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Banking, Commerce and Insurance Committee
March 07, 2017

[LB550 LB559 LB582]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, March 7, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB550, LB559, and LB582. Senators present: Brett Lindstrom, Chairperson; Matt Williams, Vice Chairperson; Roy Baker; Tom Brewer; Joni Craighead; Mark Kolterman; John McCollister; and Paul Schumacher. Senators absent: None.

SENATOR LINDSTROM: We'll go ahead and get started here. Welcome to the Banking, Commerce and Insurance Committee. My name is Brett Lindstrom; I'm from Omaha and represent District 18 and serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on 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 are called away. It is not an indication we are not interested in the bill being heard in this committee, just part of the process. To better facilitate today's proceedings, I ask that you abide by the following procedures, the information is posted on the chart to your left. Please silence or turn off your cell phones. Move to the front row when you're ready to testify. The order of testimony will go introducer, proponents, opponents, neutral, and closing. Testifiers please sign in. Hand your pink sign-in sheet to the committee clerk when you come up to testify. We ask that you please spell your name for the record before you testify. We do use the light system in this committee which means the green light will be on for four minutes. At one minute, you'll see the yellow light and when your five minutes are up you'll see the red light. If you'll not be testifying at the microphone but want to go on record as having a position on the bill being heard today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearings. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution, to the committee and staff when you come up to testify. We will need ten copies. If you have written testimony, but do not have ten copies, please raise your hand now and the page will make copies for you. To my immediate right is committee counsel, Bill Marienau. To my far left is committee clerk, Jan Foster. And I will have the senators introduce themselves starting at my far right.

SENATOR SCHUMACHER: Paul Schumacher, District 22, that's Columbus and parts of Colfax and Stanton County; Columbus is in Platte County.

SENATOR BREWER: Tom Brewer, District 43, 13 counties of western Nebraska.

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SENATOR WILLIAMS: Matt Williams, District 36, Dawson, Custer, and the north part of Buffalo Counties.

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

SENATOR BAKER: Roy Baker, District 30, southern part of Lancaster County and Gage County.

SENATOR McCOLLISTER: My name is John McCollister; I represent District 20, central Omaha.

SENATOR LINDSTROM: And our pages today, we actually have two today, Phillip Levos from Columbus, who has been with us the whole time. And then we have new member, Jade Krivanke, who is a junior at UNL from Omaha, Nebraska. Welcome, Jade. The bills today being heard are LB582, LB559, LB550. The first bill is LB582 introduced by Senator McDonnell. And we invite you to open. [LB582]

SENATOR McDONNELL: (Exhibits 1 and 2) Thank you, Chairperson Lindstrom and the members of the Banking, Commerce and Insurance Committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l; I represent LD5, south Omaha. I appear before you today to introduce LB582 brought to me by the Nebraska Credit Union League. LB582 would amend the state Credit Union Act, specifically Chapter 21, Section 1743, to clarify Nebraska Revised State Statutes by adding persons within a defined geographical boundary constitutes to what a credit union organization shall be limited. Every credit union has a field of membership that is limited by employer, association trade industry, profession, religious affiliation, or a geographic boundary. In addition to having limited fields of membership, each credit union chooses to be chartered with either the state of Nebraska or the federal government. In Nebraska, there are 61 credit unions of which 13 are chartered with our state, and the remaining 48 are chartered federally. The dual chartering system in this state is very important for not only credit unions but, indeed, all community financial institutions to foster innovation and competition between the two competing charters. It is also important for the state of Nebraska, because having state-chartered financial institutions helps to fund the Department of Banking and Finance, as well as generating revenues for the state through taxes and fees. In the case of credit unions in this state, the state charter has become less attractive than the federal charter over time. I understand that there are many reasons, including consolidation in the industry, as to why this is. LB582 attempts to address one reason why federally chartered credit unions may be hesitant to consider the state charter. In Nebraska and across the country, some credit unions have applied to their federal regulator or their state regulator to become a community chartered credit union where they can serve a defined community as approved by their respective regulator. This is currently the

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practice in Nebraska with 6 state-chartered and 23 federally chartered credit unions having a community charter. Federally chartered credit unions apply to the National Credit Union Administration, the NCUA, for their field of membership, while state-chartered credit unions apply to the Nebraska Department of Banking and Finance. The department has traditionally approved community charters for the state-chartered credit unions over the years based on the parity or wild card provision passed by the Legislature each year which provides state-chartered credit unions the same rights, powers, and privileges as their federal counterparts. So you might ask, if the department is already approving community chartered, then why LB582? The reason is that if a federally credit union is considering converting to the state charter, the absence of specific language providing for a community charter within the state Credit Union Act would likely be a barrier to such consideration. Credit unions would have to trust that the tradition of community chartered approvals would continue to occur under future department directors and staff. Credit unions are unlikely to make that transition if there is uncertainty that exists. LB582 removes that uncertainty. There will be testifiers following me that will be able to answer any technical questions that you, as a committee, may have. However, I will be happy to try to answer any of your questions the committee might have. Also today, we got the fiscal note back and it is zero. [LB582]

SENATOR LINDSTROM: Thank you, Senator. Any questions from the committee? Seeing none, thank you. [LB582]

SENATOR McDONNELL: Thank you. [LB582]

SENATOR LINDSTROM: We'll now have proponents. Good afternoon. [LB582]

FRANK WILBER: (Exhibit 3) Good afternoon. Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. It's good to see you again. My name is Frank Wilber, F-r-a-n-k W-i-l-b-e-r, and I'm the president and CEO of Liberty First Credit Union headquartered here in Lincoln, Nebraska. I'm here to provide our support for LB582. Our credit union has five branches--four here in Lincoln, and including a branch in Seward, Nebraska. We are a state-chartered credit union with \$225 million in assets, employing 81 associates, and serving those who live, work or worship in either Lancaster or Seward County. We operate as a community chartered credit union. Prior to becoming a community chartered credit union, Liberty First was Burlington Credit Union primarily serving the employees of Burlington Northern Railroad and their family members. In 1987, our board of directors made the decision to apply for a community charter in an effort to ensure that the credit union could remain healthy and serve the membership and community if there was any widespread or long-term problems with the railroad and/or its practices. This was done under the watch of my predecessor, who is now retired. I was hired near the end of 2013 to take on the role of president

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and CEO. While I was aware that Liberty First Credit Union was a state-chartered community credit union, I was unaware of the nuances of the state Credit Union Act here in Nebraska. In my experience, there are benefits of being a state-chartered credit union including the local regulator and, in general, a greater ability to help individuals with their banking needs in underserved areas. In my estimation, the state Credit Union Act in Nebraska is less defined and therefore less attractive than the act that is utilized in my former state of Michigan, as well as those in other states that I'm familiar with. A more competitive and modern act can lead to additional state-chartered credit unions which in turn can help ensure a positive economy of scales in the credit union regulation here, an increase in examination and banking revenue, as well as healthy level of peer comparison data. In Michigan, for example, the majority of credit unions, which is at 63 percent, are state-chartered and the trend is still ticking upwards. It's generally...if you're going to do a conversion, it's going to be from a federal charter to a state charter. LB582 is important because it places in the state Credit Union Act, in black and white, that state credit unions can also be organized around persons with a defined geographic boundary. As a president and CEO, it's clear to me why any credit union that is considering moving from a federal charter to a state charter would be reluctant to do so without this explicit recognition in the state Credit Union Act. As a matter of fact, in my opinion, I feel that it would be irresponsible to do so without specific language already in the act. In conclusion, I ask that you help clarify the state Credit Union Act by supporting LB582. Thank you for allowing me to testify today; and I will answer any questions that the committee may have. [LB582]

