Correct. It is a grant program that would be given to the company, but as I read the bill and understood it, if the company did not live up to expectations there are provisions to have callbacks so that we would be repaid into that fund. [LB395]

SENATOR WILLIAMS: Thank you. [LB395]

SENATOR SCHEER: Anyone else? Thank you very much. [LB395]

CHERYL BRANDENBURGH: Thank you, Senator. [LB395]

SENATOR SCHEER: Any other proponents? Good afternoon. [LB395]

KATHY SIEFKEN: Chairman Scheer, members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association here in support of LB395. There are very few economic development packages out there for small rural businesses. This fills the gap. In addition to that, everything else that the prior proponents testified to, I would agree with. [LB395]

SENATOR SCHEER: Thank you very much. [LB395]

KATHY SIEFKEN: If you have any questions, I'd be happy... [LB395]

SENATOR SCHEER: I hope everybody else was listening. (Laughter) Any other questions? Thank you very much, Ms. Siefken. [LB395]

KATHY SIEFKEN: Thank you. [LB395]

SENATOR SCHEER: Any other proponents? Seeing none, are there any opponents to LB395? Seeing none, and are there any in a neutral capacity? Senator Schilz. [LB395]

SENATOR SCHILZ: Thank you, Senator Scheer and members of the committee. I very much appreciate the opportunity to be a part of the final day of hearings. That's always a good feeling. So as I sat here and listened to questions and listened to the testimony which I'm...I would have to thank, too, everybody that came in today in support. I think it's...I think it just shows that there is an interest and the need for this kind of a tool here, that Nebraska could have some great

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opportunities. You know, I was just sitting there thinking about, you know, we heard from different testifiers that said that they've tried to attract business before and some have come back once and then come back twice and come, you know...and then all of the sudden they get clear to the end and then all of the sudden, we do everything we can and then they end up across the border somewhere. So I just wonder how much it costs every time we do that to fail. And it's that one thing that I think about. As I was looking at the fiscal note...and I want to say that right now, the way that is worded in there is that the authority would administer that. And I think that that probably would...could be changed so that the director or the Department of Economic Development would administer that and that would probably take care of most of that I would hope. But we'll check into that as well. You know, Senator Schumacher was asking, you know, well, how far do we go? How...what is the race to the bottom? That's what you're asking. Well, and I think it's a great question, and it's one that I think if you look at the handout that came from the Texas Enterprise Fund that was handed out, those are some new numbers that just came out within the last couple weeks. According to the Texas Enterprise Fund, over the last five or six years that it's been in place, the return on the investment has been about 50 to 1, okay? And when I look at that, I mean, those numbers don't...I mean, it seems almost impossible to comprehend. But what that tells us is that these kind of funds really do make an impact and really do help. Senator Gloor, when you asked, you know, how much money are we looking for, you know, yeah, there's businesses out there that with \$0.5 million or a couple million dollars could make this work. But as we heard with others, Nucor is looking at places and getting grants in the order of tens of millions of dollars. And so this fund can be scalable and can work that way. Now, how do we find that money here in Nebraska? I think it's...I think that's a great question. But I do agree with the testifier that said, you know, we aren't afraid to throw money at property tax relief without really attempting to fix any of the underlying issues with that. This bill would get to the underlying issues of, if you want real property tax relief or real tax relief, you have to have growth. And it has to be growth that happens when you need it. And I can tell you, when you look at the dynamics of what's going on with economic development within the center of the country, within our region, you see North Dakota and the oil investments. You see Texas and the oil and gas. You see Colorado and Missouri. All of this is happening around us. And it's our time to be able to take advantage of this to get the manufacturing in place that can do that. I mean, look, I come from the 47th District. That's southern Panhandle. Oil and gas is huge out there. There's a business out there called Castronics and they send pipeline to North Dakota. I'm sure that the gentleman from Nucor was thinking exactly that, too. Well, those windows only stay open for so long. And once those windows start to close and the manufacturing is in place where they need it, it becomes very difficult to pry that back out of where they are. And right now, with all of that investment that's going on around us, we need to find ways to capitalize on that and manufacturing. And there is a renewed interest in manufacturing in the United States because of the economies around the world that are growing, moving forward, and wages rising. So I think we're in a...we're kind of in a place where we need to do something at some point. I don't know if it's necessary this year, but I do think that this is the kind of a fund and the kind of

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a tool in the toolbox to be able to help Nebraska move forward. And with that, I'd try to answer any other questions. Thank you. [LB395]

SENATOR SCHEER: Any questions for Senator Schilz? Just one: Previously, years ago, most firms did their own research. They would send a team to go look at a community and so forth. Anymore, that's being done by professional organizations. And so I wonder if you suspect that, like the gentleman from Omaha was talking, that a firm comes and takes a look at this state or any one of the communities and they take a look once and they took a look twice, how many more times do you think you get them back? [LB395]

SENATOR SCHILZ: You're not. And in fact, Senator Scheer, that's a very good point. And I have a little bit of experience in this as I served as president of our county economic development group for five years. And many times in our community, we wouldn't even know that a business was looking at it until we found out that they weren't coming back. And a lot of what happens when you have professional organizations doing this that it becomes much less personal, so to speak. What happens then is the incentives that are out there and the tools that those states have really make a difference when those folks go out and look. And if you don't...it's just like looking at a resume or an application. If your application isn't filled out correctly or you don't have everything that somebody else has, guess where your application goes? You don't even get a sniff from anybody else because your application goes in the trash. Everybody else rises to the top. And so when you talk about professional services doing this, I think it's important to note that they probably aren't as willing to go out and dig around and find out. They're just going to do a skim of the surface. And if you don't match up to what they think that you need to have to be competitive, you probably aren't going to hear from any of their clients. [LB395]

SENATOR SCHEER: Okay. Thank you very much, Senator Schilz. [LB395]

SENATOR SCHILZ: Thank you. [LB395]

SENATOR SCHEER: (Exhibit 5) And that will close LB395. And we will now go to LB193, Senator Nordquist. Good afternoon. [LB193]

SENATOR NORDQUIST: Good afternoon, Chairman Scheer and members of the Banking, Commerce, and Insurance Committee. I'm state Senator Jeremy Nordquist from District 7 which is downtown and south Omaha here today to introduce LB193 which would prohibit payment card networks from collecting interchange fees on certain taxes and other fees. Nebraska retailers and restaurants, the primary collectors of sales tax, are forced to remit to the state over \$8 million more annually in sales taxes than they collect on a net basis as a result of fees charged by

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credit card companies when tax is added to the credit card sale. The credit card fee is charged on the total amount including the tax not just the sale price of the items or food that is being purchased. So let me give you a brief example. If I bought something in Omaha for \$100, there would be a sales tax of \$7 on that purchase, 7 percent. Depending on the contract between the credit card processor and the merchant, there would be a fee between 9 cents and 21 cents to process the \$7 tax. If you pick an average fee of about 14 cents, the merchant would receive only \$6.86 in sales tax after paying the processing fee. The business essentially eats the 14 cents and remits \$7 to the state of Nebraska. The fiscal office has determined that the amount on a single sales equates to at least \$8.4 million each year statewide. Prior to 2002, prior to budget decisions that were made at the beginning of the 2000s, the state did allow businesses to retain a small percentage of all of the sales tax collected to compensate for the cost of the collection. Due to tight budget times in the early 2000s, that amount was eliminated. This bill prohibits the imposition of interchange or swipe fees by the payment card networks on sale...on the sales tax portion of the purchase made using a debit or credit card. To accomplish this, the bill allows the payment card network to deduct the sales tax portion of a purchase prior to calculating the fee. So essentially if it's \$107 on the total amount, they would do the deduction and only charge the processing fee on the \$100 amount of the purchase itself, not the sales tax. If a person's credit or debit card terminal is not capable of making that calculation at the time, it allows the merchant to submit monthly tax statement documents and sales data to the card network for a rebate of the fees on the sales tax. We do have a...we included a penalty in the bill that the Attorney General could bring action against any payment network that intentionally violated sections of this bill. On...I'd be happy to take any questions. You know, just generally, I guess the...you know, right now, this certainly is a revenue stream for payment card networks of some amount, potentially \$8 million. The question is, should that fall on the merchants? Should they be able to use that as a revenue stream? Should the state step back in with some sort of way to reimburse that? And this is...I know there's a similar bill or a bill that addresses this type of an issue before, I believe, the Revenue Committee. So I think there's multiple approaches to addressing this issue. I certainly don't think that it should be falling on the merchants to have to handle this additional fee. But when it comes to the net mined, it's a net loss of revenue to them. I'd be happy to take any questions with that. [LB193]

SENATOR SCHEER: Thank you. Any questions? Senator Schumacher. [LB193]

SENATOR SCHUMACHER: Thank you, Senator Scheer. Thank you, Senator Nordquist, for bringing this. It's been a thorn in the system's side for a long time. [LB193]

SENATOR NORDQUIST: Right. Right. I did introduce, for the new members of the committee, this bill. We introduced last year. And I think Senator Schumacher has the Revenue Committee bill. Is that right? [LB193]

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SENATOR SCHUMACHER: Is...I mean, this asks the credit card companies to do some electronic magic and back calculate out the fee... [LB193]

SENATOR NORDQUIST: Right. [LB193]

SENATOR SCHUMACHER: ...and doing it that way. Isn't it just as simple to, when the merchant files their papers with the taxing people, to back it out then? [LB193]

SENATOR NORDQUIST: I would say that that certainly is...could be as simple of a way. The only issue I would see with that is, the state then is at some sort...is kind of at the whim of what the negotiated rate is between the merchant and the credit card company. If it's a higher fee, the state then reimburses the merchant for a higher loss on that sales tax. So if we set...if we just set a flat amount, said, you know, if the bottom fee that is charged is 9 cents then we...you know, that would be uniform. So anyone who has a rate that's higher than that, which would probably be smaller businesses, I assume--the Walmarts are getting the better deal than mom and pop--that if it's higher than that, they would lose or the state...you know, the state paid...makes...pays for the companies that are giving...paying the higher rate to the merchant...or to the processing, payment processing. So I guess it depends on--I don't know how your bill is structured--are we paying a flat rate to everybody to reimburse them or are we paying what they pay and then the state then is...you know, we're reimbursing them? If they didn't negotiate a new deal, we're paying for that not-good deal in some sense. [LB193]

SENATOR SCHUMACHER: If you know, the...do other states make the processing companies go through this? I mean, do they have just...has this wheel been invented? [LB193]

SENATOR NORDQUIST: You know, I think Jim Otto from the restaurant and retail will be after me. I can't answer that. He might. My inclination is, probably not. I don't think that this is the typical way which does probably create some logistical hoops for both merchants and the payment processors to jump through. [LB193]

SENATOR SCHUMACHER: Thank you. [LB193]

SENATOR NORDQUIST: Yeah. [LB193]

SENATOR SCHEER: Other questions? Seeing none, thank you. [LB193]

SENATOR NORDQUIST: And I'm to waive closing. I have corrections over in Appropriations so I'm going to go back to that. Thank you. [LB193]

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SENATOR SCHEER: Fair enough. Well, it was nice seeing you this year. [LB193]

SENATOR NORDQUIST: Yes, thank you guys. [LB193]

SENATOR SCHEER: First proponent. [LB193]

JIM OTTO: (Exhibit 1) Senator Scheer, members of the committee, my name is Jim Otto, J-i-m O-t-t-o. I'm a registered lobbyist for both the Nebraska Restaurant Association and the Nebraska Retail Federation and I'm here today to speak in favor of LB193 and thank Senator Nordquist very much for introducing it. What's being handed out right now is, I wanted to make sure that you realize that the \$8 million that Senator Nordquist mentioned is actually a number that was determined by the state fiscal office and this was on a bill that was introduced by Senator Karpisek in 2009, LB186. LB186 simply said that the state would have to reimburse the merchant for the credit card fee on the sales tax portion. We really didn't want that to pass. It would have been a nightmare to implement. We just wanted the fiscal note. And so the state of Nebraska said, and if you notice on the actual fiscal note, if you go to FY 2012-13, they estimate it to be \$9.2 million so every year it grows. And this...Senator Nordquist did a very good job of explaining why this discrepancy exists. There may be another tax that's collected that the actual collector receives less than they remit, but I don't know what it is. I think this is...so this is an unfair situation for retailers, restaurants, and anyone who collects and remits sales tax. And as senator...there are basically two ways to look at it. Senator Schumacher has introduced a bill--and we thank him very much for that--in the Revenue Committee which would simply reinstate the way it was prior to 2002 which would not have...the calculations on Senator Schumacher's bill wouldn't have anything to do with the credit card sales, but it would reimburse the merchant for an amount that at least approaches what they're losing on the credit card sales if it were done the way it was introduced by Senator Schumacher. So the real reason for this is to show you that...one more chance to show you that retailers and restaurants are kind of the Cinderella of the business world. Everybody else...as Kathy Siefken said earlier, no...there really are no...LB775 doesn't apply to retail and restaurant because it's spin-off employment not primary employment. But that may...it's probably appropriate. The...really, retailer and restaurants don't get any kind of...or very few tax incentives at all, but still are required to do all of the collection, kind of do all the scrub work that Cinderella does while the other businesses are kind of the spoiled daughters that don't have to do all those things. So we kind of figure that it's an issue that, really, the Legislature needs to take a look at. With that, I will...I think it pretty much addresses everything that we are concerned about. I think what you will find as far as opposition is that it's too difficult to do. I would just submit that, you know, it may not be very...real, real simple to do, but it's possible. And this option gives an option that would not cost the state anything except enforcement whereas there is a fiscal note to the one Senator Schumacher introduced. And to the difficulty, I would just submit that we went to the moon in 1969 so it's not impossible. It might be difficult. [LB193]

