

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

WILLIAMS: Good afternoon, everyone, and welcome to the Banking, Commerce and Insurance Committee. My name is Matt Williams and I'm from Gothenburg and represent Legislative District 36. And I'm honored to serve as Chairman of the Banking, Commerce and Insurance Committee. The committee will take up the bills today in the order posted. Our hearing today is you're part of the legislative process. This is your opportunity to express your opinion on the bills presented. The committee members will come and go during the hearing. We have to introduce bills and are sometimes called away. It's not a case that we are not interested in the bills being heard. 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. Move to the front row when you are ready to testify. The order of testimony will be the introducer, followed by proponents, opponents, neutral testimony, and then the senator introducing the bill will be asked to close. Please hand in your pink sheets to the committee clerk when you come up to testify. And also please spell your name for the record, both your first and last name before you testify. Be concise. It is my request that you limit your testimony to five minutes. We do use a light system. The light will be green for the first four minutes of your testimony. It will turn yellow for one minute. And when the red light comes on, five minutes is up. And we would ask that you wrap up your testimony. If you will not be testifying at the microphone but want to go on the record as having a position on the bill being heard today, there are white tablets at the entrance and 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 hearing. Written materials may be distributed to members only while testimony is being offered. Please hand them to the page for distribution to the committee and the committee staff will need ten copies. And if you do not have ten copies, if you would please just raise your hand and the pages will make those for you. To my immediate right is committee counsel, Bill Marienau; to my left at the end of the table is committee clerk, Natalie Schuck. Committee members are with us today will introduce themselves and we'll start with Senator Pahls.

PAHLS: Thank you, Chair. Rich Pahls, District 31, southwest Omaha.

McCOLLISTER: John McCollister, District 20, central Omaha.

LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

AGUILAR: Ray Aguilar, District 35, Grand Island.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

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

WILLIAMS: And our pages that are helping us today are Logan and Natalie. Thank you for your help with everything. And we will begin our hearing with our first bill and invite Senator Walz to come forward to introduce LB892 to change provisions of the Nebraska Real Estate License Act. Welcome, Senator Walz.

WALZ: Thank you, Chairman.

WILLIAMS: And we do not have an initiation ceremony, but I do believe this is the first time you've testified in front of the Banking Committee.

WALZ: I think it is. And you know, Senator Howard always said that she had the best committee, but looking around at your committee members, I think you do.

WILLIAMS: We're starting to like this bill already.

WALZ: All right. Good afternoon, Chairman Williams and committee members. My name is Lynne Walz, L-y-n-n-e W-a-l-z, and I represent District 15. I'm here today introducing LB892, which is a bill that was brought to me by the Real Estate Commission. This bill is essentially a cleanup bill that, that clarifies in statute the way laws are currently being, being interpreted. First, the bill makes clear that wholesalers or individuals that enter into a contract to purchase real estate then try to market that contract before taking title to the property would require a real estate license. So, for example, wholesalers who would buy a house would enter into a purchase agreement to close in two months. Over the course of those two months, they sell their interest to someone else before closing or even owning the property. This is addressed at the end of Section 1 and at the end of Section 2, subsection (1). The Real Estate Commission has always interpreted the law this way, but they just prefer to have that in statute with a line to point to rather than getting an attorney's opinion. The second piece of the bill would, would remove the waiver by experienced procedures for those that have not had the statutorily required two years of experience required to become a broker. That piece is addressed in Section 3, subsection, subsection (3) (b) by removing, quote, equivalent or sufficiently relevant experience in a real estate related industry. So basically, we are ensuring that someone has to have two years of experience to become a real estate broker. Again, this bill is a cleanup bill that makes sure that we have in statute the way the law is being interpreted. With that, I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

would be happy to answer any questions that you have, although Greg Lemon, the director of the Real Estate Commission is here and would be happy to answer any questions as well.

WILLIAMS: Are there questions for Senator Walz? Senator Pahls.

PAHLS: Thank you, Chair. Senator, I have a question. Is, is this an issue?

WALZ: Is it an issue?

PAHLS: Yeah. Is this looking for a problem or is there a problem?

WALZ: No, I don't-- I'm going to let--

PAHLS: OK.

WALZ: --Greg answer. I don't think it's a big issue. I just think that rather than having to have an attorney--

PAHLS: Just clarify?

WALZ: Yeah.

PAHLS: OK.

WALZ: Yeah.

PAHLS: Thank you.

WILLIAMS: Additional questions? Seeing none, will you be staying to close?

WALZ: I'm not sure I have another bill, so.

WILLIAMS: OK, we will see. We'd invite the first proponent to testify. Welcome, Mr. Lemon.

GREG LEMON: Chairman Williams, members of the Banking, Commerce and Insurance Committee, I'm going to try to speak up through my mask. If you can't hear me, I'll pull it off. For the record, my name is Greg Lemon, G-r-e-g L-e-m-o-n. I am the director of the Nebraska Real Estate Commission, appearing today to testify in support of LB892. And I also wanted to thank Senator Walz for bringing that bill for us. As Senator Walz explained, the bill does a couple of things. The first thing relating to wholesalers, which has already been explained. Kind of the fundamental principle of real estate licensing is that if

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

you're an owner of a property, you can represent yourself, you can sell, sell it yourself, kind of like, you know, in a, in a legal proceeding you can represent yourself in a legal proceeding, you can't represent somebody else. And so, as stated, we have always said, if you're not an owner, you need a real estate license. We don't just say that the law says that, but what we have are people who are out there, and this has become much more prevalent over the last five, ten years of people who are, are entering into a contract to purchase property, and then they try to sell that interest in that property or that interest in the contract for a profit. In our opinion, not only from a legal standpoint, but from a practical standpoint, they're acting more as an agent than as an owner. They don't have legal title to the property. They're doing it as a business. They don't have a lot of knowledge of the conditions in the property if they're trying to sell it to somebody. They're not required to do the seller property disclosure statement like a regular owner would, which provides information for the seller. And so we've had many conversations. We've gotten an opinion from an attorney that says that these people that engage in this activity are required to be licensed. We have conversations with those people saying, if you're going to do this, you need to be licensed. As a regulator, I would always, always rather be able to point to a piece of language in statute than to say, well, I've got this opinion. And if you look at the statute and this statute and read these three things together and apply this principle of law, here's what you get. Now I think that's where you get, but I'd still rather have the law in, in statute. Second change relates to getting a broker's license. Broker versus sales license, a salesperson can do everything a broker can do. The only thing a salesperson can't do is operate their own independent company. And so both the industry, and I believe they're going to testify after me, and the commission feels that someone should have two years of experience on the ground before they can operate their own company. There is a waiver provision currently in statute, so, one, we don't think the waiver-- the commission doesn't feel that waiver is, is that great of policy. And secondly, the standards for exactly what constitutes that two years of equivalent experience is a little fuzzy. And so we're not that comfortable applying fuzzy standards, either. So we would ask that that waiver be removed. It does leave a waiver in there for what we call a hardship provision, say somebody is operating as a broker in a small town. There is not another broker available to provide services, say for property management or something like that. A salesperson could come in and say, we don't have anybody else to do this. We have a hardship. Can we get a waiver to go ahead and continue this brokerage business under these circumstances? So that, in essence, is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

the two things the bill does, and I would be glad to answer any questions you might have.

