

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee March 17, 2025
Rough Draft

JACOBSON: Welcome to the Banking, Commerce and Insurance Committee. My name is Mike-- Senator Mike Jacobson from North Platte, representing the 42nd District of the Legislature. I serve as chair of the committee. The committee will take up the bills in the order posted. The public hearing is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. When it's in-- your turn to come forward to testify, give the testifier sheet to the page or to the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets back on the table for each bill. These sheets would be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone. Tell us your name, and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and followed by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer, if they wish to give one. We will be using a three-minute light system for all testifiers. When you begin your testimony, the light on the table will turn green. When the yellow light comes on, you have one minute remaining; the red light indicates you need to wrap up your final thought and stop. Questions from the committee may follow. Also, the committee members may come and go during the hearing. This has nothing to do with the importance of the bill being heard; it is just part of the process, as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring up at least 12 copies and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room; such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8:00 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. I will now have the committee members with us today to introduce themselves, starting on my left.

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RIEPE: Thank you, Chairman. I'm Merv Riepe. I represent District 12, which is Douglas County, Omaha, Millard and the fine town of Ralston.

von GILLERN: Brad von Gillern, Legislative District 4, West Omaha and Elkhorn.

HALLSTROM: Bob Hallstrom, representing Legislative District 1. Counties in southeast Nebraska: Otoe, Johnson, Richardson, Nemaha, and Pawnee.

HARDIN: Brian Hardin, District 48; Banner, Kimball and Scotts Bluff Counties.

WORDEKEMPER: Dave Wordekemper, District 15; Dodge County, western Douglas County.

JACOBSON: Also assisting the committee today, to my right is our legal counsel, Joshua Christolear, to my-- and to my far left is our committee clerk, Natalie Schunk. We have two pages here today. I'm going to let them introduce themselves and tell us a little bit about themselves.

AYDEN TOPPING: Hi, I'm Ayden. I'm a second-year psychology student at the university.

JOEL HENSON: I'm Joel. I'm a third-year student in political science.

JACOBSON: With that, we'll begin today's hearing with LB686. Senator Lonowski, you're welcome to open.

LONOWSKI: Good afternoon. Thank you, Chairman Jacobson, and members of the Banking, Commerce and Insurance Committee. Thank you for this hearing. For the record, my name is Senator Dan Lonowski, D-a-n L-o-n-o-w-s-k-i, and I represent the 33rd Legislative District. I am here to introduce LB686, a measure designed to protect the privacy and rights of Nebraska's firearm owners and retailers. The right to keep and bear arms is enshrined in both the United States Constitution and the Nebraska Constitution. Maintaining lists of firearm owners or using specific merchant codes can lead to unintended consequences, including potential discrimination or breaches of privacy. LB686 seeks to prevent such issues by limiting these practices. LB686 aims to prohibit governmental tracking; it prevents government entities and officials from maintaining lists that track firearm ownership, thereby safeguarding individual privacy. This does not include police nor sheriff's departments. LB686 also restricts merchant category codes by

restricting use of merchant category codes to specifically identify firearm retailers, ensuring that these businesses are not unfairly targeted or discriminated against. Key provisions of LB686 include definition clarifications; it defines terms such as ammunition and assignment to ensure a clear understanding and application.

Prohibition details; this explicitly restricts governmental bodies from creating or keeping records that list firearm owners. Merchant code restrictions; it forbids the use of specific merchant codes that distinguish firearm retailers from other types of retailers, preventing potential biases in financial services. To understand LB686, one must have a basic understanding of what a merchant category code is. The MCC is a four-digit number used by credit card companies and payment processors to classify businesses based on the goods or services they provide. The codes are determined by the International Organization of Standardization, the ISO. Credit card companies and payments processors will use the MCC to determine interchange fees, cash back rewards, and tax reporting. This means both businesses and consumers are monitored by MCC reporting. In September 2022, the ISO approved a firearms merchant category code for businesses that sell firearms and ammunition. That code was then published in February 2023, therefore giving entities the ability to track firearm and ammunition purchases by businesses and customers. Prior to September 2022, firearms and ammunition purchases were classified as general merchandise or sporting goods by MCC codes, depending on how the business may have defined itself. The conclusion of the document I distributed states that today, the National Shooting Sports Foundation reports that 19 states have enacted laws intended to protect law-abiding gun purchasers from the merchant category code. Nebraska should follow the lead of those states and protect the privacy of gun owners. By enacting LB686, we affirm our commitment to protecting the constitutional rights and privacy of Nebraska citizens and businesses. I respectfully ask the committee to support this bill and advance it to General File for consideration on the floor. Thank you, Chairman Jacobson, and members of this committee, for your consideration of LB686. I will try to answer any questions you may have, as I am a straight-shooter.

JACOBSON: Great open.

LONOWSKI: Thank you, sir.

JACOBSON: Questions for Senator Lonowski? I'm seeing none. Thank you.

LONOWSKI: Thank you.

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JACOBSON: We'll now ask for the first proponent. Please step forward.
Good afternoon.

MORIAH DAY: Good afternoon, Chairman, members of the committee. Appreciate you having me here. Name's Moriah Day, M-o-r-i-a-h D-a-y. I'm the director of government relations and state affairs for the National Shooting Sports Foundation. As the firearm industry trade association, we represent over 10,000 manufacturers, retailers, distributors, and other businesses in the firearm industry. We represent entities as varied as America's largest firearm manufacturers and its smallest sporting goods stores. My testimony today in support of LB686 is on behalf of our members. Writing in a 2018 article published in The New York Times titled "How Banks Could Control Gun Sales if Washington Won't," columnist Andrew Ross Sorkin put forward an idea; he asked: what if the firearm industry, credit card companies like Visa, Mastercard and American Express, credit card processors like First Data, and banks like JPMorgan Chase and Wells Fargo were to effectively set new rules for the sales of guns in America? Some anti-Second Amendment advocates, elected officials, and institutions decided to run with that proposal. One idea that came out of this column was that the purchase of firearm retailers could be tracked and monitored using specific credit card transaction codes. Four years later, under pressure from the activist Amalgamated Bank, the ISO-- a nonprofit based in Geneva, Switzerland-- announced the creation of a new merchant category code, or MCC, for transactions involving firearms and ammunition. Transactions at firearm retailers have historically been coded as sporting goods, specialty retail, durable goods, and general merchandise. This new code would specifically indicate that a person is making a purchase from a firearm retail shop. It is important to note that these codes would apply to any purchase at a firearm retailer, whether it be firearms, ammunition, boots, clothing, bags, camping supplies, a tent, or any other non-firearm purchase. Notably, Bloomberg News, which has reported extensively on the proposal, wrote: the payment network and its banking partners would have no idea if a gun store customer is purchasing a rifle or safety equipment. Additionally, Visa's CEO Al Kelly has admitted the new code proposal-- proposed won't be as effective in flagging purchases as anti-gun activists have claimed, saying-- and quote-- "If Visa's Chief Communications Officer K.C. Kavanaugh goes into a gun store and buys three thermoses and a tent, and you go in and buy a rifle and five rounds of ammunition, all I know is you both went to," went to "the same gun store, but I don't know what you bought." There are obviously numerous privacy concerns

surrounding the creation and implementation of MCCs to track purchases at firearm retailers. People often spend thousands of dollars at firearm retailers in preparation for hunting season. If a firearms-specific MCC were to be put into place, and any large purchase could be flagged as suspicious by the U.S. Treasury Department's FinCEN, and transactions could be denied. The attempt to code credit card purchases at firearm retailers is an assault on the privacy and Second Amendment rights of every single gun owner in the state. The major credit card companies in the U.S. were caught in the middle as this new MCC became highly politicized, and they rightly responded by pausing implementation of a firearm retail--retailer-specific MCC. Unfortunately, California, Colorado, and New York have passed laws mandating the use of the MCC, and other anti-gun states are attempting to follow their lead. To make certain this pause remains in place permanently and the status quo is maintained, I would urge you to join the growing list of 19 states that have passed similar measures, and pass LB686 this session. Thank you. I'll be happy to stand for questions.

JACOBSON: Thank you. Questions? Yes, Senator Hardin.

HARDIN: How do the credit card companies in general-- Visa, Mastercard, Discover, American Express-- do they all handle this the same way? Is it kind of a group-think on this? Will you talk about that?

MORIAH DAY: Absolutely. Appreciate the question, Senator. When it comes to the credit card processors, or the credit card companies-- Visa, Mastercard, you named them-- there-- there's actually a surprising amount of agreement between those companies on, on how this issue should be handled. Their preference, in conversations we've had with them, is to keep the status quo. I believe their interest is in, you know, making money for their shareholders rather than getting stuck in the middle of a fight over a merchant category code that has become highly politicized over the years. So, their position, as they've expressed it to me, obviously, they're-- they are welcome to share that themselves with you, but as they have expressed it to me, their position would be to keep the status quo, to avoid implementing this new merchant category code, and potentially creating these lists because of the privacy concerns surrounding the issue. Did that answer your question, Senator?

HARDIN: Thank you.

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JACOBSON: Yes, Senator Bostar.

BOSTAR: Thank you, Chair Jacobson. Thank you, sir, for being here. So, I-- I'm trying to understand. So, if the-- this legislation, does it stop them from ultimately implementing this code?

MORIAH DAY: That's a great question. Appreciate that, Senator. Essentially, what it does is, within the borders of the state of Nebraska, it would, it would stop implementation of this code. There are states-- as I mentioned, 19 states have banned implementation of the code, in which case firearm retailers would continue to use those same MCCs that they've used for years and years. There are, as I mentioned, three states that have chosen to enforce the use of this new MCC. Those states, you know, California, Colorado, New York-- that list of states-- they're attempting to grow that list-- activists are. This year, a number of other states that are adamantly anti-Second Amendment have introduced similar proposals. This bill essentially would ban the use of this MCC within Nebraska, essentially keeping the status quo, allowing--

BOSTAR: So, even if nationally, they decided to remove the pause that they're on that I think you described it as, it still wouldn't take effect here, if we passed this bill?

MORIAH DAY: Correct. If, if nationally-- for instance, nationally, if the credit card companies chose to remove their pause, chose to implement the MCC nationally at the pushing, you know, at the urging of--

BOSTAR: Sure. For whatever reason.

MORIAH DAY: --the activist states, or for whatever reason, it would remain paused in Nebraska. This code would not be used in Nebraska.

BOSTAR: How, how is a-- is firearm retailer, is that what the code would be applied to?

MORIAH DAY: That's correct, yes.

BOSTAR: How would-- how is that defined?

MORIAH DAY: I believe it's defined-- I think it was defined in the bill, but--

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BOSTAR: So, you, you gave the example of, you know, firearm retailers could sell other items. Could and do--

MORIAH DAY: Absolutely.

BOSTAR: --sell non-firearm items. But then of course, there are things that I wouldn't describe as a firearm retailer that sell firearms. Right? So, if I go to-- under this code, Scheels, right? Which we have here in Lincoln-- I wouldn't say that they're a, a, a gun store. Right? But they do sell guns. But I would imagine it's a slim amount of their, of, of their sales. Would they be considered a firearm retailer under this proposal?

MORIAH DAY: That-- that's a, that's a really great question, Senator, and I appreciate that. When it comes down to it, it's, it's essentially kind of up to-- there's a number of different steps within the banking system, and I don't want to bore you with all of-- all the details on each level of that process and everything. But the MCC code is essentially shared with that company. Is set-- you know, that-- each individual retailer is assigned an MCC--

BOSTAR: Who is-- and the credit card company assigns it, makes the decision?

MORIAH DAY: Essentially, their, their processor-- whoever the, the business's credit card processor-- so, you know, there's the credit card-issuing banks that are the credit card transaction processors, and then there are the credit card companies, so Visa, Mastercard, Discover. There's, you know, multiple different companies involved in this process, but this would essentially set that the processor would not assign that MCC. And back to your question, a company like Scheels, Bass Pro, Cabelas, like you said-- you know, even Walmart-- you know, companies like that that may have a small percentage of their sales, you know, being firearms, they would probably not overall be classified as a firearms retailer and assigned this code. It's really up to their processor, though. What we're seeing is this inordinately affects smaller businesses. You know, mom and pop gun shops are smaller firearm retailers who, you know, predominantly sell firearms, ammunition, and a handful of other accessories and various other items. It predominantly affects them, I would say, more than, you know, larger big box retailers. Does that answer the question?

BOSTAR: No, it does. Yeah, thank you.

MORIAH DAY: Thank you.

JACOBSON: Senator Hardin.

HARDIN: Help connect the dots for me. Why, frankly, would we care one whit what the International Organization for Standardization from Geneva, Switzerland, thinks about our Second Amendment?

MORIAH DAY: That-- appreciate the question, Senator. Frankly, you know, when it comes to our Second Amendment freedoms and the ability of Nebraskans to exercise those Second Amendment freedoms, I would argue that that decision should remain in, in your hands to protect those freedoms, rather than in the hands of an international body like the ISO.

HARDIN: Thank you.

MORIAH DAY: That would be my argument.

JACOBSON: Senator Wordekemper.

WORDEKEMPER: Thank you, Chair. Would this MCC code apply to the businesses if you paid by check, cash, PayPal, any other means? Or just credit cards?

MORIAH DAY: Appreciate the question, Senator. It would, it would only apply to credit card purchases, purchases made with a payment card that is-- that are processed through the credit card processing networks, essentially. So, if you pay by cash, pay by check, you know, money order, trade, you know, whatever other process you use, those would not be tracked using this MCC; it's specifically for credit card transactions.

WORDEKEMPER: Thank you.

JACOBSON: Senator Dungan.

DUNGAN: Thank you, Chair Jacobson. Thank you for being here today.

MORIAH DAY: Absolutely.

DUNGAN: So obviously, our Bill of Rights and Constitution prohibit the government from encroaching upon your, your First Amendment, Second Amendment rights, things like that; it doesn't prohibit private companies from doing that. And so, I note in here that Section 1,

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paragraph 2 says no government entity, official, or agent, or employee of a government entity shall knowingly keep or cause to be kept, blah, blah, blah, blah, blah. So, that pertains to governmental entities. But then, sub-paragraph (b) and (c) pertain to private companies, and say, for example, that a payment card network shall not require or incentivize, and then (c) says a covered entity, which is defined in the definition section, I think, as the transaction companies. So, it seems like we're looping into this piece of legislation a prohibition on the government encroaching on your potential Second Amendment rights, and then also private companies. So how, how do you balance us sort of telling individual private companies what they can and can't do with regards to those actions with this Second Amendment right? I'm just curious if they-- those seem the same to you, or if there's a difference there.

MORIAH DAY: Sure. I, I appreciate the question, Senator. And I would, I would say, first of all, I, I agree that, you know, our, our form of government, our, our, you know, the freedoms we hold dear in the United States-- part of those freedoms are that private companies can set their own rules, set their own ability to do business; they have the right to do business with or not do business with specific individuals or other companies or organizations. I would wholeheartedly agree with that. Unfortunately, this-- activists who created the-- or, pushed for the creation of this MCC are-- have the stated purpose-- purpose of tracking lawful firearm purchases. That, that right to own, you know, possess and purchase firearms, I think that's-- I don't know that anyone in this room would, you know, argue with that right. The creation of these MCCs, the stated purpose is to track those purp-- purchases with the end goal of making it more difficult to purchase firearms and ammunition, as well as to, to create lists that, that can be tracked. The right to privacy in your purchases of firearms and other constitutionally-protected items, I think, is, is of the utmost importance. And so, I hesitate to, to agree that there's an issue with the state banning the use of a code that's specifically aimed at, at tracking these lawful purchases. I hope that answers the question.

DUNGAN: No, it does. I just think there's always kind of a push and a pull when you're talking about things like this in private business--

MORIAH DAY: Absolutely.

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DUNGAN: --and what we can or can't tell private individuals or companies who they can transact business with, but-- no, I, I, I take your point. So, thank you.

MORIAH DAY: Appreciate it.

JACOBSON: Other questions? Senator Hallstrom.

HALLSTROM: Just wanted to make sure. The credit card company pause is something that's favorable for your position in not wanting the imposition of a merchant category code, is that correct?

MORIAH DAY: That's correct. Yes.

HALLSTROM: And was-- and it's your testimony that the credit card companies have expressed their wishes that there not be legislation of this nature enacted across the country?

MORIAH DAY: Let me clarify just a little bit. It's my understanding that the credit card companies do not want to see the MCC en-- basically enforced, forced upon them, you know, or, or on consumers across the country, if that clarifies a little bit.

HALLSTROM: Well, and, and that was different. I understand-- maybe I misunderstood. I thought you indicated that their preference was that we not have this type of legislation; their pause is sufficient to carry out your desires.

MORIAH DAY: I appreciate, I appreciate the clarif-- the opportunity for clarification here. Yes. So, my understanding of their position is that they intend, at the moment, to keep a pause on implementation of the MCC in all states that do not require the assignment of this new MCC. However, there are constant pressures on these credit card companies, you know, as we all well know. And with a number of states joining the ranks of California, Colorado, and New York in mandating the use of the code, at some point, the, the weight against pushing against these credit card companies to change what the status quo is. So, rather than the status quo being we do not assign this new MCC unless a state requires it, the default position for the credit card companies could, at some point, change to impl-- you know, assigning that code unless a state bans its use, if that makes sense.

HALLSTROM: And would it be your position in general that Nebraska has been a fairly favorable state for gun right advocates?

MORIAH DAY: Absolutely. I would, I would argue that Nebraska and her citizens are, are very supportive of our Second Amendment freedoms.

HALLSTROM: And, and would you envision, realistically, the type of legislation being introduced that would put us in a position where we're directing that merchant category codes like California, Colorado, and New York be enacted?