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SENATOR SCHEER: Thank you, Mr. Otto. Any questions? Seeing none, thank you very much. Any other proponents? Seeing none, are there any opponents? Good afternoon. [LB193]

JERRY STILMOCK: (Exhibit 2) Thank you, sir. Good afternoon, Mr. Chair. Members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska Bankers Association, in opposition to LB193. The benefits are known to consumers: protection from theft, protection from fraud, protection from inaccuracies, don't have to carry cash. On the merchant/seller side: immediate guaranteed payment, don't have to chase bad checks. The reason I go through those different items of benefits to the consumers and to merchants alike is that it...the process pays for a system. The system in place is what we have. To our knowledge, it's not possible...excuse me. The gentleman before me used the word possible. It's arguably possible, but we're not talking about a network system. We're talking about multiple network systems that would transact business in Nebraska that would all have to change their model, change their model, change their coding, change their infrastructure as to how in Nebraska this is separated. And in the other states, to our knowledge again, this is not a separation that occurs because it does not occur easily. So the entire system is supportive of what that transaction is. If the payment is not made by the card user, the card issuer, the bank paying, is based on 100 percent of what has been charged including the sales tax. So it's that entire amount that the issuing bank is going to have to go after. My three points...my fourth point is, in section 4 of the legislation it speaks of an alternative. If the merchant or seller does not set up, is unable to set up, or chooses not to set up this type of system, well then there will be an alternate system. And that would require the processor, the network card system, to accept as proof of whatever that merchant or seller submitted by means of how much that merchant or seller paid. The government would be stepping in, to the first time that I know of, that says, between businesses. Business A, the merchant or seller, submits what they believe the amount should be and the network processor has to accept that without any questions asked, without any time frame of when that statement would be submitted and it just doesn't seem to work right. Right now, we have a closed loop. The loop is, the payment system, the guaranteed payment to the merchant or seller and the section 4 creates an alternative that says, okay, well, if the system isn't out there to make it work, we'll allow you to...not we'll allow, but you will have and it will be mandated that you accept it, what that charge is. And we believe that that's flawed. And maybe, Senator Schumacher, maybe it is time to go back to what Senator Nordquist said was the origination of this action, was the change of law in 2002, is maybe there is a payment back to the retailers, to the merchants. And for the reasons I have given you, we oppose this legislation. Thank you. [LB193]

SENATOR SCHEER: Thank you, Mr. Stilmock. Any questions? Seeing none, thank you very much. [LB193]

JERRY STILMOCK: Thank you, Senators. [LB193]

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SENATOR SCHEER: (Exhibit 3) Any other opponents to LB193? Seeing none, I do have one letter from the Nebraska Credit Union League in opposition to (LB)193 as well. Are there any in a neutral capacity for LB193? Seeing none, that will conclude the hearing for (LB)193. If you might, can I see a raise of hands how many might be wanting to testify for (LB)348? That might dictate what we're doing. Having noted that, we will take a five-minute break before we start. (Laughter) [LB193]

BREAK

SENATOR SCHEER: Okay, being a little over our five-minute time period, we will now open the hearing on LB348. Senator Krist. [LB348]

SENATOR KRIST: (Exhibit 1) Good afternoon, Senator Scheer and members of the Banking, Commerce and Insurance Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha along with the north central portion of Douglas County, which includes the city of Bennington. I appear before you today in introduction and support of LB348. This is a bill that has brought about a tremendous amount of consternation. I am sure that you've heard about how complicated the issue is. You may have heard that the bill pits big banks against little banks, but it is not big banks versus little banks or bank versus credit union. The issue is, that LB348 attempts to solve a problem that affects every financial institution and every merchant who uses debit cards in Nebraska. The issue is terribly complicated, but that doesn't mean that we shouldn't do anything. It is because this issue affects every financial institution and merchant in the state that we need to get a bill passed this year. I believe that all sides will tell you today that we need to pass a bill this year and that due to some pretty intense negotiations we're in agreement in the broad sense about what we should do to solve the problem. I want to stop there and just thank Senator Scheer and others who have...and Mr. Marienau who have held many meetings many hours and, not to say that we are totally in agreement with everything across the board, but we're getting there. Let me begin by giving a little background as to why we're here. Others will follow me with more detail. The law in Nebraska was created in the 1970s at a time when no one had even seen an ATM machine. If you read the legislative history, members of the Banking Committee were confused about what this newfangled automatic machine was. And at that time, there was one ATM at the Hinky Dinky, and it was referred to as "Josephine" because it was an automatic teller machine and tellers, after all, are female; thus, Josephine. There were questions about how these things would work. For example, could you get a mortgage at one? Would little-town banks be frozen out of the market by national banks? There was even a concern at the time whether having an ATM would be considered a branch bank within the store, which was illegal at the time. Our law was created in the 1970s to make sure that all banks would have access to ATM networks and that no bank would be excluded from the network. Fast forward to 2010. In 2010, Congress passed the Durbin Amendment as part of the Dodd-Frank Act. The Durbin Amendment required competition on

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debit transactions. When Durbin became law, several networks decided to enter the Nebraska market. These networks applied and were accepted by the Department of Banking to operate as switches or networks in Nebraska. Prior to this time, only one switch was approved in Nebraska, referred to as NETS. The problem was that our law created in the 1970s requires a fee structure that isn't used anywhere else in the country. National networks that came to Nebraska used the same pricing system that they were used to everywhere else. The Attorney General was called in to determine...our Attorney General was called in to determine if that was in violation of Nebraska law. He said, it was. One financial institution in Nebraska that moved to a national network was even sued for moving. The Department of Banking is now in a quandary. Based on the AG's Opinion, the department has to enforce the law against financial institutions on every switch or network except NETS. That's because no network operating in Nebraska except NETS is in compliance with the law as it was interpreted by the AG--very important--as it was interpreted by the AG. Taken to its logical conclusion, if the department has to enforce the law as it was interpreted by the AG, every financial institution in Nebraska could be in violation of federal law and our ATM transactions will not work outside the state of Nebraska. I said "could be." Let me make it clear. There is disagreement about whether the AG's Opinion is accurate, but it is the directive given to the department at the present time. The bottom line is that our law is outdated and it needs to be modernized. The law regulates business-to-business transactions that should be private-sector negotiations. It prevents competition; it prevents business options that can reduce prices; and it makes Nebraska an outlier from other states. I had the pages distribute a copy of the proposed amendment to you, AM781. And I will not say that it is in...that everyone agrees with the amendment. But as I understand it, it was at one point an agreed upon amendment that people moved from. And you know what a plan is, it's a point from which to deviate so I will not attest that it's in total agreement across the board. I've stayed out of the negotiations at the Chairman's request and I'm happy for that. I think at this point it's my obligation to know as much about this as the banks and the institutions do and I intend to do that before it's taken to the floor if you'll allow me to take it to the floor. But I'm told that each side has diligently come together to try to work out the solutions. We're not there yet, let me emphasize that. While there's still disagreement about the language in the amendment, there will be another version I am sure. So with that, I would just say this: Again, thank you to Senator Scheer and to your committee legal counsel for engaging in the proposition. I'll save my final remarks for closing and I will be here. [LB348]

SENATOR SCHEER: Okay. Thank you, Senator Krist. Any questions? Seeing none, thank you very much. [LB348]

SENATOR KRIST: Thank you. [LB348]

SENATOR SCHEER: I would now entertain those proponents for LB348. Good afternoon.
[LB348]

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KIMBERLY FORD: Good afternoon. Let me get my props handy here. All right. Good afternoon, Chairman Scheer, members of the Banking, Commerce and Insurance Committee. I am Kimberly Ford, K-i-m-b-e-r-l-y F-o-r-d, and I am vice president of public affairs for First Data. I'm here to speak in support of LB348 and I thank Senator Krist for introducing it. So quickly, just about First Data. So we're a payments provider. You may know us, we have a significant facility in Omaha. We have about 5,000 individuals employed there. The Omaha facility represents our largest footprint out of 34 countries in which we operate, so we are proud of our presence in Nebraska. One of the other things that First Data has is, that we own and operate the STAR debit network. So for those of you who may wonder what a debit network is, I'm just going to level several quick. So you know, debit cards, they access your checking account. And financial institutions that want to issue debit cards become members of a network. So they literally join a network. There are fees that are associated with that. And then when they issue cards, you can see the network brands on the back of the card. Merchants also have deals with networks because if they have a point of sale that takes the debit card, they also have to be able to accept those cards. So what you have now are nationally run or operated debit networks so that if I want to take my debit card and use it at any retail location in the United States or at any ATM I can do so. So let me just boil it down. A debit network is basically a computer system that allows me to go to one financial institution's ATM and use this card even though it may not be the same financial institution's ATM. So interoperability is really key. So what you heard Senator Krist say is that the situation has changed and the law that made sense in Nebraska back in the 1970s is now a challenge for us today. So the crux of the issue is that the Attorney General's Opinion said that we had to price our services in a different way than we do around the rest of the country. Okay? So what that, again, means is that the state of Nebraska is really dictating terms for private business to business negotiations because, again, we negotiate with every financial institution that wants to be a member of our network what the kinds of prices should be associated with that service. Nebraska is the only state that does this. So LB348, as was introduced, not as what's on the amendment in front of you, but as it was introduced, it would have removed any of those pricing restrictions from the law. Would have basically taken them all out. However, we learned that the instate switch called NETS, and they're here today, and the Nebraska Bankers Association had some problems with the language; they were in opposition. And so under the Chairman's leadership, we have been meeting for several weeks to try to figure out a compromise. And I do thank Bob Hallstrom and Cathy Morrissey, in particular, for all of the work and coming in and talking with us on this. I do think we're close to an agreement. Again, we do have some things to work out and we're going to be meeting tomorrow and then have another meeting on Monday as well. But I do want to be clear about something. If nothing...if no action is taken this year, if no bill is moved, we're stuck with the law as it's been interpreted by the Attorney General--and that is a law that only basically one switch, called NETS, can comply with--so national networks like STAR, probably like VISA and MasterCard as well, would not be able to price in accordance with the AG's Opinion. That means that not only would the networks have trouble operating, but any financial institution that wanted

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to be a member of those networks would also be out of compliance and probably sought after by the Nebraska banking department because of that. But I don't want to just get stuck on compliance because, obviously, that's a significant one, but for us it's also about debit network competition. And why it matters to small banks, large banks, small credit unions, and large credit unions is that...let me kind of put this in context for you. So you've heard about many of the breaches that have been happening, right? Every day it seems like we read about something new. So a lot of times financial institutions, even if they want to offer debit and credit card programs, they may not have the technological infrastructure to really be able to manage those programs, provide all the fraud prevention and fraud detection services. And that's where a debit network can come in and offer those types of services. STAR alone, just in the next couple of years, is planning to spend \$50 million just on our fraud detection and fraud prevention programs. So those are the kinds of services that we can offer to financial institutions of all sizes. And if you have a market where debit networks can't come in and compete, it's the financial institutions that don't get to take advantage of those types of services and ultimately, even your constituents. They're cardholders who aren't going to be able to avail themselves of financial institutions with those protections and services as well. So I'm here to ask you for your support on LB348. Again, we are not saying that NETS shouldn't be able to operate or that they have to do what we do. We're just asking for an opportunity to come in and be able to operate like we do around the rest of the country. So thank you for your attention. And I'm happy to answer any questions. [LB348]

SENATOR SCHEER: Ms. Ford, before I get to that, I will avail this to some testifiers, not all. But if there are some things that you did not have time that you wanted to get to, if you'd like to take that opportunity to do so now, feel free. [LB348]

KIMBERLY FORD: Thank you. You know, I think that there are a couple of sort of behind the scenes issues that have to do again with certain prices. So one of the big pieces that we've had a challenge with, with the way the AG's interpretation is, is something called a switch fee. So think of this as the membership fee that when I'm working with a financial institution to join the STAR network, this is the fee we negotiate. Liken it to a gym membership, right? I can pick the gym I want to go to and if I don't like the fee, I don't have to go. So financial institutions see switch fees as a part of those negotiations. We read the AG's Opinion to say that those have to be uniform no matter what size the financial institution is. And that is differently than the way that we do business. NETS and the Nebraska Banker's Association in the compromise meetings have said that they are willing to set that aside so that we can continue to have variable switch fees. We appreciate that. We are very much in favor of that type of outcome. I think that one of the other pieces that still remains in question is around interchange. So interchange is a tough one. You just heard some about it in the last...with Senator Nordquist's bill. It's a fee that is basically set by a network and financial institutions receive those fees. On the ATM side, it can be a little different. But the fact is, is that point-of-sale interchange fees are regulated by federal law, the Durbin Amendment. So we would also like to see point-of-sale interchange fees taken off the