SENATOR LINDSTROM: Thank you, Mr. Wilber. Any questions from the committee? Senator Schumacher. [LB582]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom; and thank you for your testimony. What happens when somebody would move out of the geographic district? They got to close their accounts out? [LB582]

FRANK WILBER: No, they still...once...for most credit unions, the language in the act allows them to maintain their membership in the credit union that they joined as long as they were eligible as members at the time that they joined. [LB582]

SENATOR SCHUMACHER: And if you just rented an apartment for 30 days, you're good to go? [LB582]

FRANK WILBER: Well, technically if they establish residency, they would be good to go, yes. [LB582]

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SENATOR SCHUMACHER: And if residency is described as presence with intent to remain, I could become a resident of your credit union district in 30 seconds. [LB582]

FRANK WILBER: Well, technically, as long as you live, worship, or work in the geographical area, generally, that's...you're eligible for membership at the credit union. [LB582]

SENATOR SCHUMACHER: So not only do...what if I just lived there? Am I eligible if we pass this amendment? [LB582]

FRANK WILBER: Yes. [LB582]

SENATOR SCHUMACHER: Okay. Thank you. [LB582]

FRANK WILBER: Yep, my pleasure. [LB582]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you very much for your testimony. [LB582]

FRANK WILBER: Thank you. [LB582]

SENATOR LINDSTROM: Next proponent. [LB582]

BRANDON LUETKENHAUS: (Exhibit 4) Good afternoon. Mr. Chairman, Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee, my name is Brandon Luetkenhaus, that's spelled B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s, and I appear on behalf of the Nebraska Credit Union League. Our trade association represents Nebraska's 61 credit unions and their members. I want to first thank Senator McDonnell for introducing LB582 and to bring our support for that bill which he introduced. I think Senator McDonnell and Mr. Wilber, I think, said it very well on why this bill was brought. I would just reiterate that in Nebraska we have 13 out of 61 credit unions that are state-chartered. It seems to be the trend...some of which is consolidation, but others is just looking at charters that the trend seems to be in Nebraska of going to a federal charter. If a federal credit union was looking at moving to a state charter, I think by passing LB582 it would at least open that door for them to do that. If they were thinking of becoming a community charter, and didn't see it in the state statutes, I think they would be less likely to potentially consider that. So we want our credit unions to have all options when it comes to dual chartering system whether they decide to go as a federal-chartered credit union or a state-chartered, and I think that's healthy for the state both with credit unions as well as other

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community financial institutions. So with that I'd be happy to answer any questions you might have. [LB582]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Senator McCollister. [LB582]

SENATOR McCOLLISTER: Yeah, thank you, Chairman Lindstrom. You talk about dual registration... [LB582]

BRANDON LUETKENHAUS: Dual chartering. [LB582]

SENATOR McCOLLISTER: ...so which would mean a credit union would be registered in the state as well as federal? [LB582]

BRANDON LUETKENHAUS: No, what I mean by that is that credit unions or banks can ebb and flow from the federal regulator or the state regulator depending on their business model and depending on what regulations they like to be under. So, Liberty First, for instance, Mr. Wilber's credit union, is a state-chartered credit union. They could decide that...their board could decide that they want to move to a federal charter. Okay? Or vice versa, they could be a federal charter and move to a state charter and that's what we call the dual chartering system where that provides competition between the state regulators and the federal regulators. [LB582]

SENATOR McCOLLISTER: Is there a financial incentive to be regulated only by the state? [LB582]

BRANDON LUETKENHAUS: I think you would be...the financial aspect would probably go the other way. So it would be cheaper to be a federal-chartered credit union in Nebraska than it would be to be a state-chartered credit union. [LB582]

SENATOR McCOLLISTER: Why is that? [LB582]

BRANDON LUETKENHAUS: State-chartered credit unions pay sales tax...Nebraska sales tax. First of all, I should say this--in 1937, Congress gave credit unions a federal tax exemption, okay, because of their structure; they're not for profit, owned by their members, directed by boards and volunteers. So Congress in 1937 gave them the federal tax exemption and have supported it since then. But getting back to your question directly, state-chartered credit unions pay sales tax. They pay the state's deposit tax which is, essentially, the corporate income tax for financial institutions in the state. There is no corporate income tax, but there is the financial institution tax for banks

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and credit unions that are state-chartered. They also pay fees to the department for examination and they pay fees on assets or earnings as well. [LB582]

SENATOR McCOLLISTER: How is the sales tax computed? [LB582]

BRANDON LUETKENHAUS: On just as anything when they buy product. If they build a branch or do anything like that they would pay sales tax on that, where federally chartered credit unions are exempt from state sales tax. [LB582]

SENATOR McCOLLISTER: So just on things that you buy, not on the services you provide to your members. [LB582]

BRANDON LUETKENHAUS: Correct. Yes, things you buy, that you purchase as a credit union, yes. [LB582]

SENATOR McCOLLISTER: Thank you. [LB582]

BRANDON LUETKENHAUS: Yes, thank you for the question. [LB582]

SENATOR LINDSTROM: Thank you. Senator Brewer. [LB582]

SENATOR BREWER: Thank you, Mr. Chairman. All right, just so I got the picture. If you were, say, SAC Federal Credit Union. [LB582]

BRANDON LUETKENHAUS: Okay. [LB582]

SENATOR BREWER: You're federal, you're a national one. But say if you were...well, here in Lincoln you have Government Employees Credit Union also, that would be a state only? [LB582]

BRANDON LUETKENHAUS: Correct. They're a state-chartered. [LB582]

SENATOR BREWER: Size and number of locations, or it's up to the credit union whether they want to be one or the other? [LB582]

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BRANDON LUETKENHAUS: It's up to the credit union. Really, we have...we have credit unions of different sizes, both state...that are state-chartered. We have credit unions of different sizes that are federally chartered. It really comes down to a decision by that local credit union's board. [LB582]

SENATOR BREWER: Okay. [LB582]

BRANDON LUETKENHAUS: And whether they want to be chartered with the department or the NCUA. [LB582]

SENATOR LINDSTROM: Thank you. Any other questions? Senator Williams. [LB582]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. Thank you, Mr. Luetkenhaus, for being here. Just one simple question--what could a credit union do under LB582 that they can't do today without...with the wild card? [LB582]

BRANDON LUETKENHAUS: Well, a credit union can still apply for a community charter, as we call it. But that's all...it depends on the department's approval, the director's approval of that. I don't know if that answers your... [LB582]

SENATOR WILLIAMS: So if we pass this, they would still have to apply and it would be subject to the director's approval. So there's nothing additional that with (LB)582 that a credit union could do that as long as we continue to pass the wild card they could do. [LB582]

BRANDON LUETKENHAUS: Yes. I think you're correct. If I could expand just briefly. [LB582]

SENATOR WILLIAMS: Go ahead. [LB582]

BRANDON LUETKENHAUS: Would be that...of course, one of the concerns is with 48 credit unions that are federally chartered, if they were to look at the state act and not see, specifically, that we outline that there are community charters in the state or that the state allows for that. They may be less hesitant to look at the state charter which means that it's less effective as a dual chartering system. And the other thing is, we would then, you know, future regulators, of course, could decide that because it's not in the act they could decide that community charters will not exist at the state level. That's potential. [LB582]

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SENATOR WILLIAMS: And if those...I think according to your testimony and if those federally chartered institutions in our state are here, am I right, they do not pay sales tax in Nebraska and they do not pay state income tax in Nebraska--the federally chartered? [LB582]

