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Banking, Commerce and Insurance Committee
January 16, 2007

[LB24 LB26 LB62 LB63]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 16, 2007, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB24, LB63, LB26, and LB62. Senators present: Rich Pahls, Chairperson; Chris Langemeier, Vice Chairperson; Tom Carlson; Tim Gay; Tom Hansen; Dave Pankonin; and Pete Pirsch. Senators absent: Mark Christensen. []

SENATOR PAHLS: Good afternoon. I welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls, I'm from Omaha and I represent District 31. I am honored to serve as the Chair of this committee. The committee will take up bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position or concerns. As you notice, I do have some of the rules or procedures posted over here, also as you walked in you will see the names of the senators and the other people who serve on the committee. I am going to go over some of the procedures briefly. We are asking you to turn off your phone and pagers, and we have an on-deck chair for those of you who would be in line to testify. If you have not completed a testifier's sheet, we are asking you to do that. Some of this is because we have so many new individuals on this committee. The senator will initiate the beginning statements, then we will follow by the people who are proponents, opponents, and neutral, if necessary. Of course we will try to be fair and give everybody an equal amount of time and the closing statement, if necessary, will be by that senator who introduced the legislation. We are asking you when you begin your testimony by spelling your first and last name, we need that for the record. And the written material, we would like to have ten copies, so if you do not have ten copies I am going to ask you to hold your hand up so I can have the page make some copies, if you do need. That will help us as we move through the process. Looking up, I see we have nobody who needs those. Okay. Well, I am going to introduce the people who are very important to this committee. Committee counsel here is Bill Marienau; committee clerk is Jan Foster; and I am going to have the senators introduce themselves and we will start over...

SENATOR CARLSON: I am Tom Carlson. I represent District 38. I live in Holdrege.

SENATOR PIRSCH: I am Pete Pirsch. I represent District 4 in Omaha.

SENATOR PAHLS: And Chris Langemeier right now is in front of another committee. He will be here later on.

SENATOR PANKONIN: I am Dave Pankonin. I am from Louisville and District 2.

SENATOR GAY: Tim Gay, District 14, Papillion/La Vista and a portion of Bellevue.

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SENATOR PAHLS: And Senator Christensen is absent today.

SENATOR HANSEN: I am Tom Hansen. I am from North Platte, representing District 42.

SENATOR PAHLS: And our page is Kristine Kubik from Prague. The committee will take up the bills today in the following order starting with LB24, (LB)63, (LB)26, and (LB)62; and we will start with (LB)24. []

SENATOR PANKONIN: I am briefly going to take the chair while Senator Pahls introduces his own bill. []

SENATOR PAHLS: Thank you. It's good to be one of the first people in the new session to introduce one of the first bills of this committee. My name is Rich Pahls, R-i-c-h P-a-h-l-s, of District 31. Today I am introducing LB24. LB24 would amend the Public Accountancy Act to permit additional flexibility for CPAs with credentials in other states and with experience otherwise required by this state to obtain reciprocal certificates and permits in order to practice in Nebraska. In a nutshell, this basically is...there is a national movement to allow CPAs to be able to move across state borders in their practices, especially when they are employed by major national firms. For example, without this bill a CPA credentialed in another state and who has an undergraduate degree and the experience might, nonetheless, be unable to get a reciprocal certificate in Nebraska only because he or she did not have 150 semester hours upon graduation from college or university. Since 1998, candidates for the Nebraska examination have had to have had, among other things, 150 semester hours before being eligible to sit for the examination. Other states have 150-hour requirements, but have put theirs in place after 1998. This bill would apply to a small number of individuals. As time passes it probably would apply to fewer and fewer individuals. [LB24]

SENATOR PANKONIN: Thank you, Senator Pahls. [LB24]

SENATOR PAHLS: Any questions? If not, we have some proponents. [LB24]

SENATOR PANKONIN: Yes. [LB24]

DAN VODVARKA: (Exhibits 1, 2, 3) Good afternoon, Senator Pahls and the banking committee. My name is Dan Vodvarka, D-a-n V-o-d-v-a-r-k-a. I am the president and executive director of the Nebraska Society of Certified Public Accountants. I am here today on behalf of the board of directors and the over 2,600 members of the Nebraska Society of CPAs in support of LB24, and I thank Senator Pahls for introducing this legislation which he most accurately described in his introduction. Again very briefly, since January 1, 1998, the law in the state of Nebraska was for a student, a person to