MORIAH DAY: I do not. My-- what I would say, though, is unfortunately, a number of activists have already been pushing very hard on these credit card companies to change the default position, and they continue to do so every year. And, you know, one day at a time, they continue to do so. And unfortunately, if they change their default position, that will go into effect and, and be in effect over Nebraskans just as it is, you know, currently over individuals in California, Colorado, and New York, without your-- this body, you know, having an opportunity to take a stance against it,--

HALLSTROM: OK. Thank you.

MORIAH DAY: --if that makes sense.

HALLSTROM: Thank you.

JACOBSON: Senator Hardin.

HARDIN: Is the MCC world essentially one that would attempt to circumvent federal law that is in place to avoid creating a national registry of guns?

MORIAH DAY: That's a great question. So, there are activists that are involved in this process, including, including activists that have pushed very, very hard for the implementation of this MCC who are wholeheartedly in favor of a, a list-- whether it's a national list or a list that's privately-held that can be turned over to government authorities-- a list of firearm purchases. And we saw, we saw this-- an example of, of a financial company that went too far in my opinion. The-- relating to the January 6th situation in Washington D.C. not too long ago, financial companies in the area-- and I, I don't have the exact companies and everything in front of me right now, but they, they took it upon themselves to turn over lists of all financial transactions that had been performed by individuals who participated in the January 6th situation in D.C.; it turned over that information proactively to the Treasury Department and FBI without it being requested. So, having lists like that, you know-- in that situation,

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it was all transactions essentially, that those individuals had made. But for there to be a list of all transactions that have been, you know, performed at a firearm retailer, to have that information available in a list form that could be proactively turned over by a financial company to the federal government without it being requested, without going through any sort of judicial process, I think is a, a gross violation of the privacy of American citizens.

HARDIN: Thank you.

JACOBSON: Other questions? I guess I have one. I'm trying to understand. Today, virtually every transaction, you go through a scanner, it scans the item. Doesn't that already give detail in terms of what you just purchased in terms of that item?

MORIAH DAY: That's a great question, Senator, and I appreciate that, Mr. Chair. The, the information that is, that is passed along through that transaction typically is not a detailed view of what was in your cart. It's typically not the items, specific items that you purchased. Typically, my understanding is when you swipe your card, as we all do-- you know, sometimes dozens of times in a day-- the information that's actually transmitted to the payment processor is very limited.

JACOBSON: Well, let me be clear. I-- I'm not talking about the credit card transaction. I'm talking about when the items are being scanned across the scanner,--

MORIAH DAY: Sure.

JACOBSON: --and gets put on the tape. So, you're saying none of that will get passed on through for the transaction itself?

MORIAH DAY: I appreciate that, that clarification, Mr. Chair. My understanding is that all of that additional detail is not passed along to the payment processor unless the payment processor also serves as the e-commerce provider for that retailer.

JACOBSON: So the example you used in DC, where did that information come from? Were those MCC codes, or what-- how did they-- how did the-- those particular banks have access to that information to turn over?

MORIAH DAY: That, that information, Mr. Chair, was-- my understanding is that that information was all purchases made by those individuals within a certain time frame, so that-- it was not--

JACOBSON: OK.

MORIAH DAY: --it was based on their credit card usage, so did not have any information specifically about what items they bought; I'm not sure if it had information as to where they shopped specifically. My assumption is that it had at least that level of detail, and probably, you know, some level of detail on the MCC code for those retailers. But I don't under-- my understanding is that it would not have included, you know, whether you bought a, a can of soda or,--

JACOBSON: Right. Gotcha. Thank you.

MORIAH DAY: --you know, a bag of chips.

JACOBSON: Yeah, I appreciate that. Thanks for that.

MORIAH DAY: Thank you, Mr. Chair.

JACOBSON: Any other questions? If not, thank you for your testimony, and for answering all of our questions.

MORIAH DAY: Absolutely. Thank you.

JACOBSON: Next proponent. Good afternoon.

CARLA NOLAN: Good afternoon, Chairman Jacobson, and committee members. Thanks for having me. I'm Carla Nolan, director of financial operations at Hornady Manufacturing in Grand Island. Senator Lonowski, thank you for introducing this legislation to help protect members of the firearms and ammunition industry from financial discrimination. Hornady is an ammunition manufacturer that employs over 1,200 of your constituents. Our employees come from 50 communities representing 15 central Nebraska counties, from Ord to Hastings to Kearney to Fullerton. I've been with the company for 15 years, and during that time, I've seen some financial discrimination against the industry and, as a result, our company in a variety of ways. I manage the company credit card programs for both sales made and invoiced by the company, and purchases made by our employees from vendors. There have been several times when transactions have been declined because one of the banking entities involved in settling and funding a credit or debit transaction have marked a specific merchant category code or MCC as not able to process and/or fund. As an example, we had an employee's credit card declined when they tried to make a purchase at a local gun store there in Grand Island. When we looked into it, it was declined because of the MCC. I had to make a lot of phone calls to

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find that, in the chain of processing, one of the credit card processing partner banks-- it was actually the issuing bank, kind of at the, at the end of the chain-- had flagged that store's MCC as unable to process due to fraud risk. We asked them to remove the flag for that code and they refused, and we pressed them to do it just for Hornady's company card program, and they still refused. It took a tremendous amount of digging on my part to get to the root of the problem, and we had to change to another credit card company because nobody was able to guarantee to us that future gun store purchases wouldn't be declined. I have to assume that, to an extent, you know, this happens on customer sides as well. I always tell them to check with their credit card company about their policy. According to the Federal Reserve, 62% of all payments in the U.S. were made using credit or debit cards in 2023; this was a 5% increase from the year before. Not having protection against merchant category code discrimination makes Hornady vulnerable. LB686 would provide that protection. Thank you.

JACOBSON: Could I get you to spell your first and last name?

CARLA NOLAN: Carla, C-a-r-l-a; Nolan, N-o-l-a-n.

JACOBSON: Thank you. I do have one quick question regarding-- you mentioned the-- you did some digging, and it-- was it one particular bank that was, that was flagging transactions because of fraud risk?

CARLA NOLAN: Yeah. That, that was what they said.

JACOBSON: OK. And, and how do you know it wasn't fraud risk?

CARLA NOLAN: Because we were able to make other purchases with that card. I mean-- so, that, that card was alive and well in, in-- for other purchases. It wasn't just-- sometimes we'll get one flagged, and then from there on out until we address the issue, it doesn't happen again. But we were able to turn around and use it.

JACOBSON: OK. Yeah, I, I, I-- fraud is-- I can't give you the latest statistics, but fraud risk is very, very high today--

CARLA NOLAN: Absolutely.

JACOBSON: --in the credit card industry, and, and so it can be here, and then resolved, and move on. And so, it generally has to do with the individual who's, who's running the transaction, their, their card has been compromised, and so consequently, they, they have to cut--

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drop that card and reissue the card. And so, there could be some other explanations for what happened in that particular case.

CARLA NOLAN: Absolutely. And, and we of course see that, also.

JACOBSON: Right.

CARLA NOLAN: We have about 100 of those purchasing cards that I manage. In this situation, that was the only transaction that that card was, was unable to process.

JACOBSON: And also, to be clear, I was thinking that Hornaday's [SIC] did not do retail transactions. So, was this a larger wholesale transaction, or what-- where did the credit card come into play?

CARLA NOLAN: Great question. Thank you. So, this was a transaction where one of our employees was buying some parts that we needed for testing from a local gun store.

JACOBSON: Gotcha. OK. Thank you. Thanks for that clarification.

CARLA NOLAN: Yeah. And we do some retail sales; we do not do retail sales of ammunition.

JACOBSON: OK, thank you. Senator Bostar.

BOSTAR: Thank you, Chair Jacobson. Thank you, ma'am, for being here. So, I-- I'm-- I don't know much about MCC codes, and I'm sort of learning as we go along.

CARLA NOLAN: Sure, sure.

BOSTAR: So, in the, in the example that you cited, what you determined was that it, it was an MCC code that was flagged--

CARLA NOLAN: Mm-hmm.

BOSTAR: Help me understand what-- I guess taking a step back, what an MCC code covers. Because it-- the impression I got, which could very well be wrong, was that an MCC code was sort of a, a, a broader industry or, or retail-type code that applied to multiple retailers.

CARLA NOLAN: So, I am certainly not an expert at this. I'm just-- I'm, I'm kind of boots-on-the-ground in terms of implementing some of these. So, an MCC code is given to a specific retailer in a kind of a,

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a, a category of what they, they sell the most of, or, or whatever the credit card issuing bank gives them--

BOSTAR: So, if--

CARLA NOLAN: --to kind of qual-- you know, just determine what it is that-- what business they're in.

BOSTAR: Would two similar businesses have the same code?

CARLA NOLAN: Yes.

BOSTAR: OK.

CARLA NOLAN: Possibly, possibly. Depends on the, on the, the bank
[INAUDIBLE]

BOSTAR: But I guess, I guess what I'm really trying to ask is, it-- the code isn't a unique code for a specific retailer, right?

CARLA NOLAN: Right.

BOSTAR: OK.

CARLA NOLAN: Yes. It's, it's a generalized code for that segment of business that they're engaged in.

BOSTAR: And in the, in the example that your employee faced, a broader-- so, an MCC code that applies to multiple retailers was flagged as not being allowed to be processed.

CARLA NOLAN: Right. That particular bank in the chain,--

BOSTAR: Sure.

CARLA NOLAN: --had chosen not to, not to process that--

BOSTAR: Blocked off an entire category of businesses.

CARLA NOLAN: Right, right, right.

BOSTAR: What-- OK, so-- well, thank you. So, I, I-- again, I apologize. I don't understand a lot of this, but I think I'm working it out. So, because we-- the national MCC code change for firearm retailer is paused and, and currently not implemented, except for, I guess, those few states that were mentioned before, what was the MCC

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code category for that was prohibited by this particular financial institution?

CARLA NOLAN: So, at this time it was pawn shops-- pawn/gun shops.

BOSTAR: Got it. So, there is, there is a separate--

CARLA NOLAN: Yeah. Yeah. Yeah.

BOSTAR: --code for pawn/gun shops.

CARLA NOLAN: That-- yeah, they-- at that time. Mm-hmm. And so, that's why we feel so strongly about this, is we actually saw that happen that hey, they took a stand against that. So, you know, we see that.

BOSTAR: And even still, the, the-- that financial institution wouldn't-- they were, they were willing to completely blacklist an entire category of businesses?

CARLA NOLAN: They were. They were.

BOSTAR: Wow.

CARLA NOLAN: And I've heard of it happening, too, with casinos and things like that. Which is not my, not my fight.

BOSTAR: Sure.

CARLA NOLAN: But it, but it is certainly a way to--

BOSTAR: Wow. I--

CARLA NOLAN: --to, to structure that.

BOSTAR: Well, it's remarkable. Anyway, thank you very much.

JACOBSON: Other questions? I just want to mention, I think that Hornaday [SIC] Manufacturing and Cabela's are two of the great Nebraska entrepreneurial success stories that-- it's amazing what those companies have done and accomplished in Nebraska, and Nebraska-grown. So, I appreciate you being here. Thank you.

CARLA NOLAN: I take that to heart. I'm incredibly blessed to be a part of it.

JACOBSON: It's a great company.

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CARLA NOLAN: It is.

JACOBSON: Truly is.

CARLA NOLAN: Thank you.

JACOBSON: Thank you. Other proponents? Good afternoon.

TRAVIS COUTURE-LOVELADY: Good afternoon. Thank you, Mr. Chairman, members of the committee. My name is Travis Couture-Lovelady, T-r-a-v-i-s C-o-u-t-u-r-e-L-o-v-e-l-a-d-y, representing the National Rifle Association and our members here in Nebraska. Appreciate your time, appreciate you taking a look at this issue. We believe that this is an important issue for protecting the privacy of Nebraskans who want to exercise their constitutional rights, their Second Amendment rights. This bill does several important things, as has been mentioned. "Prohibition"-- prohibition on governmental firearm registries. There's already those prohibitions in federal law; I believe this would be a key step in this part. A restriction on the distinct merchant category codes for firearm retailers. The rationale, of course, is this protection of constitutional rights. The Second Amendment guarantees the right to keep and bear arms; LB686 fortifies this right by preventing the creation of databases that could be used or misused to monitor or restrict firearm ownership. The prevention of discriminatory practices through using these merchant category codes ensures that-- the bill ensures these businesses and their customers are not unjustly singled out or subjected to potential discrimination by financial institutions or other entities. Just the enhancement of overall and individual privacy is important, especially as been talked about today, there's lots of attacks on personal privacy, fraud is rampant, so it-- protecting any privacy we can for-- with this data is important. Any-- what's-- the little question we had before about Amalgamated Bank and where that came from-- Amalgamated Bank is a, a left-wing political project, declaring on its website it's proud to support candidates, political parties, political action committees, and political organizations as they seek to build power for progressive change. Well, they're the ones behind this code, pushed it up to the ISO. Why this code is dangerous, they want to use it to report that suspicious data up, up to the Treasury, up to other things were they could use it to push back on, on legal firearm purchases, basically to create fear among folks to, to stop using those, those lawful transaction-- lawful credit card swipes. So, we, we believe that this bill would be great for Nebraska. There may be-- it's not a threat at this moment, as was mentioned, but should it

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become a national standard, there would become a threat, so it's a preemptive strike to protect the rights of Nebraskans at this time. So, I'm happy to stand for questions, but our members in Nebraska are in-- are support of this, and we urge you to please support this bill.

JACOBSON: Questions? Senator Hardin.

HARDIN: You mentioned-- or someone mentioned three states before that have embraced this outside of Nebraska. What do these discussions look like? What about Kansas, Wyoming, South Dakota, Iowa, so forth?

TRAVIS COUTURE-LOVELADY: Certainly. Thank you, Senator Hardin. Appreciate that question. I also work in Colorado, so I had to deal with the bill last year to mandate these codes, and it is a-- it is part of the national push. It is-- those states that are further restricting or finding ways to, to clamp down on the Second Amendment. And that was part of the discussion, was well, the-- they believe that firearms are dangerous and therefore should be tracked; they believe in registries, and want to use this-- since they are prohibited from a federal registry, they want to use this to create a registry however they can to circumvent that.

HARDIN: Thank you.

JACOBSON: Other questions? Yes, Senator Dungan.

DUNGAN: Thank you, Chair Jacobson. Thank you for being here. Appreciate it. And I-- similar to Senator Bostar, I'm trying to get caught up on MCCs. I'm reading about them here and I'm listening, so I apologize if I'm saying something you've already said. So, I'm just trying to play this out to make sure I understand the concern. So, if-- let's say this bill does not get passed and the pause is no longer in effect, and so ultimately, these MCCs are, are utilized. So, banks or peer-to-peer transactions companies are able to determine the nature of the purchases. What is the next step, I guess, that there's a concern about, that would then ultimately, I guess, lead to the concern of the infringement of the Second Amendment right? Because if the individual private companies gather the information, I'm trying to sort of understand the nexus to what that does to infringe on that right to purchase the firearms. What's kind of the nexus there?

TRAVIS COUTURE-LOVELADY: Certainly. Thank you for the question. So, if you're creating any kind of database, I mean, the more data there is on that MCC, the more you're going to know what they purchase, whether

it's all the way down, you know, how to-- how far they go with this. The more data they have, the more they can do with it. So, if they, they know you're purchasing a specific kind of firearm or a specific set of firearms, however far down they're able to push it, that, that database shows that that person did buy a firearm. They do own a firearm, and the-- it could say what, specifically, they bought. And it could then be moved on whether, whether it's a specific individual that could have an issue, or it could be in a broader-- [INAUDIBLE] seems like something that may not happen, but there's the constant fear of government banning something specifically and rounding them up. Well, how do they round them up if they don't know where they are? So, if they have this list-- because they can't have a-- they can't have a government list-- that data is turned over to the government to figure out who has purchased these and where they can go find them.

DUNGAN: Thank you. No, I appreciate that. And this is an issue of first impression for me. I'm kind of [INAUDIBLE]--

TRAVIS COUTURE-LOVELADY: Sure, sure.

DUNGAN: --like learning about this. I'll kind of give you the same question I gave the other testifier, just because I'm curious your answer. How do you balance what we're talking about here with the company's First Amendment rights to sort of do business as they see fit? Because we, as a country, have acknowledged from the Supreme Court that corporations or companies have that First Amendment right to free speech, to do money as they see fit-- or to do business, rather, as they see fit. So, how do you balance telling the companies how they can or cannot operate with sort of that freedom that others have?

TRAVIS COUTURE-LOVELADY: Certainly. And that is, that is a balance. That's a balance we, we have to deal with on, on a lot of these issues. And unfortunately, it continues to, to creep. Specifically with this, they are almost begging for this just so that the neutrality stays so that they don't have to get involved in this Second Amendment fights. They don't, they don't want to be involved in, in blocking constitutional rights, but they're being pressured by lots of different activist types that, that think we shouldn't have those Second Amendment rights. So, it's a, it's a tough-- it's a tough spot to be in, and we wish we weren't in front of the Banking Committee. But unfortunately, the-- it's not just us. There's, there's other, other entities, other issues that get pushed into this realm because where they're not able to pass things at, at state level, at

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federal level, they're using the tools that shouldn't-- should not be involved in this as weapons against our constitutional rights. And so, unfortunately, we have to get involved in this sphere, and it's-- it is what it is right now, unfortunately.

DUNGAN: I appreciate you being here. Thank you.

TRAVIS COUTURE-LOVELADY: Yeah. Thank you.

JACOBSON: Senator Hardin.

HARDIN: Drafting off of what Chair Jacobson referred to earlier with Ms. Nolan from Hornady: if this bill passes, if this bill doesn't pass, would you comment on what this would look like for, potentially, not only Hornady, but Cabela's, Bass Pro in the state of Nebraska?