BRANDON LUETKENHAUS: Yeah, federally chartered credit unions do not pay corporate income tax at the federal level and they do not pay the state sales tax. [LB582]

SENATOR WILLIAMS: Thank you. [LB582]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. [LB582]

BRANDON LUETKENHAUS: Thank you. [LB582]

SENATOR LINDSTROM: Next proponent. [LB582]

MARK QUANDAHL: (Exhibits 5 and 6) Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee, my name is Mark Quandahl, Q-u-a-n-d-a-h-l. I'm director of the Nebraska Department of Banking and Finance. I'm appearing here today in support of LB582 as the regulator of Nebraska state-chartered credit unions. LB582 would amend the Nebraska Credit Union Act to provide that the field of membership in a state-chartered credit union may include persons within a defined geographic boundary. I believe it is important for the committee to know that this provision merely codifies and clarifies an existing power, as this form of organization has been available to Nebraska for many years through the wild card or equal rights statute which provides parity between our state-chartered credit unions and federally chartered credit unions. In 1995, the Lancaster County District Court upheld the ability of a state-chartered credit union, with the approval of the department, to expand its field of membership from an employer-based charter to a community charter by using the wild-card statute. Handed out with my testimony, which may...probably be more interesting than my testimony, is a list of our state-chartered credit unions with a short description of their current fields of membership. As you can see, Nebraska currently has 13 state-chartered credit unions and a number of those already have geographically or community-based fields of membership. The department chartered several of those credit unions with a geographic base as they were formerly cooperative credit associations and now nondefunct financial institutions formed in the early twentieth century specifically to serve smaller communities. In 1983, the Legislature provided short form processes allowing the conversion of these institutions to either bank or credit union charters so they could obtain federal deposit insurance. Other credit unions with a geographic field of membership began with limited fields of membership and later received department approval to expand their membership fields. As such, the amendment proposed by

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LB582 is not crucial to the administration of the Credit Union Act. At the same time, a credit union field of membership is central to its organization and growth. From a regulatory standpoint, it is clearly preferable that the authority to operate a credit union that includes a geographical boundary within its field of membership be set out in Nebraska's own Credit Union Act. So I'd be happy to answer any questions that you might have. [LB582]

SENATOR LINDSTROM: Thank you, Director. Any questions? Senator Schumacher. [LB582]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom; and thank you, Director Quandahl. In reading the language of the statute, it says that you can be a member...persons within a defined geographic boundary, doesn't require you to be a resident there, voter there, anything else there, just within it. So using this language literally, if I walk into any credit union in the state at that moment, I'm a person within that geographic area. Does that pretty well just knock that meaningless? [LB582]

MARK QUANDAHL: Let me try to answer that. [LB582]

SENATOR SCHUMACHER: It's page 2, line 15. [LB582]

MARK QUANDAHL: Right, right. I see what you're talking...that's what...it just says persons within a defined geographic boundary is what it says. If you look at, I think for instance, First Nebraska Credit Union, says--anybody that lives, works, or worships in that geographic boundary. So that the actual bylaws or the documents that govern the credit union would go to define that particular (inaudible). [LB582]

SENATOR SCHUMACHER: But if I wanted to amend my bylaws to conform to the new law and I just say--or persons within our geographic district, can I beat the system? I'm thinking like a lawyer. [LB582]

MARK QUANDAHL: No, I understand what you're saying. I guess I'm not sure exactly how to answer that. [LB582]

SENATOR SCHUMACHER: Okay. Thank you. [LB582]

SENATOR LINDSTROM: Thank you. Any other questions? Senator Williams. [LB582]

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SENATOR WILLIAMS: Thank you, Chairman Lindstrom; and thank you, Director, for being here. I want to follow up on that. Can you describe to me what is a defined geographical boundary? [LB582]

MARK QUANDAHL: Can I define that? [LB582]

SENATOR WILLIAMS: Well, the bills says--persons within a defined geographical boundary. Could the geographical boundary be the state of Nebraska? [LB582]

MARK QUANDAHL: Traditionally, the answer to that would be no. It's just within...about the largest geographic area is counties. And I believe also in the 1995 case, the Panhandle. So geographic area such that, a fairly... [LB582]

SENATOR WILLIAMS: The historic definition. [LB582]

MARK QUANDAHL: That's correct. [LB582]

SENATOR WILLIAMS: The historic definition that uses the wild card to get there. The last testifier talked about the potential of doing away with the geographical field of membership. What do you think the likelihood of the department ever getting away from using a geographical boundary would be? [LB582]

MARK QUANDAHL: All I can do is just kind of speak for myself as the director. [LB582]

SENATOR WILLIAMS: Several of the organizations that you're regulating right now already have a geographical boundary. [LB582]

MARK QUANDAHL: That's correct. I believe it's six. [LB582]

SENATOR WILLIAMS: Is it realistic to even think that that boundary would ever be done away with? [LB582]

MARK QUANDAHL: All I can tell you is that there is a theory out there that's kind of colloquially known as the demented director theory. And so, even though I may be a very reasonable, educated director, I guess, we don't know who's going to follow me. [LB582]

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SENATOR WILLIAMS: We'll use all those terms for you. Can you tell me, currently, over the last period of time, is there a trend that you have seen, what would the trend be in charters from state in credit unions from state to federal or federal to state? [LB582]

MARK QUANDAHL: Just...all I can just speak to is just the last couple of years and there have been a couple of state-chartered credit unions that did convert to a federal charter. There have been no federally chartered credit unions that have converted to a state charter in the last two years. [LB582]

SENATOR WILLIAMS: Thank you, Director. [LB582]

MARK QUANDAHL: Thank you. [LB582]

SENATOR LINDSTROM: Thank you. Any other questions for the director? Seeing none, thank you very much, Director. [LB582]

MARK QUANDAHL: Thank you. [LB582]

SENATOR LINDSTROM: Next proponent? Seeing none, we'll now move to opponents to LB582. [LB582]

ROBERT J. HALLSTROM: (Exhibit 7) Senator Lindstrom, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in opposition to LB582. Now the NBA is opposed to LB582 because, unfortunately, and in our opinion regrettably, the legislation is not needed in order for a credit union to establish a community-chartered credit union. In addition, allowing credit union to exist within a defined geographic boundary, and I think, Senator Williams, this goes to your question, would not appear to place any meaningful limitations on the area from which the credit union could draw its members. For example, the entire state of Nebraska, or the Midwest region of the United States, could be a defined geographic boundary. I attempted to look up a definition of geographic boundary and I wasn't certain exactly whether there would be any meaningful limitations that could be placed on that. So while some might say, well, gosh, if we don't need the legislation, what does it hurt to put it on the books. It hurts because we don't know what defined geographic boundary means. When we look at credit unions, the reference to "common bond" has generally been the underpinning and the very essence of the credit union; having that common bond within its memberships. Historically, we were looking at occupational or associational credit unions which are recognized under the state's statute. Over time, we've evolved to where community-chartered credit unions have been recognized. And part of the