WILLIAMS: Are there questions for Mr. Lemon? Senator McCollister.

McCOLLISTER: Yeah, thank you, Mr. Chairman. Thank you, Mr. Lemon. Just a question. In the first instance that you cited, isn't that a restraint of trade issue where you have to go through a broker if you want to sell a property that's under contract?

GREG LEMON: Well, I, I guess that's-- I don't know if it's restraint of trade. I guess I feel it's consistent with the current Real Estate License Act, whereas if you are a legal owner with title to the property, you don't need a real estate license. If you're not, you do. I mean, that's, that's the policy we want to articulate. You know, ultimately, it's up to the Legislature what that policy is, but that we're trying to be consistent. And even though the wording isn't simple, consistent and simple in how we're approaching it.

McCOLLISTER: You're not aware of any legal cases on this subject, are you?

GREG LEMON: I am not aware of any. But when you say legal case, is somebody suing somebody in a situation like this? I am not, not in Nebraska. I'm aware of [INAUDIBLE] in other states, but not here. Number of other states are pursuing similar legislation or have passed it. Oklahoma just passed something and Kansas has had something introduced this year.

McCOLLISTER: So the bill we're looking at now is that a model bill of some kind?

GREG LEMON: It's very similar to legislation which was passed in Oklahoma last year, and I talked to my counterpart there and he said that's been successful in people getting licensed and being more, I guess, above board. I mean, a lot of the people that do this business of good or bad, basically, you've probably seen the signs that say we buy houses and there's a phone number, and that's really all you have about the person, that, that is often the people that we're talking about.

McCOLLISTER: Thank you, sir.

WILLIAMS: Additional questions? Seeing none, thank you, Mr. Lemon.

GREG LEMON: Thank you very much.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

WILLIAMS: Invite the next proponent. Welcome, Mr. Brady.

JUSTIN BRADY: Chairman Williams and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Realtors Association in support of LB892. As Mr. Lemon had laid out the two different parts of the bill, there's not much more I can add other than is, you know, Senator Pahls, your question of, you know, is this a solution looking for a problem? I, I don't know that it's prevalent out there, but that is happening. And I would say, I think we should from the industry standpoint, we would like the committee to advance the bill so we can get in front of it as opposed to come back here and say, now we have a problem. And so what is happening is not all of them, but you do see these signs of, you know, we'll buy your house and it's a number. They are buying an equitable interest in the house and then going out and trying to sell your house and then showing up and saying, oh, guess what, I just sold your house and you need to be out in three days. And by the way, I'm not a real estate agent because I bought an equitable interest is really trying to simplify what's going on. With that, I'll try to answer any questions.

WILLIAMS: Any questions for Mr. Brady? Seeing none, thank you--

JUSTIN BRADY: Thank you.

WILLIAMS: --for your testimony. Invite the next proponent. Seeing no one, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Senator Walz waives closing. Do we have-- I didn't see any letters for the record. We have no letters for the record on that. That will close the public hearing on LB892. We will move on to LB737, which will be presented by Senator Bostar to adopt the Primary Care Investment Act. LB737. Welcome, Senator Bostar.

BOSTAR: Good afternoon, Chairman Williams and fellow members of the Banking, Commerce and Insurance Committee. Now clearly established as the best committee. I'm Eliot Bostar representing Legislative District 29, E-l-i-o-t B-o-s-t-a-r. Today is my pleasure to introduce LB737, the Primary Care Investment Act. Benjamin Franklin famously said that "An ounce of prevention is worth a pound of cure." The Primary Care Investment Act is built around that simple principle. While Mr. Franklin was referring to fire prevention when he said those words, I believe the sentiment applies here as well. Strengthening and expanding primary care resources in Nebraska will over time result in better health, health, health outcomes for our residents and lower

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

healthcare costs for our public and private healthcare payers. I believe those are worthy goals. LB737 represents the first steps toward those goals. The bill creates the Primary Care Investment Council, a balanced group appointed by the Governor with representatives from the medical industry, the health insurance industry, and healthcare consumers. The Council will examine various issues with a data-driven focus related to current primary care spending in Nebraska. The Council will recommend benchmarks for primary care spending in Nebraska and forecast the public health benefits and healthcare cost savings that would result from meeting those benchmarks. Those findings will then be reported to the Legislature. Nebraska is not the first state to look at the concept of increasing primary care investment as a means of reducing overall healthcare spending. As the handout you've been given shows, Rhode Island and Oregon have taken significant steps to invest in their primary care systems. And both states have demonstrated that the concept works. In Rhode Island, the state implemented strict strategies that increased primary care spending by \$18 million over a four-year period. During that same period, Rhode Island decreased total healthcare costs by \$115 million. Oregon's efforts at increased primary care spending saved \$240 million in healthcare costs over three years. They saved \$13 in costs for every \$1 in increased primary care spending. This bill makes no presumptions about whether the strategies that worked in other states will work in Nebraska or whether the same results are achievable. Those questions will be studied and debated by the Primary Care Investment Council created under LB737. However, if there's an opportunity for our state to better the overall health of its residents and save significant financial resources at the same time, then those questions need to be examined. I want to thank both sides of this equation, the Nebraska medical community and the Nebraska insurance industry for working with me on this bill. The green copy of LB737 reflects the input of both groups and is the product of many discussions between them. I do want to add that you have been handed a proposed amendment that I would like the committee to consider. It addresses some-- a few issues that were brought to me by the Department of Insurance, and I certainly am grateful for their participation in the work that went into this. It would solve a potential constitutional issue with a, with a small minor change. As well, the changes proposed in the amendment would significantly reduce the fiscal note of the bill, so I would ask that the committee keep that in mind as they evaluate the legislation. With that said, I'm happy to answer any questions you might have, and I know that there are several individuals who will testify behind me that are certainly excited to talk to you about this bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

WILLIAMS: Thank you, Senator Bostar. Are there questions for the Senator? Seeing none, we'll invite the first proponent. Good afternoon and welcome.

JOSUE GUTIERREZ: Good afternoon. Good afternoon, Chairman Williams and the members of the committee here. Thank you for the opportunity to come and speak with you all today. My name is Josue Gutierrez, J-o-s-u-e G-u-t-i-e-r-r-e-z. I am a family physician and I actually practice in Crete at the moment. I am also the legislative chair for the Nebraska Academy of Family Physicians, and I am testifying on behalf of the Nebraska Academy of Family Physicians, as well as the Nebraska Chapter of Academy of Pediatrics, Metro Omaha Medical Society, Nebraska Psychiatry Society. All of whom urge the committee members to please support LB737, the Primary Care Investment Act. Now, as Senator Bostar was talking a little bit, you may be aware of how much our country spends on healthcare compared to other developed nations. We do spend quite a bit and our healthcare outcomes actually lag behind. From the handout, you can actually see that on average we spend around 16 percent of our GDP on healthcare, while on average other countries that have better outcomes are spending around 10 percent. Unfortunately, we also see that other studies have shown that internationally, systems that out perform us are spending around 14 percent on primary care, while here in the U.S., it's only 5 to 7 percent, with primary care traditionally being defined as family medicine, pediatrics, ob/gyn, as well as mental health, among others. In response to these facts and as Senator Bostar highlighted before multiple states including Rhode Island, Oregon and Colorado, among others, have led the charge to increase the investment in primary care services. Some of them have actually invested more than 10 percent on primary care. These efforts have been closely monitored by the NAFP, the Nebraska Academy of Family Physicians, for close to like ten years. We have noticed that states that have prioritized primary care investment have increased healthcare workforce retention, reduction in healthcare spending and utilization, and most importantly, there's improved healthcare outcomes for their population. Now I want to be extremely clear on this one, investing in primary care does not mean higher wages for doctors. Let me repeat that again, investing in primary care does not mean higher wages for doctors. Investing in primary care is a way to invest in the infrastructure that is actually needed to provide that comprehensive care for each patient. As a clinician, I am in charge of thousands of patients with chronic medical conditions, including diabetes, high blood pressure, depression, anxiety, and other health conditions, I know the current infrastructure is lacking. We consider an example and all too common