TRAVIS COUTURE-LOVELADY: Thank you, Senator Hardin. Appreciate that. That-- it's an interesting question for the, for the bigger folks. And we-- there was a little bit of talk about that earlier. What, what happens to them? Do they have to separate off and have a, a separate section of their store where they have a specific code for that-- just that part of the store? How do-- do they have to set up a separate processor for that? So, it, it-- there's a lot of unanswered questions on, on those specifically, and I guess we'll figure it out once they actually implement it in the states that, that have mandated it. But it-- I think the broader threat they will, they will face is the fact that a lot of these people will move away from, from using cards and move to just cash transactions. Card-- they'll go away from using cards, and lot of people do that because of the, the restrictions that they've had to, had to deal with because of PayPal or, or other entities that already blocked those things, so. It just further restricts the ability to, to freely exercise your constitutional rights. And anything that makes it harder is going to depress that. More-- less people are going to be involved-- less people are going to be involved in the shooting sports and hunting, whatever it is, it's, it's going to depress that. And the less people that do it, their ultimate goal will, will be fulfilled, and it'll just slowly go away over time.

HARDIN: Thank you.

TRAVIS COUTURE-LOVELADY: Thank you.

JACOBSON: Other questions? All right. Seeing none. Thank you for your testimony.

TRAVIS COUTURE-LOVELADY: Thank you, Mr. Chairman.

JACOBSON: Further proponents? Good afternoon.

H. MICHELLE C. ZAHN: Good afternoon. My name is H. Michelle C. Zahn, H. M-i-c-h-e-l-l-e C. Z-a-h-n. I am a board member of the Nebraska Firearm Owners Association, and I'm also a self-defense instructor. I will look at my notes-- and I apologize, my allergies are making me sound very nasally. Merchant category codes must remain appropriate to not distinguish a firearm purchase from any other purchase. This will prevent discrimination against lawful business, big and small. It will also ensure that data breaches, which are so common these days, do not negatively impact thousands of gun owners, gun owners in Nebraska who hunt, compete, enjoy our good tradition of shooting sports, and those who own for personal protection themselves and their families.

JACOBSON: Thank you.

H. MICHELLE C. ZAHN: Thank you.

JACOBSON: Questions? All right. Seeing none. Thank you for your testimony.

H. MICHELLE C. ZAHN: Thank you for your time.

JACOBSON: Further proponents? Any other proponents on LB686? All right. Seeing none, I'll invite the first opponent to step forward. Good afternoon.

RYAN MCINTOSH: Good afternoon, Chair Jacobson, members of the committee. My name is Ryan Macintosh, M-c-I-n-t-o-s-h, and I appear before you today as a registered lobbyist for the Nebraska Bankers Association to testify in opposition to LB686. You've heard a lot of the background on MCC codes, and by and large, I, I believe everything that's said today has been very accurate with that. Unfortunately, special interest groups have proposed using the heavy hand of government to dictate how banks serve interests of their customers. Banks are faced with pressure from both sides of the political aisle regarding ESG policies. It's been said MCCs classify types of merchants and not types of products to facilitate processing transactions. One of the primary benefits is for reward points for credit cards to provide special earnings for certain spending. MCCs are also useful in identifying industry-specific fraud patterns to protect merchants. Most customers will recognize the use of MCCs when they get their end-of-year spending summary provided by most credit

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card companies. In September 2022, as was stated, ISO published new MCC for firearms retailers codes. Rightfully so, this caught the attention of the firearms industry. However, this legislation does nothing to protect the firearms industry from the perceived threats that have been raised by the proponents. First, as sate-- as stated, MCC categories apply to merchants; individual products do not have a separate MCC. As such, MCCs could never be used to facilitate a gun registry, and collect no specific data that could ever be associated with a particular firearm. Second, the ISO cannot mandate the use of any specific MCC standard on merchants; it is merely a category that can be used. When I've-- I don't know if any of you have purchased a firearm recently-- when you walk in, you give a lot of very, very specific information to the FFL who then submits it to the federal government. So, to say that this would facilitate the creation of a registry as opposed to the information that the ATF already collects, I, I think, is, is significant. Based on the foregoing, you may be wondering what harm enacting this legislation can be. Simply put, it disrupts interstate commerce. A large number of our member banks operate in multiple states. Several states, including our neighbor Colorado, have enacted legislation that mandates this MCC for firearms-related businesses. Proponents argue that this will enable financial institutions to monitor and flag suspicious activity related to firearm purchases, potentially allowing law enforcement to intervene. This is a red herring. Firearms retailers are required to collect vastly more information than ever could be categoric-- captured with the MCC. However, on the other side of the political spectrum, we have states like Nebraska considering whether to prohibit the use of MCCs for firearms. Banks and credit card issuers are caught in the middle, and for no good reason. LB686 is particularly problematic, as it fails to limit the mandate to in-state sales only. As such, there's a potential conflict of laws. With that, we would urge the committee to indefinitely postpone LB686. Thank you.

JACOBSON: Thank you. Questions for the committee-- from the committee? Senator Hardin.

HARDIN: So, how do we properly balance, from your perspective, an outside organization-- outside of United States organization in the ISO-- with the Second amendment of the Constitution? How do we, the seven dwarves-- eight dwarves, seven dwarves sitting here to do that? Help me understand. How do we balance that?

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RYAN McINTOSH: Well, the conversation would start that-- would not even involve this legislation whatsoever. The ISO does not mandate anything upon credit card [INAUDIBLE]

HARDIN: Because this legislation does do exactly that, and it's forcing us to make a decision, so I'm passing the burden along to you.

RYAN McINTOSH: Yeah, so this-- so, what this legislation does-- I mean, it does have a portion that says the government cannot create a gun registry lists. We don't care about that; that, that has nothing to do with,--

HARDIN: But they do.

RYAN McINTOSH: --with our position. Yeah.

HARDIN: Right.

RYAN McINTOSH: Yeah. So, we do not object to that portion of the bill. The, the portion is, is banning the use of a, of a merchant category code that is promulgated internationally, used nationally and internationally, and, and required in certain states. So, when we have certain states that are requiring it and then certain states that are banning it, it-- it's very problematic.

HARDIN: So, since that's already reality-- we've already got three states that have said "We love this," and you've got other states that are saying "No, not going to happen here," educate me. What are the options? Because what you're talking about is already reality in other places.

RYAN McINTOSH: I would submit to you that there's, that there's simply no need for action. This is not a problem today. This is not a problem in Nebraska.

HARDIN: But we did just hear an example of where it was a problem earlier, in Grand Island.

RYAN McINTOSH: I find it difficult to believe that a bank would carte blanche blacklist an entire industry.

HARDIN: Well, but-- so, how do you deal with Ms. Nolan, who sat where you're sitting, and just told us about one instance of exactly that taking place?

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RYAN McINTOSH: Well, I, I did not hear any, any specifics. I, I don't, I don't know if that is what occurred here. Again, Senator, I don't think that-- I think that the allegation is that either a credit card processor or bank completely blacklisted, you cannot use our credit card to make purchases at, at pawnshops. I would need more details to discern if that's happening. I've never heard that issue before.

HARDIN: Well, it sounded like more gun shops, and that was more of the concern, but-- so anyway, just, you know, passing along the-- as they say, we make \$1,000 a month and all you can eat and drink here, so we're trying to make the best decisions we can with what we have. So, that's what motivates the questions.

RYAN McINTOSH: Sure.

HARDIN: But thank you.

JACOBSON: Other questions from the committee? All right. Seeing none. Thank you for your testimony.

RYAN McINTOSH: Thank you.

JACOBSON: Next opponent. Good afternoon.

DEXTER SCHRODT: Good afternoon, Chairman Jacobson, members of the committee. My name is Dexter Schrod, D-e-x-t-e-r S-c-h-r-o-d-t, president and CEO of the Nebraska Independent Community Bankers Association, here to testify in opposition to LB686. One thing I wanted to highlight for you that has been mentioned is there have been bills introduced the last couple of years in Congress regarding this issue, and, given the makeup of Congress and the administration currently, I would expect another one to come forth during this congressional session seeking to address this issue. So, just want to put that out there that anything that we do might, might as well be pre-empted eventually as well. In principle, we, we do oppose any legislation that creates in-statute language that protects one industry by creating requirements and limiting rights on another industry, kind of what Senator Dungan was getting at with his questions earlier. Specifically, our concerns are that community banks could fall under the definition of a covered entity under the bill because they connect local retailers and businesses in their communities to payment processing services. And community banks specifically are often not in a position to negotiate with these credit, credit card processing companies and merchant processing

companies, so that puts us at a disadvantage that we can't really control what those payment processors are going to do, but we still need to serve our customers and linking them with the ability to take card processing. Now, proponents earlier indicated this issue was created by large national banks and quote-unquote left wing activists, and I think you'll be hard-pressed to find left-wing activists with any sense of the ear of any boards of our community banks in Nebraska. So, I do, do agree with Mr. McIntosh that it's not currently an issue here. But to Senator Hardin, how do we balance that then, right? We believe-- and I have not talked with Senator Lonowski about this-- but one way to balance it is you could create an exception under the covered entity definition for banks under \$100 billion in assets and below. That way, you're not encapsulating Nebraska's community banks, but maybe still getting at those big actors of the Wall Street banks. And with that, I'll conclude my testimony.

JACOBSON: Yes, Senator Hardin.

HARDIN: Even the small community banks, though, interact with bigger banks, right? And so, I'm just saying that world gets to go out into the murkiness of ESG, for example, and that would be one of these worldwide thrusts into our very backyards. And I'm saying even with the local community banks-- by the way, I bank at local community banks-- I'm just saying, even, even at the local level, we are affected by those things, correct?

DEXTER SCHRODT: Absolutely. You know, everything trickles down. Most of the the card networks are controlled by two or three companies. You know, you heard Visa, Mastercard. And, and we also heard that they're not currently looking at any of this, so that kind of speaks to the issue of maybe not being present in Nebraska. But I do believe community banks should still have the opportunity to serve their communities, give merchant processing to those who might need it, and meanwhile, you know, taking off some of the, the-- I don't even know the word I'm looking for. The onerous off the community banks for making sure that they are in compliance with this law.

HARDIN: Thanks.

DEXTER SCHRODT: Yeah.

JACOBSON: Other questions? I guess I just want to confirm a couple of things for the record. So, I'm not sure there's a community bank in Nebraska that does not issue debit cards.

DEXTER SCHRODT: I think at this point in time, 2025, they all likely do, yes.

JACOBSON: And those debit cards are have to be cleared through a network, Mastercard, Visa as an example. And when you do that, you sign up for their terms agreement,--

DEXTER SCHRODT: Correct.

JACOBSON: --and it's a take-it-or-leave-it. Is that right?

DEXTER SCHRODT: Given the community bank size, we do not have the position to negotiate, so you are correct. Take-it-or-leave-it from the processor.

JACOBSON: So then, you get the choice of "do I issue debit cards, or do I not issue debit cards?"

DEXTER SCHRODT: Correct.

JACOBSON: And since every bank issues debit cards, a customer coming in to open an account and says, then, I need a debit card, and they said, oh, I'm sorry, we don't issue debit cards because we're-- we don't want to deal with the terms of the processor.

DEXTER SCHRODT: Mm-hmm.

JACOBSON: Really have no choice, correct?

DEXTER SCHRODT: Correct.

JACOBSON: So--

DEXTER SCHRODT: Yeah, you're just going to lose customers.

JACOBSON: And at the end of the day, even the processors, the reason they have these rules-- which, I might add, are skewed towards the retailer, not the bank-- because they have the banks captive and credit unions. They, they have to have the cards; they have to be able to issue the cards; they have to have a network to clear the cards.

DEXTER SCHRODT: Correct.

JACOBSON: So, they're captive. The merchants, on the other hand, can choose whether they want to accept Mastercard, Visa, Discover, or whatever. And so, they have to be a little more negotiable with the

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merchants, and so therein lies some of the fraud issues that banks and credit, and credit unions deal with, that there's transactions that-- for fraud reasons, it's why you can go to a merchant and, and they want your signature but they don't look at your ID, and you just scribble something down and boom, that covered the signature requirement. So, that's what-- where a lot of the fraud is coming from there, and just all the other pieces. But, but at the end of the day, I think, I, I think it's safe to say that smaller community banks in particular really are captive when it comes to whatever the rules are out there in order to-- in order to play ball.

DEXTER SCHRODT: Yes, Senator. I would agree with that statement.

JACOBSON: OK. All right. And I think at the same time, don't the credit card companies-- I believe one of the other testifiers raised this question-- they're really not wild about this kind of legislation because they want to be able to clear as many transactions as they can because it's fees every time they a clear transaction. Would that be-- does that make sense?

DEXTER SCHRODT: Absolutely. It's not in the business interest to start declining transactions.

JACOBSON: Correct. OK. Thank you. Other questions? Yes, Senator Dungan.

DUNGAN: Thank you, Chair. Broadly speaking, I'm not really familiar with the practices that banks have to follow, and I know other members of this committee probably are. Are there currently any requirements in place for banks to report to law enforcement or other supervising entities suspicious behaviors or decisions that people make with their finances? I guess what I'm saying-- is there anything currently in place where if you see a bunch of really suspicious activity in somebody's financial records, it has to be reported?

DEXTER SCHRODT: Yes. Under the Bank Secrecy Act and the acts that followed the Patriot Act, banks do have to monitor for suspicious activity, money laundering, that sort of things. So, it does happen currently.

DUNGAN: What is, I guess, the standard-- and this is a broad question. Sorry to put you on the spot. I feel like I do this to you a lot.

DEXTER SCHRODT: That's all right.

DUNGAN: What is sort of the standard that's utilized for determining when something falls under that suspicious activity, as is currently required? Is it an individual's subjective analysis, or is there like a rubric you use?

DEXTER SCHRODT: So, I can speak to that in terms of deposits, but that's not really what we're talking here; we're talking about transactions, and that I wouldn't know enough about. But I can have one of my member banks and their, their Bank Secrecy Act departments reach out to you and kind of explain that more.

DUNGAN: OK. I would just be curious. I'm just curious what mechanisms already exist, because I know the concern that's been expressed by proponents is privacy being a breached and then having your information shared, which I totally understand that concern. So, I'm just trying to understand what currently exists in terms of the privacy that I have in my bank, and with my transactions.

DEXTER SCHRODT: Yeah. Just generally speaking, without delving into the details, it does currently exist under federal law that banks have to watch transactions, and all of that gets reported up to FinCEN then, which is the Department of the Treasury that one of the proponents mentioned might possibly flag transactions for gun purchases. However, with-- given the current administration, I don't see that happening in the next four years.

DUNGAN: Thank you.

JACOBSON: Senator von Gillern.

von GILLERN: Thank you, Senator-- Chair Jacobson. You mentioned in your last comment that it's certainly not in the interest-- I want to make sure I get right-- the business interests of credit card companies to decline transactions. But we know of-- we know for a fact of, of situations where corporations-- for example, Blackrock is under investigation now for making decisions to promote ESG goals that were outside the-- clearly outside of the growth of their funds for pension funds. And we know there are stories of environmentalists-- you know, the big oil companies were forced to have environmentalist on their boards, clearly not in the interest of their shareholders. So, I want to push back respectfully on your comment that it's not in the interest of-- in the business interests of credit card companies to decline transactions because we, we know of scenarios where some large corporations have made decisions which may not be in the best

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financial interests. And maybe the word "financial" would be the delineator there. Would you agree with anything that I just shared?

DEXTER SCHRODT: You know, Senator, I can't really speak to that. Given I represent Nebraska's community banks, I wouldn't have any reaction with Blackrock or Chase or Wells Fargo.

von GILLERN: Are you familiar with any of the stories that I've mentioned?

DEXTER SCHRODT: I have seen them out there.

von GILLERN: OK.

DEXTER SCHRODT: I have a personal opinion, but I'm not-- I will share that with you later.

von GILLERN: All right. Thank you, I appreciate that. Thank you, Chair.

JACOBSON: You bet. Other questions? All right. Seeing none. Thank you for your testimony.

DEXTER SCHRODT: Thank you.

JACOBSON: Further opponents testimony? Opponent testimony? OK, seeing none. Any neutral testifiers? Anyone wishing to speak in a neutral test-- capacity? Seeing none. Senator Lonowski, you're welcome to close.

LONOWSKI: Thank you, Chairman. Enlightening day. Thank you for this hearing. I appreciate all of you and, and your questions. And I'd like to thank the, the people that testified on behalf of LB686, and I look forward to getting to work with the opponents of LB686. I do have some, some things. So, Senator Hardin kept saying three states, but there's actually 19 states that are now looking at the same kind of legislation as we spoke about. And somebody brought up ESG policies; I had a banker tell me that in order to do banking in Europe that they needed to follow some of the european bank's guidelines. So, that's where the ESG comes, and, and I'm concerned in the, in the environmental, social, and governance in attempting to regulate our Second Amendment rights when it's coming from Europe. And I, I guess I don't understand-- so, if I go into a gun shop or a pawnshop, my card could be denied because of the type of business it is. That encourages me to use cash, which is even less of a trail. If I'm a bad actor, I'm

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using cash anyway. But at least here, the police and the sheriffs still-- they still can find out. And with, with January 6, they did not know the type of purchase, but they were able to go to those stores and figure out to-- they can follow that credit card trail and figure out where those people were, and that's why so many were arrested later on. A couple other things. I, I guess the term "banning" was used, and I'd like to, like to emphasize that really we're talking about pausing this, not banning it. And otherwise, I think that's all I have. I am willing to work with anyone back there on amendments to maybe include in-state sales only, and also to work on any other amendments that might be necessary to get this bill to pass through. Are there any questions of me?

JACOBSON: Thank you. Questions from the committee? Questioned-out? OK.

LONOWSKI: Thank you very much for your time. Appreciate it.

JACOBSON: Thank you very much, and don't run too far. This concludes our hearing on LB686. I would mention that there are-- there were 77 proponent letters, 34 opponent letters, zero neutral letters, and the committee did not receive any ADA testimony regarding this bill. With that, we will move on to LB687. Senator Lonowski, you're back up again.