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problem with our concern over defined or undefined geographic boundary is the fact that the federal law by the National Credit Union Administration has almost been stretched beyond recognition, based on what the law says. And I would note for the committee's benefit, if you look at the face of the federal law, it basically says community chartered unions are limited to groups within a well-defined local community, neighborhood, or rural district. The policy of the NCUA relating to the common bond requirement for community-chartered credit unions is to limit the community to a single compact, well-defined area where residents commingle and interact regularly. When the Western Heritage Credit Union situation came up in about 1994 or 1995, which was the case that Director Quandahl referenced, the department was faced with whether or not they could do that. And as Director Quandahl has indicated, the courts have upheld the ability for the wild card...credit union wild-card bill to be used to authorize community-chartered credit unions in Nebraska. However, I would ask you, if you looked at the federal law and talked about a well-defined local community in which residents commingle and interact regularly, if your first blush would be that includes 12 counties in the Panhandle, some in the north that do shopping in South Dakota, some in the south that do shopping in the area of Kansas and so forth. Well, the department made their decision. And that probably goes to show, without suggesting that anybody is demented, that if we ever got to a demented director, it can cut both ways. So the decision-making process in terms of putting something that's undefined as a geographic boundary is troubling to us. We don't like the outcome from using the federal standard, but it's out there and it's been utilized and it is sufficient without running the risk that it's even going to be potentially more broadly interpreted by the language that we have proposed here. More recently, in early 2017, again, the wild card was used to approve the former First Nebraska Educators Credit Union to become the First Nebraska Credit Union. And again, the "live, work, and worship, or attend school" standard was applied. But as Senator Schumacher points out, the statute certainly would not require that to be a part of the credit union bylaws. And in the Educators' Credit Union case, it was not only a series of Nebraska counties--Cass, Dodge, Douglas, Lancaster, Sarpy, Saunders, and Washington, but they've also been allowed to operate in Pottawattamie County in Iowa. There's a pending NCUA interpretation to go even more broadly with regard to the federal standard. This would eliminate virtually any notion of locality or well-defined community by only requiring a meaningful affinity and bond among members which would really expand the scope of where credit unions could operate as a community-chartered credit union. In closing, we would certainly be open to the creation of state standards for community-chartered credit unions, as long as they carried out the original intent of the federal law and they would then, of course, have to be coupled with a restriction under the wild-card statute to require state-charted credit unions to abide by whatever law we put on the books here in Nebraska. And I think...one last comment here before I finish up. I think for those to suggest that this is a magic pill for getting federal credit unions to convert from federal to state is a red herring. When the credit union lobbyist responded to a question, I think you'd probably find over the years since the state-chartered credit unions are subject to our bank deposit tax, that

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we've seen many more conversions from state to federal to avoid having to pay those taxes. And so with that, I'd encourage the committee to indefinitely postpone (LB)582. [LB582]

SENATOR LINDSTROM: Thank you, Mr. Hallstrom. Any questions from the committee? Seeing none, thank you. [LB582]

ROBERT J. HALLSTROM: Thank you, Senator. [LB582]

SENATOR LINDSTROM: Next opponent? Seeing none, any neutral testifiers? Also seeing none, Senator McDonnell. Senator McDonnell waives closing. And that will end the hearing on LB582. We'll now move on to LB559, introduced by Senator Schumacher. Good afternoon, Senator. [LB582]

SENATOR SCHUMACHER: Good afternoon, Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r; represent District 22 in the Legislature and here today to introduce LB559. One of the first lessons you learn in law school is the rule...the ancient rule of "ee/or." For every "ee" there is an "or": a lessee, a lessor; a vendee, a vendor; a mortgagee, a mortgagor; a grantee, a grantor. And today we're here to talk about a "stickor" and a "stickee." And here's how the state became the "stickor" and our decision today is whether or not we want to change the "stickee." A few years ago, the state was in hard times. Well, deja vu, we're in hard times again. But the state was looking for additional sources of revenue and one of the ways it got additional sources of revenue is it trimmed back the allowance that a merchant received for collecting the sales tax. And they had a formula and it wasn't all that bad and they made some money to reimburse their costs. And then we were in hard times and we talked them into taking less of a fee on the idea that when good times returned, we'd correct the situation again and go back to normal. You've all heard that line before. Unfortunately, probably not too many of them...folks are taking up our suggestions on this line, this go-round of financial hard times. And their costs did not change. And so if you buy a hundred dollars worth of product and there's a \$7 sales tax, you charge \$107 to your credit card. And depending on what fee arrangement they have, there's a small percentage of that, 2 percent or 3 percent of the \$7, that is charged as a fee to the credit card company when they run the credit card. Now, when they submit the sales tax to the state, they don't get to deduct that fee. So they have to eat the fee to...the credit card fee to collect the sales tax. And depending on how you figure it, just figure for rough figures, \$10 million a year is what the retail industry has to pay. Well, we've had several bills over the years, and to a certain extent, this is a Lazarus bill because it keeps arising again in various forms. And so Lazarus is usually in Revenue Committee, but this year it ended up in Banking Committee. So the question becomes-- who should eat that loss? Should it be the merchant or should it be somewhere up the chain of command? And what LB559 suggests is that it should be up the chain of command, that the cost

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to a credit card network for processing that fee is negligible, and, basically, the merchant shouldn't have to pay for what doesn't cost the credit card network much of anything. And so this says that the credit card network shall not charge a fee on something that is sales tax. And it attempts to define the credit card company as the appropriate place for the burden of this fee and, basically, says it certainly shouldn't be our local merchants. And we know it shouldn't be the state because we don't have any money. So that's the gist of the bill. There will be those following me who say that this bill is a good idea. And I encourage you to listen to their testimony. I'd be happy to take any questions. [LB559]

SENATOR LINDSTROM: Thank you, Senator Schumacher. Any questions from the committee? Seeing none, thank you. Proponents? [LB559]

JIM OTTO: (Exhibits 1, 2, 3, and 4) Senator Lindstrom, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o. I'm a registered lobbyist for the Nebraska Restaurant Association and the Nebraska Retail Federation; I'm here today on behalf of both associations to speak in favor of LB559 and thank Senator Schumacher very much for introducing it. We want the Legislature, and especially this committee, to understand that retailers and restaurants are the Cinderella's of the business world. By that I mean retailers and restaurants are required to do the scrub work of collecting sales tax and numerous other point-of-sales fees while actually employing more than twice as many people as manufacturing industry in Nebraska and the retailers and the restaurants actually get penalized for doing that. All the while, many other businesses, and in my example, would be the spoiled stepsisters, in my comparison, they receive lucrative tax incentives for doing much less. There are four items that are being handed out, and I'll explain each of them briefly. The first is the fiscal note on this bill. As you see, there is no fiscal impact. Senator Schumacher explained very well that we, being the retail and restaurant industry, believe this should be a cost to the state of Nebraska. But Senator Schumacher was gracious enough to introduce a bill in the last couple of sessions that would actually have the state pay retailers and restaurants more for collecting sales tax and at least begin to rectify the inequity of the credit card fees on the sales tax, but those bills had significant fiscal notes, some over \$10 million, and, obviously, it's death by fiscal note. The second is an article from today's Omaha World-Herald saying that longtime Nebraska retailer Gordman's is preparing to file bankruptcy. And the third is an Omaha World-Herald article from a few days ago articulating the challenge that shopping centers are facing in filling the empty spaces retailers are vacating. And the fourth is a copy of a fiscal note on LB186 which was introduced by Senator Karpisek in 2009 which verifies the fact of what Senator Schumacher said that retailers and restaurants remit to the state of Nebraska at least \$10 million, we think it's much greater than that, but the state even says that it's at least \$10 million more than they collect after paying the fees on the sales tax portion. You also have letters from Valentino's and Brewsky's stating that each submit over \$10,000 more per year in sales taxes than they collect after paying the fees...credit card fees on the sales tax. This is a very unfair situation for retailers and restaurants, and, in fact, anyone who collects and