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

scenario is a patient comes into the primary care office and is diagnosed with diabetes. There is only so much education we can do in a 20- to 30-minute span on that medical visit. On a follow-up visit, that patient might not be, well, improved and the condition cannot be well, well done. But we ask that patient what, what happened? Sometimes they are unsure of what happened with the education. Sometimes they don't know how to work a glucometer. Sometimes they don't understand the dietary guidelines for diabetic control. Now consider an alternative scenario with a robust primary care infrastructure. That same patient would be diagnosed with diabetes, but at the same time would be scheduled to be seeing an in-house diabetic educator who can provide additional education, ancillary resources to ensure a successful management of this patient's illness in between the clinic visits. Now, while prepping for this testimony, I had a particular patient in mind, but I soon realized that this is not just one patient. This scenario happens every day at primary care clinics across the state. Increasing primary care investment will create an infrastructure where ancillary resources such as in-house diabetic educators, as well as in-house mental health counselors, and other evidence-based care models, can be implemented and become the norm for the majority of Nebraskans, and not only the exception. Now on average, primary care accounts for 48 percent of physician office visits each year, and they influence up to 90 percent of total healthcare costs, including referrals, testing, procedures, and hospitalizations. Rhode Island and Oregon are great examples of states that have saved millions of dollars after implementing primary care investment while still improving the healthcare outcomes of their population. Rhode Island's total medical spending dropped \$115 million in a four-year period, and Oregon's program saved \$240 million in a three-year period. This data resulted in a \$13 savings for every dollar spent in primary care, as Senator Bostar previously mentioned. These are cost savings that we can't and should not easily ignore. We can talk numbers all day. I, I love numbers. I'm a, I'm a big nerd so I can bring forth study after study to demonstrate the importance and the need of a robust primary care system in order to grow our economy, keep our young talent, and furthermore attract others to the good life. We do need to start somewhere, though. At this time, we cannot accurately measure current primary care investment in Nebraska. So this committee-- this bill will establish a committee that will define what constitutes primary care, will actually measure current rates of primary care, and we will also be able to formulate policies that Nebraska could implement in the future. In short, you value what you measure and you can only improve what you measure. So this is why I urge the committee to support LB737, Primary Care Investment Act, and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

together forge a future for healthcare in Nebraska. I had a red light, man.

WILLIAMS: Perfect. Thank you, Dr. Gutierrez. Are there questions? I have a couple. In thinking about this change in practice, you've been a family practice doc operating without this. How would you see your practice adapting to this new method?

JOSUE GUTIERREZ: So I practice in Crete right now, and we have a large Hispanic population in Crete, and I think that a lot of our staff is bilingual. But having a diabetic educator that is bilingual would be amazing because then we would be able to control, advise these individuals in between those doctor visits. So the-- just the support that they will be getting from extra resources to primary care will be amazing. Hypertensives also have issues with blood pressure control. If we look at in-house dietitians, nutritionists, we can also help them that way as well. Because it's all preventative medicine, we don't want them to get to the point where they need higher level of cost or go to the ER. We, we want to save ER visits. And that's only-- always done by investing in the prevention.

WILLIAMS: You also mentioned, and I think Senator Bostar mentioned it also, that the move to this would reduce cost but improve outcomes. Can you talk a little bit about the improving outcomes for patients?

JOSUE GUTIERREZ: So if we have diabetics that are at times hard to control, you know, an A1C is what you normally measure diabetes with and 7 percent and below that's a, that's a good control. We want to get it as, as close to 6.5. But if we have 9s, 10s, 11s constantly, we need to employ more resources to those individuals. Those sort of individuals that in the future will more than likely end up in the hospital with heart attacks, with strokes, or with other illnesses such as colitis or infections. So if we are able to focus on those high-risk individuals with extra resources, we essentially are improving outcomes.

WILLIAMS: And when you say apply additional resources, what would you envision those resources being?

JOSUE GUTIERREZ: At times if the insurance companies are able to allocate monies for health improvement or some type of fund like that, that the individual clinic can then use as they see fit because each clinic knows their community, knows their needs. So I think that's, that's a way to truly effect a greater change because as physicians, we know our patients and we know where the need is.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

WILLIAMS: Any additional questions? Seeing none, thank you, Dr. Gutierrez.

JOSUE GUTIERREZ: Thank you.

WILLIAMS: Invite the next proponent. Good afternoon.

BRAD MEYER: Good afternoon. All right. Good afternoon, Chairman Williams and members of the Banking, Commerce and Insurance Committee. My name is Brad Meyer, B-r-a-d M-e-y-e-r, and I'm the CEO of Bluestem Health here in Lincoln. I currently serve as the board chair for the Health Center Association of Nebraska. And I'm here today on behalf of HCAN and Nebraska's seven Federally Qualified Health Centers, otherwise known as FQHCs. We are in strong support of LB737 and would like to thank Senator Bostar for introducing the bill. Community health centers are unique and a crucial element of the safety net in Nebraska, providing comprehensive primary medical, dental, behavioral health, and enabling services to over 107,000 individuals annually. We provide primary care services regardless of insurance status and ability to pay. Nearly 45 percent of Nebraska FQHC patients are uninsured and are billed on a sliding fee discount scale. Over 48,000 uninsured patients sought care at Nebraska FQHCs in 2020, 31 percent of the state's total uninsured population. FQHCs are integral to the communities they are in, providing high-quality healthcare to populations and areas otherwise they would lack options for. We provide stable, good paying jobs and promoting the economic well-being of the community. Annually, health centers generate \$168 million in savings to our healthcare system, providing \$208 million in overall economic impact and create 1,657 total jobs, including over 600 community jobs, not at a health center. Health centers are a proven source of primary care. COVID-19 has only magnified the critical role equitable access-- critical role of providing equitable access to high-quality primary care system plays in our overall health of our state. Access to our primary care-- access to primary care results in the early detection of illnesses, improved chronic disease management, and delivery of preventive services, all of which save money in the healthcare system in the long run. A strong primary care system also accounts for the social drivers that impact individual's overall health like poverty, access to health insurance, and geographic barriers. In order to build a comprehensive primary care system that will overall-- that will improve overall health and manage costs, we must understand the current state of primary care in Nebraska. LB737 provides a vehicle to understand the current state of primary care in Nebraska and make recommendations on how to best shape our system going forward. We believe LB737 is a critical step to building a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

thriving primary care system in our state. Our one request is for the bill-- our one request for the bill is that Primary Care Investment Council specifically includes a healthcare provider that serves underserved and historically underrepresented communities. We cannot put forth recommendations for an equitable system of primary care without ensuring that the voice of the underserved is included. Thank you again Senator Bostar for introducing this bill and Chairman Williams and the committee for your time. We encourage and appreciate your support for LB737, and I am available to answer any questions that the committee may have.