LONOWSKI: Good afternoon, Chairman Jacobson, and members of the Banking, Commerce and Insurance Committee. Thank you for allowing this hearing as well. For the record, my name is Senator Dan Lonowski, D-a-n L-o-n-o-w-s-k-i, and I represent the 33rd Legislative District. I am inning-- I am here to introduce LB687, the Firearm Industry Nondiscrimination Act. As policy makers, we should attempt to avoid discrimination against Nebraska companies and provide consequences for those who practice this type of discrimination. This bill prohibits state and local government entities from entering into a contract with a company that has a policy or practice that discriminates against businesses engaged in the firearms industry. Many successful businesses in the firearm and ammunition industries have faced discrimination by providers of financial service or insurance companies due to the very nature of their legal and regulatory compliant business. I think I have a handout here, also. Excuse me one second. Thank you. Some of the largest and most powerful corporations in the country are looking to use power to financially cripple the firearms, ammunition, and shooting sports industry, as well as other industries, based largely on the political or social views of their corporate leadership. With respect to the firearm industry, private

corporations are using their economic position of power to restrict a constitutionally-protected right in a manner that would be impermissible. This legislation would give awareness to whether these companies have a policy that discriminates. There are protections in the bill for government entities if they contract with a sole-source provider, or do not receive a bid from a verified company. Following my introduction, you will hear from the director of government relations and state affairs of the firearm industry's trade association and others that can explain more in better detail on the history of this issue and the effects it had on businesses. Thank you, Chairman Jacobson, and members of the committee for your consideration of LB687, and I will try to answer any questions you have.

JACOBSON: Committee questions? All right. Seeing none. Thank you. Now, I'll the ask for the first proponent of LB687. Welcome back.

MORIAH DAY: Thank you, Mr. Chair. Appreciate you having me again. Chair and members of the committee, if companies make a choice to have "discriminatory"--

JACOBSON: [INAUDIBLE] spell your name again.

MORIAH DAY: Yes. Moriah Day, M-o-r-i-a-h D-a-y. I'm the director of government relations and state affairs for the National Shooting Sports Foundation. If companies make a choice to have discriminatory policies against the Second Amendment, they should tell you. If you can, you should do business with someone else. Our industry is unique; our industry is essential to the exercise of a fundamental constitutional right, the Second Amendment. I testify before you today in support of LB687 because our members have a history of being denied fair access to financial and other services because of the Second Amendment. Today, you'll likely hear concerns about this bill from companies and organizations opposed to its passage; companies who would never run afoul of this bill because, as they will tell you, they don't discriminate. Unfortunately, a large number of large corporate-- corporations, such as the too-big-to-fail banks, have socially disfavored our industry. In 2013, Obama administration senior officials, unable to pass legislation, identified power in leveraging corporate America, banks, and others to implement their policy agendas. This destructive effort was termed Operation Choke Point. The goal was denial of financial services and other services to the firearm industry and others. Officials at both the Office of the Comptroller of the Currency and the FDIC insisted that firearm businesses be categorically classified and disfavored. They threatened

the companies who served our industry. Those providers subsequently cancelled the firearm industry with little explanation; they deplatformed us, they debanked us, they stopped processing legal transactions, they denied financial services, and they acknowledge they did so. Congressional awareness and oversight finally brought a small measure of relief, but hundreds of millions of dollars in damage was done. Businesses were lost, and certain levels of discrimination were baked into the system. In 2018, the situation intensified. A combination of national tragedy, progressive activism, and financial opportunism incentivized many of the nation's too-big-to-fail banks to institute new social policies barring businesses with certain firearms industries-- entities. Those banks made a decision to act in lieu of government, instituting a progressive social agenda. It certainly was not all banks; Wells Fargo is an example that faced criticism for maintaining pro-Second Amendment relationships, but many large banks unfortunately took actions detrimental to our industry. We didn't get a chance-- a choice in those decisions; it was their choice. The CEO of one of the too-big-to-fail banks said, and I quote, "This isn't an easy thing to simply take a stance on [...] I've gotten my share of people who staunchly disagree with us interfering in what they believe to be a constitutional right." "That wasn't unexpected, and we certainly respect that opinion." He then went on to outline that they expect to further leverage their position as technology advances, saying, and I quote, "There's things you can do today, and there are those things that maybe we have the ability around technology or other things to do in the future." End quote. Another large bank made their position clear as well. Quote, we have a longstanding policy of not lending to firearm manufacturers or sellers. We do not maintain banking relationships with businesses involved in gun sales, and I quote. In 2018, another of the too-big-to-fail banks said "It's not our intent to underwrite or finance military"--

JACOBSON: I'm going to have to have you wrap up your comments.

MORIAH DAY: Thank you, sir. Companies in the market have a right to set their business policies, but so do you. Those companies get a choice, and so should you.

JACOBSON: Thank you.

MORIAH DAY: Thank you for your time.

JACOBSON: Thank you for your open. Questions from the committee?
Senator von Gillern.

VON GILLERN: Thank you, Chair Jacobson. Previous opponent to the previous bill mentioned that, that many-- the financial institutions wouldn't do anything that was in-- that would not positively impact their bottom line. I'm paraphrasing. But what you just described potentially could do that, that these, these banks apparently have motivations beyond their bottom line that they're trying to implement. Would that be true?

MORIAH DAY: Thank you for-- Senator, for the question. I appreciate that. And yes, I'd like to clarify that unfortunately, in today's day and age, a number of large corporations-- and I'm, I'm not-- I don't want to single out banks, because a number of companies, such as social media giants, media companies, others, software providers, a number of large international or national corporations have chosen to make decisions that I would believe would be in direct opposition to what would impact their bottom line in a positive way. Unfortunately, that's the reality we live in. There are activists who are constantly pushing on those organizations to implement these type of policies.

VON GILLERN: I'm going to play both sides of the issue a little bit, to comments Senator Dungan made earlier. That's within their rights to do that.

MORIAH DAY: It is.

VON GILLERN: OK. All right.

MORIAH DAY: Yes, Senator, I appreciate, I appreciate that clarification, and I would, I would totally agree with that. Unfortunately, it's also-- or, I don't say unfortunately in this situation, but unfortunately some have chosen to do that. Fortunately, it is also in the purview of the state of Nebraska to choose whether or not to do business with those companies.

VON GILLERN: Right.

MORIAH DAY: This would not-- this bill would not prohibit those companies from discriminating; it would simply-- basically, if a company has a discriminatory policy, they would have to tell the state of Nebraska or whoever is trying to contract with them, and then that company would move to the back of the line, essentially, allowing you to choose companies that don't discriminate against our industry first. And then, if there are no companies that, you know, are able

to, able to fulfill that need, then the state would then be able to go ahead and contract with them.

VON GILLERN: Thank you.

JACOBSON: I guess I, I would just ask a little bit on-- follow up on Senator von Gillern's question that-- would it be safe to say that the companies that have-- in, in, in, in involved in those practices have been very large, too-big-to-fail publicly-traded companies, as opposed to the private companies that are not too big to fail?

MORIAH DAY: Appreciate the, the question, Mr. Chair. And yes, you know, by and large, the companies that we are seeing discrimination from are those very large, very large companies; the too-big-to-fail companies, as, as I described earlier.

JACOBSON: And, and publicly traded, meaning that if you get activists to go out and acquire a meaningful amount of stock, they can leverage that into a seat on the board, which can then-- that board, of course, then would dictate the kind of policies that are, that are carried out. And, and they could be in conflict with what the rest of the shareholders may want, simply because you've got activists that have taken over a meaningful portion of the stock. Is that, is that-- does that make sense to you?

MORIAH DAY: Yes, Mr. Chair. I appreciate that. Yes, that, that happens, you know, I'd say far too often, unfortunately. And unfortunately, that, you know, as you, as you mentioned, that meaningful number of shareholders is not necessarily a majority of shareholders--

JACOBSON: Right.

MORIAH DAY: --it's not necessarily even a plurality of shareholders; it's just enough to get, get one or a number of activists elected to a board of directors, for instance. And in that situation, then, you know, they may be able to impact policy that could be negative to the majority or all shareholders of that company. And I would just say, you know, to kind of tack on to that, like you said-- like you mentioned a second ago, while these, these too-big-to-fail companies are the ones that are primarily doing the discriminating, this bill would actually help local, you know, smaller commun-- you know, community banks, smaller software companies, smaller options, you know, whether they're Nebraska-based or, or not. It would help them,

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you know, have kind of a foot up in a way, competing for, for the state's business. And would, you know, hold these large companies accountable for those decisions.

JACOBSON: Sure, but-- and thank you. And I, I guess I would just lay back out-- again, follow up on Senator Dungan's comments earlier that if I'm a privately-owned bank-- and I've raised this in previous hearings-- I, I hope my competitors want to discriminate and send it my way. OK? Because I'll take care of the-- I'll take all of the gun buyers and the dealers and, and anybody I-- and it's-- gets into wholesalers and cattle, beef producers. Bring them our way, and I think most com-- and I think every community bank across Nebraska would say, "Bring it on. We'd love to have those, those customers." So.

MORIAH DAY: And I appreciate that, Mr. Chair. And we would love to, you know-- our industry would love to do business with them. And, and we would love to, you know, send, you know-- obviously love for the state of Nebraska to send more business to those community bankers and community organizations. You know, those companies that do provide those business services that may have not been in the running before when competing against large international companies and banks.

JACOBSON: Now, how do we handle those contracts that are so large that they can't be accommodated through community banks? What do we do there?

MORIAH DAY: That's a great question. And that, that is a challenge that has surfaced a couple times. So, this-- you know, this-- similar language has been passed by a number of other states. Texas is an example. Obviously, they have an enormous economy in Texas and a very large municipal bond market, things like that, related to the state of Texas. What it comes down to is you end up having some very large corporations and banks that choose to continue to discriminate, and others that choose to take a step back and look at what is financially feasible and beneficial for their bottom line and for their stockholders. And you find that there are-- there is more competition in that market than you might have thought to start out with. They haven't-- you know, as far as I'm aware, they haven't had an issue finding somebody to fulfill a contract in these other states.

JACOBSON: Do you know how many states have adopted a bill like this one?

MORIAH DAY: I don't have the list right in front of me, but I can try to get that to you, if that's helpful, Senator.

JACOBSON: Perfect. Thank you. Thank you. Senator Dungan.

DUNGAN: Thank you, Chair Jacobson. And [INAUDIBLE] this is a really interesting line of thought, I think, when we're talking about private companies versus the government. And I just-- I wanted to follow up on a couple of things that I asked you, I think, on the last bill. So, my understanding is the NRA was successful in a Supreme Court case with regards to ESG-adjacent kind of conversations, where I think there was a unanimous opinion and Justice Sotomayor wrote that government officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors. So, I think that was seen as sort of a, a victory on behalf of the NRA with regards to governmental agencies or their intermediaries trying to push a certain viewpoint. Do you fear, I guess, or do you think that if we pass this legislation, it has that same effect? Because I, I think the, the goal, obviously, is to say you can't discriminate, right? But aren't we, the government, then stepping in and telling a corporation who has that First Amendment right to act as they see fit-- aren't we essentially passing a piece of legislation that has in it viewpoint discrimination? We're saying you're not allowed to not work with individuals at the NRA or guns, or things like that. Does that make sense? I'm-- it seems like the, the current status of the law could be argued to prohibit exactly the kind of legislation that we're talking about here because we are telling companies what they can and can't do with regards to that viewpoint discrimination.

MORIAH DAY: First of all, I appreciate, appreciate the question. And while I don't obviously represent the NRA or its members, you know, what-- we represent the firearm industry and manufacturers, retailers, et cetera. That, that court case was groundbreaking in a number of ways, and obviously fascinating to see the, the opinions that came down from the Supreme Court on that. I would argue that this, this bill very, very carefully avoids that issue by instead of telling private companies what they can and cannot do, it simply chooses to prioritize doing business with those who are honestly ideologically in agreement on Second Amendment issues with the majority of-- the vast majority of Nebraskans. And so, I, I understand your concern; I, I acknowledge that. But I, I think that the bill is very careful to avoid that issue by, by not telling companies what they can or cannot do. Because I would agree completely, companies have the ability to do business with whomever they choose to do business with, and while it

may or may not make financial sense, may or may not make business sense in any other way, they have the right to do so. Again, Nebraskans also, through their elected officials, have the right to choose to do business with companies as well. And so, I would argue that, that basically, prioritizing these same companies that I think the majority of Nebraskans would prioritize doing business with is simply representative of, of people, not discriminatory against certain business practices, if that's helpful.

DUNGAN: No, and I, and I appreciate, I appreciate that. It's a very complicated legal question, obviously.

MORIAH DAY: Obviously, yes.

DUNGAN: I guess my only, I guess, respectful disagreement would be that we're not prioritizing; we're prohibiting contracts with those companies. And so, by virtue of creating that binary where we're not working with them at all, if they do choose, for whatever reason, to not-- or to discriminate against, you know, gun companies or things like that, if it's-- I fear that that might run afoul of something, but it's a longer conversation. But I do appreciate your answer. And again, thanks for being here today.

MORIAH DAY: Thank you, Senator.

JACOBSON: Senator Hallstrom.

HALLSTROM: Yeah. In a former life, I seem to recall that the state of Texas had some issues with increased bond financing cost, and the city of Stillwater, Oklahoma had to refinance a loan and at a much greater interest rate. Are you aware of those situations?

MORIAH DAY: I appreciate the question. I'm, I'm not aware of specific examples. I'd be happy to research those and get back to you, but I'm not aware of those tied to, to this.

HALLSTROM: I-- I'd appreciate-- there's a Wharton business study out there that I think reflected the Texas bond market that, that occurred after passage of similar legislation as this. I guess the next question I would ask is if, if a state had a-- or if a big company had a policy to promote gun rights, would you view that as, as a, as a good policy, from your perspective only?

MORIAH DAY: Sure. I appreciate that question, yes. And, you know, from-- on behalf of our, our members, you know, if a large company was

pro-Second Amendment and wanted to promote those policies, we would love to do business with them. You know, it, it may or may not make business sense for them, you know, as a large company to prioritize that, but, you know, perhaps, you know, they are taking an-- the initiative to compete for business in a different market than everyone else is, you know? And that, and that may be the case with some of these others, like Amalgamated Bank, which was mentioned earlier. You know, they may be-- it may make business sense for them to turn down a specific business with the firearm industry, as an example, because their, their goal is to gain more business and notoriety from those who are anti-Second Amendment and anti-firearm industry. And so, you know, they, they make-- they may make the calculated decision based, based on math that can make some more business sense for them to publicly oppose our industry in favor of getting business from, you know, left-leaning organizations and such.

HALLSTROM: And I appreciate your answer, and that's why I, I, I don't really like the use of the word discrimination, because it's almost like there's good discrimination and there's bad discrimination depending on which side of the aisle you, you happen to, to sit, in that particular instance. And I guess maybe my last question is, do you also believe or anticipate that employees of large corporations can have an influence on decisions that are made by the, companies based on their interests and viewpoints?

MORIAH DAY: Absolutely. I think, I think employees of large companies-- of any company, honestly-- depending on, you know, their station in the, in the company can absolutely have an impact. And sometimes, that's to the shareholders' benefit in a publicly-held corporation; sometimes it's not. But absolutely. You know, employees can frequently have a, a say in that.

HALLSTROM: Thank you.

MORIAH DAY: Thank you, sir.

JACOBSON: Other questions? All right. Seeing none. Thank you again for testifying.

MORIAH DAY: Thank you, Mr. Chair.

JACOBSON: Next proponent. Welcome back.

CARLA NOLAN: Thank you for your time today. I am Carla Nolan, C-a-r-l-a N-o-l-a-n, director of financial operations at Hornady

Manufacturing in Grand Island. As I've said, Hornady is a primary employer in central Nebraska, and its ability to do business greatly impacts many of your constituents. During our 2023 insurance renewal process, due to business growth, we had to get market quotes for our property insurance. We thought that we would be more likely to receive proposals if we only went to market on our facilities that do not handle any explosives or ammunition. These facilities are at least six miles away from the facilities that handle explosives. Again, we only requested proposals on the metals manufacturing part of our business, which is the same as any other metals manufacturing business. We asked 24 carriers for quotes; we received 24 declinations to quote. Despite the fact that we had a stellar loss history, despite the fact that we are in a highly regulated industry where we are required to have exceptionally high safety standards, 100% of the carriers refuse to quote, with 20 of them specifically citing our class of business as their reason. Hornady has been directly affected by this discrimination from credit card processors that wouldn't allow us to process sales of ammunition, or would allow us to do so by charging rates 5% or more above the standard rates to do so. We've also had multiple software vendors either terminate contracts or refuse to quote projects because of our class of business. A specific example of this discrimination is we had nearly completed a software purchase when one of the vendors' financial partners learned of that relationship; the partner forced the software company to withdraw from our engagement. The relationship that we were proposing wouldn't have been using that partner's business service at all, but they bullied our potential partner into losing a project based on that bias. Before we even begin to get a quote from potential software, finance, insurance and technology vendors, it is our policy to ask them to confirm that the business is willing to have a business partnership with us, knowing that we are an ammunition manufacturer. LB687 will help us to remove the barriers the financial discrimination poses to our business. It will help us to be able to choose financial products based on their merit and value, as opposed to being forced to choose from a small selection of vendors that are willing to do business with us, often at much higher prices. Thank you.

JACOBSON: Thank you. Questions? Yes, Senator Bostar.

BOSTAR: Thank you, Chair Jacobson. Thank you again for being here. Your description of your pursuit of insurance coverage, how did that-- how did that end? Did you end up being able to acquire coverage?

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CARLA NOLAN: So, we had to go to another kind of specialty market to do that. Rates were higher, we had to kind of tailor-- we had to tailor the policy to self-insure a portion of it. You know, it, it leaves us exposed. It's, it's not a position that is, is favorable.

BOSTAR: OK. Yeah. Thank you.