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remits sales tax and also accepts credit cards. And as I said before, as we've tried to rectify it in a different way, add to that the fact that out-of-state online retailers are not required at all to collect and remit Nebraska sales tax which is now at least being addressed by a bill that Senator McCollister introduced and also Senator Watermeier introduced in the Revenue Committee. And we really have a perfect storm brewing that is destroying our local business core, and that's the reason I included the two articles on Gordman's declaring bankruptcy and the vacancies that are occurring in Nebraska shopping centers. The erosion of our local business core is a huge issue that the Legislature must seriously examine. There are many factors, some that the state can change in relation to this. And advancing LB559 is a step in the right direction that does not cost the state any money and we urge the committee to advance it. I'm glad to answer any questions. [LB559]

SENATOR LINDSTROM: Thank you, Mr. Otto. Any questions from the committee? Senator Williams. [LB559]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom; and thank you, Mr. Otto, for being here. Cinderellas and Lazarus all in the same testimony. (Laughter) And now we're going to talk about who's going to be Robin Hood. I would like to point out that the retailers do receive a benefit, do they not, for repaying the fee that they do pay on the interchange? [LB559]

JIM OTTO: You're correct. They know that they're getting their money immediately. And in the case of a credit card, the credit card issuer is taking a certain risk on that being paid. I would submit that in case of a debit card, there's very little risk because it won't be approved if the money isn't in the account. [LB559]

SENATOR WILLIAMS: Instant access has a value. My question though relates to the cost of this and how it would work, and I'm sure we'll hear some testimony on this, but are you going to be able to...in the transaction as you send it through, separate the sales tax from the underlying cost of the product? [LB559]

JIM OTTO: I've asked that question of we, we being the Nebraska Retail Federation, actually do endorse a credit card processing service and so does the Nebraska Restaurant Association, two different services. I've asked both. They're not really, probably, in favor of doing it, but they say it's not that complicated to reprogram the machine. Now how complicated that is, I don't absolutely know, but each one said it wouldn't be a deal killer to reprogram the individual machines. Is that what you mean? [LB559]

SENATOR WILLIAMS: Is that the retailers' machine? [LB559]

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JIM OTTO: Correct. [LB559]

SENATOR WILLIAMS: So you would only be transmitting...you have to transmit the whole amount because that's how much you got to get... [LB559]

JIM OTTO: Correct. [LB559]

SENATOR WILLIAMS: So you would transmit it in two separate batches? [LB559]

JIM OTTO: I'm not sure how that would work, but it would be separated in some way. And also in the bill, it does say that the retailer can...if they don't do it electronically, they can request it back from the credit card company by filling out a form. [LB559]

SENATOR WILLIAMS: Okay. Thank you, Mr. Otto. [LB559]

SENATOR LINDSTROM: Thank you. Any other questions from committee? Seeing none, thank you. Next proponent? [LB559]

KATHY SIEFKEN: Good afternoon, Chairman Lindstrom and members of the committee. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I'm the executive director and lobbyist for the Nebraska Grocery Industry Association here in support of LB559. We would like to thank Senator Schumacher for bringing this issue back before the committee...new committee this year. We support this because we are now collecting taxes on behalf of the state and we end up having to be penalized for those collections just because we have to pay those interchange fees on the taxes. Jim did a great job of laying it all out, so did Senator Schumacher. I'm not sure that I can add much more to that other than the fact that this would be a fair thing to do and the right thing to do and we would encourage you to pass LB559 out of committee. [LB559]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you very much. [LB559]

KATHY SIEFKEN: Thank you. [LB559]

SENATOR LINDSTROM: Next proponent? Seeing none, we'll now move to opponents. [LB559]

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STEVE RAUSCHENBERGER: (Exhibits 5 and 6) Good afternoon, Mr. Chairman. Thank you for the opportunity to testify. My name is Steve Rauschenberger, S-t-e-v-e R-a-u-s-c-h-e-n-b-e-r-g-e-r. I thought I was an opponent of the bill until I heard the passionate explanation about Robin Hood and Lazarus and I'm not sure anymore except in the end I guess I would have to come down and tell you that as a former retailer myself, I was 17 years in the retail furniture business, I understand the frustration of the retail community in being an enforced tax collector, particularly in an Internet age when there's a lot of competition on the Web. But I'm here to tell you, I don't think the solution is to interfere with contractual negotiations and contracts that are entered into in a competitive marketplace between buyers and sellers. The electronic payment system that I represent is a robust system of more than 14 networks, more than 400 credit card issuing banks, and literally thousands of banks that agreed to be the merchant bank in the relationship. The way that system is paid for--all the security, all the fraud protection, the losses, the kind of ubiquitous international connections, are through a fee charge on each transaction as a percentage of sale called "interchange." The interchange is negotiable. Retailers in the United States and all over the world negotiate different terms and different benefits and different costs for their interchange, but basically they're paying cartage or freight to have this transaction instantaneously, securely transacted. So for a proponent to argue that we ought to interfere with a contract freely entered into by competent parties, rises to a high level and, generally, Legislatures don't do that. It's a competitive system; although I can be sympathetic to retailers not wanting to pay interchange on their tax collections. They would pay a armored car company to pick up cash receipts, they deal with change, transaction losses, collecting sales tax on a cash basis; if they had a bounced check, they deal with many of the same issues. The credit card system offers them substantial benefit. The reason McDonald's and many other fast food restaurants are willing to pay interchange and accept credit cards at their payment window is they get increased sales, people purchase more when they're not concerned about how much cash they have in their pocket. And second, the speed of the transaction speeds up the number of people in line. So the retailers benefit substantially from the system; the retail customer benefits. So I would argue that my employers at the Electronic Payments Coalition would argue that you ought not lightly interfere with that transaction or those contracts, that the system works pretty well, that there may be a better solution for burdened retailers and restaurateurs in the state of Nebraska rather than trying to impose a no-cost obligation on a national system. [LB559]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Senator Williams. [LB559]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom; and thank you, Mr. Rauschenberger, for being here. You heard my question to Mr. Otto when he was up here from the retailers association about how you would mechanically do this. Have you thought through that and can you explain that to where I could understand it? [LB559]

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STEVE RAUSCHENBERGER: Yeah...well, no, I don't know that I'm sure that I can explain it so everyone can understand it, but, essentially, the system, the main backbone of the system sees everything as a cash transaction. I mean, it's an amount. If you wanted to segregate a portion of it and have it treated separately, you would have to split the transaction at the retail point of sale. So at the retail register in some way, shape or form, you'd have to designate it as two transactions: one for 27 cents and one for 98 cents for a can of pop. And if you process it through that way, the credit card system could account for them separately. But that would be a retail...or that would be a software burden on whoever the retail processors were, it's not part of what the network would be responsible for. There's companies who claim to be able to do it. This bill has been advanced, I think, over the last six years in 14 or 15 other states. And there hasn't been a state yet that has adopted this specific language. [LB559]

SENATOR WILLIAMS: So let me ask that question followup. So nobody is doing this yet? [LB559]

STEVE RAUSCHENBERGER: No, and the bill has not passed in any state. It has not passed a committee in any state legislature in the last six years. [LB559]

SENATOR WILLIAMS: Okay. I want to go back to the first question then and specifically ask, in your judgement with what you do in this process, can it be done? [LB559]

STEVE RAUSCHENBERGER: You know, I have to believe that if a sovereign state orders something to be done, that the system will figure out a way to do it. It's not a particularly practical thing to do or it doesn't make a lot of sense, I think retailers will find their software burden of reprogramming is going to be greater than their reward. So it's impractical but not impossible. [LB559]

SENATOR WILLIAMS: Thank you. [LB559]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you very much. [LB559]

STEVE RAUSCHENBERGER: Thank you. [LB559]

