

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee February 2, 2021
Rough Draft

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LINDSTROM: Welcome to Banking, Commerce and Insurance Committee. My name is Brett Lindstrom. I am from Omaha and represent District 18. I'm honored to serve as Vice Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your part of the public legislative process. This is your opportunity to express your position on the proposed legislation before us today. Committee members may come and go during the hearing. We have to introduce bills and other committees and are sometimes called away. This is not an indication that we are not interested in the bill being heard in this committee. It's just part of the process. To better facilitate today's proceeding, we ask that you abide by the following procedures. Please silence or turn off your cell phone. Seating is limited, therefore, we ask that you only maintain a seat in the hearing room when you have an interest in the bill currently being heard. We will pause between bills to allow people to come and go. While exiting the hearing room, we ask that you use the door on the east side. We request that you wear a face covering while in the hearing room. Testifiers may remove their face mask during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reach a seating capacity will be monitored by a Sergeant at Arms who will allow people to enter based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and a wear face covering while waiting in the hallway or outside the building. The order of testimony will be introducer, proponent, opponent, neutral, and then the closing by the senator. Testifiers, please sign and fill out the pink sheet and turn it into the box at the testifiers' table when you come up to testify. As you begin your testimony, we ask that you please spell your first and last name for the record. It is our request that you limit your testimony and we'll do five minutes because we don't have a full house today. We will use the light system. It's green at five minutes, with one minute to go yellow, and then red, we just ask that you wrap it up. If you will not be testifying at the microphone, but want to be heard on record as having a position on a bill being heard today, there are white tablets at the entrance where you may leave your name and other pertinent information. The sign-in sheets will become exhibits in the permanent record at the end of today's hearing. We ask that you please limit

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your or eliminate handouts. Written materials may be handed to the committee clerk only while testimony is being offered. To my immediate left is committee counsel, Bill Marienau. To my far left at the end the table is committee clerk, Natalie Schunk. And if the pages could just stand up quickly and introduce themselves.

JORDON MONK: Jordan.

SOPHIE HOLTZ: I'm Sophie.

LINDSTROM: Thank you. And then we'll have the committee members introduce themselves as well, starting with Senator Pahls.

PAHLS: Rich Pahls, District 31, southwest Omaha.

McCOLLISTER: John McCollister, District 20, central Omaha.

SLAMA: Julie Slama, District 1: Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

AGUILAR: Ray Aguilar, District 35, Grand Island and Hall County.

FLOOD: Mike Flood, District 19, Madison and a portion of Stanton County.

BOSTAR: Eliot Bostar, District 29, south central Lincoln.

LINDSTROM: All right. And we will open the hearing on LB177. I am the introducer, so I'll turn it over to Senator Pahls.

PAHLS: Senator Lindstrom, LB177.

LINDSTROM: Good morning, members of the Banking, Commerce and Insurance Committee. My name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 in northwest Omaha. I'm here today to introduce LB177, a bill to change provisions relating to liens under the Uniform Commercial Code. The fertilizer and agriculture chemical lien and seed lien are part of a package of statutory liens that may be filed by agriculture input suppliers in order to secure payment from the proceeds of crops grown as a result of input supplier providing goods and services. These statutory liens are nearly always subject to the priority UCC lien held by an

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agriculture lender. Nothing in LB177 changes lien priorities. Under current law an input supplier has 60 days from the last date of delivery of goods or services covered by a fertilizer and agriculture chemical lien or seed lien. As farms have become larger, the delivery period for these agriculture inputs have also expanded over a longer period of time. Further, weather delays may lengthen a spring planting or fall application season for longer than 60 days. In order for any-- for an input supplier to protect itself, it may be necessary to file more than one lien to cover an application period. Most input suppliers render statements of goods or services delivered at the end of each month for that month's purchases. The statement is not due, is not due a payable until the end of the following month. That, that is essentially the end of the 60 day currently allowed. This tight time frame either forces the input supplier to permanently file a lien before knowing if the bill will not be paid or risk not being able to file a lien if a bill is not subsequently paid and, therefore, not being able to collect from the producer at the time the crop is, is harvested. LB177 would extend the time for filing fertilizer and agricultural chemical liens and seed liens from 60 days to 120 days. This does not give the input supplier any greater lien position or benefit vis-a-vis other lien holders. But it does provide the input supplier with enough time to determine if that-- if it will need to file a lien before the deadline runs out and it will reduce the number of successive liens that the input supplier may have to file over a longer application season. This results in significant reduction in the administrative burden of tracking accounts and lien filings. There will be other folks here to testify today, but if you have any questions, I'd be happy to try and answer them. Thank you.

PAHLS: We would have the proponents.

ROCKY WEBER: Good morning, Senator Pahls and members of the Banking, Finance and Commerce Committee [SIC]. I'm Rocky Weber. I'm-- that's R-o-c-k-y W-e-b-e-r. I'm the president and general counsel of Nebraska Cooperative Council. The Council represents the interests of almost all of the agricultural cooperatives in the state of Nebraska, as well as several rural electric and telephone cooperatives as well. I would like to thank Senator Lindstrom for introducing LB177 on behalf of the Council. In addition, I'd like to thank Senator Lindstrom's staff for being such a pleasure to work with on legislative matters. We asked Senator Lindstrom to introduce LB177 after hearing from several of our

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members regarding increasing administrative burdens and timing issues they have encountered as they administer their accounts receivable and attempt to secure payment for goods and services as they deliver those goods and services to their patrons on a monthly basis. As Senator Lindstrom indicated in his opening statement, LB177 would increase the timing for the filing of fertilizer and ag chemical liens and seed liens from 60 to 120 days. These liens are statutory and input supplier may file a lien upon the crops grown only from these inputs. These liens take priority only over subsequently filed liens, and they do not take priority over any previously filed lien. Currently, these liens must be filed within 30 days of the delivery of goods and services in order to be perfected against any subsequently filed lien and are valid only for that crop grown for those inputs. New statutory liens must be filed each year. Nothing in LB177 impacts the perfection or priority of a standard UCC lien filed by agricultural lenders to secure their interests in collateral on agricultural loans. Those liens are good for five years after the date of perfection, and as such they are almost universally have priority over statutory liens. We are seeking to extend the time for the filing of these agricultural fertilizer and chemical liens and seed liens largely to accommodate common billing practices of input suppliers and changing application seasons. This committee has been provided with correspondence from, I believe, three-quarters of our member cooperatives explaining these practices. For instance, if feed and fertilizer is delivered-- if seed and fertilizer and chemicals are delivered on May 1, a statement for those purchases would not normally be mailed to the producer until May 31. The producer then has 30 days until June 30 to make payment. And at that point, we are already at 60 days in the delivery of those goods and services before the input supplier even knows whether or not there will be a problem with getting payment or not. So as a result of this, two things occur: the input supplier must file a lien prematurely to make sure the 60-day limitation does not expire; or number two, the input supplier must file more than one lien on the same producer to make sure all sales and goods and services are billed with that producer and covered by a lien. The Aurora Cooperative, which is one of our members, provided some context for this. In 2017, they filed 26 statutory liens that year. In 2020, it filed 88 statutory liens. In the previous two years before 2020, it had filed 93 liens in each of those years. Approximately one-third are filed in the spring and two-thirds are filed in the fall. Each lien takes 30 to

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45 minutes of research by the co-ops to research their accounting system, to file with the Secretary of State, to generate and send the notification letter to the producer, to update the tracking spreadsheet, and update settlement notes in their accounting system. Kim Sulek, Aurora's paralegal, estimated that she spends 25 or more hours a week in the busy periods working only on administering these statutory liens. Farmers Pride Cooperative in Battle Creek, Nebraska, and Frontier Cooperative, based in Lincoln, also shared correspondence with the committee that the administrative burdens caused by the 60-day limitation are particularly difficult for smaller cooperatives, where you can't dedicate single staff to dealing with these issues all the time. And also it creates a problem in not having enough grace period for the cooperative to work with the producer if they become behind on a bill or don't pay a bill on time. And, and Jeremy Wilhelm with Frontier Cooperative, I think really put it well. He said, we don't want to liens against our producers, but sometimes a producer in the busy seasons will get late with the-- with paying a statement or will want to wait for corn to get sold or beans to get sold. And if we have a chance to talk with them, we can work those things out. If we have more time to file a lien, we, we can have some guarantee of getting payment or know what the situation is before we're forced to file a lien. So we believe that extending the 60-day limitation for agricultural fertilizer, chemical, and seed liens to 120 days would resolve these administrative issues. We also believe that these statutory liens then would be brought in line with the other statutory liens currently on the books. For instance, those filing petroleum liens have up to 180 days after the delivery of petroleum to file a lien. Those filing feed liens, statutory feed liens may do so as long as the livestock is within the possession of the producer. So we think this extension would be consistent with what the other statutory liens are as well. So we believe that passage of this bill would result in fewer liens filed and less administrative cost burden on, on input suppliers. Thank you. And I'll answer any questions you may have.