JACOBSON: To tag along on that, I'm assuming this was a very large policy that you were seeking.

CARLA NOLAN: Mm-hmm.

JACOBSON: And so, there'd be a limited number of insurers that would even take on that kind of risk, no matter what the industry-- would, would that be fair to say?

CARLA NOLAN: Absolutely. Absolutely.

JACOBSON: Yeah, and, and of course, you're in the heart of Grand Island, which has had a few tornadoes over the years, and so we're in a unique time period right now in the indust-- in the, in the industry where losses have really mounted. And the insurance industry, particularly the reinsurers have really kind of had some sig-- serious losses, and that's impacting rates for everyone, and it's impacting seemingly every carrier out there to, to raise-- I think all of us would argue that, look at our own homeowner's insurance policies and what's happened to them. So, there's a real effort out there to limit major losses in any one particularly insured. And wouldn't you say that that-- I mean, I'm a little troubled if there were those who said we're doing this specifically because of the industry you're in, but there probably are other factors that are out there as well that make yours a little unique in terms of-- having toured the plant, there's a lot of stuff in there.

CARLA NOLAN: There is. It's a, it's a, it's a big operation. You know, we feel like-- not to get into the details, but we, we kind of tailor our ask for that because-- yes, I agree with you. 20 of those 24 that declined to quote, which was all of them, specifically cited our class of business. And I would be happy to get that information we've got--

JACOBSON: Perfect. Thank you.

CARLA NOLAN: --some information on.

JACOBSON: I appreciate that.

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CARLA NOLAN: So. Yeah, so that-- that's what's disturbing about it. Four of them, perhaps.

JACOBSON: And looking at this bill, this bill is not requiring anyone to do business. This is basically saying if you proactively say "We are going to discriminate against a certain class," that then you're going to be prohibited from doing contract work of any size elsewhere in the state. And so, it doesn't--

CARLA NOLAN: That's my understanding.

JACOBSON: --it, it really just hampers them from doing other business is what you're seeing in this.

CARLA NOLAN: My understanding is that it would make them disclose that so that, you know, then it becomes more public information.

JACOBSON: So, be careful why you say no.

CARLA NOLAN: Correct.

JACOBSON: Yeah, I hear you.

CARLA NOLAN: Yeah, yeah.

JACOBSON: All right. Other questions from the committee? All right. Seeing none. Thank you again for being here.

CARLA NOLAN: Thank you.

JACOBSON: Other proponents? Welcome back.

TRAVIS COUTURE-LOVELADY: Thank you, Mr. Chairman. Good to be back. Travis Couture-Lovelady, T-r-a-v-i-s C-o-u-t-u-r-e-L-o-v-e-l-a-d-y, on behalf of the National Rifle Association and our members here in Nebraska. We do support LB687, the "FIND Act," to end discrimination against law-abiding firearms industry. The history, some of this, it started with Operation Choke Point under Obama, as been mentioned before. It's been a-- that's been a movement to attack this industry through financial services, or blocking access to financial services. And it's of course broader, with talk about ESG as well. Thankfully, we shut down Operation Choke Point with some, some friendly advocates at the federal level, but the threat does remain. I just had a few examples that I've experienced personally on this, including a bank here in Nebraska. First National Bank in Omaha used to issue the NRA

member co-branded credit card that you could get; unfortunately, they said after customer feedback, they were cancelling the card. Well, they, they were submitted to a barrage of a, of a tax after Think Progress, a progressive news site, linked them as a company that supported the NRA online, and so they're-- they were just unleashed on for that, and they were-- they relented and cancelled the NRA co-branded credit card in 2-- February of 2018. During that same time frame, Bank of America cancelled our NRA corporate card we had as employees, and then Wells Fargo ultimately cancelled the card after we switched to them. And right now, we have no NRA corporate credit card for employees. So, I experienced that firsthand on that side. Recently, as a-- I also helpful-- as a Kansan, I help with the Kansas State Rifle Association. We applied for a credit card, and I was told-- and I have a letter I can, I can show if you'd want-- anyone would like to see it-- from Chase showing that we do not issue cards-- business cards to groups like yourself, to avoid a conflict of interest. I called, talked to three different people; never could get a firm answer on what a conflict of interest actually was. They just said they would not issue the card. There's currently nine states, I believe you asked before, nine states that have, have enacted some version of this: Alabama, Florida, Georgia, Idaho, Louisiana, Montana, Texas, Utah, and Wyoming. Other states considering it currently, including-- there's also a federal version to this as well, but getting done at the federal, federal level in Congress is pretty tough right now, so the states are where these-- this action has moved forward, so. Time's up. Appreciate the opportunity to testify today, and happy to answer any questions I can try to answer.

JACOBSON: I do want to follow up on your mentioning of First National Bank of Omaha, who I believe is a privately-owned company. And I guess I think about being a privately-held bank that if we had an abortion clinic come to North Platte, and we somehow agreed to finance it, and it became public that we were financing it, and we had a strong push back by our customer base to get rid of that customer, would it be in our rights to do that, or would we be bound by having to continue to support them because we took them on as a customer and we shouldn't be allowed to debank them?

TRAVIS COUTURE-LOVELADY: Sure. Thank you, Mr. Chairman. That would be well within your rights to, to do so if they-- if you thought that Planned Parenthood did not fit with your company's values. Absolutely.

JACOBSON: And so, how is the First National Bank of Omaha any different than that?

TRAVIS COUTURE-LOVELADY: Well, this is a constitutionally protected right, guaranteed in the U.S. Constitution--

JACOBSON: To bear, bear arms.

TRAVIS COUTURE-LOVELADY: Correct.

JACOBSON: Yes.

TRAVIS COUTURE-LOVELADY: So, what all this-- and previous versions of this bill were, were much broader, saying they-- you know, you could not discriminate against. This version, the later version of the FIND Act, recognizes those private property concerns, those private business rights that they have to choose to do business with whoever they please. But it's-- it states as the state of Nebraska, we are not going to do business with companies give-- by giving them contracts that discriminate against our rights held in the Constitution. So, it's, it's a little, little bit different, we believe. And it's a way to encourage neutrality, to just do business; don't get involved in, in that sort of policy.

JACOBSON: But again, I guess it would seem that if you're a private enterprise, you should not be required to do business with someone you choose not to do business with. Would you still not agree with that?

TRAVIS COUTURE-LOVELADY: I agree with that. You--

JACOBSON: OK.

TRAVIS COUTURE-LOVELADY: --you do not-- you do not have to, and you would not have to under this bill. You just could not get a state contract.

JACOBSON: But there would be consequences if you, if you would choose to not do business with some entity because it could damage your reputation with the customers you're dealing with today. And, and I mean-- my point is that it seems to be a very slippery slope when we start mandating one private entity can do business with other private entities, and if you don't, we're going to ban you from being able to do business with the state.

TRAVIS COUTURE-LOVELADY: Yeah. It-- it's unfortunate that we have to be involved in, in this, in this sphere. It's unfortunate that banking can't just be neutral and trying to increase value for their shareholders and such, but this is, this is where we're at, this is

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the times we're in, and this is the way to push back to say, hey, Nebraskans don't want their tax dollars to go to companies that discriminate against our constitutional rights.

JACOBSON: Thank you.

TRAVIS COUTURE-LOVELADY: Thank you.

JACOBSON: Other questions? All right. Seeing none. Thank you for your testimony.

TRAVIS COUTURE-LOVELADY: Thank you, Mr. Chairman.

JACOBSON: Other proponents? Seeing none. There is one more. I thought you might be coming back. I was just-- had you somehow in my mind, you were coming back with that, with that cool shirt.

H. MICHELLE C. ZAHN: With that cool shirt, yes.

JACOBSON: Welcome back.

H. MICHELLE C. ZAHN: Thank you. My name is H. Michelle C. Zahn, spelled H. M-i-c-h-e-l-l-e C. Z-a-h-n. This is kind of short. Just that we "discriminate"-- the concern is that we discriminate against anything if we don't follow through with this is disconcerting, because it can discriminate against anything else. Why can't we just look at the credit score and credit history, and go on with our decisions? And I'm not a bank, but I'm saying, why can't we have those kind of requirements? And that's the end of that.

JACOBSON: Thank you.

H. MICHELLE C. ZAHN: Thank you.

JACOBSON: Well, we never punish anyone from using less than their three minutes, so. Questions from the committee? All right. Seeing none. Thank you for coming back and testifying again.

H. MICHELLE C. ZAHN: Thank you so much for your time.

JACOBSON: Other proponents? All right. Now, seeing none, any opponents? Welcome back.

NICK VRBA: Chairman Jacobson, members of the committee, my name is Nick Vrba, N-i-c-k V-r-b-a, president of RVR Bank, a \$550 million state-chartered bank based in Fremont, Nebraska. I'm here to testify

in opposition of LB687. I've been in the banking industry for over 20 years. In my current role, I assist in maintaining and managing a \$550 million bank, specifically on the loan side. I'd like to address some concerns about this bill. As the legislation reads today, a financial institution would be prohibited from entering a contract with any company engaged in discriminating against firearm entities, regardless if that customer met all the financial requirements and risk appetite of the bank. LB687 is a solution in search of a problem with respect to banking relationships with the firearm industry-related customers. Banks should be free to lend to, invest in, and generally do business with any entity or activity that is legal, without government interference. Banks should be free not to lend, invest, or otherwise engage so as long as they do not violate statutory, regulatory, fair lending, or other anti-discrimination laws. Banks know who they should and should not lend to. I would like to share how banks determine the credit-worthiness of a borrower. It's important to note that each bank in Nebraska calculates and determines its risk differently; no bank is the same. Most banks will evaluate, evaluate the five C's of credit: capacity, capital, collateral, conditions, and character. A bank, during a loan approval process, will evaluate those areas to determine if a customer meets that risk. Most banks will determine an internal set of financial standards. Loan-to-value 75 to 80%, a debt service coverage ratio around one-and-a-quarter. These financial benchmarks will vary, and banks are not necessarily consistent depending on the type of loan that is being sought. Each bank's standard is different due to the risk appetite of that bank. One bank might choose to have weaker loan-to-value requirements on real estate because they want to target a market for growth, while the bank down the street has plenty of those loans, and has a concentration. Some banks may be more aggressive in certain lending segments than others. A bank may loosen collateral requirements for a doctor's office while the bank down the street has a hard collateral lending policy. Some banks may choose to not lend in certain segments due to its business model and risk appetite. I know many bankers who will not entertain loans to the hospitality industry or by auto dealer paper, because it does not fit their business model, or most importantly, they don't have the staff that understands it. Some banks will, will lend to gun-related borrowers and some will not, due to this knowledge. In closing, banks should be free to lend to, invest in, and generally do business with any entity or activity that is legal, without government interference. Banks should be free not to lend or otherwise engage, as long as they do not violate restart-- re-- statutory requirements. The free market approach to banking industry regulation has produced the strongest and

most resilient financial system in the world. Efforts by policymakers from all sides of the political spectrum to intervene in the intermediation of capital risks undermining our system. Nebraska banks make decisions every day in our business interests. These business decisions are made with the primary goal of the return on investment, and that investment benefits Nebraska communities. Environmental, social, and governments' [SIC] risk should not be considered separate categories of risk, as they are already embedded in the risks banks currently monitor. Thank you for your time and allowing me to testify in opposition of LB687.

JACOBSON: Thank you. Questions? I guess I would ask you this. Probably when you went through your list of issues-- I remember back in '08 and '09 when we had all the real estate crisis, and-- be safe to say that there were probably several banks across the state and the nation that had regulatory issues where the regulator came in and said, "You're not doing any more commercial real estate loans until you get your concentration down." Would that be a fair statement?

NICK VRBA: Senator, great question, and exactly right. We, as many, I think a lot of you senators know, we are extremely heavily-regulated to begin with in our industry, and so it was not uncommon in '08, '09 for the regulators to come in and say, you know, we see a risk and you will not continue to make these types of loans.

JACOBSON: And along with that-- and I know you mentioned this in your testimony-- but we also like to have people that understand the industry and have expertise in the industry, and that's why we may very well get a request for some loan that is way outside of our knowledge base. And even if we decided to make the loan, that loan could very well get criticized by an examiner because they'd want to know who on our staff has the expertise--

NICK VRBA: Absolutely.

JACOBSON: --to really understand and manage it. Would that be also true?

NICK VRBA: It would be-- yeah, for sure, Senator Jacobson. And if you don't mind, I can kind of share an example in our bank exactly to that point.

JACOBSON: Sure, go ahead.

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NICK VRBA: Our-- we're a commercial bank. We're very much commercial real estate, business loans. We had a, a peer customer introduce us to an individual who owned a substantial feedlot in western Nebraska. I, I joke in our bank if you have to feed it and water it, I don't want to necessarily lend on it because we don't understand it. We chose to not make that loan in our bank because it didn't fit the risks. OK? And so, if I would have made that loan, the first thing the FDIC would have said to me is "Mr. Vrba, can we have a conversation about why you chose to make that loan?" OK? And so-- and for this legislation, I-- we feel, as a bank, we would be forced to make a loan to a gun person or manufacturer if they met the requirements. That doesn't fit our risk appetite. We should be able to say no to that. So, that's a perfect example.

JACOBSON: Right. Thank you. I've been learning to make questions out of all this because Senator von Gillern gives me a hard time not having any questions in the statements.

NICK VRBA: Yeah.

JACOBSON: Thank you.

NICK VRBA: Yep.

JACOBSON: Other questions? All right. Seeing none. Thank you for your testimony.

NICK VRBA: Thank you.

JACOBSON: Further opponents? Welcome back.

RYAN McINTOSH: Good afternoon, Chair Jacobson, members of the committee. My name is Ryan McIntosh, M-c-I-n-t-o-s-h, and I appear before you today as a registered lobbyist for the Nebraska Bankers Association in opposition to LB687. In addition to my testimony, I'm handing out a recent art-- article that was published by one of our board members-- and you can find it on the Platte Institute website-- that deals with these types of policies, these anti-ESG-- specifically, what we call "forced-access legislation." I'll keep my comments brief. Senator Hallstrom stepped out, but he did bring up some issues; he cited the Wharton Business study with legislation like this that was enacted in the state of Texas. What I'd say is that other states that have enacted this are experiencing the unintended yet entirely foreseeable consequences of using the government to intervene in private markets. For instance, in Oklahoma, the Energy

Discrimination Elimination Act of 2022, which is very similar except it protects the oil and gas industry as opposed to the firearms industry. One week after the law went into effect, the city of Stillwater was forced to refinance a loan after the state treasurer blacklisted the city's bank because it was signed on to the international Climate Alliance; this cost the city of Stillwater \$1.2 million overnight on a \$13.5 million infrastructure loan. Likewise, a nearly identical law enacted in Texas forced many banks out of the state's bond market. This resulted in a decrease in competition-- not an increase-- in borrowing costs for public entities. According to the Pennsylvania Wharton School of Business study, that law cost taxpayers \$504 million in the first year went into effect, and is expected to cost an additional \$416 million per year every year that it remains on the books. If anyone would like that study, I'd be happy to send it to you. So, the unintended consequences and costs to taxpayers and businesses in implementing these misdirected policies is clear. When policymakers use a bank to impose unrelated policy goals, communities and taxpayers end up losing. There was recently published in the Nebraska Examiner an op-ed entitled "Climate group exodus is good for pensioners and taxpayers." The article's author wrote "The determination of whether to invest in a particular industry at a particular time is a financial one. That's why we hire professionals. And it's why we shouldn't restrain them with political legislative mandates." We agree with the author. We would encourage the committee and the Nebraska Legislature not to shove politics into banking. I thank you for your consideration, and would urge you to not advance the bill. Thank you.

JACOBSON: Thank you. Questions from the committee? All right. Seeing none. Thanks for your testimony.

RYAN McINTOSH: Thank you.

JACOBSON: Further opponents? Welcome back.

DEXTER SCHRODT: Good afternoon, Chair Jacobson, members of the committee. My name is Dexter Schrodtt, D-e-x-t-e-r S-c-h-r-o-d-t, president and CEO of the Nebraska Independent Community Bankers Association, here to testify in opposition to LB687. Just like the last bill, in principle, we are going to be opposed to anything put into statute that protects one industry by creating requirements and limiting rights on another industry. And I do think, for the record, we need to clarify that, that, yes, the right to bear arms is a right under the Second Amendment of the Constitution, however, the rights

given by the Constitution is only applicable as to the government. So, a private industry refusing to do business with another private industry would not violate any constitutional rights. And what's ironic about that is this bill actually is more "constitutely"-- constitutionally suspect than that idea, in that here we have the government acting; we have a consequence, as Senator Jacobson pointed out, for a private business making private business decisions, and that would be a violation of the First Amendment, and I think Senator Dungan started to go down that road with the proponents. And you've heard the states mentioned where legislation like this was passed. Some states have general debanking legislation, so they say that banks can-- are prohibited from refusing to do business with certain industries in general, and I would argue that that is a more logical route to go down, because it's likely enforced by the regulators on their regulated entities, where in this instance we have the enforcement mechanism as government contracting. So yet again, another government action as the consequence to the perceived harm here. Although, Senator Jacobson, again, I got to completely agree with you that Nebraska's privately-held, privately-held and closely-held community banks are certainly not doing any of the such nature that you've heard here today, and I don't anticipate they would be. They would welcome, you know, a Chase Bank turning down a Hornaday [SIC], for example, and they would welcome Hornaday's [SIC] deposits and business, I can almost guarantee you that. So, I'll leave it there. Thank you for your time, and we do request you to not advance this bill. Thank you.

JACOBSON: Questions? All right. Seeing none. Thank you for your testimony.

DEXTER SCHRODT: Thank you.

JACOBSON: Other opponents? Mr. Bell. I thought maybe you might speak today.