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sit for the exam and to qualify for a certificate as a CPA they had to have 150 hours of college credit. Some states followed that up later, states like Iowa, and that has led to a situation where students or persons in another state may have only 135 hours or so of college credit, but because their law hadn't changed until after Nebraska law, got their certificate. Got their permit to practice in that state, has practiced. Now want to move to Nebraska and get a reciprocal certificate and then a reciprocal permit to practice and because they don't have the 150 hours, they would be required to go back to college. It interferes, obviously, with the mobility. The law simply says that if that person has been practicing public accountancy in four of the last ten years, the state board of public accountancy (Nebraska Board of Public Accountancy) could waiver that requirement. I also have brought, Mr. Chairman, today letters from McGladrey & Pullen, a firm in Omaha, in support of LB24 and I would want that in the record. Also I have a letter from KPMG and I do have copies for the committee, both in support of this legislation. As you most correctly said, this will probably effect four to eight people a year, I don't know. The person following me here in testimony is Dan Sweetwood who is the executive director of the state board of public accountancy, which is a licensing agency, and the society and the state board have worked together on this legislation and both support it. He can probably give you a better estimate, but he estimates probably four to eight people a year end up in this category. This law would give the state board the flexibility to be able to waiver those requirements and bring them into the state. Also, Mr. Chairman, I bring to you today on page 4 of the legislation a suggestion for an amendment to this bill. What happened is what has been known sometimes in bill drafting as the Vodvarka factor. I helped and I suggested a wrong number, to be very frank about it and so we...and we have copies of the amendment here. On page 4, line 4, to change "four" to "two" years. This is the section of the bill that cleans up the permit to practice section. To be a CPA and to practice as a CPA in the state of Nebraska, you must have first a certificate and then after two years of experience with a CPA firm, then you can qualify for a permit to practice and have all the full rights of a CPA to do the attest function, to do audits, to sign off on financial statements. As we drafted this legislation, and again this legislation just deals with reciprocity, I mistakenly suggested to put in "four" that should be "two" because if you are a resident in the state of Nebraska, you fulfilled 150-hour requirements, you take the exam and pass it, you pass the open book ethics exam, you get a certificate. Then you need two years of experience with a CPA firm and then you can get the full permit. We believe that should be the same for someone coming from a state in which it has the 150-hour requirement, like the state of Florida which was the first to institute it back in the 1970s. The amendment would simply make this fair for all concerned. It would give the same requirement for someone coming out-of-state with the 150-hour requirements to get the permit, as it would someone who has always lived in Nebraska and has reached all the requirements here. And again, I have worked with Mr. Sweetwood on this to make sure that this works. Taken as a whole, we believe that the bill opens up some flexibility in the reciprocity system. Again, it's not a large piece of legislation that effects a whole lot of people, but to the people it effects it's important, and to the firms that have written it's important so that we can

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bring good, highly trained CPAs into the state and get them working for firms as quickly as possible. Mr. Chairman, I of course will be open for questions and I would respectfully suggest that this bill be amended and approved by this committee and moved on to General File if possible. Thank you for the opportunity to testify and... [LB24]

SENATOR PAHLS: Dan, I just had one question. You are telling me the two years, because it went from five to four to two, the two years is just a... [LB24]

DAN VODVARKA: It puts everybody on an equal basis that have already had 150 hours. And in many states...47 states now have the law, but it started probably in the late seventies and then it caught fire about 1992. We passed it but didn't make it effective until 1998. Then since '98 a majority of states have come in with this, but that leaves a gap. That leaves a gray area that probably, eventually will go away as you said, but... [LB24]

SENATOR PAHLS: Are there... [LB24]

SENATOR HANSEN: Are there any offshore schools for accounting? [LB24]

DAN VODVARKA: Offshore being? [LB24]

SENATOR HANSEN: Well, Caribbean. Could they work there for two years and then come in? University system, small schools... [LB24]