WILLIAMS: Thank you, Mr. Meyer. Are there questions? Senator Pahls.

PAHLS: Thank you, Chair. I have a question. I'm looking at the back page of the healthcare centers. How many are there in state of Nebraska? I see you have Bluestem, Drew, Good Neighbor, Heartland Health, Midtown, and One World. Do you have, like, many more?

BRAD MEYER: So there's seven. So we have one in Gering, one in Grand Island, two in Omaha, one in Lincoln, one in Norfolk, one in Columbus, and the sister to that in Fremont.

PAHLS: OK. For the west?

BRAD MEYER: For the west, it's just Gering and if you call Grand Island--

PAHLS: Oh, I guess, Gering is west.

BRAD MEYER: Yeah.

PAHLS: I guess, you can't get much further west.

BRAD MEYER: Right. Yeah.

PAHLS: OK. Thank you.

WILLIAMS: Additional questions? Seeing none, thank you for your testimony.

BRAD MEYER: Thank you.

WILLIAMS: Invite the next proponent. Good afternoon and welcome, Doctor.

DAVID WATTS: Good afternoon, Senator Williams, members of the committee. Thanks for the opportunity to be here. My name is Dr. David

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

Watts, D-a-v-i-d W-a-t-t-s. Can you hear me through this mask? I'm testifying on behalf of the NMA in support of LB737. And also thank Senator Bostar for the bill. In the football game of healthcare, primary care is the front line. Evidence clearly shows primary care is the most effective tool to keep patients healthy throughout their lives. Primary care physicians provide comprehensive, coordinated, and relationship-based care over time. This helps patients get the right care at the right time, in the right manner, and at the lowest overall cost to both patients and payers. In a 2019 study, pre-COVID, the Kaiser Foundation found that 46 percent or nearly half of insured adults have difficulty affording their out-of-pocket healthcare costs. Additionally, one in eight adults reported that their medical bills had a major impact on their family. Most concerning of all, 30 percent of all adults said they had not filled prescriptions due to the cost. Those numbers do not add up to keeping people healthy and productive. LB737 would help bring accountability and cost savings to the healthcare system in Nebraska. Currently, the primary care system is overloaded and under resourced with many clinics operating on razor-thin margins. This is a barrier to the goal of proactive outreach to patients to managing chronic conditions such as diabetes and high blood pressure, to facilitating behavioral health services, and to minimizing costly ER and hospital visits. The last few years have shown the NMA that Nebraska has value access to quality healthcare. However, you can't truly value what you don't currently measure. Measuring and critically analyzing primary care investment in the state will allow our healthcare industry to do two things: one, to begin to work towards a meaningful shift towards primary care and, two, to reduce overall costs. Data from other states who have embarked on this journey is very clear. For example, in Rhode Island, as you've heard, primary care went down-- went from 12 percent from 5 percent of total healthcare spending, resulting in a 14 percent total, total cost reduction in overall healthcare costs. That was a savings of \$97 million, and that's not pocket change. Now is the time to examine primary care investment in Nebraska so that we may also realize in this state better overall health for your constituents at a significant cost savings. For these reasons, the Nebraska Medical Association asks for your support and advancement of LB737. Thank you for your time.

WILLIAMS: Thank you, Dr. Watts. Are there questions? I have one question, Dr. Watts. Because of this committee and the other committee I serve on, Health and Human Services, we've talked a lot about direct primary care and different methods. What has been the stumbling block that has stopped us from implementing these types of changes?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

DAVID WATTS: Well, my, my, my primary care colleagues, I'm a retired dermatologist and, and, and, and, and I, I think probably to avoid giving you inaccurate information, let me get back with you on that.

WILLIAMS: OK. Maybe somebody else will be testifying that can answer that question. Any additional questions? Seeing none, thank you for your testimony. Invite the next proponent. Welcome, Mr. Blake.

JEREMIAH BLAKE: Good afternoon, Chairman Williams and members of the Banking, Commerce and Insurance Committee. My name is Jeremiah Blake, spelled J-e-r-e-m-i-a-h, B as in boy -l-a-k-e. I'm the government affairs associate for Blue Cross and Blue Shield of Nebraska and I am here to testify in support of LB737. Blue Cross believes that fostering a strong relationship between a primary care physician and the patient is key to improving health outcomes and mitigating healthcare costs. To encourage this relationship, Blue Cross created the Total Care program to ensure that patients see primary care providers who know their medical history, understand their preferences, and can coordinate in collaboration with specialists. And it works. We know that Blue Cross members who are connected to our Total Care physicians experience improved health outcomes. For example, individuals were 26 percent more likely to be screened for colorectal cancer, diabetic members were 39 percent more likely to have their glucose levels under control, and children were 20 percent more likely to have their well-child visits. The program also resulted in lower costs because physicians are incentivized for the quality of care they deliver, rather than the volume of services they perform. As a result of our Total Care program, we achieved a savings of approximately \$75 million over a 12-month period. The average annual cost of healthcare for these members was \$636 lower than those members who were not attributable to a Total Care arrangement. These results demonstrate what is possible when payers and providers work together and why this legislation is so important. It's also important to note that the time is right for these discussions envisioned in LB737. As described in Section 2 of the bill, Congress passed the Consolidated Appropriations Act late in 2020. This law requires health insurers to submit data to the federal government about healthcare spending, including spending on primary care. The first reports covering calendar year-- calendar years 2020 and 2021 are due at the end of this year. Going forward, insurers will be required to submit this information by June 1 following the calendar year. The council envisioned in LB737 can utilize this data from the reports without creating new burdensome data tracking and reporting requirements on the insurers. In addition, we'll be able to compare healthcare spending in Nebraska to those with other states providing a meaningful

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

comparison. We believe that increased collaboration between health insurers, primary care physicians, and patients is an effective way to improve health outcomes and lower costs. For these reasons, I urge the committee to support LB737. I want to thank Senator Bostar for his leadership on this, as well as the Academy of Family Physicians for working with us, and I'd be happy to answer any questions you have.

WILLIAMS: Questions for-- Senator Aguilar.

AGUILAR: Thank you, Chairman. Mr. Blake, I'm very familiar with the Heartland Health Center right now.

JEREMIAH BLAKE: Um-hum.

AGUILAR: Tell me how this will benefit them.

JEREMIAH BLAKE: So admittedly, I'm not as familiar with the Heartland Health Center in Grand Island, but what we're trying to do is we're, we're trying to make sure that we're driving customer-- or patients into lower costs, preventative services up front instead of having to go to the emergency room because they haven't been taking their insulin or some other thing like that. And I think in talking to the Academy of Family Physicians, what they've struggled with is that, again, what, what we do a lot of times is we will look at what health outcomes have been achieved and we'll share that, that savings with the, the, the primary care physician. What they struggle with is in order to build that infrastructure to have those nurses on staff, it's difficult for them to justify that expense up front when they get reimbursed on the back end. And so we need to figure out a way to kind of flip that dynamic and make sure that the-- our primary care physicians have the infrastructure to, to serve their patients.