PAHLS: Any questions? Senator.

McCOLLISTER: Mr. Weber, this is very similar to a bill that I introduced, I recall, is this different in any way?

ROCKY WEBER: Senator, the bill you introduced on our behalf was a, was a-- was an amendment to the petroleum statutory lien, and that changed

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the time for actually being able to foreclose on that lien to extend that from 90 days after filing of the lien to one year after filing of the lien.

McCOLLISTER: And that bill was successful?

ROCKY WEBER: Yes.

McCOLLISTER: Great. So this is a very similar bill.

ROCKY WEBER: Very similar. We're just trying to, again, to match modern billing practices and modern planting seasons and harvest seasons and fall application seasons. We're just trying to make sure we can accommodate the lien system in such a way that actually fewer liens get filed so that we're not forced to file liens when we don't have to.

McCOLLISTER: Well, as farms get bigger, the amounts of money that is in process gets bigger as well.

ROCKY WEBER: Oh, most-- anymore, most of these accounts will run within a 30-day period over, over \$100,000 easy.

McCOLLISTER: Wow. Thank you, Mr. Weber.

ROCKY WEBER: Yeah.

PAHLS: Any other questions? Thank you for your testimony. Any more proponents? Any opponents? Senator.

LINDSTROM: I'll just waive.

PAHLS: The senator has waived. Need to add that we do have letters for record, we have four letters for record. That will end the testimony on LB177. Thank you.

LINDSTROM: We will now open the hearing on LB234, introduced by Senator Flood.

FLOOD: Thank you, Vice Chairman Lindstrom, members of the committee. My name is Mike Flood, F-l-o-o-d. I represent the 19th Legislative District. This bill has been a long time in the making. Senator Pahls

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and I were freshmen senators in 2005 when Speaker Brashear came forward from District 4 with a proposal that would add limited liability companies to the requirement that a-- to the requirement that corporations already had to file a biennial report and set the fee at \$10. At the time of the hearing, I asked a question, what would the cost be on business and would businesses report-- would, would they ask their attorney or their accountant to file these biennial reports? And in the years since 2005, this has become a burden on small business. Let me tell you why. Corporations are, in my opinion, cumbersome, they require more paperwork, they have bylaws with presidents and vice presidents and stock. Limited liability companies formed in the late '90s are the vehicle of small business. If you start a small business, you use an LLC, they're easier. The income flows through directly on a K-1 back to the individual taxpayer, which is very easy. An estate planning will often put the real estate or certain assets of a family in an LLC to navigate probate and to navigate the waters of estate planning just to put different assets in different buckets. The reality is at the time in 2005, there were 20,000 LLCs. I learned this morning, there are like 90,000 LLCs. At the time in 2005 there were 20,000 LLCs, they had been-- it had been in existence since the late '90s and there were 40,000 corporations. Today, as I just learned, and as you will learn behind me, there are literally 80 or 90,000 LLCs. What happens when you impose this biennial fee, these folks that run these that have these LLCs usually take it a lot of times to their accountant or they take it to their lawyer and that \$10 is now \$30 following the act of the Legislature last year. What happens is they take it to their accountant and the accountant charges 50 bucks or 75 bucks. And so you've created a cost on business that is, number one, a pain. And number two, is now \$30, which doesn't sound like a lot. I disdain fees. I disdain them. I, I look at what we did here and I recognize the public policy interest in having these fees or in having the biennial reports. You want to know that your corporations or your LLCs, you want to know their current address, you want to know that they're in good standing. I looked at the fiscal note on this and it's atrocious. It's like \$11 million. We can't afford it. We can't afford this bill. We can't afford to do what I want to do in this bill because it's not that big of a priority. But there's two things I would ask of the committee. Number one is, could we look at moving the LLC reporting from something greater than two years? I'd put five years. I don't think we should touch corporations.

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Corporations are a separate beast. They have a lot more detail to them. C-corp's file taxes separately. It's, it's something that I think we need to look at. But as it relates to these LLCs, could we look at pushing this back to a three-year, four-year, or five-year reporting period? The cost will not be nearly what it is in the fiscal note. At the time that we voted on this back in 2005, it was \$200,000 and that was with 20,000 LLCs. Well, now the fees got raised to \$30. And so the fiscal note is going to be a lot greater. At the end of the day if this bill doesn't go anywhere, I understand. But I'm telling you, when these-- when people come before us and they want to add this \$10 fee, it turns into a monster. And that's what we've created here, a cash monster that is devouring small businesses, one bite at a time. And who wins? The lawyers and the accountants. I went in to see my accountant on this and he's like, I get these all the time. He's like, we charge 50 bucks. And you will find out it's very easy to pay it online. But when you've got three or four or five LLCs just because you've got these different entities out there, you just hand it all over to your accountant at tax time and they take care of it. So I will say this, the Secretary of State, Bob Evnen, was not here when this was passed. He has-- he and I have visited, he's opposing this bill, which I understand and I appreciate. We can't afford it. But it is something that I have thought a lot about, as you can see, since 2005. Thank you.

LINDSTROM: Thank you, Senator Flood. Any questions from the committee? Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Lindstrom. Does the fiscal note come from the reduction in state revenues, the \$30 or \$40 times the 90,000?

FLOOD: No, my bill actually took a broad swipe at all entities, including corporations, both domestic and foreign. And a lot of the income that we get as part of the \$11 million as I-- as you will learn from our Secretary of State comes from foreign corporations, foreign being outside the state of Nebraska. Narrowing this to LLCs would be a whole different fiscal note. But with the addition of from going \$10 to \$30, it's going to make that fiscal note look larger than anything that I voted on. And to be clear with you, when this came across the desk in 2005, although I asked questions, the fiscal note was like \$200,000 and it was making LLCs-- putting them on the same level as

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corporations. And I did vote for it. And it's one of those votes that I regret, obviously.

LINDSTROM: Senator Pahls.

PAHLS: Thank you, Senator. I heard you say you have disdain for fees. That's more than just this fee, other fees, is that what you're--

FLOOD: Well, you know, here's one of the things that happens. So somebody goes to get a loan and they own, they own a camper with their brother-in-law and they put the camper in an LLC for a variety of reasons. It's easier to own it that way. So they go to get their house refinanced, they forgot about the LLC over here and now they have to get it reinstated. And you'll find out there's more fees on top of that to get it going. And you run-- you know, LLCs are so common with, with small business people and just families that the reinstatement fees come with it. And, you know, then if you're late, there's a fee. You know, the Secretary of State's Office is generous, they-- they're due by April 1, but if-- you have a grace period until June 1. And they do a good job of setting up everything you need. I will tell you from my service here, any time I hear somebody talk about, oh, this just add this fee on, I run for the hills because I know that once you add it, it never goes away and it escalates and it grows like bacteria.

PAHLS: Thank you.

LINDSTROM: Any other questions from the committee? Seeing none, thank you, Senator Flood. Do we have any proponents? I do have a letter from-- dropped off-- drop-off testimony from Bob Hallstrom, Nebraska-- or excuse me, National Federation of Independent Business and Nebraska Bankers Association. We'll now move to opponents of LB234.

FLOOD: Oh, I guess I'm not supposed to sit here.

LINDSTROM: Good morning.

BOB EVNEN: Morning, Vice Chair Lindstrom, members of the committee. It's a pleasure to be here. My name is Bob Evnen, B-o-b E-v-n-e-n. I have the privilege and honor of serving as Nebraska's Secretary of State. And I note that Senator Flood now has me reduced to defending bacteria, but at least he spared me the defense of viruses. I want to

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begin by saying that I have the utmost respect and regard for, for Senator Flood, who is the sponsor. Senator Flood and I have known each other for many years. We've been friends and colleagues, and I, I do have very great respect for him in, in, in all ways, in all regards. Today, however, I rise in opposition to this bill. This bill has nothing to do with LLCs. Senator Flood is concerned about the fees attached to LLCs, if I, if I understood him correctly from his testimony. And I'm not sure what, what Mr. Hallstrom's letter says, but I can tell you that last year when we, we, the Secretary of State's Office went through a thorough reexamination of fees that are charged by the office and submitted them to the Legislature, that Mr. Hallstrom, on behalf of this group, supported that. Last year, the, the fees for LLCs, and for a variety of other things were, were submitted to the Legislature and were ultimately adopted by the Legislature and signed by the Governor. This bill, LB234, that's before you now has strictly to do with corporate fees. Now, last year, we didn't propose to do anything to corporate fees. So-- and that's the-- that is the scope of this bill. It has nothing to do with LLCs, it has to do with fees charged to corporations. Under current law, foreign and domestic corporations are required to file biennial reports once every two years at a minimum cost of \$26. Under LB234, the filing period would be extended to five years with no change in the filing fee. I want to give you a little bit of history to put this in context related to corporations. This current minimum domestic fee was set in 1982 with the exception of temporary increases in 1993 and 1994. This fee has remained unchanged since 1982. And at that time, filings were required annually and the fee was \$13. In 2003, the filing requirement was changed from annually to biennially, every two years, and the domestic minimum fee was increased to \$26, \$13 times 2. If the current fee that was set in 1982 was adjusted for inflation, the current biennial fee would be \$140. And, and I've just-- last year, you know, our, our filing fee schedule and other matters was revised by the Legislature and, and adopted, signed by the Governor. The filing fee for reinstatement-- all right, so if you're-- if you don't get yourself filed until after June 1, the filing for-- fee for reinstatement is \$30 plus whatever unpaid fees there are during the period that you're filing is lapsed. If a corporation has been dissolved for five years or more, it has a reinstatement fee of \$500. Now, I don't know, I, I wasn't around when that was set, that was set by the Legislature and signed by the Governor. I believe that there