DAN VODVARKA: Senator, good question, that is referred to in the first paragraph of the bill and that deals with reciprocity from foreign countries and that is dealt with by the state board of public accountancy and they can...Danny can give you a little better idea of that, but this reciprocity is just aimed at states within the United States, because we know what their requirements are. Foreign certificates...they are not called CPAs. In Canada they are charter accountants, is handled in a different section of the law and the state board has a lot of flexibility there whether to accept it or not. [LB24]

SENATOR PAHLS: Thank you. [LB24]

DAN VODVARKA: Senator Carlson. [LB24]

SENATOR CARLSON: Even though you indicated this would involve not very many people a year, it will be people that come in from the outside and become residents. [LB24]

DAN VODVARKA: For the most part. They don't have to. Yes, for the most part it will. You could receive a reciprocal certificate and live outside the state and come here to

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practice, although that is not done very often. We are aiming this at younger CPAs moving into the state, although it's not all younger. Dan has a couple of examples of two that are waiting right now to come into the state from Wisconsin, but a reciprocal certificate and a reciprocal permit to practice, you can have a residence outside the state, but you must be working for a firm inside the state. There must be a firm here that is licensed in Nebraska that you are working for. [LB24]

SENATOR CARLSON: But you believe for the most part they are going to move to Nebraska.... [LB24]

DAN VODVARKA: Yes. [LB24]

SENATOR CARLSON: ...live in Nebraska and even though it's not very many, it's a little bit of an economic development issue. We gain a few taxpayers. [LB24]

DAN VODVARKA: We gain some taxpayers and even for the ones that don't come in and spend...are totally full-time, which is very few, at least they are coming here and they have got to be spending some money while they are here and working with their practice, and Dan can speak to that, too, for a moment, I think. [LB24]

SENATOR PAHLS: I see no more questions. Thank you. [LB24]

DAN VODVARKA: Thank you. [LB24]

DAN SWEETWOOD: Good afternoon, Senators. Thank you for hearing this bill and I appreciate the Nebraska Society of CPAs introducing this bill. We, through the chair, we... [LB24]

SENATOR PAHLS: Could I have you spell your name? [LB24]

DAN SWEETWOOD: Yes, it is Dan Sweetwood, S-w-e-e-t-w-o-o-d and I am the executive director of the Nebraska State Board of Public Accountancy. [LB24]

SENATOR PAHLS: Thank you, Dan. [LB24]

DAN SWEETWOOD: I have been in that position for four years. Again, appreciate the opportunity here. I am the individual that gets to take a telephone call from a CPA in Wisconsin that has been there for nine years practicing public accountancy and can legend themselves as a CPA in the state of Wisconsin. And under our current law and rules, that individual could come into our state and find out that since they do not meet our specific education rules that I get to tell them that they have to go back to school. And most of them have family, work considerations, and again from the economic standpoint some of them, based on the current law, could quickly decide that maybe

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Nebraska isn't the place for me to come work as a CPA. So this is the fairness, the flexibility issue that Dan alluded to. My board met, and quickly I know some of you are new, the state board of public accountancy consists of six CPAs, two from each legislative congressional district appointed by the Governor with two public members. Quickly, if any of you ever have any questions about the CPA profession, you can contact us. I am sure my board would welcome and get back to you on information, but they met on January 5 at our regularly scheduled meeting and they support this concept and the latest version that they see they indicated to Dan and the society that we also support this concept. The question, Senator Hansen, about the foreign credentialed CPAs, we have a process where our national organization, the National Association of State Boards of Public Accounting, NASBPA, which we belong to, we have a credential service tied to them. They go out, they judge the experience and the education of those national credentials. Right now, I believe, there are five that are credentialed and we, based on that information, would allow that reciprocity. Senator Carlson, I think I touched on the economic. You're exact...Dan's right on that, although they have to show us that they are regularly employed in our state. They just can't come in, get the credential and go away. Right now the current law, they have to show regular employment within our state. I'll take any other questions, if you have them. [LB24]

SENATOR PAHLS: Yes. [LB24]

SENATOR GAY: Dan, on that NASBPA that you talked about, if there is a complaint in a previous state that comes with them, I assume, or any prior complaints. They come to Nebraska...you are able to view that somewhere? [LB24]