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table so that there's no inconsistency with state law and there's no inconsistency with federal law. So if we take switch fees off the table and point-of-sale interchange fees off the table, we are left with ATM interchange fees and whether those should be variable, uniform, or not. And that is really, I think, the crux of what the negotiations have been about and I think that, philosophically, we seem to be in agreement and now it's really just working out the black and white language. That was a level of granularity that you may or may not have wanted, but I appreciate the extra time, Senator. [LB348]

SENATOR SCHEER: Not a problem. Questions? Senator Schumacher. [LB348]

SENATOR SCHUMACHER: Thank you, Chairman Scheer. And thank you for your testimony. I've struggled with this issue since early in the session trying to understand it. And I'll confess I don't understand it. Okay? So maybe, since you're on the hot seat, you can help me. [LB348]

KIMBERLY FORD: Okay. Tall order. [LB348]

SENATOR SCHUMACHER: First of all, are we talking about here now both the ATM side of the equation and the point-of-sale side of the equation? [LB348]

KIMBERLY FORD: So, the Attorney General's Opinion, we believe...well, the base law we believe affects ATM and point-of-sale. The Attorney General's Opinion seemed to really just focus in on ATM and the Department of Banking issued a statement of policy that said, point-of-sale interchange should not be covered. I think there's a question as to whether that's really the case if you read the language of the original statute. So, the first bill as introduced, LB348, would have dealt with both ATM and point-of-sale by taking it all off the table and not having any pricing restrictions at all. The amendment that's in front of you today, but that we are still negotiating on, would take point-of-sale off the table and we would just be dealing in an environment where ATM interchange fees were regulated. Does that answer the question? [LB348]

SENATOR SCHUMACHER: Is there any reason, if we're going to bite into this apple, why we shouldn't take care of both of them? [LB348]

KIMBERLY FORD: Take care of both of them in that point-of-sale should be uniform? [LB348]

SENATOR SCHUMACHER: Under the amendment, are we going to have to sit down and listen to this whole issue again under an ATM bill next year? [LB348]

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KIMBERLY FORD: Well, so the amendment actually would, we think, satisfy some of the bankers' concerns and NETS' concerns to say that ATM rates should be uniform. It's something that, operationally, will cost us some money, but that we're willing to do. The reason that we think point-of-sale should be not covered by the Nebraska law is because federal law regulates point-of-sale interchange. And so we don't know that the state can come in and affect that. [LB348]

SENATOR SCHUMACHER: Well, one of the issues that seems to be out there is that right now NETS treats all banks who are members of NETS equally. [LB348]

KIMBERLY FORD: That's our understanding. [LB348]

SENATOR SCHUMACHER: Okay. And they've got to charge the same fee schedules and fee arrangements. And that if the outside operators come into the state, they will come in with pricing mechanisms that on the...well, may be equal in fee, but adjusted by other side benefits or side product pricing that has nothing to do with the operation of the ATM or the debit side, but they'll get a uniform fee here, but if you'll sign with them, the bigger bank, the bigger operator will get a kickback of some kind or a bonus or a cheaper price or some incentive. And that somehow disadvantages the little banks. Is that part of the marketing? [LB348]

KIMBERLY FORD: So, I'm going to do my best to answer your question, but I think one of the other proponents may be able to speak better to that because he's actually the president of a credit union and could talk about pricing. Let me be very transparent, though. So First Data owns STAR. First Data has a number of products and services that we offer to financial institutions. When we are soliciting a financial institution for business, we definitely want to make that pot sweeter. So we may adjust our switch fee, depending on something like an asset size, depending on something like the transaction volume they think are going to be over our network. And then we might look at to say, hey, and if you're getting other First Data products and services, we'll make that an even better fee. That's absolutely how debit networks, outside of Nebraska who operate on a national basis, that's absolutely how we do business today. We look at a whole bunch of factors to entice a financial institution to join our network. I don't see that that, on its face, would be a disadvantage to small financial institutions. In fact, STAR, my network, 99 percent of our 5,000 or so members are small banks and credit unions. The several members that we have in Nebraska, their asset size don't even reach \$1 million. We're talking like \$400,000 and \$500,000 in assets. That is the smallest of small. So what we do is bring to the table competitive pricing so that maybe they can pass on savings to their customers in some way. Or we make their fraud prevention programs arguably better so that they're not having to reissue cards as much. So I would argue that it's more of a holistic viewpoint that we can provide a good

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product offering that helps small financial institutions in particular with pricing and offering better services to their own cardholders. [LB348]

SENATOR SCHUMACHER: Help me understand the mechanism that's involved. You start out...let's take the ATM side. You start out with a box that's in a lobby of a bank or a convenience store or a tavern or any place like that. Now there's a box. And that box, you can put a card in and you press some buttons and, bingo, out comes cash if you've got money in your bank. Who owns that box? [LB348]

KIMBERLY FORD: So there is...there are...there's really a class of individual or company called an ATM owner. So that can be a financial institution. It can actually be a nonbank; you could own an ATM. Now if you wanted that ATM to work and to accept cards you would have to be sponsored into a network, most likely by a financial institution. So you would have to have some partnership in place, but you could be an individual person who owns an ATM. For purposes of this discussion today, we're talking just about ATMs that are owned by financial institutions. [LB348]

SENATOR SCHUMACHER: Is...I mean, this ATM box has got to be connected to some thing over some kind of a communication medium, a wire or a piece of fiber or something. How are they connected? [LB348]

KIMBERLY FORD: Yes. That's where the debit network like STAR comes into play. So STAR actually was born out of a number of just regionally owned ATM boxes, basically. And as federally chartered institutions, especially, started broadening and opening up branches around the country and ATMs started popping up, this new phenomena that existed that was happening in the '70s, what they realized is financial institutions and the networks--STAR, Visa, MasterCard, etcetera--wanted their cardholders to be able to not question whether their card was going to work if they used it at one ATM here and if it wasn't going to work at the ATM down the street. Right? They didn't want the cardholder to have to think about where do I find a list of what works and what doesn't. So these networks were created to basically have interoperability and communication with all sorts of ATMs. So with the ATM box in the financial institution down the street there is a processor, a payment processor, and a network that they connect into. And that allows them to run the types of communication that means the cards will work. [LB348]

SENATOR SCHUMACHER: Does the box in the convenience store talk to the network over the Internet? [LB348]

KIMBERLY FORD: Yes. [LB348]

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SENATOR SCHUMACHER: So we have an Internet connection? [LB348]

KIMBERLY FORD: Yes. [LB348]

SENATOR SCHUMACHER: Okay. The person...I want to try to get the whole picture of what kind of mess we're dealing with. The person who has a key to the ATM box, moreover the person who can work on the ATM box if it's broke. Do they have to be licensed or registered with anyone? [LB348]

KIMBERLY FORD: You know, that's a great question. I think that I've seen some state legislative proposals...I'm not sure about what laws exist, but that do require some sort of registration. Generally that's done by the banking department and again, because an individual nonbank ATM owner does have to have some financial institution that's party to that contract as well as the network. Somebody is keeping track of who this person is. [LB348]

SENATOR SCHUMACHER: In Nebraska, do we have this somebody? [LB348]

KIMBERLY FORD: I don't believe that the banking department looks at that. [LB348]

SENATOR SCHUMACHER: So we have this box that is wired into a box we'll talk about later over the Internet and we have no control over who owns the box? We have no registration process of where the boxes are? We have no control of the people who have access to the inside of the box or its electronics? [LB348]

KIMBERLY FORD: From a regulatory perspective, likely not, although the banking department would have to answer that. But from a network, financial institution partner, or processor perspective, yes. That information is known about who owns the ATM. They would know the location. Regulation E at the federal level, the Electronic Fund Transfer Act, actually requires location information to be printed on the cardholder's receipt. So that kind of information about where it is and who owns it is kept track of. I just don't know that the banking department in Nebraska actually keeps track of that. And I'm sorry for... [LB348]

SENATOR SCHUMACHER: Who patrols it, the guy who opens it up and has access to all the goodies inside, including maybe the ability to tack on a hard drive to memorize every transaction? Who could make sure that's a legitimate guy? [LB348]

KIMBERLY FORD: I don't have the answer to that, but I can certainly find out. [LB348]

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SENATOR SCHUMACHER: Okay. So now we've got this box with those questions on it, connected over the Internet. And at the other end of that Internet connection, receiving signal from that box is who? [LB348]

KIMBERLY FORD: So you have the ATM, you have a network that's sitting in the middle-- think of it as the rails... [LB348]

SENATOR SCHUMACHER: Okay, the Internet. [LB348]

KIMBERLY FORD: ...and a processor. So it actually may go from an ATM owner and terminal to a processor--that's an entity, First Data also plays that role--who then takes that information, sends it through the network. So that could be STAR if it's a STAR card. And it's ultimately the bank that issued the card that gets to say, yes, you should transact on this account; and, yes, there's \$20; and, yes, you can spit \$20 out. The card-issuing institution always has the say over "approve" or "decline" codes. [LB348]

SENATOR SCHUMACHER: So the card number and the request for money or whatnot is transmitted over the Internet from the box... [LB348]

KIMBERLY FORD: Yes. [LB348]

SENATOR SCHUMACHER: ...in the convenience store to basically you guys or NETS. And there, a receiving computer takes that information and looks at it and says, oh, in order to ask the bank who this person is a customer of whether there's money there,... [LB348]

KIMBERLY FORD: Yes. [LB348]

SENATOR SCHUMACHER: ...we need to send it to this address on the Internet where that bank is located. [LB348]

KIMBERLY FORD: Yes. So, well, part of the transaction message, as soon as I've swiped my card at an ATM, part of these series of 16 digits in this is the bank identification number. So as a processor in a network we know that this is PNC Bank that issued this card and I need to route this to PNC to be able to say, does Kim Ford have \$20 in her account and can she get money right now, yes, no? And if "yes," then it goes back over the lines and the money spits out of the ATM. [LB348]

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SENATOR SCHUMACHER: Okay. So the ATM money gets spit out. How does...and presumably, the owner of the ATM is the one who stuffs money in there to start with. [LB348]

KIMBERLY FORD: Yes. [LB348]

SENATOR SCHUMACHER: How does that owner get his money or her money out of the bank that coughed up the money? [LB348]

KIMBERLY FORD: So that...the process I just described, when a consumer swipes a card is called an authorization, but there's another process called settlement which is actually when money changes hands. And that can be some period of time after authorization. It can be a matter of a few hours or it can be a matter of days or if the ATM owner has an institution that is driving the network, there may be some...I don't know the timing that gets set up for how they get the money replenished, but it is a separate process after the card swipe. [LB348]

SENATOR SCHUMACHER: Now in this system there are fees. [LB348]

KIMBERLY FORD: Yes. [LB348]

SENATOR SCHUMACHER: And one of the fees has nothing to do with it. It's kind of a rental fee that the user of the box at the convenience store pays. And it can be free or it can be a couple bucks, just for the pleasure of using the box up front. [LB348]

KIMBERLY FORD: Yes, if you're asking about surcharge-free networks, those do exist, yes. STAR operates one, NETS operates one. [LB348]

SENATOR SCHUMACHER: Right. Okay, so if you and I go into partnership and we buy one of these boxes we can, as long as we put a little disclosure on the box say, hey, if you can get money out of this box you owe us two bucks. Okay, so that's one fee. Now, somebody's got to make money off of this or there wouldn't a fuss over it. Okay? So the parties involved, as I see it, are the bank that has got the deal with the box owner, they've got to get something out of it. And what is what they get out of it called? [LB348]

KIMBERLY FORD: So the owner of the ATM, whether you're talking a nonbank or a financial institution in an entity, generally is going to get interchange which is confusing because it flows in reverse...interchange flows in reverse in the point-of-sale environment than it does for ATM. But generally, it is the ATM owner that's going to get paid an interchange fee. That interchange

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fee is generally going to be set by the debit network that it's participating in. The surcharge that it sets... [LB348]

SENATOR SCHUMACHER: The interchange, is that a big amount of money? I mean, if we were to run a hundred dollar bill through this thing how much would that be? [LB348]

KIMBERLY FORD: No. You're talking cents, c-e-n-t, cents, yeah. [LB348]

SENATOR SCHUMACHER: Just a few cents? So the bank that's sponsoring the machine just gets a few cents off that deal plus whatever surcharge they (inaudible). [LB348]

KIMBERLY FORD: But if they've got lots of ATMs around the country, that can add up rather...in the state, that can add up quickly. [LB348]

SENATOR SCHUMACHER: Sure, okay. So now the next person up the line is you folks who operate the decisionmakers to where to go to find the bank to charge. And you guys get a cut? [LB348]

KIMBERLY FORD: Yes, we do. That's the switch fee so...that I referenced earlier. [LB348]

SENATOR SCHUMACHER: Okay. [LB348]

KIMBERLY FORD: So when a transaction actually runs over our network, we actually don't...the network does not receive interchange, we receive a switch fee. [LB348]

SENATOR SCHUMACHER: Okay. And is...on our hundred dollar deal, roughly how much would that be? [LB348]

KIMBERLY FORD: That's also cents. [LB348]

SENATOR SCHUMACHER: Just a few cents. Okay. And that goes to the switch operator. [LB348]

KIMBERLY FORD: And, Senator, I can't get into specificity because there is a competitor network in the room, actually several, and so we can't get into actual pricing. I can tell you generally, but cents is about the most I can say. [LB348]