SENATOR LINDSTROM: Next opponent? Good afternoon. [LB559]

BETH BAZYN FERRELL: Good afternoon, Chairman Lindstrom, members of the committee. For the record my name is Beth, B-e-t-h, Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the

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Nebraska Association of County Officials. I'm appearing in opposition to LB559. Our concern is a little different than has been expressed before. Our concern is what this bill might do in the future. Right now, if counties accept a credit card, they have to pass that interchange fee onto the user of the card. Counties are required to collect the amount of taxes that are levied or the amount of taxes that are set, so they can't absorb the interchange fees. And we just wanted to just make sure that that was on the record that if we can't pass those along, that would be a problem for counties. I'd be happy to take questions. [LB559]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you very much. Next opponent? [LB559]

ROBERT J. HALLSTROM: (Exhibit 7) Chairman Lindstrom, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m; I appear before you today as registered lobbyist for the Nebraska Bankers Association in opposition to LB559. I'm also appearing in opposition on behalf of Networks, Inc. The NBA has consistently opposed this type of legislation when it's appeared in the past. I think the initial witness gave you the background in terms of the impracticalities of making changes to your systems that, ultimately, I think, at the end of the day are probably going to end up costing the retailers additional cost. I think what I'd like to focus on a little bit is the convenience both for the consumer and the retailers and the benefits that are gained from the system that's evolved from the card issuers having put in the capital investment to create this system, the innovations that go forward, the fraud protection services that are in, and just the general convenience for consumers in being able to use credit cards. With regard to a couple of the issues, while I, too, can be sympathetic with regard to the sales tax collection process that's been imposed by the state, not the card issuers, we have contractual basis upon which these fees are negotiated. That's proprietary information, but I think we'd probably find somewhere in the neighborhood of 2 to 2.5 percent is the average cost that might be involved and well worth the investment in the involvement. I would suggest that if you said one way to avoid having to pay the interchange on the sales tax is to go to an all-cash system. Number one, that certainly is at the prerogative of the retailer; but number two, I'd suggest nobody is going to go back to that day. But if we do go back to that day before we had credit cards, think of some of the costs that were associated and the inconveniences that were associated with not having credit cards available to utilize. You had backroom accounting requirements; you had debt collection types of activities, and you had direct losses. The merchants are paid directly and immediately, subject to the interchange fee that pays the price or the cost of the system, and we don't think anybody is going to go back to that time. But based on those benefits that accrue to retailers, we don't think this is an appropriate approach and would encourage the committee to indefinitely postpone LB559. I'd be happy to address any questions. [LB559]

SENATOR LINDSTROM: Thank you, Mr. Hallstrom. Any questions from the committee?
Seeing none, thank you very much. [LB559]

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ROBERT J. HALLSTROM: Thank you. [LB559]

SENATOR LINDSTROM: Next opponent? [LB559]

BRANDON LUETKENHAUS: (Exhibit 8) Good afternoon, Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee, my name is Brandon Luetkenhaus, B-r-a-n-d-o-n L-u-e-t-k-e-n-h-a-u-s, and I'm here on behalf of the Nebraska Credit Union League. Our association represents Nebraska's 61 credit unions and their members. I appear before you today in opposition of LB559. Previous testifiers have outlined pretty well what our opposition would be as well as card issuing financial institutions. We bear the fraudulent costs when fraud occurs on these cards. And so interchange helps to offset that, and also to help with innovation in the card system. Just one story: when I was heading up to Basset, Nebraska, where my wife is from, we stopped in a small town where they had a sandwich shop that was a chain sandwich shop. And so I usually never carry cash on me, and so when I went in there I expected to be able to pay with my debit or credit card. And so as the person is making the sandwich, we get to the cash register and I pull out my card and they say--I'm sorry, we only accept cash or checks. So that's a merchant that decided that they didn't want to pay that interchange fee, is what I'm assuming, but unfortunately I didn't have cash or a check on me. So they made the sandwich and I had to leave without a sandwich and they left without me paying for that sandwich. So it's really...I think most places...most merchants now are moving to the card system because they understand the convenience of it. Also, there's been studies that have shown that folks who use cards--credit cards, plastic, spend more if they use cards versus cash. So there's many benefits to cards...credit cards. And so for that reason we think the interchange, the small amount that Mr. Hallstrom described is worthy for the merchants at this point. And with that, I'd answer any questions you might have. [LB559]

SENATOR LINDSTROM: Thank you. Any questions? Senator Williams. [LB559]

SENATOR WILLIAMS: I'm just taking a quick look...thank you, Chairman Lindstrom...take a look at this before you leave, would you? [LB559]

BRANDON LUETKENHAUS: Oh, yeah, I will. Okay. [LB559]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you very much. [LB559]

BRANDON LUETKENHAUS: Thank you. [LB559]

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SENATOR LINDSTROM: Next opponent? [LB559]

BILL MUELLER: Chairman Lindstrom, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r; I appear here today in opposition to LB559 on behalf of American Express and PayPal. We echo what the prior witnesses have testified about. We do oppose this legislation that would affect interchange fees. You've been provided information about the numerous steps in this process. To provide you some context, there are approximately 10 million merchant locations in the United States that can accept a payment card. There are also hundreds of payment processors. There are 14 debit networks, and roughly 8,000 financial institutions that issue credit cards and debit cards. Because our payment system is built to seamlessly allow consumers to use their cards at any retailers and at any ATM in the country, the systems linking those millions of retailers at one end with the thousands of financial institutions at the other end must be interoperable. To adopt this bill in Nebraska would negatively affect that system and we would ask the committee not to advance the bill. I'd be happy to answer any questions. [LB559]

SENATOR LINDSTROM: Thank you. Thank you for your testimony. Any questions from the committee? Seeing none, thank you. [LB559]

BILL MUELLER: Thank you. [LB559]

SENATOR LINDSTROM: (Exhibits 9 and 10) Next opponent? Seeing none, we'll now move to neutral testifiers. Seeing none, I do have two letters of support, they were mentioned before, from Brewsky's Food and Spirits and Valentino's. And with that we'll invite Senator Schumacher back to close. [LB559]

SENATOR SCHUMACHER: Maybe it's just Groundhog Day. Thank you, Senator Lindstrom. This issue has been around since the problem came up and it likely will be around after this hearing. And I would guess that as the folks were talking, it occurred to me, maybe, it will solve itself with the advent of something that...well, Senator Brewer may still be around here when this issue first comes forward, most of the others of you may be gone, but maybe there's a way when we move to the bitcoin system that we will be able to solve this problem. I'll be happy to take any questions from the committee. Thank you for your time. [LB559]

SENATOR LINDSTROM: Thank you, Senator Schumacher. Any questions from the committee? Seeing none, thank you very much. And that will end the hearing on LB559. We'll now turn the hearings over to Senator Williams. [LB559]

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SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And now we'll open the hearing on LB550; invite Chairman Lindstrom to make his introduction. [LB550]

SENATOR LINDSTROM: Thank you, Vice Chairman Williams, members of the Revenue Committee (sic-Banking, Commerce and Insurance). I introduce...my name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 out of northwest Omaha. I introduce LB550 on behalf of the Department of Insurance. It strikes a requirement for the Comprehensive Health Insurance Pool, otherwise known as CHIP, to utilize an independent actuary in setting rates for CHIP. CHIP is a high-risk pool for health insurance and is insurance of last resort for Nebraskans who cannot secure health insurance. Before the Affordable Care Act, CHIP had thousands of members. Now, the number of members is below ten. The legislation is intended to be used as a vehicle for any needed reaction by the Legislature to actions in Washington related to the repeal and/or replacement of the Affordable Care Act that would impact Nebraska's high-risk pool. The Director of Insurance is here to provide more detail and explanation. Thank you for considering LB550. I'll be happy to answer any questions. [LB550]