DAN SWEETWOOD: Exactly right, Senator Gay, and we have been involved in that a little bit. Exactly, we want the ability to...where that individual comes from on that national side to review and we hope to have that very soon, to have the ability of a kind of a national license database to check. Right now the profession has not got to that point, but we are working on it and we are pretty cognizant of that when we question that CPA coming in, the application that they fill out to ensure to the best of our ability to make sure that they are properly licensed without any disciplinary actions. [LB24]

SENATOR GAY: So when do you think they will have that database? [LB24]

DAN SWEETWOOD: It's called the Accountancy Licensing Database, the ALD, and we hope to have that within the next year. [LB24]

SENATOR GAY: But you do look for things like that? [LB24]

DAN SWEETWOOD: Oh, yes, absolutely. Part of our job. [LB24]

SENATOR GAY: Okay, thank you. [LB24]

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SENATOR PAHLS: I see no more questions. Thank you. [LB24]

DAN SWEETWOOD: Thank you. [LB24]

SENATOR PAHLS: Do we have any opponents? Seeing none, any neutral? Seeing none, I will waive closing. Is Senator Schimek...we are in a unique situation. We are waiting for Senator Schimek, and since Senator Langemeier has the next two bills and he is at another committee, talk with your neighbor (laughter). [LB24]

BREAK

SENATOR PAHLS: Good afternoon, Senator Schimek. [LB63]

SENATOR SCHIMEK: Good afternoon, Mr. Chairman. I apologize for making you wait. I hope you have not been waiting long. [LB63]

SENATOR PAHLS: We haven't. [LB63]

SENATOR SCHIMEK: I was sitting there very oblivious in my other committee hearing. Anyway, thank you for giving me this opportunity to come before you today. For the record, my name is DiAnna Schimek and I am from the 27th Legislative District, the "Historic District," and I am pleased to be able to tell you a little bit about LB63 today. It's an issue that members of this committee would have heard last year and I don't see too many members of this committee except one, I guess, who were here last year, so I will go into a little bit of detail. [LB63]

SENATOR PAHLS: Yes, please. [LB63]

SENATOR SCHIMEK: (Exhibit 1) First of all this bill was brought to me by a constituent concern and it amends section 44-784, the childhood immunization mandate. The law exists because the Legislature recognized the importance of childhood immunizations. With the passage of the law, the effort to vaccinate children became a priority for the state of Nebraska. This mandate does not reach ERISA plans, of course, but one thing that was apparently overlooked in the whole discussion was whether or not children of parents who were issued so-called certificates would enjoy the same immunization benefits that others would. A few years ago, my constituent and his wife sought those immunizations for their child, but they were not notified by the certificate provider, who is sited in Indiana, that his child's coverage was in fact not mandated by Nebraska law. After a lengthy investigation by the Department of Insurance in Nebraska, it was found that the constituent's certificate was, in fact, not subject to (section) 44-78 (sic: 44-784) and that the group in Indiana had not violated Nebraska law. My constituent, however, felt cheated. He believed, as most people would, that immunizations were a mandated

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benefit no matter what the terminology. But if one looks at the statute in question, terms such as certificate and subscriber contract are not specifically defined. I realize that insurance law is constructed with sophisticated terms of art, but I believe that the Legislature would have made sure that the statute included the term certificate had it known that it was possible for parents with plans that were not ERISA to fall through the cracks. It should be noted that in certain situations it is completely possible that the employer that purchases insurance may not have an understanding of the regulatory laws of Indiana or any other state nor of the conflicts of law that arise in situations such as this. Even more disturbing is that the consumer who naturally believes that he or she is entitled to all the benefits of the mandate in (section) 44-784 is, in fact, not entitled. This issue poses another disturbing possibility--the possibility that companies can use trust to avoid mandated benefits, thereby skirting state regulations. While the state in which these certificates were formed may have some regulatory functions over the trust, it appears that form shopping could be a prime consideration for the situs of these trusts. The Department of Insurance recommended last year that if we were to introduce a bill that it be done in the manner in which LB63, previously LB878, is drafted. The department had indicated that the problem encountered by my constituent could be one for a small sliver of consumers who fall through the cracks between federal and state law. Unfortunately, the department does not know how many consumers within the state are effected in the same way that Mr. Haller, my constituent, is. My hope is that this committee will advance the bill this year. I know that they were inclined to do so last year, at least maybe adopt it into a larger committee bill perhaps, but at some point and I am not sure I understand at all, the thing kind of fell apart. So I would really ask you to consider it again this year, Mr. Chairman, and I must apologize. My constituent, at the last minute, was prevented from coming to the committee, but I do have a letter from him for the committee members. So with that, I would conclude my remarks. [LB63]