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SENATOR SCHUMACHER: Okay, but we're not talking much. [LB348]

KIMBERLY FORD: No. [LB348]

SENATOR SCHUMACHER: You know, we're talking less than a buck, less than 50 cents maybe. [LB348]

KIMBERLY FORD: Probably. [LB348]

SENATOR SCHUMACHER: Okay. So now we got somebody else that has to get in the action and that's the bank who's bothered by all this on the receiving end. Do they get something? [LB348]

KIMBERLY FORD: In an ATM transaction when...so let's use just PNC Bank, right? [LB348]

SENATOR SCHUMACHER: Okay. [LB348]

KIMBERLY FORD: So they have issued me my card, I'm in Nebraska, I go to First National Bank of Omaha's ATM. So PNC is actually going to be paying the interchange fee to First National. Think of it as kind of a "thank you for letting my customer access money from your ATM" fee. So PNC is not going to be making any money on that transaction, they are going to pay an interchange fee to the ATM owner. [LB348]

SENATOR SCHUMACHER: And PNC is your bank? [LB348]

KIMBERLY FORD: That's the card issuer, yes. [LB348]

SENATOR SCHUMACHER: The card issuer. [LB348]

KIMBERLY FORD: So the card...the bank... [LB348]

SENATOR SCHUMACHER: And that's usually a bank? [LB348]

KIMBERLY FORD: Yeah, that's always a bank or a credit union. [LB348]

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SENATOR SCHUMACHER: Okay. And in the case of a Nebraska bank or credit union, it would be some Nebraska bank that would issue that card and they would be the people who end up paying to the... [LB348]

KIMBERLY FORD: The interchange. [LB348]

SENATOR SCHUMACHER: ...bank that owned the machine? [LB348]

KIMBERLY FORD: You got it. [LB348]

SENATOR SCHUMACHER: The sponsor. Okay. [LB348]

KIMBERLY FORD: You got it. [LB348]

SENATOR SCHUMACHER: And how much money is that involved? [LB348]

KIMBERLY FORD: Again, it's probably going to be under a dollar. [LB348]

SENATOR SCHUMACHER: Okay. So we've got three places here in which there's minor fees. Where is all the controversy over? I mean, why...where's the competition issue at? Who is trying to offer a cheaper fee and who's the beneficiary of the cheaper fee? [LB348]

KIMBERLY FORD: Okay, so it's not at all about the surcharge that a consumer pays when they want to use an ATM, so set that completely aside. So the ATM owner makes the money on the surcharge, always. They set it, they get it, it's profit. [LB348]

SENATOR SCHUMACHER: That's just bonus for entering the machine. [LB348]

KIMBERLY FORD: That's what you and I pay. That is off the table. It is not in play. [LB348]

SENATOR SCHUMACHER: Okay, right. It has nothing to do with this. Got it. [LB348]

KIMBERLY FORD: Where the challenge is, is that...again, STAR was not born in Nebraska and we are nationally operating. And so when we are looking to make deals with financial institutions the way that we entice them to the network is by offering good services. But also having a membership fee, let's call it, but a switch fee that is a certain price. And we may adjust

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that price based on a variety of factors. We also then say, if you're a member of our network you're going to get an interchange fee. That may be really good for point-of-sale transactions and maybe not as good for ATM. But interchange fees and switch fees are two fees that financial institutions may pay or receive. And so their networks, we're using that in our negotiations with financial institutions when we want them to join our network. So what's the sort of crux of the issue is that the Nebraska law that's in place and the way that the AG interpreted it back in 2013 is that the switch fees, the fees that we negotiate with financial institutions are supposed to be the same for every financial institution, meaning you can't look at one financial institution and say, wow, you have \$10 billion in assets, I'm going to give you a great rate versus another financial institution and say, wow, you only have \$400,000 in assets, sorry, I'm not going to give you a great rate. The Nebraska AG's Opinion is saying that can't happen. Everything has to be uniform. [LB348]

SENATOR SCHUMACHER: Is that the same for the exchange fee? [LB348]

KIMBERLY FORD: The interchange fee? [LB348]

SENATOR SCHUMACHER: Yeah. [LB348]

KIMBERLY FORD: That's how we believe it was interpreted. [LB348]

SENATOR SCHUMACHER: Okay. Now I forgot to ask one question. Does the bank who ends up getting dinged in the end who issued the card... [LB348]

KIMBERLY FORD: For the ATM. [LB348]

SENATOR SCHUMACHER: ...and they end up having to pay this exchange fee because somebody dinged them from a machine, do they pass that fee on to their consumer? [LB348]

KIMBERLY FORD: I can't speak to that. I would imagine that if they are paying some sort of fees out that they've figured out the economic models that make sense so that those...right? Maybe they're paying it all out but it's coming in, in the way of interest income, or maybe it's coming in from interchange revenue from the point-of-sale side or late fees. I don't own a bank so I'm sorry, I can't speak to that. [LB348]

SENATOR SCHUMACHER: Okay. So depending on the policy of the bank that issued the card, they may have a line on their statement saying so much money for use of credit card or something or a debit card. [LB348]

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KIMBERLY FORD: They may. They may. [LB348]

SENATOR SCHUMACHER: So is all this just about who...building up volume for these few cents a transaction at the switch level? [LB348]

KIMBERLY FORD: For us, it's about having more competition in the state of Nebraska so that we can offer better services for financial institutions in the state. If there are opponents in the room, they might see that differently. [LB348]

SENATOR SCHUMACHER: Okay. All right. Thank you very much. [LB348]

KIMBERLY FORD: You're welcome. [LB348]

SENATOR SCHEER: I can't imagine there being any other questions, but Senator Howard. [LB348]

SENATOR HOWARD: Thank you, Chairman Scheer. Thank you for your testimony today. [LB348]

KIMBERLY FORD: Thank you. [LB348]

SENATOR HOWARD: I was curious in both listening to Senator Schumacher's line of questioning and your testimony. What would happen...would it work if we just solved the POS issue this year and then we worked on the ATM issue over the interim? Would that work? [LB348]

KIMBERLY FORD: At First STAR it does not work. And the reason is because we offer point-of-sale and ATM services. So think about a financial institution...again, from their perspective, they want their cardholders to be able to take their debit card to any retailer that has a card-swipe machine or any ATM at any financial institution or nonbank ATM, right? I mean the point from a financial institution's perspective is, you want your cardholders to be able to use those cards everywhere. We still have an issue if...even if the point-of-sale interchange fee is addressed in terms of not being out of compliance with federal law the point is, we offer point-of-sale and ATM services. So we aren't in a position to be able to like have some sort of way that we deal with one financial institution with their ATM rates and then look at that differently for point-of-sale for the same institution. It's not operationally something that we're willing...I believe that we're willing to do. I don't know operationally how feasible it is. But for us, that's not a solution that's workable. [LB348]

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SENATOR HOWARD: Thank you. [LB348]

SENATOR SCHEER: Senator Williams. [LB348]

SENATOR WILLIAMS: Thank you, Senator Scheer. And I don't have nearly as many questions. [LB348]

KIMBERLY FORD: Thanks, because I'm thirsty up here. [LB348]

SENATOR WILLIAMS: One thing I wanted to ask, just in case it was something that you misspoke on. You mentioned that you have several small banks in our state that do business with you that are in the \$400,000 to \$500,000 total asset size? [LB348]

KIMBERLY FORD: That's correct, yes. [LB348]

SENATOR WILLIAMS: There are no banks that small in our state. [LB348]

KIMBERLY FORD: I've got a list with FDIC numbers. I probably can share those with you. [LB348]

SENATOR WILLIAMS: I think you mean millions, not thousands. [LB348]

KIMBERLY FORD: I will certainly double-check. [LB348]

SENATOR WILLIAMS: I want to go back to the question of uniqueness, why that is unique. And I sincerely appreciate First Data's involvement in Nebraska and your involvement with helping to solve this (inaudible). And am I correct in saying that the point-of-sale part of this general business is the part of this business that's growing? [LB348]

KIMBERLY FORD: Yes. [LB348]

SENATOR WILLIAMS: And the ATM portion of this business that we are really now trying to deal with is static to shrinking. I mean,... [LB348]

KIMBERLY FORD: Probably static. Yes, that's correct. [LB348]

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SENATOR WILLIAMS: Yeah. Yeah. And...but then back to what you were taking about unique. And I think it is unique. And why is Nebraska unique? And I would suggest that's because NETS did get into this business early. And the part that Senator Schumacher didn't focus on when he went through the was the surcharge part of this. In your experience in doing business in multiple states, including Nebraska, are there more surcharge-free transactions in Nebraska than there are in other states? [LB348]

KIMBERLY FORD: Senator, I don't have that information. There may be others who do, but I will...I can look and get back to you. [LB348]

SENATOR WILLIAMS: Well, there are. [LB348]

KIMBERLY FORD: Okay. [LB348]

SENATOR WILLIAMS: And the reason for that is the system that's been set up here, and I will ask these questions of other people, too, but there are at least 1,200 places in Nebraska that you can go and use a surcharge-free machine. And my concern is twofold. That we end up with a system that does not shift the cost of what we're talking about, these fees that Senator Schumacher is talking about, to the consumer... [LB348]

KIMBERLY FORD: Absolutely. [LB348]

SENATOR WILLIAMS: ...so that there are, all of a sudden, instead of having 1,200 surcharge-free machines out there, we have machines that every time you go use your card or nearly every time, you pay that \$2 or \$3. That's the consumer paying, not the business partners in here that are transacting business and making money all the time. And the other thing is that is we'd create a system that whether you're the bank in Falls City or the bank in Ravenna or the bank in Chadron, you can be competitive with the larger banks in this system. So those are questions that I'm going to be asking additional people when they come up. [LB348]

KIMBERLY FORD: May I respond or...? [LB348]

SENATOR WILLIAMS: Yes. That's a question. [LB348]

KIMBERLY FORD: Okay. So on the surcharge issue, a very absolutely valid concern. And I think it's the right thing to be thinking about the consumer impact even though we're talking about business to business fees. STAR has a surcharge-free network so...and there are other networks that offer those as well. So I think that, again, by opening the market up to more

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competition, you actually have an even greater opportunity for networks, especially that have surcharge-free services to come in. I think...remember at the end of the day though, even if all of this is addressed and every debit network could come in and compete, we may not get one financial institution that decides to join. It is always the financial institution that issues the debit cards that gets to decide what network they want to join. So I would also argue that a financial institution that is concerned about the impact on its cardholders for having less access to surcharge-free networks, would probably not pick to be participating in a network that doesn't have a good surcharge-free offering. Right? Because they're going to be thinking about their cardholders even more than we are. I think also in terms of the small financial institution experience, again what we would argue is that we have all kinds of fantastic product offerings, especially in the fraud prevention space that even if the surcharge fee is not something that...you know, maybe that increases tomorrow instead of decreasing. I don't know, maybe it decreases for them tomorrow with more competition. There are still other services of which they could avail themselves that make the overall value better and may make them save money on things like card reissuance or they attract more consumers because they now can offer a prepaid program or a person to person transfer. So that would just be how I would respond to that. Thank you. [LB348]

SENATOR WILLIAMS: Thank you. And I would just point out with that, the consumer has been a huge winner this entire process today, that each one of us has the ability to carry that plastic card and go anywhere and transact business, so thank you. [LB348]

KIMBERLY FORD: Absolutely. Thank you. [LB348]

SENATOR SCHEER: Any other questions for Ms. Ford? Ms. Ford, I think you are done. [LB348]

KIMBERLY FORD: Thank you very much. [LB348]

SENATOR SCHEER: Thank you so much. [LB348]

KIMBERLY FORD: I appreciate it. [LB348]

SENATOR SCHEER: The next proponent, please. Good afternoon. [LB348]

MICHAEL McDERMOTT: Hello. Chairman Scheer, committee members, thank you for the opportunity to testify here today. My name is Michael McDermott, spelled M-i-c-h-a-e-l M-c-D-e-r-m-o-t-t, I'm the president of Metro Credit Union in Omaha. We are a federal, low-income