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are public policy reasons that support a high fee after that length of period of time. But in any event, that's what the statute provides. I will tell you that about 94 percent of our filers file on time. And that's, that's over 50,000 corporations. So, so these corporations do find a way to get themselves filed on time. And I would say, you know, I practiced law for [INAUDIBLE] years and that was-- and, and there were corporations, there were companies that said, well, would you handle these filings for us? And they went to their accountants and said, would you handle these for us? And of course, lawyers and accountants charge for that service. But that's, that's at the, at the, you know, that's the market operating. If you don't want to pay somebody to file them for you, you can file them yourself. And most people do, 94 percent of our filers are for corporate filings, which is-- was the focus of my attention based on the bill, 90-- 94 percent of all filers file on time. All of the fees for this report go into the state's General Fund, a reinstatement fees which are far, far less, go 60 percent into the General Fund, 40 percent into the Secretary of State's cash fund. The fees generate about \$11 million per, per biennium, which-- and you all have the fiscal note. It's a \$35 million reduction in revenue over a 10-year period. And on the other hand, I think there's a good reason to keep an accurate record of corporations. We need to have a record of registered agents. Moving to a five-year filing would greatly magnify the inaccuracy of the information. And more corp-- more corporations would be administratively dissolved because they don't receive the necessary information, a result of their failure to update the identity of their registered agent. And there's also a hazard, an increased hazard of fraudulent use of shelf corporations. These are corporations which have gone out of business, but if you had a five-year filing period, it would be-- you know, there's still-- that you could still receive a certificate of good standing. And so there are malefactors who will go misappropriate a corporate name, ask for a, a certificate of good standing and receive it and, and use it in a fraudulent fashion. I, I, I think five years is a, a dangerous length of time. And we also have made registration very convenient by providing online access. I can tell you, I've heard very little complaint about the current filing requirements and 94 percent of our corporate filers seem to be able to comply with it. They do it on time and the fee hasn't changed for, for 40 years. May I just conclude one point?

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LINDSTROM: Continue, please.

BOB EVNEN: Forty-two states require annual reports, which is what Nebraska required previously. My predecessor, in conjunction with the Unicameral, changed that to biennial. Forty-two states require these filings every year. Only six states require it every two years, which is a, a, a relaxed requirement of which we are one and the other two states do things completely differently. So for these reasons, I, I can't support LB234. And I'd be happy to answer any, any questions that the, that the committee might have.

LINDSTROM: Thank you. Any questions from the committee? Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Lindstrom. Being the small government that you are, Secretary of State Evnen, are there any reports that you come across that we could do without?

BOB EVNEN: Well, that's a, that's a wonderful question, Senator McCollister. I haven't reviewed reports for that purpose, registrations for that purpose. But I can tell you, having reviewed the-- having reviewed them all last year, we have a lot of registration requirements. And it might be, it might be an interesting project to, to do that. In general, registration requirements are very important for the movement of capital. You can't have a free-market economy unless capital is willing to, to, to invest to loan money. And capital will not loan money unless they get certificates in good standing, for example, unless they have an orderly system for registering UCC filings, which is-- which Senator Lindstrom has the previous bill on. It's extremely important to have these things centrally located and accurately and timely filed. Otherwise, capital won't move. That's one of the biggest problems of Third World countries, is they don't have an organized system of who owns what and how debts can be secured. Without that, you won't get capital to move. So these functions, which seem really, you know, mechanical and ministerial, they, they, they serve a very important function in a free-market economy. Now having said that, Senator, that doesn't mean that we, we absolutely have to have every report we, we require. And it might be a worthwhile exercise to go through it through that lens.

McCOLLISTER: Great answer, thank you.

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LINDSTROM: Thank you. Any other questions? Senator Bostar.

BOSTAR: Thank you, Senator Lindstrom. Thank you, sir, for your testimony. I understand that LB234, that its scope is broad, but regarding what Senator Flood talked about, do you think that there's an opportunity to examine-- excuse me, this process specifically with regard to LLCs? Is there an opportunity there to streamline some things?

BOB EVNEN: First of all, Senator, congratulations.

BOSTAR: Thank you.

BOB EVNEN: If you'll allow me to offer you my congratulations. We did that last year. So we did go through that exercise last year and there were, there were a number of fee changes that were made, some fees were reduced, some fees were increased, some fees we tried to rationalize relative to other fees and with respect to whatever revenue was generated that got us, that got us, meaning the Secretary of State's Office, out of the state's General Fund with respect to four of our major programs and we were, we were relying solely on cash funds for that that are, that are fee-generated funds. In addition to that, when we, when we brought forward this proposal to the Unicameral last year, there were a number of what are you going to do with the money? So we, we showed the Legislature what our intention is, which is overwhelmingly to improve our technology for the purpose of customer service, to make easier the filing of reports, the obtaining of reports and so forth, you know, in a, in a variety of areas that, that the Secretary of State has been tasked with, with performing. So the answer is yes. And that's what we did last year.

BOSTAR: Thank you.

LINDSTROM: Thank you. Any other questions? Seeing none, thank you for coming in.

BOB EVNEN: Thank you, Senator.

LINDSTROM: Any other opponents? Any neutral testifiers? We did have a couple of letters for the record, one in support, zero of opposition, and one neutral. Senator Flood, you're welcome to close.

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FLOOD: Thank you, Vice Chair Lindstrom. I enjoy Secretary Evnen. He was my attorney for 15 years in a couple of different matters and it was enjoyable to listen to him oppose my bill because he does a good job. This bill misses the mark in the, in the big picture. And I don't think it's worth further consideration this session. But I do look forward during my time in the Legislature in working with Secretary Evnen to see if there is a way that we can reduce whatever burden we can on small business. Thank you.

LINDSTROM: Thank you. Any final questions? Seeing none, thank you. That'll close the hearing on LB234. We will open the hearing on LB535. Or is this right? I'm sorry, LB253. I apologize. This hearing is LB253. Good morning.

AARON HEYEN: Good morning. Good to go?

LINDSTROM: Good to go.

AARON HEYEN: All right. Good morning, Mr. Vice Chairman and members of the committee. For the record, my name is Aaron Heyen. That's A-a-r-o-n H-e-y-e-n. I am the administrative assistant for Senator Matt Williams, who has asked me to appear on his behalf to present LB253, a bill he introduced at the request of the Secretary of State. The bill would fix two oversights in the Nebraska Uniform Limited Liability Company Act and would make one clarification in the Nebraska Uniform Protected Series Act. All of the changes are focused on what we call protected series. Our LLC Act was enacted in 2010 and then our series LLC Act came along by way of bills passed in 2018 and 2019. The latter of those two was LB78, introduced by Senator Williams. An LLC that wishes to establish protected series must file a protected series designation with the Secretary of State. Then that LLC is a series LLC. The Protected Series Act provides a comprehensive framework for the formation and operation of a series LLC. A series LLC has horizontal liability shields as well as the standard vertical liability shield. The horizontal shields protect each protected series and its assets from liability for the debts of the series LLC and for the debts of any other protected series of the series LLC. The Uniform Protected Series Act was drafted as what the Uniform Law Commissioners call a module to be inserted into the enacting state's existing LLC Act. Nebraska followed that scheme. One aspect of that scheme is that the Protected Series Act as a module in the LLC Act does not have its

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own separate fee schedule section. In the process of creating the Protected Series Act, provisions regarding protected series filings were added to the fee schedule of the LLC Act, but there were two oversights. Therefore, the bill would add provisions referencing a filing fee for filing a statement of designation when filed as part of a merger. Next, the bill would add provisions referencing a filing fee for filing a statement of designation change to amend a protected series designation. Again, these are two fixes of oversights. Finally, the bill would make explicit something that has generally been understood to be the case. The bill would amend the series LLC Act to make clear that a protected series may not render professional services. This relates only to protected series. An LLC can still render professional services just like always. This would not stop a series LLC from rendering professional services. Again, this change would apply only to a protected series. Those are the fix up and clarification changes from the Secretary of State. A representative of that office will follow me with more details and answers to your questions. But if you have any really hard questions, I would ask Bill because he wrote all of this testimony. If you ask me, I would be making up the answers. Thank you, everyone. And on behalf of Senator Williams, I would urge advancement of the bill to General File.