SENATOR PAHLS: Do I see any questions? Thank you. [LB63]

SENATOR SCHIMEK: Thank you very much. [LB63]

SENATOR PAHLS: Do we have any proponents? Opponents? Neutral? Waive closing? Thank you, Senator. Senator Langemeier, it's good to see you. LB26, right. Yes, go ahead. [LB63]

SENATOR LANGEMEIER: Good afternoon, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. My name is Chris, C-h-r-i-s, Langemeier, L-a-n-g-e-m-e-i-e-r, representing District 23. Today I bring you LB26 on behalf of the Nebraska Real Estate Commission. LB26 would amend the Nebraska Revised Statutes, section 81-885.01 of the Nebraska Real Estate License Act regarding the deletion of some obsolete language. This proposed legislation eliminates language requiring a real estate broker's license to charge an advance fee to promote the sale of real estate in a publication issued primarily for such purpose or for the referral of such

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information to brokers. Due to recent court decisions, the legislation has proven to be unenforceable and therefore is proposed for repeal. Can it be that simple? Yes, it can and I am going to give you a little example and I am not going to submit this into evidence. We don't have to put this whole book in, but if I was a company that wanted to produce a piece of printing like this, which is a national magazine that allows real estate agents to advertise in, technically the way our law is currently written, I would have to be a broker to provide this type of publication out there. The court cases have proven that you don't have to be, you can be a printer of sorts to offer a generic book with lots of different listings in it and so that is why the law is proposed to be taken out. That concludes my testimony. Are there any questions? [LB26]

SENATOR PAHLS: Seeing none. [LB26]

SENATOR LANGEMEIER: There will be others to testify. [LB26]

SENATOR PAHLS: Okay. Some proponents? [LB26]

SENATOR LANGEMEIER: There he is. [LB26]

SENATOR PAHLS: All right. Welcome. [LB26]

LES TYRRELL: Chairman Pahls, members of the committee, my name is Les Tyrrell, L-e-s T-y-r-r-e-l-l, and I am director of the Nebraska Real Estate Commission, appearing here today on behalf of the members of the commission in support of LB26. As Senator Langemeier indicated, this is a very simple piece of legislation. It is to delete, repeal some obsolete, unenforceable language. To give you another example, what this is, is basically it's saying that a piece of advertising like what appears in a newspaper done by not a newspaper is that person would be required to have a real estate license to put that advertisement out there, and that you could not charge a fee of a seller of property to advertise. Courts have held across the nation in the recent years that advertising is advertising. The rest of our law allows us...if a person who is advertising properties gets into the business of negotiating deals between buyers and sellers, other provisions of our law allows us to take action against them under that condition. So this is basically with today's use of web sites, which are also a publication, this allows us to not have to require those people to be licensed nor situations like Senator Langemeier indicated. And so we would urge you to advance this legislation and I would be happy to answer any questions that you might have. [LB26]

SENATOR PAHLS: Do I see any questions? Thank you. [LB26]

KORBY GILBERTSON: Good afternoon, Chairman Pahls, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I am appearing today as a registered lobbyist on behalf of the Nebraska Realtors

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Association in support of LB26 and the commission's work to clarify and keep clear the provisions of the real estate licensure act (Nebraska Real Estate License Act). And I think Mr. Tyrrell summed up very well, as did Senator Langemeier, what this bill does and I would be happy to try to answer any questions, if I could. [LB26]

SENATOR PAHLS: Thank you. [LB26]

KORBY GILBERTSON: Thank you. [LB26]

SENATOR PAHLS: Opponents? Neutral? Closing? Senator Langemeier waives closing. Senator Langemeier, it's good to see you again. [LB26]