SENATOR WILLIAMS: Any questions for Chairman Lindstrom? Seeing none, thank you. First proponent? Director Ramage. Welcome. [LB550]

BRUCE RAMGE: (Exhibit 1) Thank you. Vice Chairman Williams and members of the Banking, Commerce and Insurance Committee, my name is Bruce Ramage, spelled B-r-u-c-e R-a-m-g-e, and I'm the Director of Insurance for the state of Nebraska. I'm here today to testify in support of LB550. Thank you to Chairman Lindstrom for introducing LB550 on the department's behalf. I asked Senator Lindstrom to introduce LB550 to open up the statutes related to the Comprehensive Health Insurance Pool, or CHIP. CHIP is the state high-risk pool for individual health insurance. Pre-Affordable Care Act, or ACA, CHIP was the home for individuals who purchased health insurance on the individual market and were unable to secure coverage because of preexisting medical conditions. At its height, CHIP insured thousands of Nebraskans and was funded by premiums of members in upwards of \$30 million in health insurer premium tax annually. The ACA prohibits insurers from excluding individuals because of preexisting conditions, and the number of members has dropped accordingly. Right now, less than ten Nebraskans are in CHIP. These members are Medicare covered individuals under age 65 who are unable to secure Medicare Supplement or Advantage policies. CHIP is governed by a board that I appoint. The green copy of LB550 would eliminate the requirement for an actuarial study the board uses to set CHIP premium rates, however, the real purpose of LB550 is to provide a vehicle, if needed, for the Legislature to react to any changes on the federal level related to the Affordable Care Act. Right now, a great deal of uncertainty exists related to the repeal or replacement of the Affordable Care Act and it is obviously a very hot topic. High risk pools like CHIP have been mentioned by some in Washington as a possible part of any repeal of the ACA. As a result, I thought it wise to ask legislation to be introduced in case CHIP needed to be

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amended to implement any needed to the program or the state insurance code. My department continues to monitor developments in Washington. In fact, just late yesterday, the House Republican plan on repeal and replace was released. If the need for statutory changes arise, I will be in touch with Senator Lindstrom and the committee. Thank you again to Senator Lindstrom for introducing this legislation. I would be happy to answer any questions. Thank you. [LB550]

SENATOR WILLIAMS: Questions for Director Ramge? Senator McCollister. [LB550]

SENATOR McCOLLISTER: Thank you, Vice Chair Williams. And thank you for your testimony. You indicated there are ten people still in the CHIP pool. [LB550]

BRUCE RAMGE: Yes. [LB550]

SENATOR McCOLLISTER: Why haven't they switched to some other policy? [LB550]

BRUCE RAMGE: These are individuals who, again, they have Medicare and they rely on CHIP for their supplemental coverage and their prescription coverage. They're not able to get into a Medicare Advantage Plan because those plans are not uniformly available throughout the state. [LB550]

SENATOR McCOLLISTER: So it's a matter of geography? [LB550]

BRUCE RAMGE: Yes. [LB550]

SENATOR McCOLLISTER: I see. How much money is in the pool currently? [LB550]

BRUCE RAMGE: Well, the pool...I'd have to get back to you on the dollar amount. But how this works is, premium-tax-paid-for health insurance first goes to this CHIP fund. And then what is used or necessary to support this program is subtracted from that fund before it then filters over to the General Fund, the school fund, and...I think there are three funds; the third one escapes me right now. So what is actually being spent right now is in the neighborhood of \$350,000 to a half million dollars. I would expect that to continue. [LB550]

SENATOR McCOLLISTER: Per year? [LB550]

BRUCE RAMGE: Per year, yes. [LB550]

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SENATOR McCOLLISTER: I see. But it is a fund. [LB550]

BRUCE RAMGE: It is a fund, yes. [LB550]

SENATOR McCOLLISTER: And there's no money...how much money is in the fund now? [LB550]

BRUCE RAMGE: That I will...I'll get back to you and let you know. The accountant in our department will have those figures. Unfortunately, I didn't bring those today. [LB550]

SENATOR McCOLLISTER: Thank you, Director. [LB550]

BRUCE RAMGE: You're welcome. [LB550]

SENATOR WILLIAMS: Senator Kolterman. [LB550]

SENATOR KOLTERMAN: Thank you, Vice Chairman. Welcome, Director Ramge. [LB550]

BRUCE RAMGE: Thank you. [LB550]

SENATOR KOLTERMAN: Just to go a little bit further with what Senator McCollister was asking, that fund never accumulates a lot of money because you use it...it's kind of a pay in/pay out, isn't it? [LB550]

BRUCE RAMGE: Yes. It's basically at the end of each annual cycle, then it...the remainder is processed over with the rest of the premium tax. [LB550]

SENATOR KOLTERMAN: So is it...is the intent to eliminate the actuary because there's such few people in the plan you don't need it any longer? [LB550]

BRUCE RAMGE: That was our thought that perhaps...you know, just as a way to get this open and to hold it open in case that more extensive changes would be desirable or necessary, that this was one suggested change that we would have. [LB550]

SENATOR KOLTERMAN: Just open up the bill. [LB550]

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BRUCE RAMGE: Correct. [LB550]

SENATOR KOLTERMAN: So the actuary...you can always come back and hire an actuary.
[LB550]

BRUCE RAMGE: Yes, and the board uses a consulting actuary to do this work. They're required to do that now by the way the CHIP Act reads. This would still leave it open for them to do that if they felt it was desirable. [LB550]

SENATOR KOLTERMAN: The other question I have is, and Senator Schumacher and I have talked about this on the floor recently, if the Affordable Care Act changes in Washington, D.C., which it looks like it's probably going to do, and they put in provisions for selling across state lines, will this be used as a shell bill to accommodate those types of changes? Could it be used as a shell bill? [LB550]

BRUCE RAMGE: It probably could. With regard to plans across state lines, historically we've had some of that through what are called association group plans. And so those have been around for a number of years. But we would...I would ask our attorneys in the department to look to see if there needed to be a change in our statutes to accommodate that, if it comes about. [LB550]

SENATOR KOLTERMAN: Well, the other side of that is, agents are licensed by state, so if I was going to sell in Iowa, wouldn't I have to get licensed in Iowa? [LB550]

BRUCE RAMGE: I would guess so, yes. [LB550]

SENATOR KOLTERMAN: And carry an Iowa license, or whatever state you're dealing with?
[LB550]

BRUCE RAMGE: I would think that each state's licensing...producer licensing requirements would stay intact. I would hope so. [LB550]

SENATOR KOLTERMAN: Under the proposed changes. [LB550]

BRUCE RAMGE: Yes. [LB550]

SENATOR KOLTERMAN: Okay, thank you. [LB550]

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BRUCE RAMGE: You're welcome. [LB550]

SENATOR WILLIAMS: Senator Schumacher. [LB550]

SENATOR SCHUMACHER: Thank you, Senator Williams; and thank you, Director, for your testimony today. I was listening to a syndicated financial broadcast the other day talking about the topic that Senator Kolterman just raised. And the speculation was that one of the ways...the changes in the ACA may evolve is with something that facilitates interstate sales of insurance and various forms of regulation that would address like the issue that Senator Kolterman just raised about licensing of agents. The one thing that the Unicameral supposedly has as an ability is the ability to move at lightening speed; don't mess around very much with committees, with two houses, or whatever. And the speculation was that if this thing rolls out, the state who sets up a favorable regulatory and statutory environment the fastest may have a lot to gain. What do we need to do as a committee and your department to not only monitor what's going on there, but also get a feel for what is likely to come out of it. And in the event something develops, be able to...maybe even this session, set up a structure to take advantage of all that? It would be a real challenge, but it could be highly rewarding. [LB550]