LINDSTROM: Thank you. Nice job. I have to ask if there's any questions? Seeing none, thank you.

AARON HEYEN: Thank you.

LINDSTROM: We'll have our first proponent. Good morning.

COLLEEN BYELICK: Good morning. I'm used to saying good afternoon, so this is a little bit different. Good morning, Vice Chairperson Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Colleen Byelick, it's C-o-l-l-e-e-n B-y-e-l-i-c-k. I'm the chief deputy and general counsel for the Secretary of State here on behalf of Secretary of State Bob Evnen in support of this bill. We would like to thank Senator Williams for introducing this legislation on our behalf. A legislation enabling the creation of series LLCs was first passed in '18 and then later amended in 2019 and had a delayed operative date of January 1, 2021. Over the last year, we have been busy implementing this legislation. And in doing so, we found a few items that needed a little bit of

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clarification. And that's why we're bringing forth this legislation today. We view this as a cleanup bill. We're not attempting to create additional fees with this bill. We're clarifying two provisions. One is related to the statement of designation change filing, and that relates to creating a protected series as part of a merger. And the second is related to a statement of change that's done to change the name of a series LLC or the protected series. It's referenced in two different statutes. However, the fee statute only referenced one of those statutes. So we're just trying to get that cleared up today. And then finally, we are clarifying that the protected series may not render a professional service. Through an interpretation of the Act, we feel that that is the case, but we felt that it would be best to just plainly state that in the legislation. We did also ask the Uniform Law Commission for their impression of the language, and, and they agreed with our interpretation of the statute as it exists. So again, these are just a few changes that we think help improve the clarity of series LLC legislation and assist our office in implementing this legislation. Thank you for your time today. I'm happy to try and answer any questions you may have.

LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you.

COLLEEN BYELICK: Thank you.

LINDSTROM: Any other proponents? Seeing none, any opponents? Seeing none, any neutral testifiers? Seeing none, waives closing on LB253. And that'll end the hearing on LB253. We will see you at 1:30.

LINDSTROM: We're a little past 1:30 here, so we'll go ahead and get started. Welcome to the Banking, Commerce and Insurance Committee. My name is Brett Lindstrom. I'm from Omaha and represent District 18, and I'm honored to serve as Vice Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your part of the public legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members may come and go during the hearing. We have to introduce bills in other committees and are sometimes called away. This 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, we ask you to abide by the following

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procedures. Please silence or turn off your cell phone. Seating is limited, therefore, we ask that you only maintain a seat in the hearing room when you have an interest in the bill currently being heard. We will pause between bills to allow people to come and go. While exiting the hearing room, we ask that you use the east door. We request that you wear a face mask covering while in the hearing room. Testifiers may remove their face mask during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity will be monitored by a Sergeant at Arms who will allow people to enter based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. Our order of testimony today will be introducer, proponent, opponent, neutral, and then the senator will close, if they so choose. Testifiers, please sign in and fill out the pink sheet, turn it into the box at the testifiers' table when you come up to testify. As you begin your testimony, we ask that you please spell your first and last name for the record. It is our request that you will limit your-- that you would limit your testimony to five minutes. We will use the light system. So five minutes green, with one minute to go yellow, and we ask that you please wrap it up at red. If you will 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 the entrance where you may enter your name and other pertinent information. The sign-in sheets will become exhibits in the permanent record at the end of today's hearing. We ask that you please limit or eliminate handouts. Written materials may be handed to the committee clerk only while testimony is being offered. To my immediate left is committee counsel, Bill Marienau. And to my further left down at the end of the table is committee clerk, Natalie Schunk. And our pages today are Caroline and Ashton. So welcome. And now I'll have the senators introduce themselves, starting with Senator Pahls.

PAHLS: Rich Pahls, southwest Omaha.

McCOLLISTER: John McCollister, District 20, central Omaha.

SLAMA: Julie Slama, District 1: Richardson, Pawnee, Johnson, Nemaha, and Otoe Counties.

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AGUILAR: Ray Aguilar, District 35, Grand Island and Hall County.

FLOOD: Mike Flood, 19, Madison and a part of Stanton County.

LINDSTROM: And Senator Bostar might be introducing a bill. Oh, he is introducing, he said that this morning. So he's currently-- he'll be in later. And with that, we'll open the bill-- or the hearing on LB535, introduced by Senator Kolterman, but we have Mr. Mahood filling in today.

TYLER MAHOOD: All right. Good afternoon, Vice Chair Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Tyler Mahood, M-a-h-o-o-d, and I am Senator Kolterman's legislative aide. Unfortunately, due to COVID protocol, Senator Kolterman is unable to attend this hearing. So I am honored to have the opportunity to introduce this bill on his behalf. Senator Kolterman introduced LB535 on behalf of the Nebraska, the Nebraska Bankers Association. LB535 prohibits a policy of life insurance subject to an assignment from being terminated or lapsed by reason of default and payment of any premium unless a notice of pending lapse or termination of the policy has been provided by the insurer to any known assignee at least 30 days prior to the effective date of the lapse and termination. LB535 also allows notices of a lapse or termination to be provided electronically by the insurer to any assignee who has requested notice. Senator Kolterman knows that there is opposition to this bill from the life insurance industry, and he looks forward to working with the bankers and the industry, industry to come together to work on language that everyone can agree to this bill-- can agree to before this bill moves forward. Due to the complex nature of the banking and insurance industry when it comes to this issue, I respectfully ask that you defer any questions to the testifiers who will follow me. Thank you.

LINDSTROM: Thank you, Mr. Mahood. Any questions from the committee? Seeing none, thank you. We will have our first proponent. Good afternoon.

KEVIN POSTIER: Good afternoon. Get this off. My name is Kevin Postier. I'm president, CEO, and, and chairman of Henderson State Bank, Henderson, Nebraska, here to testify in support of LB535. I would like to talk just a little bit about the, the process that we go through as

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a bank in terms of, of collateral. And I'd like to share a personal experience that our bank had been through recently where if we had had LB535 in place, we would have been prevented a significant loss. Bank loan customers pledge different types of collateral to secure loans on a, on a routine basis. Personal property like livestock, inventory equipment, accounts receivable, farm products. Our, our lien position on those types of collateral is protected by UCC filing with the Secretary of State, which I'm sure many of you are aware of. Real estate, when it's pledged to the bank is-- or, or deed of trust is filed with the Register of Deeds in the county where the property is located, so that's, that's our protection of, of our collateral. On a life insurance policy, when that's pledged as collateral, the life insurance company is required to acknowledge the assignment. And then a copy of that assignment is retained by the bank or, or filed to, to show that that is our collateral. Under current law, however, it's possible for an assigned life insurance policy in Nebraska today to be canceled for nonpayment of a premium without the bank having the opportunity to either protect our collateral position, by, by paying the premium for the customer, for example, or even to be notified of the cancelation of the policy. On residential property, financial institutions oftentimes are, are listed on the policy and there's a chance to, to, to pay the premium for the customer if they don't, don't pay it in a timely manner. And the same with property and casualty insurance as well or liability, we have a chance to pay the premium if we're assigned to the policy. But on a life insurance policy, on an assignment on life insurance policy, that is, is not the case currently. Recently, our bank did experience this, this very situation. We had a customer who had assigned a sizable life insurance policy to our bank as collateral. Our bank contacted the insurance company. We filled out the assignment documents that were provided by that company and we received a signed acknowledgment back from the company. The document was placed in our customer's bank file, and then the bank subsequently made loan decisions based on the, the value of that life policy as part of our collateral base. A couple of years later, the customer's financial position began to deteriorate and the bank contacted the insurance company again just to verify that the life insurance assignment paperwork was, was still in effect. The bank received a verification from the life insurance company that a policy was in fact in place and, and assigned to our bank. Unfortunately, a couple of years later, our, our customer died and we contacted the

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life insurance company to inquire about the process of, of filing a claim with the company. We were notified that the policy had lapsed due to nonpayment of the premium by our customer and that our bank didn't have a claim under the, under the policy. We contacted the Nebraska Insurance Commissioner's Office to, to pursue this further, and they stated that the insurance company was not required to provide the bank a, a notice when the premium was past due or prior to the cancellation of the policy by the company. So in short, the bank had relied on the acknowledgment of the assignment of the life insurance policy by the company as part of our collateral. To secure a note to our customer, we made a loan, you know, using that as part of our collateral. But unlike personal property and real estate, there's nothing in, in current Nebraska law that protects in a signing of a life policy against their collateral disappearing. I'm here to request that the Legislature would provide a remedy to, to protect future assignees. In our situation, there's nothing that can be done at this point from a legislative standpoint. But LB535 would provide protection to assignees of life insurance policies in the future and that would protect their collateral. I would strongly request support of LB535 for these reasons.