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designation credit union because more than one-half of our 32,000 members have incomes less than 80 percent of the median family income. I support LB348 as proposed because the current ATM statute in Nebraska is preventing the free market from operating. In 2013, Metro moved our processing from NETS to First Data STAR and late last year we were sued by four banks that process with NETS. I had prepared testimony to talk about today and prepared to answer some questions and I gave my attorneys a heart attack. So they're not letting me do that testimony. It's also going to be pretty hard for me to answer any questions and I apologize for that, but what I can say and what I think needs to be heard today is that there is a big problem with the current law. The current ATM statute says you can't discriminate in pricing. And that language is used in the lawsuit because the four banks that are suing Metro are processing...they're paying fees at the...at our First Data STAR ATMs that are about one-third of the fees that they would be paying if those were NETS ATMs. So in other words, we're being sued for having lower fees at our ATMs and that doesn't make sense to me. I really don't think that's what the statute originally intended. And it's one reason that I think the statute needs to be changed. But the biggest reason the law needs to be changed in Nebraska is because we should have the right to select the processor that works best for us and especially if it's a company in Nebraska that employs 5,000 people and was approved by the Department of Banking. Nebraska is a pro-business, free market state and we're a very small player. Of the approximately 2,000 ATMS in Nebraska, we only own about 16, so we're not very big. But processing with First Data STAR not only saves us money processing, but it also gives our members the opportunity to have additional services that they didn't have before. They have more services available to them now. And as much as I genuinely, personally like the people at NETS, I work for the members of our credit union and I have a responsibility to make the best business decision that I can for the organization. I just have a couple more comments. In the country, there is an efficient and affordable ATM network that's available and I'm hoping that we can fix this so that we have an ATM network in Nebraska that's both efficient and affordable. I know that Chairman Scheer asked NETS and First Data to sit down and try and negotiate this and I appreciate that. I was actually very surprised that First Data came to the table and was ready to do something in Nebraska that is different than they do in any other state, which is have a uniform interchange fee. And that was almost a discussion that we heard earlier on Senator Nordstrom's (sic: Nordquist's) bill where they were talking about doing something different in Nebraska to deal with sales tax. And First Data actually came to the table and said, we'll change our interchange pricing in Nebraska to comply with this state law. So as a client of the STAR network, I really appreciate that. And then the last thing, even though I'm not supposed to answer questions, Senator Schumacher did ask a question and Kim looked to me and asked me to kind of help. So let me make it part of my statement and then the attorneys won't be upset. But when you talk about the difference between the services that we received from NETS versus the services we receive from First Data STAR, when we were with NETS, we actually had to have a second company that we worked with, Elan, to get the same full range of debit services that we now get just from First Data, so it wasn't an apples-to-apples comparison, so. I wish I could say more. I

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wish I could answer questions. I apologize for not being able to do that, but thank you for your time. [LB348]

SENATOR SCHEER: Fair enough. Thank you very much. Welcome. [LB348]

JULIA PLUCKER: Thank you. Good afternoon, Chairman Scheer and members of the Banking, Commerce and Insurance Committee. My name is Julia Plucker, spelled J-u-l-i-a P-l-u-c-k-e-r, I'm a retained lobbyist for the Nebraska Credit Union League. The Nebraska Credit Union League is the state's credit union advocacy organization representing Nebraska's state and federally chartered credit unions in Nebraska. Both the president and the governmental affairs director are in a legislative conference in D.C., so they're not able to be here today so you're stuck with me, and probably won't be able to answer as many questions as they could, but I'll try. We are part of the working group negotiating this complex issue. And I want to thank Chairman Scheer for inviting us to be part of that group and for all of his hard work in trying to reach a consensus. I also want to thank Senator Krist for introducing this legislation and understanding the importance of fixing the issues that exist this session. As others have testified before me, Nebraska's ambiguous electronic funds transfer laws are both unworkable and unenforceable. In today's world, a free and open marketplace where financial institutions can choose one switch over others by evaluating their services, their products, and their price will result in the best possible outcome for all financial institutions. An open and free marketplace will increase competition, accelerate technological advancement, and lower the cost of switch services. I wanted to take a minute to comment on the previous testimony from Metro, who is a member of the league. As you heard, the four banks that are suing Metro are alleging price discrimination at Metro's ATMs. This discrimination is actually an average fee that is lower than the same transactions at NETS ATMs. You may ask, as I did, why would a bank ever sue someone else for charging them too little? What's the real issue? According to NETS' talking points that were sent out over the weekend, 60 percent of the ATM fees paid in Nebraska are \$1.50 per transaction, which is three times the national average. Some people are saying that consumers benefit from this. We would argue that three times higher than average fees benefit the individuals and institutions that own most of the ATMs. We are supporting LB348 because it recognizes that worldwide and regional electronic payment networks each have their own pricing structures and agreements that efficiently determine competitive electronic banking transaction prices. And competition in this arena is good for both financial institutions and their customers. That being said, we appreciate the working group's compromises and believe that the amendment is a step in the right direction. We understand that there are outstanding issues that are yet unresolved and we're committed to assisting the group to work through those issues. One of those issues is essential to credit unions and I feel like I need to take just 20 seconds to explain that issue to the committee. In 1999, credit unions created the Nebraska Credit Union ATM, LLC, otherwise known as a CUSO for the purpose of reducing their ATM costs by cooperating with each other and having an ownership stake in each other's ATMs. This allows participating credit unions to

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charge a lesser fee to other participating credit unions for the ATM transactions than they would for nonparticipating financial institutions. It also benefits customers of those participating credit unions by giving them free ATM transactions. The ownership structure was approved by the Department of Banking and Finance in 1999, and the LLC has been in operation ever since. We would be happy to allow all financial institutions, including banks, to be able to participate in this type of structure. But we believe that it's essential that these types of LLCs be allowed to continue as they have for the past 16 years. We respectfully request the committee advance LB348 or any negotiating compromise to General File as a first step in joining the other 48 states that promote a competitive electronic banking environment populated by competing networks. Thank you for your consideration and I would try to answer any questions. [LB348]

SENATOR SCHEER: Thank you. Any questions? Senator Schumacher. [LB348]

SENATOR SCHUMACHER: Thank you, Chairman Scheer. And thank you for your testimony, Ms. Plucker. We heard that Metro was sued by four banks. Presumably those banks are members of NETS. [LB348]

JULIA PLUCKER: I believe so, yes. [LB348]

SENATOR SCHUMACHER: And we've also heard that there are several Nebraska banks that have done the same thing as Metro, and that is left NETS. Are they codefendants in that lawsuit? [LB348]

JULIA PLUCKER: They are not at this time. [LB348]

SENATOR SCHUMACHER: So what differentiates NETS from them? [LB348]

JULIA PLUCKER: I am not probably the best person to answer that. I think they have some different structure. And maybe NETS could answer that if they're testifying after me. But right now, the lawsuit is just the four banks as plaintiffs versus Metro. [LB348]

SENATOR SCHUMACHER: And one other question. We heard that in these negotiations, there was some agreement where First Data agreed to a uniform interchange rate. [LB348]

JULIA PLUCKER: Correct. [LB348]

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SENATOR SCHUMACHER: Which is what the bank that issues the card ends up paying the bank that sponsors the machine. Okay. Did they agree to a uniform switch fee? [LB348]

JULIA PLUCKER: I don't believe they have. I'm looking behind me. No, I don't think they have. [LB348]

SENATOR SCHUMACHER: Well, is that part of this puzzle? [LB348]

JULIA PLUCKER: That's part of what we are talking about, but... [LB348]

SENATOR SCHUMACHER: Okay. Thank you. [LB348]

SENATOR SCHEER: Senator Williams. [LB348]

SENATOR WILLIAMS: Thank you, Senator Scheer. Ms. Plucker, I just want to go back to the question I had earlier about surcharges and how that works. The portion that you talked about in the fact that potentially in Nebraska interchange fees are higher, but at the same time we have so many of our fees, 60 percent, 65 percent...not fees, transactions that are surcharge free. If you look at the whole transaction and there's no surcharge, you may have reduced the cost of the overall transaction. If there is a surcharge, you may have increased the cost and if the cost is going to be paid, it is going to be paid by the consumer, not the financial (inaudible). Is that correct? [LB348]

JULIA PLUCKER: I would...if you're asking the same question that you asked the previous testifier, I would first state that... [LB348]

SENATOR WILLIAMS: I am not asking the same question. I'm asking...your comment was that, I think, Nebraska's interchange fees are...nationally, fees would be about a third of what they are in Nebraska. And so \$1.50 is what you're talking about is what we pay in Nebraska. [LB348]

JULIA PLUCKER: Right. Right. [LB348]

SENATOR WILLIAMS: And if we drop that to 50 cents, but then we have what is typically a, you know, when you do now you've got a \$3.50 transaction versus what was \$1.50 before. And \$3.00 of that is being paid by a consumer. Is that correct? Am I missing something there? [LB348]

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JULIA PLUCKER: Well, I disagree because I think you do have to look at the transaction as a whole. And if the financial institution is able to save money on the total transaction...you know, financial institutions do pass costs onto their customers. If they can get a lower interchange fee, that's less operating expenses and less fees that they're passing on to their consumers. Especially in a credit union environment where our customers are our member owners, so... [LB348]

SENATOR WILLIAMS: I clearly understand that. That that's where the savings is. My concern, again, goes back to if there is a surcharge, that surcharge ends up being paid by a consumer (inaudible.) [LB348]

JULIA PLUCKER: Right. And we are concerned also about surcharges. And I would say that...I can use...I mean, we have a case study now because we have one financial institution that moved from NETS and is using STAR. And I think that was a concern, if they're losing the surcharge-free...NETS to NETS surcharge-free network. But First Data STAR also has a surcharge-free network and I can report--I don't think I'm speaking out of turn with this lawsuit pending--that they haven't received one customer complaint from their...they haven't had one customer go to an ATM that they thought was going to be surcharge free and it turns out it wasn't. So that hasn't been a factor for them, but I...you know, that's all I can say for that case study. [LB348]

SENATOR WILLIAMS: Thank you. [LB348]

SENATOR SCHEER: Any other questions? Seeing none, thank you very much. [LB348]

JULIA PLUCKER: Thank you. [LB348]

SENATOR SCHEER: Next proponent. Seeing none, then we will go to opponents. And again, those that may be wanting to testify, if you could move towards the front, that would help us as far as timing. Good afternoon. [LB348]

ROBERT HALLSTROM: (Exhibits 2 and 3) Chairman Scheer, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as registered lobbyist on behalf of the Nebraska Bankers Association and the Nebraska Electronic Transfer System in opposition to LB348 as introduced. While the witnesses that follow me will provide more specific information regarding the application of existing law to their day to day operations and provide the justification for retention of the existing provisions of law relating to ATM interchange fees, I've been tasked with giving a little bit of the background behind the law in Nebraska and the reasons why the law was established in the manner in which it was. Senator Scheer, I know you admonished us when we got into the working group that we were not to look

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back, but to look forward. But I think it's important perhaps for framing the issue to provide a little bit of the background underlying the law. As Senator Krist indicated, in the mid to late 1970s state-chartered banks were at a disadvantage compared to national banks and savings and loans in that the others had access to electronic funds transfer systems, the earliest essence of ATMs, while state banks did not and statutory authorization was required. At that time, an extensive review process with the Department of Justice and NETS being established was undertaken and we were led to the conclusion that the law in Nebraska had to be based on a nondiscriminatory basis, both as to universal access for customers of all banks and nondiscriminatory fees, what over time has become equal fees for essentially the same service pursuant to Attorney General Opinions and the like. The rationale for the service...for the system which we believe exists just as strongly today as it did then was, again, to allow customers of banks throughout the state to have access to ATMs established by other financial institutions. In addition with respect to fees, the pricing structure for interchange fees...and we've heard a few times the terminology interchange fees have to do with the fees that are paid by the card issuing bank for their customers to use an ATM to the establishing financial institution or the owner of the ATM. And at this time, I think I'd just diverge a little bit. The issue that we're looking at is the reason that we have problems with those that are operating outside the existing law are that they have either variable switch fees and variable interchange or both. And with respect to the variable interchange aspect of this, that is where other institutions working with Metro--in this case--working outside of the system so to speak, cannot only have situations where Metro is violating the law allegedly in terms of their pricing decisions, but also could have situations that would result--which is also a part of the lawsuit--in having the plaintiff banks in that case violating the statute as well. So it is, in fact, a two-way street with regard to the allegations that will be determined in that pending litigation. Over the years to show the application and interpretation of the law, we have had a number of situations where there's been challenges to the law if you will. Not legal challenges, but we had one where Norwest Bank back in the mid-'90s had an instant cash program. They were providing, similar to what the issues are surrounding this, preferential pricing to those that were correspondent bank customers. And at that time, there was a request for an Attorney General's Opinion. The Department of Banking was very involved in that issue. The Attorney General's Opinion came out and based on the Attorney General's Opinion and the Department of Banking input Norwest concluded that they could not have preferential pricing under the existing statute. A year later NBC Bank was looking to allow no fees to be charged to their affiliates, which were under common ownership. And the department at that time had no objections to that approach, but they clearly indicated in order to comply with the statute that there would have to be an exclusion built into the statute and that amendment was adopted. With regard to affiliates, Ms. Plucker mentioned the CUSO situation that the credit unions are involved with. The issue there and the most recent Attorney General's Opinion fairly clearly showed that "affiliate" doesn't mean a bunch of organizations that come together and have common ownership of the ATMs. An affiliate is the traditional notion of having common ownership of each other, brother and sister subsidiary and affiliate types of institutions. As

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Senator Krist did, I'll fast forward to 2012, but for a little bit different reason. That was the time about which the Department of Banking started inquiring into entities that they felt might have been conducting switch activities in Nebraska without having the proper approval. They identified at least a half a dozen entities that made application to the department and those applications were approved. Subsequent to the approval of the application there were some concerns that they may not have been properly approved because their activities were not going to conform with the statute. An Attorney General's Opinion was requested and the results of that Attorney General's Opinion and subsequent Statement of Policy Number 33, both of which are attached to my testimony, have kind of brought us to this point and gotten us into the soup that we're in, so to speak. With regard to the statement of policy, it was designed to address affirmatively some of the POS side to take some of those issues perhaps off the plate in terms of concern. Quite frankly, the Attorney General's Opinion was originally intended to address ATM issues, but there was some indirect fallout because the determination which we expected which was that the switch fees have to be equal, applies equally to the ATM and the POS side of things because both are subject to the same nondiscrimination statute. We've noted the litigation that's pending. And with regard to the Durbin Amendment I think that's where the crux of the issue comes in where we have...and, Senator, if I might indulge for a few extra minutes? [LB348]