AGUILAR: Yeah. Heartland Health is a federally funded clinic for low income and it operates on a sliding scale just like you were talking about.

JEREMIAH BLAKE: Yep.

AGUILAR: They're a great addition to our community.

JEREMIAH BLAKE: Great.

WILLIAMS: Additional questions? Senator Pahls.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

PAHLS: Thank you, Chair. OK, the question I have, primary care physician. Is there a shortage? Do we have a shortage of those individuals?

JEREMIAH BLAKE: Again, just generally speaking, yes. I think primary care and nurses, there's a significant shortage in the state and across the country.

PAHLS: OK, then what I'm looking at, are you looking more at the vulnerable population?

JEREMIAH BLAKE: Sure. I mean--

PAHLS: Is that population you're looking at?

JEREMIAH BLAKE: I, I would say we're looking at the entire population, Senator. Again, what, what we want to get at is anybody who's accessing healthcare services, but they're doing it on the expensive end. We want to drive them to the lower cost end of the spectrum, which is primary care and out of the emergency room.

PAHLS: OK, that just leads me-- my doctor would be classified a primary care doctor. I mean, he, he sends me onto a specialist if need be.

JEREMIAH BLAKE: Sure.

PAHLS: You're not looking to help him or her, whoever. I mean, you're looking-- I'm trying to figure out if it's the, the vulnerable population that you're really working on or is it all?

JEREMIAH BLAKE: It's, it's all patients,--

PAHLS: OK.

JEREMIAH BLAKE: --Senator.

PAHLS: OK.

JEREMIAH BLAKE: And again, you're-- thank you for going to your primary care physician. That's not always the case, right, some people just go straight to the emergency room. And that's a very high cost, expensive means to access the healthcare system.

PAHLS: OK. Thank you.

WILLIAMS: Additional questions? Seeing none, thank you, Mr. Blake.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

JEREMIAH BLAKE: Thank you.

WILLIAMS: Invite the next proponent. Welcome, Mr. Bell.

ROBERT M. BELL: Good afternoon, Chairman Williams and members of the Banking, Commerce and Insurance Committee. My name is Robert M. Bell. Last name is spelled B-e-l-l. I am the executive director and registered lobbyist for the Nebraska Insurance Federation. I am here today to testify in support of LB737. The Nebraska Insurance Federation is the state trade association of Nebraska insurance companies, including most of the health insurance plans selling in the state. The health insurers in Nebraska appreciate the Nebraska Academy of Family Physicians and Senator Bostar for reaching out very early in their drafting process and involving the Nebraska insurance industry. I think it's fair to say that both the Academy and the Federation share the common goals of delivering better results for customers at a lower cost. And I was going to go on. I got more testimony. Everything's been said. I would just add a couple of things. This is a nice example of the medical provider community and the payer community getting together on, on something that we can agree on. Too oftentimes, we, we spend time at this table fighting one another over, over who gets paid and how much, right? And this one, we agree that we need to study an issue so that we can bring better health outcomes to our policyholders and, you know, maybe save them a little bit of money. You know, insurance is a pass-through operation that that money that is paid in insurance premiums, premiums goes to the providers of, of the services that you pay for with your insurance. So in the medical arena, it's a doctor, it's a hospital, it's an emergency room, it's your family physician, it's your surgeon, whatever the case may be, that-- most of that is-- it passes through. And so it's nice to work with the, the community on that to find better solutions. And then one correction I would for Dr. Gutierrez, I hope I said that correctly, I believe GDP is 19.7 percent now, up from 16 from a couple of years ago. So from the latest numbers from the Center of Medicaid and Medicare Services. So I mean, the number continues to escalate of how much Americans are spending on their medical care, and that's concerning for us. And also, I just-- one, one final comment. We, we, we felt like we struck a balance in the council of medical providers and payers of, of healthcare. So if, if-- you know, Bluestem I thought brought some interesting points to the table here and asking for a position, and, and we wouldn't have any objection to that. As an industry, we just want to make sure that, that balance is kept between the payers of healthcare and healthcare providers and we try to strike that balance. So just something to keep in mind as you're looking at

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

possible amendments. And with that, thank you for the opportunity to testify.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Mr. Chairman. Thank you, Mr. Bell.

ROBERT M. BELL: You're welcome.

McCOLLISTER: As a board member of One World, I support this initiative and, and the fiscal cost is modest. But how exactly will this initiative save money?

ROBERT M. BELL: OK, so I was thinking about this and this question and Senator Pahls asked a similar question. So I have a, I have a primary care physician, so let me share an example from my own life. As many of the members remember last year, I was in a cast at this time because I had fallen off my bike and I had broken my wrist and I broke that, that wrist right before Christmas when everybody goes on vacation, right, including medical providers. And so I had an X-ray taken at a, at a-- not an emergency room but an urgent clinic, and they sent it on to my primary care physician because I asked them to. And then they, without any prodding by me, picked up the phone on Monday. I, I broke my wrist on Sunday. They called me and they said, you need to get to a surgeon as soon as you possibly can, you know. Otherwise, they left me at the Urgent Care the day before just saying it's going to be hard to get a hold of people, you know, we'll slap a, a brace on it. And after the new year, contact, you know, a surgeon as soon as you can so, or, you know, contact somebody there to take a further look at it. So my primary care physician stepped up for me and was able to advocate for me. And how that saved money is this way, so I still had to have a very expensive operation on, on my arm. But from what the surgeon told me, it would have been far more expensive had I waited, and the recovery would have been more difficult had I waited. And that's just one example and, and a relatively common injury for, I, I think, I'm, I'm going to be a little overweight, but I'm relatively healthy. At least that's what my wrist was telling me, I might need to lose a couple of pounds, but that saved, that saved the whole system money, right? And that not only saved, you know, I had to pay all of my out of pocket and, and things like that, but my insurer and my wife's employer who, you know, sponsors that plan, they had less costs related to that because my primary care physician stepped up and, and made a couple of phone calls for me.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

McCOLLISTER: So perhaps the fact that you went to an Urgent Care instead of a hospital emergency room perhaps was another way to save some.

ROBERT M. BELL: Oh, yeah, that-- I'm certain that saved the insurer and the employer a significant amount of money.

McCOLLISTER: Thank you, Mr. Bell.

WILLIAMS: Additional questions for Mr. Bell? Seeing none, thank you for your testimony.

ROBERT M. BELL: You're welcome.

WILLIAMS: Any additional proponents? Seeing none, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity?

ERIC DUNNING: Good afternoon.

WILLIAMS: Welcome, Director.