SENATOR LANGEMEIER: Quick trip. [LB62]

SENATOR PAHLS: We are now discussing LB62. [LB62]

SENATOR LANGEMEIER: Good to see you all again, too. Again, good afternoon, Chairman Pahls and members of the Banking, Commerce and Insurance Committee. My name is Chris, C-h-r-i-s, Langemeier, L-a-n-g-e-m-e-i-e-r, representing District 23. LB62 would amend state statute 44-354 to provide that an insurance producer, agent or broker may charge additional incidental fees for premium installments, late payments, policy reinstatements or other small services that would include payment by credit cards, processing insufficient fund checks, obtaining records, reports, appraisals, inventories and other like documentation and make regular filing of an insured's application for insurance. The bill would provide that fees for making payments by credit card may not exceed the amount charged to the insurance producer by the credit card company. The bill would provide that fees shall be disclosed in writing at or before the time the fee is charged and that the amount of the fee shall be posted where the insurance producer conducts business. The bill would provide that violators are subject to the Unfair Insurance Trade Practices Act. Thank you for your consideration of this legislation. Are there any questions? [LB62]

SENATOR PAHLS: Seeing none. Proponents? [LB62]

JIM CAVANAUGH: Senator Pahls, members of Banking, Commerce and Insurance Committee, my name is James Cavanaugh. I am an attorney and registered lobbyist representing the Independent Insurance Agents of Nebraska. We appear here today in support of LB62 and would like to commend Senator Langemeier and the cosponsors on this committee for introducing this matter. LB62, as some of you may recall, was introduced in a different form last year, was subject to an interim study resolution over the interim. We worked closely with the committee, department, and other interested parties to develop the bill that you see before you. Senator Langemeier indicated this is a very limited scope. That great Republican President, Abraham Lincoln, once said

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about the practice of law that the only thing lawyers sell are their time and advice, and that is true as far as it goes. But if any of you have ever dealt with lawyers and I know that some of you are, you know that there are such things as costs in litigation, the practice of law. These costs are generally fees that pass through to the litigant. They are not legal fees. They do not go in the lawyer's pocket, but if you were to retain an attorney to go over to the courthouse and sue somebody, he would say to you, I will take the case on the basis of an hourly compensation package or a contingent fee compensation package. But the costs are going to be paid by the litigant and that is general practice in the law. It's not mandatory. It can be waived, and I would point out that the scheme envisioned under LB62 is similar. It's not mandatory. It's elective. Agents can choose to use this or not, but in at least 16 other states, including Iowa, Kansas, Missouri, Minnesota, and Illinois here in the Midwest, similar programs are in place, have been used over a period of years. This particular one is most closely fashioned on the Missouri statute. And I can tell you from discussions with the Missouri Department of Insurance and our independent agent-counterparts in Missouri, there has never been a single complaint filed. Basically, what we are trying to do are capture the costs of repetitive acts, incidental fees that in large part have been shifted, in recent years, from companies to agents. For instance, when you go into your insurance agent and you ask to be quoted on a car insurance policy, somebody's going to have to get your motor vehicle record. And today, by and large, for an independent insurance agent, the cost of obtaining that motor vehicle record from the Department of Motor Vehicles falls to the agent. And LB62 would say simply the cost, the specific cost of that motor vehicle record can be then passed on from the agent to the insured. Similar costs are incurred if the agent has to go and get an accident report. You have had an accident, may or may not affect your insurance premium, but a report must be secured and reviewed. In Omaha, for instance, and you will hear from agents testifying to follow me, I think that's about \$10 per accident report. Those are the kind of incidental costs that we are talking about. LB62, based on the Missouri model, says incidental fees only--we are not talking big ticket items--for acts actually performed. If I tell you I am going to charge you \$10 for that accident report, I got to go get the accident report. Credit card fees for the amount only. If the credit card fee is \$2, then you are charged \$2. Disclosure at or before the point of sale for all of these transactions. Written disclosure provided to the insured, kind of in the form of an itemized bill, and disclosure posted conspicuously in the place of business, which means that if you come into my agency, on the wall in the lobby there is going to be a list of charges and their amounts. All of this enforced under the Unfair Insurance Trade Practice(s) Act, which is the Department of Insurance overall enforcement mechanism in insurance matters. We feel that this is fair recognition of incidental costs that in agencies, and you will hear from the agents to follow me, incur over and over and over and over and over again. And if you are a big insurance company, if you are a Geico and you have got your own insurance agents working on staff someplace in a phone bank far away, it's not a big thing. But if you are a Main Street agent in Main Street, Nebraska and you are doing 500 or 600 of these a year to service the community at \$10 a copy or \$3 a copy, you can do the math and you can