ROBERT M. BELL: You were right. Good afternoon, Chairman Jacobson, and members of the Banking, Commerce and Insurance Committee. My name is Robert M. Bell, spelled R-o-b-b-e-r-t M. B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation, the state trade association of insurance companies, and I am appearing today in opposition to LB687. You've already heard that LB687 would adopt the Firearm Industry Nondiscrimination Act, which would prohibit organizations that discriminate against members of the firearm industry from securing state contracts and political

subdivision contracts, and would require contractors to provide written verification that it-- that they do not discriminate against a firearm industry. Much of the government of Nebraska and political subdivisions of the state are either self-insured or pool their risk with a variety of other inter-governmental risk pools, which are quasi-publican-- quasi-public entities that compete against private insurance. Many of these entities have reinsurance agreements with reinsurers, or syndicates that provide coverage in cases of catastrophic loss. The insurers' concerns with LB687 are that the provisions could effectively shrink the pool of available insurers and reinsurers to the state and its political subdivisions, not because of insurers that-- insurers discriminate against the firearm industry, but because financial decisions are often confused with discrimination in the marketplace. Many insurers will write any insurance for any legitimate business; others will limit their scope of their business to certain types of business, such as small businesses or only large businesses, or certain types of businesses. Of course, there are mutual insurers that may only write business that meet their own mission of their members, such as churches or farms; other insurers will only write specialty business that cannot-- will only write specialty business that cannot secure insurance in the admitted market. These insurers are often-- are called surplus lines insurers. Many insurers limit the amount of coverage they will provide. The property and casualty insurance market has been especially difficult-- that has already been mentioned-- due to increased storms, particularly convection storms. In November of 2023, losses due-- in the United States due to severe convection storms topped \$50 billion annually for the first time in United States history. At this time, my understanding is that many insurers will not touch, in the admitted market, total insured value over \$50 million. Under a bill like LB687, which places an additional squeeze on insurers do per-- due to perceived discrimination, and political subdivision-- subdivisions and the state may find it difficult to find appropriate reinsurance or excess loss policies due to the unwillingness of an insurer to submit written verification that it is-- does not discriminate against the firearm industry. When strict financial decisions are often confused with perceived discrimination by outside parties, that could leverage LB687 against insurance companies. A better solution would be to continue to let the markets operate without outside interference.

JACOBSON: Thank you.

ROBERT M. BELL: That's all I have. We oppose. Thank you.

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JACOBSON: That's perfect, since your red light's on.

ROBERT M. BELL: It, it was the last time this session, so I figured I have to go over a little bit.

JACOBSON: You get one-- you get one mulligan.

ROBERT M. BELL: OK.

JACOBSON: OK. Questions from the committee? All right. Seeing none. Thank you for your testimony.

ROBERT M. BELL: You're welcome.

JACOBSON: Other opponents? Any other opponent testimony? How about any neutral testifiers? Any neutral testifiers? Seeing none, Senator Lus-- Lonowski, you're welcome to close.

LONOWSKI: Thank you, Senator Jacobitz [PHONETIC][SIC], and committee. It looks like my college notes; they're everywhere. Senator Jacobs-- Jacobson, I believe that you were sincere when you said you were pro-gun and pro-ammunition. My concern is when your bank is a little bit down and you sell 30% or 51% of your bank to the Bank of Chicago, and now they're making the decisions that you wouldn't necessarily make to small-town people. Discrimination, the-- or, not discrimination. When I heard-- when I heard Hornady say-- Ms. Nolan say 24 out of 24 rejections, that sounds like discrimination to me. I am not in this business; I don't pretend to be. I do have concerns, though. If my, if my insurance company knows about my little small stockpile in my basement, I wonder if, if they start looking at me differently for insurance. I do appreciate Ryan McIntosh and, and Mr. Bell coming in and talking to me about this last week. I do appreciate that the opponents came in. I would like to thank the committee for your time, and I really want to thank the people who came from a long distance to testify. And if there are any amendments, I'm willing to work with those amendments, and I respectfully ask that the committee's consider-- for the committee's consideration for advancing this to General File.

JACOBSON: Thank you. And I appreciate you mentioning that-- because I was curious if you had any opposition, those opposed reach out to you to discuss it. And I think most of us get frustrated on the committee that, that we end up with opposition testimony on the day of the hearing, and you don't even know about the opposition because-- and they're saying we're sincere about negotiating, but then they come the

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day of the committee with no amendments and no ways to work it out. So, I appreciate the fact that they reached out to you, and you guys did work together to try to come up with some kind of a middle-ground, so. We always like to see that. Questions from the committee for Senator Lonowski? All right. Seeing none. Thank you. We're going to dismiss you for the day.

LONOWSKI: Thank you.

JACOBSON: This clears out our-- oh, I-- let me just say I do-- we do have-- we did receive 29 proponent letters, 34 opponent letters, zero neutral testifiers, and the committee did not receive any written ADA testimony regarding the bill. With that, that--

LONOWSKI: Thank you.

JACOBSON: --concludes our hearing on LB204 [SIC]. And Senator Kauth is here, so we're going to move right into-- or, excuse me, that concluded LB687, and we're going to open up LB204.

KAUTH: Did they try to start me early?

JACOBSON: Well, the clerks are just way too fast for me today.

KAUTH: Good afternoon chairman-- oh, were we ready to go? You want to wait?

JACOBSON: Why don't we let them clear out the place here a little bit. Don't, don't start the clock here yet, Natalie.

KAUTH: Am I on--

JACOBSON: She's already ahead of me, too, so.

KAUTH: We assume Natalie runs the show.

JACOBSON: She runs the show. [INAUDIBLE] says she does. All right. Let's go ahead and--

KAUTH: All right. Ready?

JACOBSON: Thank you.

KAUTH: Good afternoon, Chairman Jacobson, and members of the Banking, Insurance and Commerce [SIC] Committee. My name is Kathleen Kauth, K-a-t-h-l-e-e-n K-a-u-t-h, and I'm here to present to you LB204, the

Biometric Autonomy Liberty Legislation bill, commonly known as "BALL." This was introduced last year, and so I'm reintroducing it this year; hopefully in a biennium, we'll be able to work through it and make the changes we need for final passage next year. Technology is growing faster than many of us can comprehend. The advancements, even in the last year since I first introduced this for AI, is nothing short of astounding. The ability of our devices to track us, our movements, our biometrics, and even our feelings, and analyze them is both exciting and concerning. Exciting because we have the ability to analyze so much more information to use to improve ourselves; concerning because we currently don't have a handle on who else is using that information, and what they might be using that information for. I routinely fluctuate between "technology is amazing, and look at everything we can do with it" to "Oh my gosh, Skynet is real, and we're all going to die." I was at my son's house this weekend, and he has a Google Home, and he said, "Google, please lower the lights" and he's telling it what to do. And then I said, "Google, are you good or bad?" And he said, "I only use my powers for good." That's really scary. You've heard it said if you don't-- if you-- if a product is free, then you are actually the product. LB204 is designed to establish your ownership rights over your biometric and biological data. As quickly as things are-- in technology are progressing, it's important to create these guidelines now so they can be adjusted as new technology and new uses for technology develop. Biological data means data that provides a characterization of the biological, physiological, or neural properties, compositions of an individual's body or bodily functions. Biometric data means retina or iris scans, fingerprints, voice print, hand or face geometry, deoxyribonucleic acid biometrics, brainwave, heart, pulmonary, reproductive, or other biometrics. In the writing of the bill this year, the exemption for state agencies collecting fingerprints was accidentally omitted, so we have an amendment that was sent to the committee putting that back in. Who owns your data? Did you know that your data was for sale? How much is your data actually worth? According to MarketsandMarkets, the global biometric system industry was estimated to be \$47.2 billion-- with a "b"-- dollars in 2024, projected to reach \$84.5 billion by 2029, in five years. You may not be aware of how biometrics is already a part of your daily life. Your phone may already be using a face scan to gain access. If you've taken a flight lately, has your face been scanned at the airport? And by the way, you can say no to doing that; most people just walk up and, and allow it to happen. Do you use your palm print or your fingerprint to gain access to work locations? These are all examples of how this technology is being used and expanded

upon at a rapid pace in our world. According to MarketsandMarkets, increasing integration of biometrics in consumer electronics is fueling the growth of the biometric system market. Biometric systems are routinely built into software segments, which hold the largest market share. These systems are also utilized with single-factor authentication such as face and iris scanning with multiple devices, biometric systems, fingerprint/palm recognition. These are a key component in the rapidly-changing healthcare industry. They are touted as controlling sensitive data, electronic health records, and medication dispensing. Biometric systems make up a large part of our daily life already, but where is that data going? Where is it being stored? Who is it being sold to? What do they plan to do with it? There are many privacy risks. You've seen a rise in the, the building of data centers across the country; that's part of where it's stored. LB204 asserts that the biometric and biological data are the property of the individual. That individual may sell or otherwise consent to its use. Consent can only be given by those over age 18, and there must be an opt-in rather than an opt-out. Critically, the language must be written in a seventh-grade lexile, and importantly, no one can be coerced in-- to have technology implanted in their body. There are certain times where criminal justice systems will be allowed to use it for ankle bracelets, but it's not implanted in. In this bill, it specifies that the consent forms have to be written at a seventh-grade lexile. So, this was something last year when we introduced it-- the business community was, was stumped as to what lexile meant, and how on earth would they ever be able to write this? Lexile is a very common education system that talks about how difficult content is and how it's written. You can actually-- and unfortunately, you have to use AI to do it-- plug it into AI and say "Write this at a seventh-grade lexile," and it will rewrite it. So, objections about lexile being difficult to implement are non-existent. The objections to this bill have been primarily from business groups, many of whom are behind me. The comment when-- I got when I first introduced this last year was, "Well, we don't know what we might use it for, but we might want it at some point." They still don't understand the value of it, they just know it's going to be very, very valuable, and so they want to hold on to the rights that they think that they have, taking that from you. That means they know that your biometrics are a valuable source of revenue and the market isn't there yet. They do look at how the data that is scraped off every internet post or search has led to huge financial gains-- again, almost \$50 million in 20-- billion in 2024. They want to reserve the right to profit off your personal biometrics at whatever point it does become valuable. Now,

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the fact that this bill is being heard so late in the session is kind of a clue that it's probably not going to get out. Bills like this one really need to be heard in a committee that deals with technology, and I've introduced an LR to have a technology committee for our Legislature. As we look more and more at all of the bills that we've introduced this session, there are several that are very heavily technology-focused, and I think as a Legislature, we need to be looking ahead and create a committee that can really understand what this technology is. When we have bills that are dealing with technology but are being heard in committees where there is an impact, such as Banking, I think it negates a little bit of the ability to be objective for it. This bill was originally based on an Illinois bill that had several problems, and last year, we corrected those problems. We worked with BNSF; they unfortunately had an incident where the way the bill was written, it recorded every time someone walked in or out of a, a door, and their biometric was collected as an incident that had a, a fee assessed. So, we've changed that; we worked on that last year. My hope is that we can work through this this year, make any adjustments, and I-- I'm more than happy to work with the business community to figure out how exactly we put parameters in place that protect the biometrics of the individual Nebraskan and still allow businesses to use it and create and develop new opportunities. So, with that, I'm open to questions. Oh, and by the way, we've got several testifiers behind who-- Dr. Andrea Neuzil understands the technology of this very, very well, so I will defer a lot of the tech comments to her.

JACOBSON: I've got to ask, there was-- wasn't there a TV show, Are You Smarter Than a Sixth Grader [SIC]?

KAUTH: Yes, yes.

JACOBSON: So, did-- is that why we moved to seventh grader?

KAUTH: I-- you know what? The sad fact is, when you look at, at the reading scores across the country, seventh grade still might be too, too tough. But-- yes.

JACOBSON: [INAUDIBLE] when it comes to technology, that's probably past me. So, I [INAUDIBLE]

KAUTH: It is terrifying.

JACOBSON: All right. Thank you.

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KAUTH: Thank you.

JACOBSON: Questions? Senator Dungan.

DUNGAN: Thank you, Chair Jacobson. Thank you for being here again. It's good to see you back here.

KAUTH: I miss banking.

DUNGAN: I was going to say it's good to see you back in BCI. I was just curious, looking at the enforcement mechanism of this.

KAUTH: Yes.

DUNGAN: That was a conversation I think we had last year. So, looking at Section 14--

KAUTH: Do you know what page that's on?

DUNGAN: --and-- sorry, it's page 8.

KAUTH: Thank you.

DUNGAN: So, page 8 into page 9, it looks like Section 14 and 15 kind of highlight the, the teeth of the bill,--

KAUTH: Yes.

DUNGAN: --and that's kind of done through-- it looks like a civil filing on behalf of the-- or, from the Attorney General.

KAUTH: Right. And, and the, the biggest concern that I had was we don't want to hurt businesses who are making-- who, who have made a mistake. Like, there's an error. We don't want this to be something that damages businesses or damages their ability or interest in developing new technology, but we also want to be protecting individuals' rights. So, what this basically says is if there's a problem, the AG sends them a letter, they have 60 days to cure it.

DUNGAN: And that was kind of my question, is it provides that opportunity for them to fix some of the issues there, if, perhaps, it was unintentional.

KAUTH: Right. And, and that, that is absolutely the goal. And, and I see-- again, with as fast as things are changing in the technology

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world, I see this as we're going to have a lot of trial-and-error things, and I think we need to go at it with a lot of grace--

DUNGAN: Yeah.

KAUTH: --so that we don't penalize the wrong people, but also so that we protect constituents.

DUNGAN: And I think that makes a lot of sense, because I heard some of the complaints from the business community, and this seems like it's striking a balance, which I appreciate. In Section 14, which is on that page 8, it says that the processor in possession of the biometric data has to use that reasonable standard of care within the industry or the profession of the processor. Where does that reasonable standard of care come from, that language?

KAUTH: That is-- I-- Dr. Neuzil will probably address that. It's basically saying that as things progress quickly, we can't say this is what you have to use today, because then we fix it in law. And so, what we're saying as we go through what the, the proportionate group-- if, if, if most of the people in the industry say, hey, yeah, this is what we're using now, we're trying to keep up with the speed at which technology is moving, so we have to put some flexibility in there.

DUNGAN: Accounting for efforts being made, but still, at the same time, understanding it's an evolving field. Do you have any idea what the interplay would be between LB204, this bill, and then LB241, which we passed earlier this year--

KAUTH: Is that this--

DUNGAN: Senator Hallstrom bill, which requires for data breaches for companies-- it increased that essentially standard of proof from the negligence standard to the willful/wanton negligence.

KAUTH: I have not-- I have not looked at the interplay between this one and that one.

DUNGAN: OK.

KAUTH: We certainly would need to address that on the floor, make sure that we're not stepping over each other. But no, that's a good--

DUNGAN: I would just be curious, because I know LB241 did address biometric records, which-- I don't know if there's really a definition

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of what biometric records means in LB241. But with regards to the industry standard of reasonable care, I think that makes sense in yours, in LB204, so I would just be curious the interplay between those two.

KAUTH: I can visit with him and, and work through that, if you want to sit down with us.

DUNGAN: OK. Thank you. I appreciate it.

KAUTH: Thank you.

JACOBSON: Other questions from the committee? Yes, Senator Riepe.

RIEPE: Thank you, Chairman. Thank you for being here. I'm looking at the notes here in the biometric autonomy liberty law. Is that a federal law?

KAUTH: No, that's, that's the name that we came up with it last year. Just-- it was easier in our, in our office to refer to it as "BALL."

RIEPE: OK. So, is there any comparable federal law or legislation?

KAUTH: As far as biometric? That, I don't know.

RIEPE: OK. My question would be there is if it's being developed, promoted on the federal level, that would probably supersede us. The other question I have-- and I know it, it talks about that it exempts the HIPAA. HIPAA is pretty serious, and they're not probably easily exempted or set aside. They will have some response to--

KAUTH: So, based--

RIEPE: --what their engagement-- always the fine line of slipping over into, into a HIPAA violation, which is a pretty serious process. And I'm also curious about how does one monitor police? This-- if this were to be law?

KAUTH: This-- and it would be policed primarily by the individual who feels that their rights have been violated. So, they would report it to the Attorney General. So, you as a citizen would say, hey, I did not give my permission-- pardon me-- for my likeness to be used, or I didn't allow them to do-- grab my face and, and hold onto that. So, the, the difficulty there is, there's so much of this on-- going on right now, we don't necessarily know when this is happening, so that's

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another one of those, those issues that, as we develop this law, we're going to have to figure out how do we make sure if somebody's-- you know, if the cameras that we have on right now, are they grabbing our likenesses? Is somebody grabbing that-- it right now?

RIEPE: Sounds to me like the trial lawyers might be proponents for this bill [INAUDIBLE].

KAUTH: I, I think they were before we adjusted it with BNSF. They, they liked it much more. But, but again, that is part of that-- when it happened in Illinois, they-- again, they got hit very, very hard, and so that made every-- all the businesses say, oh gosh, we can't do this at all. And so, it, it is important that we make sure that we protect businesses who are trying to grow and develop and advance technology, but at the same time, protecting the citizens. So, it's a, it's a pretty delicate balance in that.

RIEPE: Have you used the Illinois law as a foundation for this?

KAUTH: A template, yes. Yeah.

RIEPE: Are they the only state out there that's--

KAUTH: No, they, they-- there were the-- essentially, the clearest-cut. Colorado's done it; there are-- I mean, there are a few other states who have done it. And Senator Bostar had a bill that had some of these measures in it last year, and it did get passed; we heard this one too late in the session to actually get it married up with his.

RIEPE: OK. Thank you.

KAUTH: Thank you.

RIEPE: Thank you, Chairman.

JACOBSON: Other questions from the committee? All right. Seeing none. Thank you.

KAUTH: OK.

JACOBSON: I'll ask for our first proponent. How are you?