ERIC DUNNING: It's good to be here. Mr. Chairman and members of the Banking, Commerce and Insurance Committee. My name, for the record, is Eric Dunning, E-r-i-c D-u-n-n-i-n-g. I'm the director of Insurance. I'm here to testify in the neutral capacity about LB737. So we've had a good description about what the bill does and what its aims are. I'm here primarily to discuss the amendment for you today. We, we spoke with Senator Bostar earlier about this and appreciate his work in working through those issues. First one's a constitutional issue relating to appointment to commissions by the Governor, the second one relates to another relatively straightforward issue related to removing people from these commissions. Typically, we're not seeing a lot of statutes that remove people-- set out standards for removing people from these commissions. Last, and really most substantive for us, we're looking for a clarification on the relative roles of the council and the department so that the amendment would clarify that the council would prepare the reports and the department's role is limited to convening the parties, getting them all in one room, making sure that their expenses are paid, making sure that they have a way of getting the report into state government. So with that, Mr. Chairman and members of the committee, I'd be happy to answer any questions.

WILLIAMS: Questions for Director Dunning? Seeing none, thank you for your testimony.

ERIC DUNNING: Thank you, sir.

WILLIAMS: Is there anyone else care to testify in a neutral capacity? Seeing none, Senator Bostar, while you're coming forward to close, we do have position letters: six proponents, no opponents, and no neutral testimony.

BOSTAR: Thank you, Chair Williams, committee members. I appreciate your time and attention to this issue, and I think that everything that was said was fairly comprehensive. So I just wanted to give an opportunity if the committee had any additional questions before we close the hearing on the bill.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Mr. Chairman. Why 15 members? Does that prescribe some model legislation?

BOSTAR: The number of members and it's-- so it's 17 members, two ex officio nonvoting members, in addition to the 15 voting members. Really, the number of members and the, the representative mix of the members is the result of negotiation and collaboration between healthcare providers, healthcare payers, the stakeholders. And so this is, this is where we, we came to that everyone felt good about.

McCOLLISTER: Yeah, is this similar to what other states are doing?

BOSTAR: It's similar, it's similar in that other states are examining primary care investment and, and in a couple of cases that you've, you've heard about making that investment and, and reaping the rewards and benefits of said investment. As far as how much of this bill language you're going to find in other states, I don't know.

McCOLLISTER: OK. Will we have any permanent employees if this bill were passed?

BOSTAR: My understanding is that with the amendment, no, there are no FTEs associated with this.

McCOLLISTER: Understand. And finally, so most of the expenses are meeting expenses. Is that correct when the group would come together?

BOSTAR: Yeah, so in the fiscal note, there's an expense-- it's my understanding that the, the primary expense in the bill is the drafting and production of the final report, which the green copy lays out is the responsibility of the Department of Insurance. So the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

Department of Insurance would, under the green copy, be required to contract with a consultant essentially to do that, and that's, that's the bulk of the expense. The amendment would change that and so eliminate all those expenses and have the committee itself and its members draft the report, having the department be responsible for essentially transmitting the report to the Legislature, but not itself creating it.

McCOLLISTER: So the committee would draft a report, who would have the primary responsibility to see that's accomplished?

BOSTAR: Well, the committee would certainly draft a report. You know, honestly, I, I think that there is, as you've seen, there's, there's no opposition to this. You're seeing the payer side and the, the healthcare administration side. The administrators of, of healthcare all want to see this happen. So I'm not, I'm not particularly concerned that we're going to, we're going to end up with a lack of motivation at the end of the day to realize the benefits that we are-- we're, we're looking at potentially gaining.

McCOLLISTER: Thank you, Senator. Thank you.

WILLIAMS: Additional questions? Senator Bostar, does that mean that with the amendment, the fiscal implications of the current fiscal note that we have will change?

BOSTAR: Significantly. Significant reduction, I should also specify.

WILLIAMS: Yeah. And as far as, as you are aware, the amendment language would be agreed to with all the other testifiers that testified?

BOSTAR: I believe it is.

WILLIAMS: And not have an objection to that language?

BOSTAR: Yes, sir.

WILLIAMS: Thank you. Any additional and final questions? Seeing none, thank you, and that will close the public hearing--

BOSTAR: Thank you.

WILLIAMS: --on LB737. With that, we will move forward. We'll take just a second while the room adjusts. All righty, with that, we will open the public hearing on LB811, presented by Senator Dorn to change

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

provisions relating to auctioneers of real estate. Welcome, Senator Dorn.

DORN: Good afternoon, Chairman Williams and, and members of the Banking Committee. My name is Myron Dorn, M-y-r-o-n D-o-r-n. I represent District 30. I bring LB811 to you today for your consideration. LB811 would eliminate reciprocal licensing requirements for out-of-state auctioneers who want to conduct auctions of personal property in Nebraska. Existing law requires auctioneers from other states who want to conduct a public auction in Nebraska to be licensed under the same requirements as auctioneers who want to conduct an auction in their own state. The auctioneers apply for a license with a county, county clerk who tracks down the requirements of the other states, creates an application and license, and charges the same fee as the other states. NACO brought this bill to me at the request of the county clerks. This law has been in effect since 1953. But as you can see by the fiscal note from Lancaster County, which hasn't issued an auctioneer license in 15 years, it's not being used. The law doesn't provide any guidance about what clerks do with the application, and there is no enforcement mechanism if an auctioneer from another state doesn't apply for a license. LB811 does not change any requirements for auctioneers who sell real property. Real estate auctions would continue to be conducted in compliance with the Nebraska Real Estate License Act. Jon Cannon with NACO will follow me and be able to give you, I guess, more details if you have questions or whatever. This is kind of basically just a cleanup bill that we have something that's been on the statute since '53 and it's not being used.

WILLIAMS: Thank you, Senator Dorn. Are there questions? Seeing none, will you be staying to close?

DORN: Yes.

WILLIAMS: Welcome our first testifier in, in support. Welcome, Mr. Cannon.

JON CANNON: Thank you, Chairman Williams. Members of the Banking, Commerce and Insurance Committee, my name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials, also known as NACO. We're here to testify in support of LB811. First, we'd like to thank Senator Dorn for bringing this bill on our behalf. This is something that our clerks, as he had mentioned, had have wanted to have taken care of. We also want to extend our appreciation to the auctioneers of Nebraska. We worked with

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

them in advance. If they're, if they're here to testify neutral, support, or opponents, at the very least, they gave us the benefit of their counsel and we certainly appreciate that. Our interest from a county government perspective is in engineering a process to make government work more efficiently. We don't always get there, but we certainly are trying and, and I think everyone in this room can appreciate that. Frequently, as Senator Dorn mentioned, you'll have auctioneers from out of state, typically Iowa, but some from other states as well that will, will want to come in and auction personal property, real estate, what have you in Nebraska. And when they do that, if they're auctioning personal property, our clerks have to create a form because we don't have a form for auctioneers. They will create a license. There will be a Social Security number on that form and on that license. And then what they're supposed to do with it from a record keeping perspective, we don't know. We-- there is, as Senator Dorn had mentioned, there is no enforcement mechanism for the set of statutes. And so if there's any other state, let's say someone comes in from Montana that wants to sell, auction personal property in, in our state, your county clerk is going to have to go research the state of Montana's requirements, find out what the reciprocity requirements are, create the form, create the license, and go through the same process. Nothing is done with the application. It's not forwarded on to any state agency. Nothing is, is done with that license. I guess if someone really wants to, they could probably-- it would be suitable for framing. But really, that's, that's as far as it goes. As you know, internet auctions are becoming more and more of a thing, and it becomes increasingly hard for us to police these sorts of things when things are being conducted via electrons rather than in person. That's really all I have. As Senator Dorn had mentioned, this is a, a statute which was first created in 1953. The world certainly has changed in the intervening, does my math, 69 years. And so we think that it's appropriate for us to amend 81-887.03 and to strike entirely 81-887.01 and 81-887.02. With that, I'd be happy to take any questions you may have.