BRUCE RAMGE: It would; and you've raised a really good question that I think we should go back and spend some time and look at, an attorney there at the department, because in terms of producer licensing, I think that we are in a favorable situation. We are reciprocal with all 50 states and our licensing fees are fairly favorable. So I don't think there would be difficulty in getting out-of-state producers licenses. In fact, we have a huge number. I think we have nearly 90,000 producers licensed and the majority of those are from other states right now. But in terms of what we would need to do in terms of policy approval and things like that, we should take a look at. And I thank you for that thought. [LB550]

SENATOR SCHUMACHER: I think that if it turns out that we can have a regulatory structure we could host some companies that might become interested in taking advantage of any new structures. This is a once-in-a-lifetime opportunity. [LB550]

BRUCE RAMGE: Yes. And there are many of the major insurers already licensed here; they may not be domiciled here, but they are licensed. So it's a...very interesting. [LB550]

SENATOR SCHUMACHER: Thank you. [LB550]

BRUCE RAMGE: You bet. Thank you. [LB550]

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SENATOR WILLIAMS: Senator Kolterman. [LB550]

SENATOR KOLTERMAN: Thank you, Senator Williams. Director, would you...just dovetailing off of that, would you talk a little bit about our regulatory environment because we picked up Aflac, we picked up Pacific Life, and some of those major life, health carriers over the last few years. Are we in a position where we could acquire some more domiciled companies? [LB550]

BRUCE RAMGE: We are. One of the primary reasons why Nebraska is viewed favorably is because the Legislature and this committee, over the years, has worked with the department in keeping our insurance code up to date and favorable. So that really sets the initial stage for companies in their ability to do business here in Nebraska. I think the insurance community as a whole looks at Nebraska very favorably because of our state's work ethic in terms of the labor force. And it's just generally viewed as a good business climate. At the Department of Insurance, we try to be very open and transparent and always willing to have discussion with companies as they have questions or inquiries, and, hopefully, that goes a long way to making a favorable environment as well. [LB550]

SENATOR KOLTERMAN: Just one last comment along those same lines, part of it has to do with the environment here. Our legal counsel has been with us a long time and he has a very good reputation, is that not correct? [LB550]

BRUCE RAMGE: That is very correct. Thank you, Bill. [LB550]

SENATOR WILLIAMS: Any further questions? Senator McCollister. [LB550]

SENATOR MCCOLLISTER: Yeah, thank you, Senator Williams. Back to the CHIP bill itself, the participants in CHIP pay a fee or a premium per month. [LB550]

BRUCE RAMGE: Yes. Correct. [LB550]

SENATOR MCCOLLISTER: But isn't there also a General Fund appropriation for CHIP? [LB550]

BRUCE RAMGE: Yes. They pay a premium and it's...it is higher than what would be found in the standard market. But those premiums still do not cover the cost of their healthcare. So the balance of what's not covered by their premium, as well as the administrative costs, are picked up through that CHIP distributive fund. [LB550]

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SENATOR McCOLLISTER: Does the fund have any other sources of income? [LB550]

BRUCE RAMGE: No. Well, investment income, you know, as it is invested during the year. [LB550]

SENATOR McCOLLISTER: Okay. We heard in this committee LB324, which is Senator Kolterman's bill--adopt a Pharmacy Benefit Fairness and Transparency Act. And you said that the majority of the benefits still enjoyed by CHIP participants are drug related. [LB550]

BRUCE RAMGE: Yes, many of them are. [LB550]

SENATOR McCOLLISTER: Wouldn't managed care or some other Nebraska program take care of the need or at least eliminate the need to have those drug benefits managed by (inaudible)? [LB550]

BRUCE RAMGE: For those who are able to enroll into the standard Medicare and Medicare Part D, that does take care of it. But because these folks are not eligible for that plan, they're under age 65, their only avenue would be the Medicare Advantage Plans and they're not eligible for Affordable Care Act because the Affordable Care Act does not allow a person on Medicare to obtain ACA coverage. [LB550]

SENATOR McCOLLISTER: Okay, I'm still a little confused, because I thought under the ACA, everybody had the right to healthcare coverage including pharmacy benefits. [LB550]

BRUCE RAMGE: No. There is a ruling that...and our legal counsel has discussed this with attorneys in D.C. asking them to reconsider their position and they've not been successful in getting this to be turned around. But there's an antiduplication rule which if you were on Medicare it's the rule that is intending to allow you to only have one Medicare supplement policy. And so because of this antiduplication rule, they do not allow Medicare and Affordable Care Act coverage. [LB550]

SENATOR McCOLLISTER: Still confused. Medicare is for people my age, but Medicaid is for those poor individuals. [LB550]

BRUCE RAMGE: Yes. [LB550]

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SENATOR McCOLLISTER: They have certain eligibility; and those people my age, 65, they're on Medicare, they can't do the "D" coverage? [LB550]

BRUCE RAMGE: These are for...and I'm sorry if I wasn't clear, these are for people who are eligible for Medicare by reason of disability. So for example, many of the participants may have end-stage renal disorder, and because of that they are eligible for the Medicare program. They're not yet age 65. And that's why they are in the program. [LB550]

SENATOR McCOLLISTER: Thank you, Director. [LB550]

BRUCE RAMGE: Yes. [LB550]

SENATOR WILLIAMS: Senator Kolterman. [LB550]

SENATOR KOLTERMAN: Yeah, just a little clarity to that--also, correct me if I'm wrong, but if you live in outstate Nebraska, which is in my opinion west of Lincoln, there's no Medicare Advantage being sold out there, that I'm aware of, nobody is marketing those, because they're usually marketed in the metropolitan areas, is that correct? [LB550]

BRUCE RAMGE: The coverage is spotty because those plans also rely on networks. [LB550]

SENATOR KOLTERMAN: So that's the only other option that these people could have. [LB550]

BRUCE RAMGE: Yes. [LB550]

SENATOR KOLTERMAN: And since like in Seward, Nebraska, you can't buy a Medicare Advantage, but you can buy a Part D and you can also buy a excess policy...supplement. [LB550]

BRUCE RAMGE: Yes. And so when these participants reach age 65, then they're able to go onto a standard Medicare and Medicare supplement. [LB550]

SENATOR KOLTERMAN: And did I hear you say there was ten people on the CHIP program? [LB550]

BRUCE RAMGE: Roughly ten, yes. There may be less than ten. [LB550]

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SENATOR KOLTERMAN: It's unfortunate, but that's the way it is. I understand the rules. [LB550]

BRUCE RAMGE: It is. They rely heavily on it. [LB550]

SENATOR KOLTERMAN: Yeah. They're getting their money's worth, aren't they? [LB550]

BRUCE RAMGE: Yes. [LB550]

SENATOR WILLIAMS: Other questions for the director? Thank you, Director. [LB550]

BRUCE RAMGE: Thank you, Senator Williams. [LB550]

SENATOR WILLIAMS: Next proponent? Seeing none, are there any opponents? Anybody here to testify in a neutral capacity? Seeing none, Chairman Lindstrom waives closing. That will close the hearing on LB550. [LB550]

SENATOR LINDSTROM: That will end the hearings. Thank you. [LB550]