ANDREA NEUZIL: Hi, Senator Jacobson. Thank you so much for hearing us today, especially on our last day, and may the luck of the Irish be

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with you today. I am Dr. Andrea Neuzil, A-n-d-r-e-a N-e-u-z-i-l, and I'm currently studying Generative Artificial Intelligence through MIT, and I strongly support LB204. As technology is rapidly integrating with our minds and our bodies, we must establish legal safeguards to protect our personal autonomy, privacy, and our biometric data. Nita Farahany, the author of "Battle for Your Brain," warns that as neurotechnology becomes more prevalent, the sanctity of our thoughts is increasingly under siege. Technologies such as Cognito, an Alzheimer's treatment; Muse, which is a meditation app; the Synchron's Stentrode, which is a brain implant for ALS; and the Neuralink are already currently collecting our brain wavelength data. Without any legal protections, individuals risk-- risk losing control over our most personal data. Financial incentives for exploiting biometric data are staggering. The data brokerage industry generates billions in revenue, with tech companies leveraging big data analytics to amass nearly \$907 billion in profits in the last three years. As Senator Josh Hawley points out in "The Tyranny of Big Tech," we must reclaim control over our personal data and ensure that it is not exploited for profit without our consent. Senators Bostar bill from last year dud-- does do an excellent job at beginning this conversation, however it in-- allows for an opt-out buried in a 300-page user agreement that the majority of us use when we download our computers. A Stanford University study demonstrated that AI can accurately re-identify over 90% of the time just using VR-tracked eye movements, and 97% of the time of accuracy, proving how easily it is biometric data can be linked back to the individual. This legislation is incredibly important, and our personal information has become a valuable commodity, and I think it's actually appropriate that it is here in our Banking Committee. Yuval Noah Harari warns in "Nexus" that data has become the most important asset, for those who control it will yield [SIC] immense power. Earlier, you talked about the concern at the collection of databases, credit card fraud, and data breaches, and when this occurs, my question to you would be at least then you can have some recourse getting a new credit card information, you new-- you-- new username or password, but you cannot do anything to change your iris, scan your biometrics. So, what protection are we currently surrendering to our tech companies? With that, I would take any additional questions.

JACOBSON: Thank you. To your last point, so if there's, if there's a breach, what are those tech companies to do as it relates to-- I mean, isn't that one of the problems we had in Illinois, is that, is that it

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brings a bunch of class action lawsuits against that particular vendor?

ANDREA NEUZIL: Right. So, the big difference between what LB204 is doing and what they're doing in Illinois, and also what was just simply missing in Senator Bostar's bill is-- you know how when you have-- any time you go into a website, there's the cookie pop-up? Right now, what we're asking is basically using a data nutrition label by asking those three simple questions, so it's allowing at that point-of-service for that user to decide, yes, I'm going to allow my biometric first to be collected; the second question is then can it be stored in that user-- in, in that processors; and then, can that be sold? If I have a-- if I have ALS, I want my data to be used for research; I'm going to say yes to that my biometric data be utilized, but it really should be up to that consumer at that point. So, I think that what we're trying to do is to balance that consumer protection and not harm commerce.

JACOBSON: That is appearing on the website. You're saying it has to be a proactive opt-in as opposed to an opt-out.

ANDREA NEUZIL: That's what makes this-- that different, yes.

JACOBSON: Yeah. And, and I'm not sure that that industry would agree with that [INAUDIBLE] so.

ANDREA NEUZIL: What is-- I'm, I'm--

JACOBSON: Well, I'm just saying that I think the pushback I'm getting from the industry is we would rather have it, like most others, you can opt out as opposed to proactively opting in to that data being collected, because it's already been collected.

ANDREA NEUZIL: Well-- but what, what this is asking for is basically, at that point-of-service, like a cookie setup, where you decide right there at that point-of-service. And so, I guess my point would be, when was the last time that-- is consent really consent if you don't know what you're consenting to? When was the last time that you've read a 300-page user agreement? And can, can the average American read that 300-page user agreement and even understand what it is saying?

JACOBSON: And the, the same would be true for the other side, in terms of saying, you know, they're not reading it, so if, if they truly care about it, they will, they will proactively reach out and have that opportunity to do so.

ANDREA NEUZIL: Hence the three questions in LB204.

JACOBSON: Right. OK. Gotcha. Other questions? Yes, Senator Riepe.

RIEPE: Thank you, Chairman. I was-- I guess I-- you mentioned earlier that you have a doctorate?

ANDREA NEUZIL: Yes.

RIEPE: I, I-- congratulations.

RIEPE: Can you tell me what that doctorate's in?

ANDREA NEUZIL: In educational leadership. So, I take complex ideas, and I try to boil them down to make them consumable bites.

RIEPE: OK. I was--

von GILLERN: For people like us.

RIEPE: Pardon? I was going to guess that it was more of like an information technology, or something like that.

ANDREA NEUZIL: So, that's currently what I'm studying through MIT, yes.

RIEPE: OK. My other question would be, is-- I don't know how far along the scope of-- if this is in the AI arena, whether as a state we can afford to be in a-- someone would say we need to be, but whether we can afford-- because there will be false starts-- whether we can afford to be in that leadership of trying to be one of the creative states, and just-- I just don't-- I'm not convinced that we can. It will be very expensive, with a number of false starts.

ANDREA NEUZIL: From the industry side, is that what you mean?

RIEPE: From-- yeah, from a-- coming up to an actual application and implementation.

ANDREA NEUZIL: But that's why we did not offer this in-- through the Judiciary by off-- having the \$5,000 penalty per usage. That's why we offered it through the Attorney General sticking up for the citizens' rights.

RIEPE: OK. Well, I just don't have a lot to learn about it, but thank you. Thank you, Chairman.

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JACOBSON: Questions? Yes, Senator Hardin.

HARDIN: China fond of this?

ANDREA NEUZIL: China would absolutely not be fond of this. In fact, China's currently, in their education system right at the-- at-- right now, if you go into a classroom, they're wearing the-- similar to the Muse meditation app, they're wearing these headsets that-- also here in the United States, SmartCaps is being used for truckers to measure brainwave length data, to make sure that the trucker is not falling asleep at the wheel. Sounds like a safety issue, right? Except what China is using it for is that engagement; is, is your student engaged? And then they get a score, basically like a grade card of yes, your child was engaged during math today or no, they, they, they wandered. So, no China would be very anti-Kauth's bill.

HARDIN: So help me out with an example, if I can.

JACOBSON: Sure, go ahead.

HARDIN: Paint a picture for me, and play "and then what?" And then what? Because my mind can race to a number of "and then whats." It feels like we're on the border, science fiction is meeting reality in next week, here. So, paint a picture for me of-- if we don't do this, then what? If we do do this, then what? Can you do that?

ANDREA NEUZIL: Thank you so much for asking that question, because I think that that's exactly what Senator Kauth was joking, about Skynet from Terminator was, was referring to. But I guess my biggest concern is-- will we become a state that is a safe haven? So, let's, let's talk about the good news first, OK? And then we can concern ourselves with the opposite. What if we become the state where we become a safe haven, where we are one of the few states-- or maybe the Midwest goes and makes this push, like Colorado, Illinois, things like that. Maybe we become safe havens where we're one of the few locations where we are not forced or coerced to use a biometric chip, either worn on our body or implanted into our body, where we would have to utilize that chip to buy or sell goods, or to be government-identified. We would be a place where humans are one point-- "Human 1.0." Now, what's the opposite side of that? We begin wearing our biometrics. How many of you were wearing an Apple Watch right now? Collecting your heart rate data, letting you know-- or if you utilize an iris scan at your bank, or things like that. So already, our bio-- this is not a tomorrow issue; this is a current technology now, where our legislation has

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simply not caught up. I guess my question to you would be, why does the technology company need that level of access to your family's bodies? What could they do with that information? It could be very dangerous. Particularly as a woman, I would be very concerned about what level of access technology would have in my body.

HARDIN: Thank you?

ANDREA NEUZIL: Sorry.

JACOBSON: Other questions from the committee? All right. Seeing none. Thank you for your testimony.

ANDREA NEUZIL: Thank you so much for your time.

JACOBSON: Other proponents?

SPIKE EICKHOLT: Good afternoon, Chair Jacobson, and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska in support of LB204. We testified to-- in support of Senator Kauth's bill from last year in support, as well; we thank her for bringing this bill. You've got a copy of my testimony, so I'm not going to read it to you. But for years, the ACLU has been concerned with respect to government agencies and business-- businesses collecting personal private data from people, really without their knowledge or, or consent. I think what Senator Kauth has here is, is a good start. I think-- picking up what the last testifier just answered in response to a question from Senator Hardin, I think we all know that companies-- tech companies, our phones-- are collecting data from us already. We already know it. You know, even what we're talking right now, when I get on Facebook later on, I'm going to have ads that are going to be picking up on the things that I was testifying to earlier today, and talking about and hearing in this room; that just happens all the time. But what I think her bill does, at least it tries to get some sort of recognition that we, as people, ought to have some say in this data that's being collected. I would respectfully suggest her bill is pretty-- I don't wanna say modest, but her bill, I think, is responsive to the issue, and it's also deferential and respectful to businesses. It doesn't necessarily prohibit; it doesn't have any kind of penalty, really, at least for a private cause of action against a company that violates this. It simply requires an understandable form, an opt-in with three questions that are given to the person whose data is going to be collected and harvested. And we all acknowledge that's what's going

on. They are harvesting data, simply put. It exempts government agencies. It's got a very big exception for private agencies and private businesses that use and work with government for security purposes. And I could just answer a couple of questions that have been asked before. There is not-- in response to Senator Riepe's question-- there is not a federal act that really addresses this issue. There has been some enforcement from the Federal Trade Commission using the Federal Consumer Protection Act laws to go after certain companies, but the model bill, if you will, that Senator Kauth referenced before, is a, a bill-- or, a law from state of Illinois that was actually passed in 2008. And in 2020, the ACLU and a number of private organizations actually sued a company called Clearview AI, and that company was collecting data, images and so on, and simply selling them to anybody for any price-- or, at a price they had set-- businesses, private individuals, and so on. This bill is different than Illinois in a couple of ways. First, in response to what Senator Riepe asked, the enforcement mechanism is the Attorney General. And Senator Dungan referenced it before, on pages 8 and 9, Section 15 of the bill provides that the Attorney General may pursue a civil action under the Consumer Protection Act for violations of this. In other words, this bill does not provide for a private cause of action. A person can't simply sue-- I don't represent the trial attorneys, but I don't think that they would necessarily like this, because this gives the discretion to enforce it to the, to the Attorney General, so. And the Attorney General can work in a cooperative way with violators like they typically do already when they enforce violations. And I see my red lights on. I'll answer any questions if anyone has any.

JACOBSON: Thank you. Questions? Senator Dungan.

DUNGAN: Thank you, Chair Jacobson. Thank you, Mr. Eickholt. Can you speak a little bit also, if you can, to the question I had for Senator Kauth with regards to the difference in burden of proof that we just have seen in Senator Hallstrom's bill from earlier this year, and what we see here with reasonable care? Can you, I guess, give us a brief explanation of what that difference is, and how you see these two bills interacting?

SPIKE EICKHOLT: That bill is LB241, signed by the governor today, I saw. Or at least it was returned from the governor and, and read into the record today. LB241 would require a higher burden than simple negligence; I think would require willful and wanton or gross negligence. If you wanted to bring a class action suit in state court against a, a company or an entity that failed to maintain sort of debt

control over data, and I think it did reference it-- or, did reference in that bill biometric records. It doesn't necessarily define what that is, but it does represent biometric records. So, that bill that was now law requires, at least for a class action case brought in state court, that a plaintiff needs to show sort of gross negligence on behalf of the, the entity that sort of corrupted or compromised the data. This doesn't provide-- this bill does not provide for cause-- private cause of action at all. The enforcement mechanism, as I said, is the Attorney General Office themselves, and they may pursue a civil action against the company. And I, I think the Attorney General will do that, and our Attorney General has. Our Attorney General, a couple years ago, as part of a settlement against Google for the tracking of data that Google was doing. You know when you have your apps and you pop up on your phone, and it says "track while using" or "don't track at all," the companies were tracking anyway. Right? And so about, I think, 20 or 30 states entered into settle agree-- settlement agreement, and our state was part of that settlement agreement because they were violating whatever provision of law that was. So that's one difference, there, if I answered your question.

DUNGAN: You did, no. And I guess in your opinion, based on looking at this compared to the Illinois law, what is the-- is, is there a difference between the enforcement mechanism in those two, and, and do you think that this bill appropriately allows the Attorney General to enforce this protection, if it were to be enacted?

SPIKE EICKHOLT: Answer to the last question, I think yes, it does. It references the Consumer Protection Act, which the Attorney General has lots of authority to pursue injunctive authority, to seize records, to issue cease and desist orders to violators, and so on, so I think that's true. The Illinois law was actually pretty robust, if you will, for its enforcement mechanism. You could get fines, you can get settlements, anybody could sue; the ACLU sued, along with maybe 10 or 12 different other organizations and entities and private people who had been harmed by this company, Clearview. They actually got a pretty good settlement with this company that was a nationwide settlement, so Clearview stopped-- agreed to stop selling and doing business nationwide, even though they were just sued in Illinois under an Illinois law. They still could, after a number of years, after they affirmatively allowed people to opt out of their database who had their information seized by them or collected by them. The settlement also allowed this company to still work with law enforcement agencies, local and federal, so. That's not something that her bill envisions, so I think-- and it's fair to say, I don't think Senator Kauth is

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necessarily hostile to business, in response to what Senator Jacobson asked before. The industry has an interest in this, and they're already sort of operating in a certain way, but I think her, her bill accommodates that and recognizes that.

DUNGAN: Thank you.

JACOBSON: Other questions? Senator Hallstrom.

HALLSTROM: I just wanted to thank you for confirming that the governor had signed LB241. I, I tempered my exuberance because Chairman Jacobson indicated at the start that he'd ask people to leave if there were public outbursts and applause.

JACOBSON: Other questions from the committee? All right. I'll-- I guess I just have one question. So, is it-- am I to understand there have been three states that have approved-- or, that have passed this kind of legislation so far?

SPIKE EICKHOLT: California has got one that's not as good as-- or it's not as robust, if you will, as Illinois.

JACOBSON: Gotcha.

SPIKE EICKHOLT: And Colorado, as Senator Kauth said before, does have a law as well.

JACOBSON: OK. All right. I guess I, I always get worried a little bit about these-- this is not a Nebraska issue; this is a nationwide issue. And I think maybe a little bit to Senator Riepe's point earlier, you know, are we getting ahead of ourselves and maybe not letting the federal government really establish what the policy should be in nationwide? I always get concerned about patchwork efforts, where it's-- particularly when you've got technology companies, you know, throughout the country, and they've got to work around various estates and, and-- I mean, do you see something on the horizon at the federal level?

SPIKE EICKHOLT: I think that if states do start enacting laws, then you will see a reaction on the federal level. Because, just like you said, the, the last thing these companies want to do is have a patchwork of things we need to comply with. So, many times I've observed, observed in different types of areas of law, you just see that happen. States do it this way, other states do it that way, and then there's a push to do something federal to make it uniform.

JACOBSON: Yeah. And I-- I've kind of made that same argument on bills that I've offered, but -- in fact, one here recently in, in the Transportation Committee, so. So, thank you. Other questions from the committee? All right. Seeing none, thank you for your testimony. Other proponents? Welcome.

JEANNE GREISEN: Good afternoon. My name is Jeanne Greisen, J-e-a-n-n-e G-r-e-i-s-e-n, and I'm here representing Nebraskans for Founders Values, and urge your support for protections of biometric data like those proposed in LB204. Biometric data-- our fingerprints, faces, voices-- are personal property, property belonging to each individual. Unlike a password, you can't change your DNA or your iris scan. Once compromised, it's gone forever, and this very sentiment was stated in the Government and Oversight Reform report in September of 2016 regarding the OPM data breach on how the government jeopardized our national security for more than a generation. In this breach, 5.6 million people had their fingerprints stolen, which was just one of the personal markers that were stolen in this case. Private companies aren't much better. Look at the 2019 Suprema leak, which 27.8 million biometric entities in the UK were exposed globally. LB204 aims to fix this by giving citizens control, requiring explicit permission before collecting and sharing biometric information, and enforcing penalties for violation. This isn't hypothetical. Obviously, we've talked about this already-- the Illinois Biometric Information Privacy Act, it cut some violations since it's 2008 law, per their study. And companies face real accountability, however there were significant issues with the initial, initial legislation, which was amended in 2024 due to the massive amount of litigate-- litigation impacting businesses in their normal course of business, and this was seen, obviously, in the BNSF case. However, Nebraska needs to learn from this and write their legislation accordingly. The Founding Fathers built our government on-- to protect liberty and not erode it. In The Federalist No. 51, it warns of concentrated power, and today, that is unchecked data collection. If a corporation or an agency can track my face without my say, that's not freedom. A 2004 Pew survey found 81% of Americans fear losing privacy to tech. We're not alone in wanting this stopped. Opponents say it's too burdensome for businesses-- or as you, Senator Jacobson, just said that for the tech companies-- but protecting roughly 2 million Nebraskans autonomy outweighs the corporate convenience. LB204, it isn't anti-innovation; it's pro-dignity, and it ensures citizens aren't reduced to just a data point for profit or surveillance. So, I urge you to move this legislation forward and protect the liberty, and not lag in regret on not doing something.

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JACOBSON: Questions from the committee? I would just have one question. So we talk about, you know, optical images and fingerprints and so on. So, if you go to work for a company that uses that to get into the system,--

JEANNE GREISEN: Right.

JACOBSON: --don't they have to store that information?

JEANNE GREISEN: But how long do they have to store it for? So, that--

JACOBSON: Well, I, I presume as long as you're employed.