SENATOR SCHEER: Go ahead and finish whatever you have. [LB348]

ROBERT HALLSTROM: The Durbin Amendment...essentially in our working group we've had the department most recently suggest that one of the things that we have to resolve is the POS issue. Unequivocally, without question I think everybody around that working group table would agree that that's the case. He's also looking for a moratorium so that the department is not subject to criticism for not enforcing what is the law when it's in the process of being changed as we're working toward. And I think that is a wise resolution of things and it also provides an opportunity for folks to have some time to comply with whatever the new law may come about. One of the things I'd like to note with regard to Durbin, I think the witnesses before me have commented on the fact that Durbin effectively does allow for discrimination, if you will, because interchange fees can be different for banks that are over \$10 billion in assets versus those below. So I think that provides the justification for us to make the change on the POS side. I probably would suggest that that in and of itself doesn't mean that we have to change the ATM law. In response to Senator Howard's question, we certainly could keep the ATM law as it is. That would put the department in the position of having to then go out and take legal action against all of the switches who are not in a position to comply with the ATM law that currently exists regarding equal switch fees and equal interchange. With that, I'd be happy to address any questions, Senator. [LB348]

SENATOR SCHEER: Shorter than I expected, Bob. [LB348]

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ROBERT HALLSTROM: Well, I really could go on. [LB348]

SENATOR SCHEER: Other questions? Senator Schumacher. [LB348]

SENATOR SCHUMACHER: Thank you, Chairman Scheer. Thank you, Mr. Hallstrom, for coming before the committee. On the machines that are in the various commercial locations, who owns those machines or is...who are the nonbank owners? I get the impression there's a lot of them out there that just ordinary people have bought. [LB348]

ROBERT HALLSTROM: The statute applies on its face to ATMs that are owned by Nebraska-based financial institutions...an institution or institutions, combination. It also applies to ATMs that are owned by Nebraska Institutions in conjunction with other third parties. What is not captured under the statute--and some could argue if they're not covered under the statute maybe they're not authorized--but they are operating out there and they effectively are not subject to the statute which is probably an issue over time perhaps. Not interjecting it into some of the issues that we've worked with at this point, but that may be an issue to be looked at over time. [LB348]

SENATOR SCHUMACHER: Now, I mean if somebody goes out and buys one of those machines and has access to the inside and is unlicensed, unregistered with anybody in fact, is the hardware? Does that have to be registered or licensed someplace? [LB348]

ROBERT HALLSTROM: Senator, I'd leave that to the technical folks with NETS, hopefully, that can address that question. I don't think you have to be licensed to work on the machine. But as to those questions, I... [LB348]

SENATOR SCHUMACHER: So who would bear the responsibility of if somebody got in there, hacked into the wiring, put a hard drive on there and started memorizing everything that went through or worse yet was used, because these things are connected to the Internet, as a relay point for an attack on the financial institutions? [LB348]

ROBERT HALLSTROM: Well, generally it's not necessarily captured under the ATM law, but my assumption, Senator, is that that would have to do with potential data breach issues. And financial institutions are subject to specific requirements with regard to the Gramm-Leach-Bliley Act that they have to comply with, with respect to data breach and notification of customers. And, in most cases, not only when the data breach is the fault of the bank so to speak, but even when retailers have breaches that the bank had absolutely nothing to do with--and that's another issue, Senator--but they are...the banks are responsible for reissuing compromised cards, for

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eating losses that their customers may have because their cards were utilized, identity theft, fraudulent activities, and all of those issues. [LB348]

SENATOR SCHUMACHER: I have another question for maybe the NETS technicians. Thank you. [LB348]

SENATOR SCHEER: Any other questions? Thank you, Bob. [LB348]

ROBERT HALLSTROM: Thank you. [LB348]

SENATOR SCHEER: Next opponent. Good afternoon. [LB348]

CATHY MORRISSEY: (Exhibit 4) Good afternoon. I'm laughing because I'm afraid you're going to accuse me of being a NETS technician and I'm going to do my best. Chairman Scheer, members of the Banking, Commerce and Insurance Committee, my name is Cathy Morrissey, spelled C-a-t-h-y M-o-r-r-i-s-s-e-y. I'm president of NETS, Inc., a taxpaying, not-for-profit, member owned, regional ATM and PIN debit network. We're based in Lincoln, Nebraska. And I appear before you today in opposition to LB348 as introduced. Our network membership consists of roughly 280 financial institutions that have charters or offices in Nebraska, and NETS has been in existence since 1975. Our mission statement from day one calls on NETS to be a nondiscriminatory, reliable, cost effective electronic processor of financial transactions for any provider of financial services. And we work very hard to live that mission statement in line with the nondiscriminatory language of the Nebraska Statute 8-157.01. You will hear testimony by others to follow speaking to the importance of the nondiscriminatory language, particularly as it relates to ATM access and usage fees. My message to you is that I'm firmly convinced that equal access and equal fee language of the statute has made the landscape in Nebraska different and better, much better in fact. Senator Krist and Kim Ford are correct. We are working toward and hopeful for a compromise on an amendment to LB348. We absolutely believe that any compromise must retain this nondiscriminatory language and here's why. A checking account study conducted by Bankrate.com in 2010 found that 99.1 percent of ATMs assessed a surcharge to noncustomers. And you heard Kim very eloquently say a surcharge is a fee that's paid by the consumer to the owner of the ATM they are using and that becomes part of the transaction amount. Nebraska statistics are very different and different in a good way for consumers. I can report to you that in 2014 more than 60 percent of the ATM withdrawals conducted at Nebraska financial institution ATMs were completed surcharge free for customers of other Nebraska financial institutions. What makes Nebraska so different than the Bankrate study or possibly other nearby states? I believe strongly that the reason is the state statute requires nondiscriminatory access and fees. Specifically, out of nearly 4 million transactions at Nebraska financial institution ATMs in 2014, 2.4 million were conducted on a surcharge-free basis. And

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based upon an average surcharge of close to \$3.00 per transaction, this translates into real savings for Nebraska consumers. As part of my testimony materials I have shared with you a set of maps, so I ask you to take a quick look at that. There are roughly 1,200 small blue marks on this first map, depicting the availability of surcharge-free ATMs for Nebraska consumers in the current environment. The second page shows Omaha surcharge-free ATMs. Page 3 shows Lincoln. And the last page is a snapshot of the same for Grand Island. This is powerful evidence of statute language that has worked and continues to promote both a level playing field for all financial institutions and significant surcharge-free options for Nebraska consumers. We believe that the framework that helped build the current landscape should be maintained in an effort to allow Nebraska to continue to be different and better for consumers. Finally, I fully recognize that ATM processing and routing can be a confusing and complicated subject matter. Senator Schumacher, you ask great questions and Kim Ford gets an "A" in her responses. In an effort to assist your review of consideration of LB348 in its amended form, the other item that I have attached to my materials is a packet of information called "ATM Transaction Routing." Time doesn't allow me to cover these materials today, but there are some pictures, too, which helps show the flow and describes in pictures what Kim was trying to share with each of you earlier. My hope is this can serve as a resource to you. In closing, I want to thank Senator Scheer for his leadership to bring industry participants together in an effort to finalize an amended bill that can be agreed upon. It's very easy to say this statute is old, it can't be relevant. But my firm belief is that the key components of the statute that have served to separate our state in a positive way, creating a level playing field for every financial institution doing business in the state and a vibrant surcharge-free environment for Nebraska consumers. The nondiscriminatory ATM component of our statute should be part of any compromise. Thank you. [LB348]

SENATOR SCHEER: Ms. Morrissey, if you want, you certainly would have time if you would like to go through that if it would benefit the committee in relationship the transaction. [LB348]

CATHY MORRISSEY: I'll cover a couple of things if that's all right. But really, Kim was on point. This would only allow you to look at a picture while you're doing it. The first page is the lingo, okay? It's all these descriptors that we've been talking about, whether it's switch fees or interchange or BIN Tables or that sort of thing, and defines who a process is, who a switch is, that sort of thing. That can be useful as we go along. There are several examples here and I won't go through every one, but maybe I'll just take Example 1. And it's "ATM Transaction Routing". And this particular case is a nonsurcharge transaction example. But what you see in the top left corner is a customer from Bank A and she is going to an ATM owned by Bank B. She...let's say she decides she wants \$100 in cash. So she does the necessary security measures, requests her \$100. Step 2 points toward the ATM processor. And the ATM processor is the person that is programmed to route that cash withdrawal request to get it to her bank and so they take that information. And then they look at the networks that the owner of the ATM--which is Bank B--has to offer and matches it against the cardholder and what's on the back of the card, like Kim

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said, and they find a match for that transaction. In Kim's case, she has a star on the back of her card and this would...let's say they both are...that is a match for this. This transaction then runs from the processor to the STAR network. One key component to tell you though is if there was two matching networks, say the STAR network and that little blue N that's NETS--that's us--both are on that card, then it's up to the bank ATM owner or the ATM owner to tell them what the preference in routing should be. So the owner of the ATM says, if there's two matches you go to this one first, you go to this one second, you go to this one third. Okay. The network switch then gets it properly routed based upon that BIN information, of course, to the Bank A down below who takes that information, determines if the customer has the money, sends a signal back either approving or denying that transaction. And the transaction gets routed back through the same circuit that we just saw. And in this case, let's say she had the money in her bank account, she got her \$100. She did not have a surcharge because this was a nonsurcharged transaction so she did not have to pay an extra fee. But at the very bottom of this page, at the bottom of the last part where it's the description of the steps, it tells you what fees are involved in this type of transaction: ATM interchange, who pays it and to whom; the switch fee; that sort of thing. And it goes right down the line and talks through that. So does that level set a little bit? Okay. [LB348]

SENATOR SCHEER: Yes. Thank you, Cathy. [LB348]

CATHY MORRISSEY: Okay. And there's other examples in here, but I don't think we need to be redundant. [LB348]

SENATOR SCHEER: Fair enough. I appreciate the explanation and the tutorial. Questions? Senator Campbell. [LB348]

SENATOR CAMPBELL: I just want to commend you for your diagram; I don't know who put it together. I'm one of those people that cannot learn audio. I mean, I could listen to all that exchange, but I'm never as good as when I can see it. So I appreciate that. [LB348]

CATHY MORRISSEY: I was laughing because I'm the same way. Yes. [LB348]

SENATOR CAMPBELL: Just as a review, how long now has NETS been in operation? [LB348]

CATHY MORRISSEY: We were incorporated in 1975. Now things didn't...things were slow back...I wouldn't say we were running transactions in 1975, but we've been in business since...incorporated since 1975. [LB348]

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SENATOR CAMPBELL: And over that period of time, you added banks as they became able to participate in NETS. Would that be accurate? [LB348]

CATHY MORRISSEY: I think that's a fair statement. I mean, I think...what for the...both ATM business as well as the point-of-sale side. And when point-of-sale side started getting very popular then folks came into the state selling that service and we were trying to tag along as part of that. Yes. [LB348]

SENATOR CAMPBELL: Got it. So can...what percentage of the banks can do point of sale? All of them now? [LB348]

CATHY MORRISSEY: I wouldn't say 100 percent because not every...believe it or not, not every institution in Nebraska issues a debit card today. But that would be probably less than one hand, okay? [LB348]

SENATOR CAMPBELL: Okay, that helps. Thank you. [LB348]

SENATOR SCHEER: Senator Schumacher. [LB348]

SENATOR SCHUMACHER: Couple of questions. How many ATMs are there in Nebraska? [LB348]

CATHY MORRISSEY: Great question. I can get back to you on that. I should have known that. I'm going to say, including those that you were speaking of earlier that are not owned by financial institutions... [LB348]

SENATOR SCHUMACHER: Just how many of those boxes are there? [LB348]

CATHY MORRISSEY: I would say there's over probably 3,000. [LB348]

SENATOR SCHUMACHER: So there's 1,200 that are surcharge free; that would be at least 1,800 that are not surcharge free. Are those all owned by nonbanks? [LB348]

CATHY MORRISSEY: They are not. They are not, but virtually every nonbank-owned ATM is surcharging us consumers today. What you have...and surcharging is not addressed in our statute at all and I think that was probably wise. It gives individual ATM owners the right to determine on a ATM by ATM basis. So if they...if in your hometown the bank wanted to put an ATM in the

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grocery store and they went to that grocery store and they said, well, I got four other banks that want to have this ATM in here. And in order for me to choose you, I got to get some revenue. Okay? So what I would tell you, in Nebraska the preponderance of financial institution owned ATMs that are on premise are by and large offered surcharge free today. Those retail arrangements are case by case, and there are certain...and you'll hear testimony in a little bit from a banker who doesn't surcharge in any location, including the retail locations and has very good results to point to that. [LB348]

SENATOR SCHUMACHER: Is the credit card processing done over the same network? Does NETS do that? [LB348]

CATHY MORRISSEY: We do not do credit card processing. [LB348]