LINDSTROM: Thank you.

KEVIN POSTIER: Who has the first question?

LINDSTROM: Any questions from the committee? Seeing none, thank you.

KEVIN POSTIER: OK, thank you.

BOB HALLSTROM: Vice Chairman Lindstrom, members of the committee, my name is Bob Hallstrom, B-o-b H-a-l-l-s-t-r-o-m, and I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB535. Mr. Postier has done a nice job of taking care of most of my testimony in terms of identifying to the committee exactly what the process is for taking a collateral assignment in a life insurance policy. I think the underscoring thing here today is that we are simply looking for some type of mechanism that will allow a lender, much like in many other instances where they take security to have notice so that they have an opportunity to protect their interest. Mr. Postier indicated that in many types of insurance, the banks have the opportunity to pay the premiums if they are delinquent.

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Not so in life insurance, but nonetheless, if the bank had had noticed that there was a pending lapse or termination due to nonpayment of premium, they could have gotten in touch with the borrower and tried to take some type of action to ensure that that life insurance policy would remain in force and in effect and, and try to eliminate the loss that was incurred. Mr. Mahood indicated that Senator Kolterman is interested and willing to work with the bankers in the insurance industry in trying to come to a resolution on this issue. That certainly has been the case to this point and will continue to be so. We reached out to the insurance industry in probably late November, early December, provided them with a copy of the initial draft of the legislation. I can assure you it has been pared back significantly from the original draft. We received a litany of about 12 to 15 different concerns with the, with the bill. We have narrowed it down to notice only if there is a premium nonpayment. They only have to provide notice by electronic means. And perhaps most significantly, the lender themselves has to reach out and provide a request for a specific notice. So if the lender does not take that step, then the insurance company would have no obligation to provide notice. I think it's also significant for the committee to know that in most of these collateral assignment cases, it's my understanding that the document itself is generally prepared by the insurance company. So the insurance company and Mr. Bell was gracious enough to alert me, if I understood correctly, that some insurance company collateral assignment documents do provide for notice, others do not. My issue would be if some of them can do it, why can't all of them do it to provide the measure of protection that would have afforded the Henderson State Bank to avoid the type of loss that occurred in this particular situation? Just fortuitously different context, but the Nebraska Court of Appeals just today posted a, a advance sheet in the case of Saif v. Atlantic States Insurance Company. It is a different context, but it had to do with an insurance contract drafted by the insurance company that had a provision regarding a breach of the cooperation clause. What that clause basically is, is the insurance company says if we have to investigate a claim and possibly pay that claim, we want our insurer to cooperate with us and provide information in a timely fashion. The significance to this legislative bill is just reading a little bit from the, the case. It says the purpose of a cooperation provision in the contract is to ensure that an insurer has an opportunity to protect its interest. It goes on to

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say, prejudice is established by examining whether the insurer received notice in time to meaningfully-- meaningfully protect its interest. That's exactly what we're asking to have done in LB535. We hope we can come to a resolution with the insurance industry and will continue to work towards that end. But we believe there ought to be a mechanism out of fairness to provide notice so we can avoid the type of situation that occurred in this particular instance. With that, I'd be happy to address any questions of the committee.

LINDSTROM: Thank you. Any questions? Senator McCollister.

McCOLLISTER: Thank you, Senator Lindstrom. Similar legis-- legislation that's occurred on securing your interest. I can't remember what the exact bill was, but it's very similar to the kind of bill you're proposing today.

BOB HALLSTROM: Yeah, over time, Senator, we've had, we've had situations where with different segments of the insurance industry, one of the bills that I think you might be referring to is on the property and casualty side.

McCOLLISTER: Yeah.

BOB HALLSTROM: We have a situation where on the property casualty side, the lender is typically when there-- have collateral that is insured by a property and casualty company is going to be named as a beneficiary or even as the named insured and those, those designations have different connotations for the protection that they receive. But in this case, it's a little bit different issue. The legislation that, in fact, Senator Kolterman had introduced a few years ago was designed to address, in that case, the property casualty carriers who have an obligation by contract to pay any damages or loss benefits to a lender who is either a named insured or a beneficiary. But they've established the internal process, notwithstanding that contract, that they don't have to pay, they don't have to follow their contract for amounts that they deem to be insignificant, \$5,000, \$10,000. At some point, we're talking real money. A little bit different context, but the same type of issue that the insurance industry, in that case, decided whatever was in the contract, they didn't necessarily have to follow.

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McCOLLISTER: As I recall, you finally worked out an agreement with the insurance companies.

BOB HALLSTROM: We took our ball and went home, Senator. I think the process or the practice is still going on.

McCOLLISTER: OK. Secondly, on the way home last night, I heard an ad to buy your life insurance policy, to sell your life insurance policy and to obtain funds. Does this bill cover that [INAUDIBLE] as well if the, if the policy is sold?

BOB HALLSTROM: No, it would not, it would not touch that particular issue, Senator. I'm, I'm not terribly familiar with that process. We might have to look into that, but this would not. This is as it's been revised and, and ultimately introduced, has been narrowed down to nonpayment of premium only.

McCOLLISTER: Maybe something to look into it.

BOB HALLSTROM: Thank you, Senator.

McCOLLISTER: Yeah, thank you.

LINDSTROM: Any other questions? Seeing none, thank you.

BOB HALLSTROM: Thank you.

LINDSTROM: Next proponent. I didn't think you were proponent on this. Seeing no other proponents, we did have a drop-off testimony from Eric Hallman with Nebraska Independent Community Bankers. And now we'll move to opponents.

ROBERT BELL: I think I have, I have a thing with muscle memory, just stand up and start walking. Vice Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee, my name is Robert M. Bell, spelled R-o-b-e-r-t, last name spelled B-e-l-l. I am the executive director and registered lobbyist for the Nebraska Insurance Federation. The Nebraska Insurance Federation is a state trade organization representing the domestic insurance industry in Nebraska. I am here today to testify in opposition to LB535. As you know, Nebraska has a strong domestic insurance industry, particularly in the life insurance aspect of the industry. Companies such as Mutual of

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Omaha, Ameritas, Pacific Life, Assurity, Woodmen Life, among many others, call Nebraska their domestic home. Simply stated, the life insurance industry is fundamentally opposed to any legislation that seeks to change the existing contractual obligations of a life insurance contract, such as LB535 proposes to do by adding to the law that a life insurance policy cannot lapse or terminate if the life insurer does not notify assignees at least 30 days prior to the effective date of the effective date of the lapse. The insurance industry opposes LB535 for three major reasons. First, LB535 seeks to utilize the insurance company to manage the relationship between the bank and its customer. We feel that this is an unfair burden to the insurance company. An insurer is not a party to the loan agreement between the bank and a customer during a collateral assignment situation. Instead, the insurer is in a contractual relationship with the policy owner. When the policyholder fails to follow through with its obligations with the bank, the insurance contract or with the insurance contract, excuse me, the insurance contract will terminate or lapse. The consequences and responsibilities of this termination or lapse remain with the policy owner. LB535 will shift that responsibility to the insurer should the insurer fail for some reason to make the required notice. Second, LB535 also impairs the existing contractual relationship between the insurance company and the policyholder. It is not clear from the language whether or not LB535 applies retroactively. The law looks unfavorably upon statutes that, that impair existing contractual obligations by retroactive applicability. By placing new requirements on key contractual provisions, LB353 [SIC] seeks to amend contractual obligations that have for in many cases been in place for years or even decades. Third, the solutions already exist in the marketplace. Many insurers, including some in the Federation, as Bob pointed out, already provide in their life insurance contracts that notice of nonpayment premium will be sent to assignees. It is imperative that a bank read the contractual provisions of the policy before making collateral assignments or be prepared to accept the risk. Further, products such as credit life, newly issued insurance policies, nonrevoc-- excuse me, nonrevocable beneficiaries, or policy transfers could be used to satisfy a collateral requirement. Under the Interstate Insurance Compact, of which Nebraska is a member, some products, such as Universal Life, are required to provide such notice. In the new contracts, the market has solutions available. I do appreciate the

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efforts of Senator Kolterman and Mr. Hallstrom and the Bankers Association to address the concerns of the insurance industry. I will say I, I got a draft of this at Christmas. Not to-- I know I had a member company that received a, a draft before the trade association did. We, we do have some other technical concerns, I think that could probably be worked out from a technical standpoint. As an example, you know, I know there was-- we had provided-- there were some concerns about the manual operation of, of notice, and so, you know, the bankers, threw in electronic, we would like flexibility related to doing either electronic or by mail on, on some notices. But these are, you know, we have questions related to the meaning of lapse in termination. Depending on your life insurance policy, that might mean different things. It's just not always as simple as you stop paying your premium and the, and the contract is, is canceled. And, and we're concerned about the broadness of the assignee. However, even with technical fixes to the underlying language, it's really the policy that the Nebraska Insurance Federation is opposed to and would likely remain opposed for those reasons I previously stated so the Nebraska Insurance Federation opposes the passage of LB535 and I appreciate the opportunity to testify. Thank you.