WILLIAMS: Thank you, Mr. Cannon. Senator Bostar.

BOSTAR: Thank you, Chair Williams. Thank you, Mr. Cannon. So would this have any impact on online auctions?

JON CANNON: No, sir.

BOSTAR: So in what year did you mention that this, this law was initially 1953?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

JON CANNON: Yes, sir. And 81-887.02 had an amendment put on it in 1997, and 81-887.03 had an amendment put on it in 2009.

BOSTAR: So presumably in 1953, the Legislature thought that this was important. And so in what ways have in-person, nondigital auctions changed between 1953 and today to where we should conclude that the thinking of the Legislature at that time is now no longer relevant?

JON CANNON: First and foremost, I would suggest that back in 1953, the-- this Legislature had laws on the books where we taxed personal property, and, and the state was taxing personal property and, and I'm certainly not old enough to remember it. But there was a time when every man, woman, and child in, in Nebraska had to account for all the personal property that was in their household, and that's how the state of Nebraska imposed a property tax. And then in 1967, we said we don't like the state imposing a property tax on personal property or on, on property. And so, therefore, we shifted over to the counties entirely and the state got into the income and sales tax business. I, I would think there's probably a, a relationship between the two, although again a little bit before my time, so I'm, I'm not entirely certain. Also, I think the prevalence of in-person auctions was probably far greater back in the, back in that time period. Other than that, it's pure speculation on my part, sir.

BOSTAR: Thank you.

JON CANNON: Yes, sir. Thank you.

WILLIAMS: Additional questions? Senator McCollister.

MCCOLLISTER: Yeah, thank you, Mr. Chairman. Thank you for being here, Mr. Cannon.

JON CANNON: Yes, sir.

MCCOLLISTER: Looking at the text of the bill, 81-887.03, we aren't deleting that whole section. All it says is, "All auctioneers of any state shall comply with the requirements of the Nebraska Real Estate License Act." So the, the act still-- there's still verbiage that they have to comply with. Correct?

JON CANNON: Sure. For selling real estate, they would have to comply with that act, sir. And then this, this act would also repeal outright sections 81-887.01 and .02.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

McCOLLISTER: OK. So it's only for real estate or is going to be personal items?

JON CANNON: So the, the thinking here is that real estate is, is something that, of course, we keep a record of every square inch of Nebraska. And when somebody comes into the state and is selling real property in Nebraska, that's something that we certainly want to make sure that a person that comes in is complying with the, and I have to make sure I get the, the act right, the Real Estate License Act, and so that we want to make sure that people that are auctioning real property are, are complying with the requirements of that act.

McCOLLISTER: But real property is more than just real estate, isn't it?

JON CANNON: Yes, sir. It would include buildings and improvements and attachments or I've got to think of the right word. It's not attachments. It's something very similar to that, though.

McCOLLISTER: But wouldn't include farm machinery and things like that.

JON CANNON: No, sir, it would not.

McCOLLISTER: OK. Thank you.

JON CANNON: Yes, sir.

WILLIAMS: Additional questions? Seeing none, thank you, Mr. Cannon.

JON CANNON: Thank you very much.

WILLIAMS: Additional proponents? Seeing no one, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Senator Dorn, if you'd like to come forward. We do have one letter from the record and they are a supporter, Diane Duren representing the Nebraska Auctioneers Association.

DORN: Thank you. Thank you for some of those questions. And what Senator Bostar said a little bit ago. When I was growing up, most of the sales, if not all of them, you spent a lot of time during the winter going to farm auctions and stuff and you, you-- well, we went for other reasons. But part of the reasons you went was for the food and visit with everybody. Nowadays, today that's just flipped. My gosh, some of the online auctions, Big Iron and such, they have massive sales or whatever and stuff, and they have-- those retirement

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

auctions we used to go, you go to those now or whatever. Part of what this, this bill does is it, it brings into the fact that those auctioneers from out of state that maybe assume they were right or didn't know if they were right or, you know, I'll do this auction and then we'll leave Nebraska and they won't catch me or whatever. No, this here right here says they will follow our Nebraska Real Estate License Act so that they know auctioneers from out of state, maybe Iowa has a little bit different and they're thinking, they're following the Iowa license, and it might follow Nebraska. No, this says you will follow Nebraska's Real Estate License. So it gets away that, I call it that gray area about, oh, I think I'm OK. No, now they know, they go look, and they make sure they're following Nebraska's Licensing Real Estate Act, so.

WILLIAMS: Any questions for Senator Dorn? Seeing none, that will close the public hearing on LB811.

NATALIE SCHUNK: Hey, Matt, Flood is still in Transportation.

WILLIAMS: He's testifying now?

NATALIE SCHUNK: [INAUDIBLE]

WILLIAMS: Senator Flood has a bill that is still going in Transportation right now.

McCOLLISTER: Take a break.

WILLIAMS: We'll take a break. Let--

[BREAK]

WILLIAMS: OK. We're going to go ahead. We will now open the hearing on LB795 introduced by Senator Flood to change provisions relating to the release or modification of certain restrictions under the Nebraska Uniform Prudent Management of Institutional Funds Act. Welcome, Senator Flood.

FLOOD: Thank you, Chairman Williams, members of the Banking Committee. My name is Mike Flood, F-l-o-o-d, and I'm the state senator for District 19, which includes all of Madison and part of southern Pierce County. I'm here to introduce LB795 at the request of the University of Nebraska Foundation. For a little background, this bill seeks to amend the Uniform Prudent Management of Institutional Funds Act, an act established in Nebraska statute with LB136, which I introduced in 2007 after the Uniform Law Commission adopted it in 2006. The act's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

purpose is to govern the charitable management of permanent endowment funds. Given the perpetual time horizon of endowments, changes in circumstances sometimes leave the charity with an endowment that can't be spent for the original purpose. In those circumstances, a charity may be able to seek a judicial remedy to determine an alternate purpose, but can be costly to pursue, which is exactly why the UPMFIA [SIC] provision in Section 58-615 (d) was included. This section provides that if a fund is more than 20 years old and is less than \$25,000 in value, restrictions can be modified by a charity with the consent of the state Attorney General without a need for judicial action. At this time, 27 states have a limit for these small endowments higher than Nebraska's \$25,000, ranging from \$50,000 to a quarter million. Additionally, four states have built in an adjustment mechanism that increases the limit annually. For example, Tennessee increased its limit of \$150,000 by \$5,000 on January 1 of each year since 2011. This bill would allow charitable organizations to better carry out their objectives while maintaining the safeguards for donor restrictions. Any modification will be made in accordance with the donor's probable intention and will be overseen by the Attorney General. Therefore, a charity cannot arbitrarily alter a donor's intent with respect to the charitable gift. If the committee has any questions, I'd be more than happy to address them. Thank you for your time.

WILLIAMS: Questions for Senator Flood? Senator Bostar.