SENATOR SCHUMACHER: So if you have a...when you go to the grocery store and you press either "debit" or "credit" you're tying into two different networks depending on which button you push? [LB348]

CATHY MORRISSEY: Let me stop back. Let me step back. If you use a debit card, okay, the misnomer is that it's saying debit or credit when you swipe it. It's still a debit transaction, but when you're pointing to credit...using a debit card at point of sale and point to credit, you're asked to sign instead of entering your PIN. Okay? Signature debit is, in the marketplace, called credit at those point of sale, but it's strictly a debit transaction. Those transactions would be routed on a debit network. [LB348]

SENATOR SCHUMACHER: Even though you're just using a credit card and don't ever use debit? [LB348]

CATHY MORRISSEY: If it's a credit card, yeah. I'm sorry, if it's a credit card those run through different rails altogether. [LB348]

SENATOR SCHUMACHER: And so that little box at the grocery store that's by the counter that you slide your card through, that knows two different places to send the signal? [LB348]

CATHY MORRISSEY: Well, it...that box definitely knows various options to send that signal. I'm not sure I'm fully addressing your question. If it's a credit card that is swiped, that will be a credit card transaction. If it is a debit card that says debit or credit, you don't have to say debit for that to go down the debit lines. If it's a debit card, it will go down the debit lines. If you say credit, they may make you sign, but it's still a debit card transaction. [LB348]

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SENATOR SCHUMACHER: The...now, NETS is nonprofit, right? [LB348]

CATHY MORRISSEY: Taxpaying nonprofit. [LB348]

SENATOR SCHUMACHER: Taxpaying nonprofit. It just basically pays out salaries. Does it ever give bonuses or perks to its members? [LB348]

CATHY MORRISSEY: We do not give bonuses. We treat all of our members the same, but what we do, and this is common knowledge so, what we do because we are a taxpaying, non-for-profit entity we do, once we have retained sufficient cash reserves to cover expenses and build for the future, commonly we give a holiday. Okay? And so we stop charging switch fees for all of our members for either a month or a two-month or a three-month period of time. [LB348]

SENATOR SCHUMACHER: And what if I am an out-of-state bank who's not a member of you? Do I get charged? [LB348]

CATHY MORRISSEY: We wouldn't be seeing your activity so we would not be charging you and we would not be giving you a holiday. [LB348]

SENATOR SCHUMACHER: Because when the signal hits, it's your...my card hits your machine, it would route it to somebody else besides you? [LB348]

CATHY MORRISSEY: Well, let me...if you're asking if an out-of-state cardholder comes to Nebraska and uses an ATM, do we see that? No. [LB348]

SENATOR SCHUMACHER: Does the ATM machine then make the determination to send it to a different processor? [LB348]

CATHY MORRISSEY: Yes. That goes back to that drawing and say that... [LB348]

SENATOR SCHUMACHER: We don't need to get into it in detail, but the ATM makes that decision where to send it? [LB348]

CATHY MORRISSEY: Well, the ATM processor does. [LB348]

SENATOR SCHUMACHER: And that's the one in the convenience store that makes the decision where to send it? [LB348]

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CATHY MORRISSEY: It all happens instantaneously, but yes. [LB348]

SENATOR SCHUMACHER: It pulls a different IP address out to send that signal to? [LB348]

CATHY MORRISSEY: I don't know about IP addresses, I'm sorry. [LB348]

SENATOR SCHUMACHER: I don't want to belabor this too much here, but I'm still hunting as to if we pass this, who makes money and if we don't pass this, who makes money, because somewhere that answer has got to be. [LB348]

SENATOR SCHEER: Any other questions? Senator Howard. [LB348]

SENATOR HOWARD: Just as a follow-up clarification sort of piggybacking on that, so NETS manages all of the debit card transactions for instate debit card issuers? [LB348]

CATHY MORRISSEY: For any institution that is a member of NETS and has a debit card program. [LB348]

SENATOR HOWARD: And so Senator Schumacher's question is, if somebody comes from Iowa, like my fiance for example, comes from Iowa, uses his debit card at an ATM in Omaha, does it go through NETS or does it go through STAR or one of the other transaction... [LB348]

CATHY MORRISSEY: That Iowa cardholder is not going to be a member of NETS. We...this is where it could get confusing. We, NETS, may be the ATM processor, but we are not going to be the switch or the network for that transaction. [LB348]

SENATOR HOWARD: So it would be whatever was on the back of his card. [LB348]

CATHY MORRISSEY: Correct. Correct. [LB348]

SENATOR HOWARD: So technically, those other entities are already operating in Nebraska? [LB348]

CATHY MORRISSEY: There is an exemption in the statute for out-of-state cardholders coming to Nebraska and for Nebraska cardholders to go out of state to make that work and flow. [LB348]

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SENATOR HOWARD: Okay, thank you. [LB348]

CATHY MORRISSEY: Yeah. [LB348]

SENATOR SCHEER: Senator Williams. [LB348]

SENATOR WILLIAMS: Thank you, Senator Scheer. And, Senator Howard, we would like your fiancée to bring cash to Nebraska. [LB348]

SENATOR HOWARD: Touche. [LB348]

SENATOR WILLIAMS: Quick question on fraud protection. I would like to get an update on what your company is doing as far as fraud protection in this world we're living in. [LB348]

CATHY MORRISSEY: Uh-huh. Great question. That is top of mind for all folks. It was commented on earlier. We're doing a few things. Let me tell you, the short answer is we're doing a few things. One, we have a product called Fraud Navigator that we offer to all of our members at no charge that helps detect ATM and PIN debit fraud. In addition to that, we are spending a great deal of money on infrastructure and product, particularly as it relates to the EMV migration so that we can start to reduce fraud in that regard as well. Finally, it was mentioned that Mr. McDermott mentioned that he worked with two entities when he worked with NETS. I'll be honest, NETS has never tried to be everything to everyone. We have done what we do very well. We do not do that signature side of the debit card processing. And we partner with strategic partners to make that, but in our view, it's a very great system and it allows NETS to stay efficient and bring in the sophistication of some other networks that we can partner with. And they have great fraud products as well. [LB348]

SENATOR WILLIAMS: Thank you. [LB348]

SENATOR SCHEER: Any other questions? Seeing none, thank you, Ms. Morrissey, very much. Appreciate it. Next proponent...opponent. Sorry, I forget where I'm at, time moves so quickly. Good afternoon. [LB348]

MARK HANSEN: (Exhibit 5) Chairman Scheer, members of the Banking Committee, my name is Mark Hansen, that's spelled M-a-r-k H-a-n-s-e-n, I'm the executive vice president and I'm a director for West Gate Bank here in Lincoln. We are a \$380 million community bank. We've got seven offices, all of them here in Lincoln. Today I appear before you in opposition of LB348 as it was introduced. You heard earlier from Bob Hallstrom who talked about the history of the

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statute. But just to reaffirm that key point I'd like to make sure that we all understand it is that nondiscriminatory access and fee language that we think is so important. It establishes a level playing field for all financial institutions in Nebraska from border to border. And there's nothing in the statute that precludes a competitive environment. In fact, the essence of the nondiscriminatory language gives everybody the ability to compete. And the end result, in my opinion, is it's more access and less surcharge for consumers. What does this mean for a customer at my bank that goes to another institution's ATM? The law says that that financial institution that owns that ATM will charge my bank the same access fee as any other institution. So the same amount whether I'm a \$25 million bank in Stapleton, Nebraska, or a \$50 billion bank in Omaha and whether that bank has zero ATMs or 250 ATMs. The impact of that equal access and equal fee language is that in Nebraska a very large number of ATMs are available on a surcharge-free basis. You heard those statistics from Cathy already. This is a benefit for all financial institutions, but especially for those with fewer ATMs in nonmetro areas. It protects and preserves community banking and it provides consumers more access and a lower level of surcharge than in other states, which again Cathy pointed out. Why is this important for West Gate Bank? West Gate Bank, we only have eight ATMs. I think my written testimony says five, that's a typo. We actually have eight so I'll correct that. We only have one that's not on our premises. But we have a very robust and a considerable retail banking operation in Lincoln. We have strategically and financially made the decision to encourage our customers to use other ATMs. That's part of our service delivery strategy. We actually underwrite the cost for that so we're not passing those costs...those interchange costs on to our consumers. Not every bank does it that way, but we've made that business decision. We promote the heck out of our debit and ATM cards and we promote surcharge-free access to our customer, which happens if they're using a bank that's inside the NETS system today because we've agreed to that. And any other institution that wanted to join that could also. We actually...again, we promote our accounts with that feature. And I would say that I think this is true for the vast majority of Nebraska banks who are smaller and have few ATMs for their customers. Why is this important to consumers? And that's probably what you folks care about the most, more access, less surcharge. A thousand alternatives for accessing your cash surcharge free, cost savings to Nebraska consumers estimated in Cathy's testimony over \$7 million. We've heard some arguments by the proponents of the bill that Nebraska financial institutions' costs are higher because of the statute and I would agree with that at one level. But that's a cost Nebraska banks pay and we do pay more to allow our customers the access that they're getting on a surcharge-free basis. We think that's a better system for Nebraska consumers. There's people that would like to paint the current statute as outdated, but quite frankly I think the authors of this legislation, when introduced, got it right. And I think the statistics in comparing us with other states bear this out. So as I've stated before, I stand opposed to the LB348 as introduced and I think it's essential that any compromise allows equal access and fee language to carry through in the same manner as they apply under the current law in order to see the benefits we see today for financial institutions, and more importantly, for consumers. Thank you. [LB348]

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SENATOR SCHEER: Thank you, Mr. Hansen. I think we exchanged e-mails about 7:30 this morning so evidently your banker hours are different than the perception of banker hours, so. Other questions? Yeah, I'm looking at you, Williams, but any other questions? Thank you very much. [LB348]

MARK HANSEN: Thank you. [LB348]

SENATOR SCHEER: Welcome. [LB348]

LESLIE ANDERSEN: (Exhibit 6) Thank you. Chairman Scheer, members of the Banking Committee, my name is Leslie Andersen, L-e-s-l-i-e A-n-d-e-r-s-e-n, I'm president and CEO of the Bank of Bennington. It's an \$80 million institution with the offices located in the Omaha metro and surrounding area. And I appear before you today in opposition of LB348 as it has been introduced. As you know, in its current form LB348 looks to significantly modify Nebraska Statute 8-157.01. The bill as proposed would serve to unravel the statutory provisions regarding nondiscriminatory access and fees for ATM transactions which have served our state exceedingly well for over 30 years. Mr. Hansen briefly touched on the fact that Nebraska institutions do pay a little more to allow their customers to access ATMs on a surcharge-free basis. However, these slightly extra costs provide significant benefits to the consumers and customers of the bank. The Bank of Bennington has two ATMs, yet our customers enjoy the ability to get cash without surcharges all over the state. So when our young customers go on to college and communities across Nebraska, they can enjoy the benefits of avoiding a surcharge. A colleague of mine, Keith Knudsen, president of Security Bank/Laurel has provided written testimony on this bill. Keith couldn't be here today, but asked that I incorporate a few of his key points into my testimony, which I will do at this time. I quote: Security Bank is \$185 million institution with offices in Laurel, Allen, Coleridge, Hartington, and Osmond. So our operations are located in the northeast corner of the state with close proximity to both the South Dakota and Iowa borders. Every Security Bank location is in a small rural community, yet our customers regularly access surcharge-free ATMs over 1,000 times a month. Further, in certain months customers have utilized ATMs offered by 60 different financial institutions in over 40 different communities. Keith feels strongly that these statistics demonstrate that surcharge-free alternatives matter to his customers and in turn, that makes this service very important to Security Bank. Keith further states that it is essential that our bank retain our customers as they move on to college and careers and surcharge-free alternatives is a key ingredient in retaining that relationship. Both Keith and I feel strongly that this consumer friendly environment is a direct result of the nondiscriminatory access and fee ATM language in the current statute. Keith estimates that customers of his bank are saving over \$3,000 a month because of the benefits of the current system. We estimate that our customers are saving about \$2,250 a month. For institutions the size of Security Bank and Bank of Bennington, these amounts are very meaningful. As you've heard today, numerous parties are making a strong effort to reach a compromise on LB348,

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which I fully support with one caveat. It's critical that any compromise retain that nondiscriminatory access and fee language that sets Nebraska apart. Not doing so would hurt consumers by increasing costs incurred for their use of ATMs and would also remove the level playing field for all financial institutions in the state regardless of their size, location, or number of ATMs. This is particularly concerning to me for community banks in greater Nebraska. I'd like to take just a second to sort of expand upon Senator Williams' question earlier about the total cost of a transaction in a surcharge-free or surcharge world. So in a surcharge...interchange on a surcharge-free transaction is approximately \$1.50, you heard that earlier. An interchange on a surcharged transaction is approximately \$.50, so the money that goes between the banks is either \$1.50 or \$.50. In a surcharge-free environment that is the only charge that occurs. In a surcharged transaction, that \$.50 changes hands. But also, the add-on surcharge hits and that added on surcharge is generally \$3.00, and the consumer is the one paying that. So you go from a transaction costing \$1.50 that the banks are bearing to a transaction that's costing \$3.50 of which only \$.50 the banks are bearing. Thank you. [LB348]

SENATOR SCHEER: Thank you, Ms. Andersen. Questions? Senator Schumacher. [LB348]