LINDSTROM: Thank you. Any questions from the committee? Senator Flood.

FLOOD: Mr. Bell, thank you for your testimony.

ROBERT BELL: You're welcome.

FLOOD: How if-- you clearly know that banks are using these life insurance contracts as collateral in the repay, you know, for the financing of a debt.

ROBERT BELL: Correct. Yes.

FLOOD: And we have provisions with real estate and all, you know, all sorts of other ways to collateralize something. Wouldn't this be something that's in the, the best interests of our financial system to make sure that, you know, the banks that are holding the people's money from their depositors aren't placed in greater risk by the lapse of a contract?

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ROBERT BELL: You know, that's an interesting question. We feel like as an industry that we have a contract with the policy owner, whoever that policy owner is, and it's not necessarily the insured life under the, under the policy. We're, we're certainly not trying to stifle the, the interests of the banks. I mean, we, we provide for in the contracts for these types of assignments to occur. And I think assignments can be different than even just collateral assignments. Right. Where we get concerned is, say, 40 years ago, you signed a whole life policy. Right. And that is underwritten with certain thoughts related to lapse in termination that, that, that might happen in the future in, in the actuaries looking at all of those calculations. And then there's provisions within it, like, if X, Y, Z happens, it's terminated. The bank, when it gets that collateral grant should be able to read that and say, OK, some of these policies might say, hey, we have noticed that we'll go to an assignee and some of them may not. You know, we, we would feel like on that policy that's 40 years old that did not require that and was not underwritten for that, that suddenly if the Legislature would pass a law that would require this, our insurers are on the hook for payment of that benefit to a bank, even though the policy should have lapsed long ago if the assign-- if the notification does not go out for some reason. So.

FLOOD: Well, I-- it seems to me on the liability front, there could be some language that would address your liability just also to your point of retroactive.

ROBERT BELL: Um-hum.

FLOOD: But I, I would think that this is not too much to ask of a life insurance company to provide notice. I mean, it's like, it's like you, you filed notice in a lawsuit. You, you know, you-- in this case, you're, you're basically making the banking system somebody that is due notice because it's being received as collateral. I wouldn't think that we would be harming the interests of the insurance companies such that we shouldn't consider it.

ROBERT BELL: Well, I would say this, Senator Flood, is that, and, and as Senator Kolterman or Tyler mentioned, I guess, is that we're, we're open-- we're always open to discussions and, and particularly on notice. However, this is not what this bill does. I mean, it, it requires notice, but the hook is if that notice does not occur for

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some reason, the policy does not lapse or terminate. So we're, we're talking about, let's say, the bank and I'm not, I'm not saying this is, this--

FLOOD: But insurance companies are in the business of providing notice. I mean, to, to have a policy lapse, you know better than anybody how to provide notice.

ROBERT BELL: Right.

FLOOD: Banks are open Monday through Friday, 8:00 to 5:00. Like, the, the thought of providing notice, I would think here is not too great a burden.

ROBERT BELL: It depends, depends on your insurance company, right, depends on your computer system, depends on what it will allow for and not allow for. Right. So if you have 500,000 enforced policies, right, and that software only allows for one notice to go out for whatever reason. And that is the policy owner notice. Suddenly, if on those 5 you have, I don't know, 1 percent of those policies, 5,000 policies, I think my math's right there, if has an assignment on there and you have to do notice related to not only to the policy owner, but to a second person and your software doesn't allow for it. All right. That's a manual process that you're going to have to go-- that you're going to have to mail. So every time a missed premium happens, you know, we're sending out two notices instead of one notice.

FLOOD: Still doesn't sound overly burdensome to me, but I'll, I'll be done here.

ROBERT BELL: OK.

FLOOD: I, I appreciate where you're coming from.

ROBERT BELL: OK, thank you, Senator.

FLOOD: Any other questions? Senator Pahls.

PAHLS: I have a-- were you around when we had Viatical issue here?

ROBERT BELL: I was not working insurance issues at that point.

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PAHLS: OK. The reason I'm bringing that up is because Senator McCollister thought about, you know, buying and selling life insurance policies. But and it's my understanding that through the Viatical, we stopped that in the state of Nebraska. Bill, you probably can remember that. That was a big deal.

ROBERT BELL: I remember there was a very, very large legislative fight that happened, you know, 10, 12 years ago.

PAHLS: Yeah.

ROBERT BELL: However long that was.

PAHLS: Right.

ROBERT BELL: Yeah.

PAHLS: A lot of lobbyists made money on that deal.

ROBERT BELL: Lobbyist development bill. Yeah.

PAHLS: Yes.

ROBERT BELL: Yeah, it, it was. And I think we're talking about a little bit different type of situation here. Yes.

PAHLS: Yes, just because it considered--

ROBERT BELL: Because of the question. I understand.

PAHLS: Yeah, and I just wanted to point out we won and they lost.

ROBERT BELL: Right.

PAHLS: It's a good feeling.

ROBERT BELL: Thank you, Senator Pahls.

PAHLS: Thank you.

ROBERT BELL: That was, that was a good bill.

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LINDSTROM: Any other questions from the committee? Seeing none, thank you.

ROBERT BELL: You're welcome.

LINDSTROM: Next opponent.

MATT HOLMAN: Good afternoon, Chairman Lindstrom and members of the committee. My name is Matt Holman. That's M-a-t-t H-o-l-m-a-n, and I'm assistant general counsel for Ameritas Life Insurance Corp. in Lincoln. And I'm here today to testify on behalf of Ameritas in opposition to LB535. Ameritas has both fundamental and technical concerns, bear with me, you've heard a number of these things already from Robert Bell, but a number of technical concerns with LB535. Fundamentally, the bill would change the contractual relationship of the insurer and the insured. As has been discussed, the requirement would be adding a substantive provision into the insurance contract after it's been issued. Providing the notice would be a new administrative burden on the insurer and could impact lapse and termination rates. These things were not part of the insurers' considerations when originally developing and pricing the product. The insurer's contractual rights and obligations are with the policy owner, not a collateral assignee. The insurer provides grace period notices as required by the policy and Nebraska law to the policy owner. The entity that we contracted with. The insurer underwrote that risk and priced the policy years, sometimes decades in the past. When a lender decides to accept a collateral assignment as security for the loan, its accepting its risk of its own. The lender can mitigate or manage this risk through its relationship with the borrower. You know, whether that's through the loan documents or otherwise. When assessing this risk and developing the loan documents, the lender could require any lapse notices be forwarded to the lender, in which case they would be-- or they could require transfer of ownership of that policy. So the lender would be the owner and would automatically get those notices. It would require some form of credit life insurance, or it could simply choose not to take on that risk. Whatever the lender's choice, it's up to the lender to manage its relationship with the borrower and the borrower as collateral. The insurance company should not be required to fundamentally alter its contract rights in order to keep an unrelated lender's collateral in force. Beyond the fundamental concerns, LB535 has many technical issues as well. Section (2) of the

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bill states that an insurer must provide notice to any assignee which has requested that notice. But Section (1) indicates that no policy shall lapse unless notice is provided-- has been provided to any known assignee. Most insurance policies indicate that no assignment will be valid unless received and accepted by the insurer. An insurer will therefore know of any assignee having an interest. So the purpose of the request section-- in Section (2) is unclear. The bill requires electronic notice to the assignee, but does not address electronic consent requirements or other implications of federal ESIGN or the Uniform Electronic Transactions Act. Most well-established insurers maintain, maintain an enforced block of life insurance policies that date, date back decades. Many of these policies were written in a different era, may have been acquired from other insurance companies who initially collected the data. Often we may have knowledge of a collateral assignment, but that assignment was never properly released. We may not have proper contact information for the assignee or the assignee is no longer in existence. In these instances, what would happen in the event a policy lapses? The insurer could not properly provide notice of the lapse. But by operation of LB535, the policy would be required to remain in force. Most concerning, perhaps, is what happens in the event an insurer inadvertently fails to provide notice to an assignee. Whether because the assignment was not properly recorded or due to other technical errors. Lapse notices would be provided to the insured and-- or the owner of the policy. But by operation of Section (1) of LB535, the policy would continue in force. This would put us in limbo in terms of the status of the policy with no clarity and no premiums being paid to come in to keep the policy viable. To summarize, we have both fundamental and technical concerns with LB535, but lenders have many options at their disposal to address these concerns without fundamentally interfering with contractual rights. As such, I urge you not to advance LB535, and I'll be happy to do my best to try and answer any questions you might have. Thank you.

LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you.

MATT HOLMAN: Thank you very much.

LINDSTROM: Any other opponents? We do have a drop-off testimony as an opponent, Coleen Nielsen, with State Farm and Nebraska Insurance Information Service. We'll move to neutral testifiers. Seeing none, we

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did have a few letters for the record, two in opposition for LB535. And if Mr. Mahood would like to close. Mr. Mahood waives close. And that'll end the hearing on LB535. We will now open the hearing on LB503 introduced by Senator Flood.

FLOOD: Thank you, Vice Chairman Lindstrom, members of the committee. My name is Mike Flood, F-l-o-o-d. I represent District 19. Let me start out with this bill by defining a legal procedure called interpleader. Interpleader is a civil procedure that allows a plaintiff or defendant to initiate a lawsuit in order to compel two or more parties to litigate a dispute. What would be the applicable, applicable situation? So let's say you are the trustee on a deed of trust where the borrower didn't-- defaulted to the bank. The trustee goes and sells the property and there's a couple of different lienholders and they pay off the first lienholder and there's money left over and they don't know who to give it to for sure. So they can use an interpleader to call everybody into court and lay out the evidence and let a judge decide. It's not extremely exciting stuff, but that's what this bill is about. This bill, LB503, I have introduced on behalf of the Nebraska Bankers Association. It would allow a lienholder to obtain an award of reasonable attorney fees and court costs in interpleader actions resulting from an objection to, or in certainty of the proposed payment of proceeds of a trustee sale if the objection is found by the trial judge to be without good faith or reason. So here is my example. Let's say Senator Pahls and Senator Lindstrom own two different banks, I'm the borrower, I decide to take out a loan from Senator Pahls's bank, and then I take out a second loan from Senator Lindstrom's bank and I build a house with it, buy property and build a house. If I were to not make my payments and default on one or both of the loans and do not bring the loans current after I've been given notice of a default, all of a sudden the trustee holding the deed of trust is going to come in and is going to sell my house under the deed of trust to pay back the two banks that I took loans for. After the sale, let's say there's enough to pay off Senator Pahls's Bank, but the rest of the money is about 10,000 bucks. And let's say I dispute the fact that Senator Lindstrom's bank is owed that money. In this situation, the trustee, who I'll make Senator Slama, she has to decide how to handle the funds for the junior lienholder. And if I object to the claim in bad faith and Senator Slama decides to file an interpleader action with the court, all of a

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sudden Senator Lidstrom has to go to court, spend the money to have this legal fight even when I don't have a valid objection. What this bill says is if, if an interpleader action becomes necessary for the trustee and the borrower doesn't have a good faith reason to object, then I'm also on the line as a borrower for the attorney's fees when Senator Lindstrom has to go in and fight it. That is what this does. I did the same thing in Nebraska law with child support liens. And the best example I can give you in a child support lien, and this was maybe ten years ago, I had a guy living in Stanton County, he had gotten divorced. They had a, a child. He was current on his child support payments, and he wanted to move into another house. And his former spouse, the mother of his son, would not sign off on the lien just because there was a bad relationship, probably why they got divorced. And so he had to go to court and get a court to allow him to move into another house. And basically what I did then is with the law, we passed a law that said if you do that and there's no basis for objecting, you've got to pay the attorney's fees and it makes the objector think twice about just objecting to object. This is the same thing here essentially with a deed of trust. Thank you, Vice Chairman Lindstrom, members of the committee.

LINDSTROM: Thank you. Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Flood. I feel left out of the example you gave.

FLOOD: I was trying to find a job for you.

SLAMA: He can be the judge.

FLOOD: You can be a chairman of the board of Senator Pahls's bank.

McCOLLISTER: Very good. Thank you. I feel better already.

FLOOD: Yeah.

McCOLLISTER: The law that you did pass on child support, has that worked out pretty well?

FLOOD: Yeah, I think it's, it's reduced problems for the spouse obligated to pay child support. And, you know, there's a reason people get divorced. They don't get along too well. And it's not uncommon in

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child custody disputes to have that kind of animosity. And so I-- I've heard from different folks, especially title companies that it has helped.

McCOLLISTER: Great. Well done.

FLOOD: Fortunately, I haven't experienced any of that myself in the last ten years.

LINDSTROM: Senator Slama.

SLAMA: Thank you, Senator Flood. Just a quick question, how often does this happen where there's bad faith objections raised in an interpleader?

FLOOD: Honestly, I'll let Mr. McIntosh from the Bankers Association answer that question. But my sense is this isn't something that happens often. It did recently happen in Nebraska. And the Bankers Association has been responsive to a, a certain situation that this occurred.

SLAMA: OK. Thank you.

LINDSTROM: Any other questions? Seeing none, thank you.

FLOOD: I will waive closing.

LINDSTROM: OK. We will have our first proponent. Good afternoon.

RYAN McINTOSH: Good afternoon, Vice Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee. My name is Ryan McIntosh, R-y-a-n M-c-I-n-t-o-s-h, and I appear before you today as a registered lobbyist for Nebraska Bankers Association in support of LB503. LB503 expands on the existing statutory framework to allow a lienholder to obtain an award of reasonable attorney fees and court costs in an interpleader or other similar action resulting from an objection to the proposed payment of proceeds of a trustee sale by the trustee if the objection has been made and found by a trial judge to be without a good faith reason. Just to give a little bit more of a background and to expand on what Senator Flood said, deeds of trust are generally the preferred method for securing a loan with real estate. When a bank or other person makes a loan that is to be secured by real estate, the

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borrower will sign a deed of trust to the trustee pending repayment of the loan or promissory note. In these transactions, the borrower is known as the trustor, the lender is known as the beneficiary, and the person holding the deed of trust is the trustee. The trustee is often the bank, but can also be an attorney. Upon repayment of the loan and all other obligations contained in the promissory note, the trustee will execute the deed of reconveyance releasing the deed of trust from the real estate. Deeds of trust often include a power of sale from when a borrower defaults under the loan. Under Nebraska law, there are very specific procedures that must be followed for a trustee to exercise that power of sale. Upon default typically for non-- failure to make payments, banks will often appoint an attorney, a successor trustee to exercise this power of sale. First, the notice of default must be provided to the borrower. This provides a borrower an opportunity to cure the failure to make payments over the other default. If no cure is made, the trustee proceeds through the publication of notice and eventually winds up on the courthouse steps, holding a trustee sale. In most cases, the property is sold for the amount of the outstanding balance on the first loan, and if there are any junior lienholders, the liens are extinguished and there are no proceeds to be distributed to those junior lienholders. And the less common cases, and, and to answer the question posed, it's not very often. In most cases, there are not excess funds. So it is, it is in a minority of cases that there are excess funds where this does become an issue. However, when there is excess funds, the trustee pays those funds out to junior lienholders in order by priority until they are all satisfied and ultimately any excess cash to the borrower. LB503 addresses an issue that occurs where a borrower or any other interested party objects to the trustee's proposed payment of excess funds. In such cases, the trustee may elect if the objection has merit or if the trustee is just unsure how to proceed to pay the proceeds in the court by filing what is referred to as an interpleader action. This puts the onus on the court to make a determination of how funds should be paid out. We recently had this case come to our attention for whatever reason, perhaps to get a cash settlement that the borrower raised a meritless objection. The trustee elected to file an interpleader action. Once the sale proceeds have been paid into the court, the parties with an interest are left to defend their interests through the court proceedings, and the trustee has no further obligation. As a result of interpleader actions being filed based on

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unfounded objections, the lienholder not only loses the time value of money, but incurs legal fees to defend the rights in the interpleader proceedings. LB503 simply provides the basis for a lienholder to obtain an award of reasonable attorney fees and court costs in an interpleader action or other similar action resulting from these objections. The award of attorney fees is only to be allowed if the objection has been made and found by a trial judge to be without a good faith reason. The bill provides for a rebuttable of presumption that the objecting party did not have a good faith reason to object in the event that the judgment is entered in favor of the lienholder, an amount equal to or greater than the portion of the funds paid into the court by the trustee to which the lienholder claimed to be entitled. As Senator Flood pointed out, this is not new under Nebraska law. Without a good faith reason, this standard is modeled after the law that Senator Flood passed in 2011, which is found in Nebraska Revised Statute, Chapter 42, Section 371. For these reasons, the NBA supports LB503 and would respectfully request that the Legislature pass the bill for consideration by the full body. Thank you.

LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you.

RYAN McINTOSH: Thank you.

LINDSTROM: Any other proponents? We do have-- let's see, it's LB503, drop-off letter from Eric Hallman, Nebraska Independent Community Bankers. Any opposition? Any neutral testifiers? Seeing none, Senator Flood waived closing. That'll end the hearing on LB503.

PAHLS: The next bill up is LB510 by Senator Lindstrom.

LINDSTROM: So since we're moving along pretty quickly here, I think Kris is bringing stuff down, but I know the bill well enough. I brought the bill last year. My name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 in northwest Omaha. What LB510 does is opens up the Nebraska Installment Loan Act. Currently, the, the Nebraska Installment Loan Act is 24 percent on the first \$1,000 borrowed and 21 percent on anything above that. This would simply change it from that statute, that rate, and do a per annum at 29 percent all in. It states-- you know, if somebody wanted to go buy or access a loan, they could go down to OneMain or something similar

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to go in there. You typically have to have pretty good credit to get one of these loans. The other alternative would be to go online. And if you go online, it's not regulated by the Nebraska Banking and Finance Department and, therefore, they can charge anywhere from 24 up to, I believe, 36 percent. So what this does is just make it more viable for our brick-and-mortar installment loan businesses to operate in the state of Nebraska. And we did include a couple of different provisions than, than what we had last year, and that was to add \$300 and an annual fee, \$350 to the Financial Institution Assessment Cash Fund, and another-- I'm sorry, \$150 to the Financial Institution Assessment Cash Fund, and then \$250 annual renewal fee to the Financial Literacy Cash Fund. And we put that in more as a good faith effort. But ultimately what we're trying to do is just keep our brick-and-mortar installment loans competitive in the state and be able to operate here. And so that's essentially what LB510 does and there'll be people behind me to address any type of specific details. With that, I'd be happy to answer any questions.

PAHLS: Any questions? Senator McCollister.

McCOLLISTER: Yeah, you say, Senator Lindstrom, this is very similar to a bill that you put forth, you had last year?

LINDSTROM: Correct. So we-- I can't remember the number off the top of my head, but we, we did vote it out of committee. Senator Chambers ended up fighting the bill on the floor.

McCOLLISTER: So it failed to advance?

LINDSTROM: It, it-- we didn't-- if I remember right, we ran out of time. It got past General File. We were on Select File and by that point most the other bills had jumped ahead of it. And so we decided to come back and bring this bill. Again this year, I think a lot of it in light of what we saw on the ballot initiative with the payday lending. Again, I want to make sure I emphasize that this isn't payday lending. This kind of fits that middle ground where payday lending, you're going to pay not as much anymore, but if it was up to 400-plus percent. But you didn't have to have any credit. Here, you have to have some type of credit score. And then that would allow-- and again, it's not 29 percent, it can be up to 29 percent. So just because you

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go get an installment loan doesn't mean you're automatically 29 percent. It just gives them flexibility.

McCOLLISTER: Great. Thank you.

PAHLS: Senator Slama.

SLAMA: This isn't a question, it's just for the reference of the rest of the committee, that was LB188 in 2019.

LINDSTROM: Thank you. I sometimes try to push the numbers out of my head because there's always new ones coming, so.

PAHLS: Any other questions? Thank you, Senator.

LINDSTROM: Thank you.

PAHLS: Any, any proponents?

ASHLEY KRINGS: Good afternoon, Senators. My name is Ashley Krings, A-s-h-l-e-y K-r-i-n-g-s, and I'm the district manager for OneMain Financial here in Nebraska. I would like to thank you for the opportunity to testify here today in support of LB510. And I would like to thank Senator Lindstrom for sponsoring the legislation. I'm a native Nebraskan, born and raised on a farm outside of Humphrey. Today, my husband and I are proud to be living, working, and raising our three children in Platte County. I started with OneMain in 2003 as a customer service representative and worked-- and have worked as a district manager for more than seven years here in Nebraska. OneMain has been in business for over 100 years and in Nebraska for more than 75 years. Today, we have eight branches in the state. I'm proud to work for OneMain. Our employees, myself included, live, work, and volunteer in the communities we serve. Here in Nebraska, we empower nearly 11,000 Nebraskans with financial mobility through access to credit. Our average FICO score of customer-- of consumers here in Nebraska is 630, and our average personal loan is around \$10,000 with an average 57-month term. Nationwide, our average borrower is 49 years old, with an annual income of approximately \$45,000. Nebraskans who live paycheck to paycheck and lack savings have extremely limited options when faced with a financial emergency. If they can't rely on friends and family for a loan, they might be forced to credit cards or riskier products. These Nebraskans need access to safe and affordable

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credit to manage their financial lives effectively. I believe LB510 is needed to allow Nebraskans additional access to credit. The Nebraska Installment Loan Act has not been updated in many years. And with financial mobility so fragile, we must make safe and responsible credit more accessible. According to a 2018 Federal Reserve study, four in ten adults were unable to meet an unexpected \$400 expense without selling or borrowing money-- selling something or borrowing money. And with COVID-19 further straining Nebraskan families, access to credit has never been more important. As I was preparing to come here today, I spent time reflecting on our Nebraska customer experience surveys. From Omaha to Scottsbluff, the customer's words had familiar themes illustrating what an installment loan from OneMain means to them. Words like simple, less stress, and easier to manage kept popping up. One customer's words really summed it all up. They said, My life has changed 180 degrees because of the debt I was able to pay off. My stress level has gone down immensely. A more specific example from our Omaha north branch involves a customer who went through a divorce, leaving her with nothing. She moved to Nebraska to rebuild her life, but found herself faced with turned down after turned down when trying to secure a loan for a much needed car. It wasn't until she connected with OneMain that she was able to get a loan needed to purchase a reliable vehicle. The loan also helped her rebuild her credit, and she was able to return a few months later and qualify for a loan to consolidate the debt she had incurred through the divorce. Every day, our employees help Nebraskans by creating and maintaining highly successful lending relationships with tangible benefits for borrowers. And this bill would allow us to serve more, more Nebraskans. The outdated rate structure in our statute limits the number of Nebraskans we can serve in-state with our safe and responsible products. With passage of ballot initiative 428 implementing a 36 percent rate on payday loans, Nebraskans we are currently unable to serve are increasingly turning to online lenders. Unlike OneMain, these lenders do not have licenses with Nebraska Department of Banking and, therefore, are not examined by the state. They also are likely to charge higher rates than currently allowed by the statute. Our personal and auto installment loans amortized and are fully underwritten. We help our customers budget, only lend to those with the ability to pay, and still turn down a vast majority at nearly 70 percent. We make sure our customers can afford their loans and have a pathway out of debt. Nebraskans need access to credit via

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installment lenders in the state who are licensed and examined by the Department of Banking. LB510 would allow in-state licensed lenders to serve more Nebraskans and would not affect the rates of our current customers. Instead, it would enable us to serve more Nebraskans who currently have no other option than costly loans from out-of-state lenders. Thank you again, Senator Lindstrom, for sponsoring LB510. If the law is updated, I am confident we can help more consumers. I respectfully ask this committee to support the bill and pass it into law this year. Thank you for the opportunity to speak to you. And I welcome your questions.

PAHLS: Any questions? Senator McCollister.

McCOLLISTER: Yeah, thank you for appearing. Do you actually have storefronts or is it a [INAUDIBLE] operation?

ASHLEY KRINGS: No, here in Nebraska, we currently have eight locations that are brick and mortar.

McCOLLISTER: Brick and mortar.

ASHLEY KRINGS: Um-hum.

McCOLLISTER: OK. And with the passage of the payday lending, would that-- those rates be higher-- your rates be higher than payday lenders are required now to abide by?

ASHLEY KRINGS: So, we are asking to increase to the cap for the installment loan to 29 and the payday got capped at 36 percent.

McCOLLISTER: I see.

ASHLEY KRINGS: Um-hum.

McCOLLISTER: OK, thank you very much.

ASHLEY KRINGS: Yeah.

PAHLS: Senator Slama.

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SLAMA: Just for my reference, so the online banks the customers are sometimes turning, those aren't regulated by that 36 percent cap, are they?

ASHLEY KRINGS: That is correct. So the-- we are examined by the State of Nebraska Banking Department, but the online lenders have no responsibility to them. So there's really no way to regulate them. And so we see rates that are, you know, higher than ours, higher than 36 percent at times.

SLAMA: Thank you.

ASHLEY KRINGS: Um-hum.

PAHLS: Any further questions? Thank you for your testimony.

ASHLEY KRINGS: Thank you.

PAHLS: Any more proponents? Opponents? Neutral? Senator.

LINDSTROM: I'll just waive.

PAHLS: The senator waives. That ends LB510.

LINDSTROM: And that will end the hearings for today. We'll go into Exec.