BOSTAR: Thank you, Chair Williams. Thank you, Senator. And I, I, I think I understand what the bill is doing from the statement of intent, as well as the bill language itself. But you know, I think, and this isn't really a question, but it's sort of hard to understand you. If you could avoid mumbling when you're presenting to the committee, I think that would be very helpful.

FLOOD: With your mask on, I'm having trouble hearing you.

BOSTAR: Thank you.

WILLIAMS: Any additional questions? I have two. One is you mentioned this is being brought to you or was brought to you by the University of Nebraska Foundation. But this applies to all of those types of activities, right, not just the Nebraska Founda-- University of Nebraska Foundation?

FLOOD: Yes, that's correct. This would affect any nonprofit charitable contribution under the Uniform Law. So it could be Metro Community

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

College Foundation or the Lexington Public Schools Foundation. In my law practice, I haven't seen this very often, but I remember a time where somebody left money to a local humane society that ended up going out of business, essentially, and it was in a small community and we had to figure out how to meet the donor's intent and donate the money to an area humane society. And it was difficult because you want to honor the donor's intent, and sometimes it's impossible to even do that. And so this helped. Something like this for a small amount would help, would help do that as long as you notify the Attorney General to make sure it's still in sync. And the Attorney General then gets the instrument that the donor signed, whatever that may be and looks at the charity that you're proposing to put it into or the fund, and they can then sign off on it and say that this is-- this meets the donor's intent and it's legal.

WILLIAMS: So it still has a review.

FLOOD: Sure.

WILLIAMS: It's just by the Attorney General. Second question was since you introduced the original legislation, it was \$25,000. This proposes to raise it to \$100,000, that, that level. And if I remember your testimony correctly, we have some states that are clear up to quarter of a million. Is that correct?

FLOOD: Yes, it ranges from \$50,000 to \$250,000, so I don't think we are stepping out too much. And talking to the University of Nebraska Foundation, they thought that was an adequate number for the few times that they run into this.

WILLIAMS: Any additional questions? Senator McCollister.

McCOLLISTER: Yeah, thank you, Mr. Chairman. What kind of nexus does the proposed project have with the donor's original intent? How, how far afield can, can one go?

FLOOD: Well, it would be-- if, if the dollar amount, let's say this passes, is under \$100,000, the Attorney General would review that and then determine if it's reasonable. That would be as the, as the author of the bill if somebody is looking to the history, my intent would be that it was reasonable and I guess that's really up to the Attorney General. Like in the instance of giving the money to a humane society and there's no humane society in the community, like, we felt at the time I was representing the folks involved there that giving it to an area humane society that would take care of dogs and cats from that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

town would meet the donor's intent. Probably would not make sense to give that money to the hospital foundation because the donor wanted to take care of animals, you know, so I think there has to be a relationship between where the money was intended to go and where it ultimately goes.

McCOLLISTER: Thank you.

WILLIAMS: Seeing no additional questions,--

FLOOD: Thank you.

WILLIAMS: --we will move to proponents. Invite the first proponent.
Good afternoon.

KEITH MILES: Good afternoon, Senator Williams. I want to thank you as Chair of the committee and members of the Banking, Commerce and Insurance Committee for allowing me to speak this afternoon. My name is Keith Miles, M-i-- K-e-i-t-h, last name Miles, M-i-l-e-s. I serve as senior vice president and general counsel for the University of Nebraska Foundation. And I'm also appearing today on behalf of the University of Nebraska system in support of LB795, the proposal to modernize the Uniform Prudent Management of Institutional Funds Act. We want to thank Senator Flood for introducing this proposal and also thank you, Senator Williams, for assisting us with some critical research during the interim. In 2007, Nebraska became one of the first states in the country to adopt the Uniform Prudent Management of Institutional Funds Act, which is also referred to as UPMIFA, it had been drafted by the Uniform Law Commission. A significant focus of UPMIFA is the investment of endowed gifts held by charitable institutions. A donor may direct that his or her gift be endowed by the donee charity, meaning that the principal is preserved in perpetuity with only distributions based on the invested gift available for spending. The intent of LB795 does not impact any of the investment provisions of the act, but instead addresses Section 58-615, which provides a framework for modification of what I refer to as old and small endowment funds by a charity if the original purpose has become a, quote, impracticable, impracticable or wasteful, if it impairs the management or investment of the fund, or if, if because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund, end quote. Under Section 58-615, the option to seek a modification applies only if the fund has a value of less than \$25,000 and was established more than 20 years ago. And let me say that this has been a useful tool for us in a few situations over the years. It's not something we use regularly.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

But if the investment of the fund or the purpose of the fund is no longer viable due to some change, possibly at the university an elimination of a major or a restructuring of a college or program or some other changing circumstances which make it impossible to utilize a particular fund exactly as requested by the donor. In all cases, any modification to the fund under the provisions of UPMIFA require that we provide notice to the Attorney General, who in essence stands in the shoes of the donor to exercise oversight over charities and their use of donated funds. This provision, whether it's \$25,000 as the current statute has or at \$100,000 as proposed in LB795, does not give carte blanche to the charity to arbitrarily usurp the wishes of the donor and repurpose the charitable gift. The University of Nebraska Foundation has over 5,000 funds currently that are endowed, and it's not an exaggeration to say that over 99 percent of those funds are restricted to a specific purpose, whether that's scholarships, research, faculty support, or another purpose often limited to supporting specific colleges, departments, or programs. We cannot and do not treat these donor restrictions as optional, but if an endowment fund is, for example, directed for students majoring in Polish language and that's no longer offered as a major, this act provides us that avenue to identify another use for the fund that might seem to align with the donor's original purpose. And again, we do try to stay as close as we can to that original purpose. In this example, we might recommend modifying the fund to support another major in languages, possibly Russian. For funds that exceed the limit of \$25,000 that do not have provisions in the donor agreement for an alternate purpose, we do still have the opportunity to pursue a modification, but it would be necessary to file a petition with the court and seek a judicial reformation, but that would be at a significant cost and, and could take several months to do, and we have done that on occasion. Modification for these small funds under Section 58-615 of the Nebraska UPMIFA can be handled in-house and can typically be resolved in 60 to 90 days. By extending this limit to \$100,000, more older, smaller funds could be revised through this mechanism, rather than the more costly court action. We have more than 1,800 endowed funds that are older than 20 years, with a value less than \$100,000 and we'll continue to make every effort to comply with the donor's intentions as documented in the gift agreement. So this mechanism is an option of last resort, and we still expect it to be used infrequently. I want to again thank Senator Flood once again for his leadership with this issue, both in 2007 and with LB795. This proposal is needed modernization of UPMIFA, while maintaining oversight and accountability through the Nebraska Attorney General. LB795 will help charities direct more endowed donor funds towards impactful purposes

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee January 31, 2022

while reducing legal administrative fees and costs to update these old and small funds. And with that, I'd be happy to answer any questions you might have.

WILLIAMS: Thank you, Mr. Miles. Are there questions? Seeing none, thank you for your testimony.

KEITH MILES: Thank you.

WILLIAMS: Invite the next proponent. Seeing no one, is there someone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Senator Flood waives closing. And I don't believe we had any letters for the record. No. So that will close the public hearing on LB795 and I would like to have a short Exec Session.