JEANNE GREISEN: So, that should be written in a policy, that-- and that-- you know, and I had that conversation. My husband used to work for BNSF. And so he said, well, he really wanted to go to biometric data because to get into the gates, the things that happened in, in Illinois, of course. But then you need to let that person know, saying, OK, we're going to store this for this amount of data. So, it's being transparent. So, does that employee know that? That yes, they're going to-- they're going to use my fingerprint so I can get into the gates, and they're going to have it as long as I'm employed here. But the day that I am terminated, that collection should be destroyed, and the person should know that. But then, I feel like consumers also need to know how is that being protected. Like, they need to have cybersecurity, something that they know that that data is taken and held very confidential, that they aren't going to have a data breach. And what are they doing to do that?

JACOBSON: But, but, but data breaches happen every day. And so, where do you see the liability at that point?

JEANNE GREISEN: Well, is it carelessness on the, on the business?

JACOBSON: I didn't say carelessness. I just said there are data breaches.

JEANNE GREISEN: Correct. There are.

JACOBSON: Nobody, nobody wants to be breached, OK? Every company is doing something to protect their data because they don't want to go through the breach and all the issues that go with being breached, but it happens. And you've got all kinds of firewalls and everything else you have in place. But it can happen, and I think that's where business and industry gets a little nervous with some of this. I, I

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understand where we're, we're trying to go here, but, but that is an issue that's out there as well, that we want to just make sure. Which is one reason that this is in the Commerce Committee and not the Technology Committee, because this is really a commerce issue as well.

JEANNE GREISEN: Right. Well, who's, who's-- my question would be, is who's more important, the business or the actual person?

JACOBSON: Well, I, I think if you go to work for a business and you give them that information, you've done it so you can get a job. They're storing it to the best of their ability, and if an-- and if a hack would occur, that's not within their control. Then, where's the, where's the liability? Where's the-- where are the-- there, there are issues that come up at that point that are beyond the business's control, or the employee proactively gave that information to them. [INAUDIBLE].

JEANNE GREISEN: Well, I'm not sure that this bill is really-- like, the main target of this bill is honestly businesses that are trying to do the right thing in hiring employees. I feel this is big tech. So, are we talking about software programs? Are we talking about online searching, or your Apple phone, or the big players in big tech? I feel this bill is more aimed towards big tech, and what are they taking and storing?

JACOBSON: So, should the bill be modified to deal with that?

JEANNE GREISEN: Probably so, because if you don't aim it towards that, you probably are going to harm businesses more. But then, I don't give the government a pass either, because our Founding Fathers-- we aren't giving government a pass. It's the people's job to keep the government in check, and so I don't think the government needs to be exempt on we're not going to hold you accountable on data either, because--

JACOBSON: You mean like social security?

JEANNE GREISEN: --this report on the oversight committee happened in the government, and people lost all their, all their fingerprints.

JACOBSON: Yeah. Yeah, and the Social Security breach.

JEANNE GREISEN: Mm-hmm.

JACOBSON: Yeah, I agree. Thank you.

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JEANNE GREISEN: Yeah.

JACOBSON: Any other questions from the committee? All right. Seeing none. Thank you for your testimony. Any other proponents? How are you?

TRACY AKSAMIT: I'm good. How are you?

JACOBSON: Very good.

TRACY AKSAMIT: Thank you, Chair, and committee members. I'm Tracy Aksamit, T-r-a-c-y A-k-s-a-m-i-t. I'm here on my own behalf. I support the direction of this bill, however, ask that it would go much further to define and protect personal ownership of a, of an individual's biometric data. Please seek to simplify the various data privacy laws and bills by considering a comprehensive data privacy act, combining data management components common to all sectors and propos-- and purposes such as between finance, agriculture, health, and education. Data is inherently flawed, like the links displayed possibly on this bill's web page today, and we are in a void of media transparency that would encourage balanced and open debate around the current and future impacts and ethics of ever-increasing, data-driven decision making. Similar to Canada's biodigital convergence, we are facing real risks. Please consider how similar the U.S. government-funded initiatives aligning many IoT and IoB technologies with financial, law enforcement, and particularly health data must serve only a well-- a very well-defined and essential purpose. Less is more. A comprehensive data privacy act would recognize the limited value in managing outcomes with data, and would value transparency, user consent, strong safeguards for only opt-in biometric data use, and strict data retention limits. Additionally, the act would be fundamentally tied to environmental and health impacts related to communications technologies, data collection, and could indu-- introduce a robust accountability mechanism to ensure Nebraskans maintain ownership and control over their personal data, including the ability to sell, donate, or receive royalties on their personal data. Thank you.

JACOBSON: Thank you. Questions from the committee? All right. Seeing none. Thank you for your testimony. Any other proponents? How are you?

EMMA YEAGER-CHAE: I'm phenomenal. How are you?

JACOBSON: Perfect.

EMMA YEAGER-CHAE: Perfect. Well, good afternoon, Chairman Jacobson, and the members of the committee. Thank you for being so present here

on this beautiful Monday. Sorry you have to be inside. My name is Emma Yeager-Chael, that's E-m-m-a Y-e-a-g-e-r-C-h-a-e-l, and I'm here today to testify in support of LB204 because my safety and privacy should not be for sale. In an increasingly digital world, our personal data, particularly our biometric and health-related data, has become a commodity, often bought and sold without our explicit consent. While technology offers us incredible convenience, it should never come at the cost of our fundamental right to privacy. One critical example of this issue is the menstruation tracking apps. These tools provide essential health insights for millions of people, helping them monitor their cycles, manage reproductive health, and plan for medical needs. However, without proper legal protections, the intimate data collected by these apps can be sold to third parties, used for targeted advertising, or even weaponized against individuals. This is not a hypothetical concern; it is a real and present danger. Health data should never be exploited for profit, or used in ways that could harm users. Beyond health apps, the need for biometric privacy extends to all areas of life. Biometric data such as fingerprints, facial recognition, and voice prints is increasingly used for authentication in everything from unlocking devices to securing bank accounts. But without legal safeguards, companies and bad actors can use this data in ways we never consented to. In the wrong hands, biometric data can enable identity theft, facilitate surveillance, or even put individuals at risk of stalking or harassment. I should not have to choose between accessing technology and protecting my fundamental right to privacy. My biometric data is mine alone, and it is not a product to be sold, nor should it be used in ways that companies-- oh, I'm sorry-- that compromise my personal safety. LB204 is a necessary step towards ensuring that individuals retain control over their most personal information. By passing this legislation, Nebraska can set a precedent that privacy is not a privilege, it is a right. I urge you to support this bill and to stand up for the safety, dignity, and autonomy of all Nebraskans. Thank you.

JACOBSON: Thank you. Questions from the committee? All right. Seeing none. Thank you. Other proponents? OK. If not, anyone wishing to speak in opposition to the bill? A person clear in the back of the room.

LAUREL OETKEN: Patiently awaiting.

JACOBSON: Patiently waiting, I might add that.

LAUREL OETKEN: Thank you.

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JACOBSON: And you'll notice the drapes are drawn so we can't see what's going on outside.

LAUREL OETKEN: Yeah, I can't see the nice day happening outside. Good afternoon, Chairperson Jacobson, and members of the Banking, Commerce and Insurance Committee. Thank you for the opportunity to testify today. My name is Laurel Oetken, spelled L-a-u-r-e-l O-e-t-k-e-n, and I currently serve as the executive director of Tech Nebraska, the state's first technology trade association that was created in partnership with the Nebraska Chamber of Commerce and Industry. I'm here today on behalf of Tech Nebraska, the NE Chamber, Lincoln Chamber, Omaha Chamber, and the National Federation of Independent Businesses Nebraska Chapter to provide opposition to LB204, which would adopt the Biometric Autonomy Liberty Law. While we acknowledge the importance of safeguarding biometric data, our concerns stem with how this bill would conflict with our existing data privacy law in Nebraska. The Nebraska Data Privacy Act, enacted through LB1074 during the 2024 session, took effect on January 1 of this year, and it establishes comprehensive guidelines for the processing of personal data, including biometric data, by entities conducting business in Nebraska. This act also grants consumers specific rights over their personal information, and imposes obligations on data controllers and processors to ensure transparency and security. The Nebraska Data Privacy Act already addresses the collection, use, and protection of biometric data. The type of data defined as biometric data is encompassed by the definition of data under existing law. Introducing LB204 may lead to overlapping regulations, creating confusion on-- confusion among businesses and consumers about compliance requirements. Additionally, inconsistent definitions between what was in-- what is introduced in LB204 and what will be enforced within the Nebraska Data Privacy Act could result in inconsistent interpretations or future enforcement challenges. Additionally, the protections proposed by LB204 are therefore unnecessary, and at this-- and, at times, are conflicting. As biometric data is already covered by the Nebraska Data Privacy Act, putting additional regulations on this sub-classification of data could make it unclear which regulations apply to what kinds of data and how given kinds of data should be handled, which, again, could lead to compliance issues. This could also discourage innovation and economic growth within our state, or even could push organizations to do business outside of the state of Nebraska. Finally, there are more general concerns about the feasibility of complying with the provisions of LB204. Many of the provisions have wide-reaching requirements that would require

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operations-- or, excuse me-- operations on too large of a scale to be feasible for large-scale companies. While LB204 intends to protect consumers from the potential harm associated with the collection of biometric data, we strongly believe the concerns raised through this bill are addressed under existing data privacy law. Thank you again for the opportunity to testify today, and I'd be happy to try and address any questions you may have at this time.

JACOBSON: Thank you. Questions from the committee? All right. Seeing none. Thank you for your testimony.

LAUREL OETKEN: You bet.

JACOBSON: Other opponents? In the front row.

RICH OTTO: Chairman Jacobson, members of the Banking, Commerce and Insurance Committee-- and now I will have to use "BCI" as my new acronym. Thank you, Senator. My name is Rich Otto, R-i-c-h O-t-t-o, and I'm testifying in opposition to LB204 on behalf of the Nebraska Retail Federation and the National Federation of Independent Businesses. I know the previous testifier got them in the list, but I just wanted to mention that in case it wasn't on her sheet. We have seen data privacy bills; since 2020, we've seen many more. I know this committee got several of them referenced this year alone, and we are appreciative of Senator Bostar's bill last year, LB1294 it started as, and then was amended into LB1074. Previous testifier talked about how LB1074 covers biometric data, so I won't go into that again. I just want to give the analogy that LB204 is kind of like building a separate house on a different foundation. We didn't build on Senator Bostar's bill; we kind of have two different, and we have to-- both have to meet code, and now that's where that discrepancy is. Do we have to follow LB1074 or LB204, or do they conflict? So, that would be the first thing, is that we build LB204 on top of our current data privacy. I did want to touch on a few things that are actually-- we do like. The bill does have some law enforcement exceptions, which we need with the rise of organized retail crime in retail. And then, it does have a section for security purposes, which we would like the committee to enhance if they were going to advance this out. We would like to see fraud prevention. Currently, with the rise of organized retail crime, we have to do more and more scanning of faces, facial recognition of those coming into brick-and-mortar stores. Often, we use this when we have a trespass notice against an individual that has occurred, had theft in our stores multiple times. We can-- law enforcement encouraged us to get a, a trespass notice; then, when we

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know that person has set foot in the store, we can call law enforcement proactively and say, "Hey, they aren't allowed here," so we would like some additional language to those sections. I also did want to point out that-- well, first of all, to Senator Hardin's China line, I don't think China would care about this. I don't think they're going to comply one bit with a Nebraska law. We're concerned with retailers like Temu. They are stealing your data. Don't shop on that site would be my recommendation. But I don't think those type of international players are going to comply with the Nebraska law, and they'd probably almost encourage it because it's going to put good actors at another penalty and the bad actors-- international will just keep doing the same thing, and, and and going down that line. Several other things in it; we do like what the bill has changed to give the Attorney General the authority. And I will stop there with my red light on. Happy to answer any questions.

JACOBSON: Great, great timing. Questions from the committee? Senator Wordekemper.

WORDEKEMPER: Thank you for being here. And I think you touched on something that I-- I'm trying to wrap my head around. If, if we pass this bill-- and, and some of the other ones that have been passed-- Senator Bostar's-- so, it's intended to protect my biometrics here in the state, whether they're doing business here in the state-- what happens when I cross the state line or I go on vacation for two weeks? Am I free game to all these biometric companies, even though we passed a law here in the state? I mean, where's-- where do you draw the line on these companies?

RICH OTTO: Well, that's a good question. I would say if they're not doing business in Nebraska-- my best example would be, I recently went on a cruise; they did facial recognition, and I could do kind of the fastpass the passport line. And so, this does have-- government gets brought into Senator Kauth's LB204, which is one of the big deals. Senator Bostar was just on private. But I would say it's where that company is residing, where it's happening. And so, [INAUDIBLE]-- Nebraska's laws are going to change what a Nebraska individual gets for privacy on a cruise that docks out of Texas or Florida. That's my interpretation.

WORDEKEMPER: Thank you.

JACOBSON: Other questions? Senator Bostar.

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BOSTAR: Thank you, Chair Jacobson. Thank you, sir, for being here. Do you-- I don't know if I caught it exactly. You were mentioning some bills from previous sessions, one was a 1200 number.

RICH OTTO: Yeah, yours started as LB1294. That was the original bill number.

BOSTAR: OK. Could you-- you talked about some conflicting provisions between the existing Data Privacy Act and LB204. Could you get, for the committee, a, a specific breakdown of--

RICH OTTO: Differences? Yeah, absolutely.

BOSTAR: --where, where they would be challenging to--

RICH OTTO: We have--

BOSTAR: --so that we could [INAUDIBLE] look at--

RICH OTTO: --to-- I will give Senator Kauth credit. She has modified the bill from her last year's version. We do have an analysis of your bill, Senator Bostar, to Senator Kauth's version from last year. But again, I don't-- I can provide that to you in the next few days, but I do want to give the disclaimer that she has made a few changes, and it would be a, a, a comparison to last year's model. And so, there-- we could point out some of the things that she's changed from last year's to this, but that would be the quickest. We can do another updated comparison based on this language in LB204.

BOSTAR: Thank you.

JACOBSON: Other questions from the committee? All right. Seeing none. Thank you for your testimony. Are there further opponents? Any other opponent testimony? Anyone wishing to speak in a neutral capacity? If not, Senator Kauth, you're welcome to close.

KAUTH: Thank you very much, everyone. Couple of things. So, Senator Wordekemper, it would apply only to companies in the state and us in the state, similar to if you cross over to a different state, they have different speed limits, you follow the laws in that state. So-- yeah, so the hope would be that Nebraska would join Colorado and Illinois and other states that are looking at this because, to Senator Riepe's point that maybe the federal government should just do it, they're not going to and-- they-- until they see enough states saying, hey, this is an important-- the states are obligated to do everything

that's not enumerated in the Constitution. Tech is not enumerated in the Constitution. It's our responsibility to push forward and lead the way, and say, hey, look, this is important. About the time we have patchworks and different states with different things, there will become a, a pressure for the federal government to say, OK, now it's time for us to look at everything that's happening, look at which is working, what are not working, look at how to best protect people and businesses, and then apply a federal framework. I'd be happy to put in the bill that at such time that a federal framework goes into place, this bill goes away. Happy to do that. I do believe the, the reasonable care question was brought up, and businesses that are taking the-- basically the minimum standards necessary to protect data, and that changes all the time. As hackers get more successful and better at what they do, people trying to protect that data have to get better at what they do. So, it's a constant step-up kind of game, so that's, again, why you don't put it exactly specifically saying this is the type of technology that has to be used to protect this, because that technology will be obsolete before the ink is dry on this. Let's see here. First, I love the "privacy is a privilege, not a right." That is a great statement. Sorry. Not a privilege, it is a right. Great statement, and I was very happy to hear her say that. When Tech Nebraska and all of the state chambers-- so again, you have all of the businesses saying, hey, we really think that we want this and we're going to use it, and we need it because it's going to make us billions and billions of dollars, so of course are opposed to any restrictions on that. We have to be able to find that balance. More than happy to work with them to figure out what, what is a better balance. And, as Mr. Otto said, we've changed it a little bit. We worked all last year and, and through the summer, looking at this bill and trying to figure out how do we balance that out? How do we protect businesses, their entrepreneurship, and their development of technology? But also, how do we protect the citizens of the state? So I encourage you to work with me; if we need to find an amendment, get an amendment, put on this and kick it out.

JACOBSON: Questions from the committee? Senator Dungan.

DUNGAN: Thank you, Chair Jacobson. Thank you again. And you kind of answered my, my question, I think, in your closing. But just to clarify, so, when Senator Jacobson-- or, sorry, Chair Jacobson was talking about some of the hypotheticals with regards to, you know, hackers getting into, to biometric data-- in the event that a business or covered entity had a firewall, or had some sort of system in place that an objective sort of reasonable person in that situation would--

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thinks would protect against that, do you think that that would be enough to be a reasonable standard? I mean, is that--

KAUTH: It is--

DUNGAN: --do you think this protects people who take just the general care to protect your biometric data?

KAUTH: Yes. And, and again, it will be constantly stepping up as one method becomes easier and easier to attack and [INAUDIBLE]. My son's a computer engineer; he talks about this stuff, and I don't know half of the things he's saying. But he said it, it is, it is a living, breathing thing that they are constantly working in developing this. So, it's not ever going to stop, that we're going to have new ways to protect, and that they are going to have new ways to attack.

DUNGAN: And, and then the-- so, using the reasonable care standard, which is an objective standard--

KAUTH: At that time.

DUNGAN: --it's trying to sort of address that there is this evolving--

KAUTH: Right. Right.

DUNGAN: --mechanism in place. And so, you think that would be sufficient to address the evolving technology?

KAUTH: I do. Yes. Thank you.

DUNGAN: Thank you.

JACOBSON: Other questions?

KAUTH: I would like to point out that the ACLU has testified on my bill literally only one other time, so this is, this is a momentous bipartisan occasion, and I think this committee should take advantage of it.

JACOBSON: Well, thank you for bringing us to the Twilight Zone.

KAUTH: It's-- truly.

JACOBSON: With, with that said, thank you for everyone's testimony today. This concludes our hearings on LB204, and that will conclude our committee hearings today.