SENATOR SCHUMACHER: Thank you, Chairman Scheer. And thank you for your testimony. Are you one of the institutions that has filed a lawsuit in this matter? [LB348]

LESLIE ANDERSEN: Yes, sir, I am. [LB348]

SENATOR SCHUMACHER: And how many defendants are there in that action? [LB348]

LESLIE ANDERSEN: There's one defendant. [LB348]

SENATOR SCHUMACHER: And are there other parties in Nebraska who also abandoned the NETS system for some alternative system besides Metro? [LB348]

LESLIE ANDERSEN: At the time of the lawsuit, Metro was the only one. There were a couple of other small institutions that don't have ATMs that weren't part of NETS. [LB348]

SENATOR SCHUMACHER: And when was the lawsuit filed? [LB348]

LESLIE ANDERSEN: I don't know, exactly. I'm sorry. [LB348]

SENATOR SCHUMACHER: Within the last year? [LB348]

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LESLIE ANDERSEN: Yes. [LB348]

SENATOR SCHUMACHER: And at that time there were no banks with ATMs that were not a member of NETS...were not processing through NETS? [LB348]

LESLIE ANDERSEN: That's my understanding, yes. [LB348]

SENATOR SCHUMACHER: Thank you. [LB348]

SENATOR SCHEER: Any other questions? Seeing none, thank you very much. [LB348]

LESLIE ANDERSEN: Thank you. [LB348]

SENATOR SCHEER: Next opponent, please. Can I see a raise of hands about how many more testifiers we might have? Okay, thank you. Welcome. [LB348]

ALAN FOSLER: (Exhibit 7) Thank you. Senator Scheer and members of the Banking Committee, my name is Alan Fosler, spelled A-l-a-n F-o-s-l-e-r. I serve as senior vice president for Union Bank and Trust Company, a \$3 billion financial institution with our base here in Lincoln and other offices in 14 communities across the state. I appear before you today in opposition of LB348 as originally introduced, yet I'm encouraged that a compromise is being worked on as well. Like Mark and Leslie ahead of me, I am very concerned that eliminating the nondiscriminatory access and fee language from (section) 8-157.01 would be harmful to consumers in our state. Nebraska consumers see far fewer surcharged ATM withdrawals than is typical in any other state. And we believe our Nebraska consumers want to keep it that way. I mentioned that Union Bank has locations in 14 Nebraska communities. Additionally, we have two banking offices in Kansas. As Cathy Morrissey stated in her testimony earlier, her statistics indicate that in 2014 over 60 percent of the ATM withdrawals conducted in Nebraska financial institutions' ATMs were surcharge free for Nebraska consumers. That's not been our experience with Kansas operations. Our customers are assessed a surcharge virtually 100 percent of the time and that's quite a difference and confirms that the consumer will likely pay more should the original version of this bill become law. The statute in Kansas does not contain the nondiscriminatory access and fee language. I believe this is strong evidence that the current language in our statute is working and working to the benefit of Nebraska consumers. Major beneficiaries of the current statute and proposed provisions are college students in our state. Reinforcing an earlier point today, Nebraska consumers can access over 460 ATM terminals in the Omaha and Lincoln area on a surcharge-free basis. Most students attend schools in the eastern part of our state and this is a huge advantage for students in those cities. Providing

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surcharge-free ATM alternatives for college students was a factor considered by the University of Nebraska in the selection process for Union Bank and Trust Company to provide banking services at the UNL Student Unions. Union Bank opened a new branch bank and installed nine ATMs on UNL's City and East Campus locations earlier this month. The East Campus location had previously received numerous complaints related to the prior bank's ATM surcharge policy and financial impact to students. Students are among the most frequent users of ATMs and adding surcharge fees could have a very negative impact on their already tight finances. As an example, another financial institution had ATMs with a surcharge fee imposed at 15 grocery stores in five Nebraska communities. And after we replaced them with Union Bank's surcharge-free ATMs, the activity levels nearly doubled within the first two months. This indicates the positive consumer response in appreciation for reduced fees for providing this service. In my opinion, it's critical that the compromised legislation retain universal access and equal fee for equal service at ATMs in Nebraska. As introduced, LB348 would be costly for many consumers and students and this is my basis for opposing the original bill. Thank you. [LB348]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much for being patient. [LB348]

ALAN FOSLER: Thank you. [LB348]

SENATOR SCHEER: Good afternoon and welcome. [LB348]

KIM SCHROLL: (Exhibit 8) Good afternoon. Chairman Scheer, members of the Banking Committee, my name is Kim Schroll, K-i-m S-c-h-r-o-l-l, I'm executive vice president and chief operating officer of NebraskaLand National Bank in North Platte. NebraskaLand National is a \$615 million institution with Nebraska offices in North Platte and Kearney. We also have an office in Rock Springs, Wyoming. Our bank deploys a total of eight ATMs. I also serve on the board of directors for the Nebraska Bankers Association and our institution is a member of the Nebraska Independent Community Bankers. I am here today to voice my opposition to LB348 as introduced. I believe that by creating a level playing field for all financial institutions operating in Nebraska, the current statute has provided the framework for a consumer friendly environment and a wealth of surcharge-free ATMs all across the state. It is important for these benefits to be carried forward to any revisions to current law. Our customers are mobile and they value surcharge-free ATM alternatives. They routinely take advantage of surcharge-free access in cities as large as Omaha, Lincoln, and Grand Island, but also in places like Bassett, Falls City, Bellwood, Petersburg, Cozad, and South Sioux City. We feel good knowing that our customers can access their accounts that they have with our bank from ATMs in those cities and do not have to pay a surcharge to do so. Our bank does pay an access fee to the owner of the ATM for this right, which we see as an important value to our customers. We are glad to provide this service.

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NebraskaLand also offers our eight ATMs surcharge free to customers of other Nebraska institutions. When this happens, our bank receives a fee paid by the other bank involved. A certain amount of this usage comes from customers of other institutions in our trade territory, but we also see customers of very large, metropolitan area banks use our ATMs. At the end of the day this system has worked well...our customers, and ultimately for all Nebraska financial institutions and the customers they serve. I mentioned that we also have a bank in Rock Springs, Wyoming. This was an entry into a new market for us with a separate charter, so we built our customer base from scratch. We started that branch in 2006. One of the first differences that we noted is that there were no surcharge-free ATM alternatives available to our customers. We worked to address that issue by joining one of the national surcharge-free networks to try to create a similar environment that our customers enjoy in Nebraska. We found out quite quickly that the Nebraska model is not easily duplicated by these national networks. It was extremely expensive for our bank to join with a significant amount of fixed costs and charges. But even worse than the cost, this did not create a good solution for our customers because there just weren't very many surcharge-free locations available. The end result is that our Wyoming customers are assessed a surcharge over 98 percent of the time they withdraw cash from any ATM but our own. The Wyoming Department of Banking indicates that the surcharge amount can be as high as \$5.00 per transaction. And for our customers the average surcharge in Wyoming is \$2.70. Again, I believe this evidence that is of great value to the equal access, equal fee component of the statute. And for these reasons, I stand opposed to LB348 as originally introduced. [LB348]

SENATOR SCHEER: Thank you, Ms. Schroll. Any questions? Senator Williams. [LB348]

SENATOR WILLIAMS: Thank you, Senator Scheer. Thank you, Kim, for being here. Appreciate it. I just want to be sure about one thing because of the cumulative testimony that was just heard. I think the bankers that have just testified have been all talking about the fact that approximately 60 percent of the surcharge or the ATM transactions are surcharge free. Your experience in Wyoming, Mr. Fosler's experience in Kansas, Ms. Andersen's experience in South Dakota and Iowa, we've pretty well got Nebraska surrounded. Am I reading that right, with states that are surcharging nearly 100 percent of the time? [LB348]

KIM SCHROLL: That's correct. [LB348]

SENATOR WILLIAMS: Okay. [LB348]

KIM SCHROLL: Our customers are being charged 98 percent of the time a surcharge in Wyoming. [LB348]

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SENATOR WILLIAMS: Thank you. [LB348]

SENATOR SCHEER: Any other questions? Thank you very much. [LB348]

KIM SCHROLL: Thank you. [LB348]

SENATOR SCHEER: Good afternoon. [LB348]

KURT YOST: (Exhibit 9) Chairman Scheer, how are you this afternoon? Members of the Banking, Commerce and Insurance Committee, my name is Kurt Yost, K-u-r-t Y-o-s-t, and I appear before you this afternoon as a registered lobbyist for the Nebraska Independent Community Bankers. Jacob is passing around our prepared testimony on this issue, seen through the eyes of a rural community bank in north-central Nebraska. And he is our immediate past chair and was unable to be here this afternoon. To say this issue is extremely complex is an understatement. There are a lot of moving parts and many interested parties with much to gain or lose. Assuming a mutually agreed upon compromise can be found between NETS and First Data/STAR that we can all live with, we will withdraw our opposition to LB348 and support the compromise. And I thank you for your time. [LB348]

SENATOR SCHEER: My God, I like that testimony. [LB348]

KURT YOST: And, Senator Scheer, one added comment. I'm the next to last person you're going to see in this chair this year. Any questions? [LB348]

SENATOR SCHEER: There might be questions. Any questions for Mr. Yost? Seeing none, thank you. [LB348]

KURT YOST: Thank you all. [LB348]

SENATOR SCHEER: Thank you. Any other opponents? Seeing none, are there any in a neutral position? Like Bob Barker, come on down. [LB348]

KATHY SIEFKEN: Chairman Scheer and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association in a neutral position. Our concerns regarding this issue center around the POS and the switch fees. It's our understanding that the current law conflicts with federal law as a result of the Durbin Amendment that was passed back in 2008. Our members use several different switches. They

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choose the switch or the third-party processor that they want to go through. And basically the bottom line is, that when customers come into our stores we want them to be able to use their cards and we want them to work. And so a compromise is very important and we would encourage a compromise on the issues that we can all move forward and life gets better. With that, if you have any questions I'd be happy to answer. [LB348]

SENATOR SCHEER: Any questions? Thank you. [LB348]

KATHY SIEFKEN: I was shorter than "Yosty," right? [LB348]

SENATOR SCHEER: You were. [LB348]

KATHY SIEFKEN: Okay. [LB348]

SENATOR SCHEER: (Exhibits 10, 11, 12, 13, 14, 15, 16, and 17) Are there any other testifiers? Seeing none, while Senator Krist comes up, there are several letters of opposition to (LB)348 from Craig Brewster of Butte State Bank; Doug Johnson of Midwest Bank; Keith Knudsen from Security Bank; Perry Haralson of Cornhusker Bank; Dan Poppe of Archer Cooperative Credit Union; Alan Emshoff of Generations Bank; Bob Mayber of Farmers State Bank; and Phil Jossi, a director at Heartland Bank in Kearney. And with that, I will turn it over to you, Senator Krist. [LB348]

SENATOR KRIST: Thank you, Senator Scheer, and thanks for all of your indulgence and also for participating and trying to work out the compromise. And all those people who testified either in...as proponents, opponents, or in the neutral. It is a complex problem with complicated issues to solve and I think we can get there if we apply our collective energy. In closing though, what you've heard is it's a big problem in Nebraska. The problem exists from point-of-sale and ATM transactions. I have found in my time in business and in the Air Force and now in the Legislature, once people come to the table, whether the issues are big or small, we should solve those problems together. So I would urge this committee--and I will be involved with the negotiations from now on at the Chairman's discretion--we need to solve the point-of-sale and ATM question now, even if it's just a moratorium with a downstream projection of when that ATM issue would be solved. I do have to talk though about something that I think is curious. I feel like...there's a scene in The Wizard of Oz where the Wizard says, pay no attention to the man behind the curtain because he's, you know. We've been talking about surcharges a lot. I do business with a bank in Nebraska. It has no NETS on the back. I get charged a surcharge when I go into the tavern or I go into a restaurant or I go into someplace where there's an independent person. If we're going to solve the surcharge problem, we need to have all of these ATMs owned by institutions and prohibit surcharges. Other than that, the transaction fees that are laid out may

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or may not prohibit surcharges. My Nebraska bank which chooses STAR and I would remind you they are zero...on this piece of paper that was presented to you, a wonderful diagram, if you'll look at the symbol for NETS and you look at the symbol for STAR right next to it, circle it because there's no surcharge on either one of those networks. So we're talking about a conflict in federal law and state law that needs to be solved. I think the surcharge initiatives and surcharge conversation has been good, and it brings to mind how citizens are being scammed in many cases. But I always have an option to go to my bank and not pay a surcharge or go to the place where that independent ATM machine is and pay \$3.50. So back to the point at hand, we have a conflict in federal law versus state law. We need to solve this so the banking department can enforce those efforts. Thank you for your time. [LB348]

SENATOR SCHEER: Any questions for Senator Krist? And before closing the committee hearing I, as well, would like to thank those individuals that have been working--we'll call it a working group--on behalf of Senator Krist's bill. Everyone has been very professional, dedicated. It has been a--I won't say a delight because I get tired of the same subject day after day--but everyone has been very professional and I truly believe everyone is working, trying to resolve the issue to come up with some type of compromise that will be suitable to all involved. And for that, I thank you very much. And with that, that closes the last hearing for our committee. Thank you. [LB348]