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see how that can build up to be a significant cost for a medium-to small-sized family agency. This is not a money maker for the agents. It's an attempt to just stay even with the costs of doing business, costs that heretofore were not always passed on to the agents, but more and more in the insurance world are. And, the agents feel that these are reasonable, incidental costs that the other 16-18 states that currently allow these to be passed through find not a problem to administer through the insurance departments. I would be happy to answer any questions you might have. [LB62]

SENATOR PAHLS: Senator Gay. [LB62]

SENATOR GAY: This is an elective choice by the agent when you say it's posted and the enforcement is under this unfair insurance. I'd add on property casualty insurance, but when you go there the agent has the choice, do you sign a waiver...how is it enforced, I guess? You say there has been no complaints in Missouri, but what if someone were saying...and then is there a fee schedule of...you said \$10 for an accident report, is there a fee schedule to follow or can I charge \$30? I mean it has to be the cost of? Are you going to come back and say agent so-and-so is charging \$30 and it was only \$10 for that report? How is the enforcement mechanism on this? [LB62]

JIM CAVANAUGH: Those are all good questions and give me a second to address different parts of it. As far as the elective goes, yes, this is a may, not a shall. You may do this, but you don't have to do this. And I can tell you from the practice of law, a lot of lawyers not only don't charge costs, but they will advertise we will waive the cost for you, you know, just as a competitive advantage. I can anticipate that particularly in areas with just a couple of agencies that if one agency is not going to do it, it's very, very likely that the other one will waive it as well. But you know, I can see it mainly used in the waiver advertisement potential of the waiver than in the imposition in a lot of cases. And I know from talking particularly to larger agencies that they are not interested in participating simply because of the scale of their practice. As far as the posting of it, yeah, literally on the wall: \$10 for an accident report. Now that is what an accident report costs from the Omaha police division. It may not be what an accident report costs from the Hooker County Sheriff's Office, but whatever that cost is we are trying to peg it to exactly the cost of the transaction. Not \$11, not \$9, but you know, whatever the transaction costs us just hold us harmless. As far as the enforcement aspects, generally speaking now if you have a complaint with your agent or with your company regarding some matter of your coverage, the department is the place that you go. In the United States still, insurance is regulated pretty much on a state-by-state basis and so your state insurance director, and they are here and you will hear from them later as well, is the place where you go to lodge a complaint. And generally speaking the broadest, you know, umbrella for complaints is this is an unfair trade practice that you, Mr. Agent, are charging me \$15 when I can show that the record you got only cost you \$10. You know, those types of things would be...your relief would be to complain to the agents...to the department. The department comes to the agent and

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goes, what is up with this? There should be a pretty good paper trail on this because the bill calls for you to give the insured like a receipt, like an itemized...here is the \$10, that was for the accident report. Here is the \$3, that was for the motor vehicle record, so you know you will actually have a piece of paper if and when you have some complaint to take to the department and show, you know, they overcharged me. But under any scheme, I mean we are talking such incidental fees that, you know an overcharge is going to be fairly, fairly minor. Yeah. But it's our anticipation just not to overcharge, not to undercharge, just to hold harmless. [LB62]

SENATOR CARLSON: Maybe this isn't a question right here and I will kind of follow up with Senator Gay. So you have an agent that overcharges or you have got an agent that doesn't disclose, what are the consequences other than a complaint? [LB62]

JIM CAVANAUGH: Well, the consequences I mean ultimately, I suppose, would be that the department would say that you don't have a license to sell insurance in Nebraska anymore. I mean that is the ultimate enforcement arm of the department, vis-a-vis an agent, you know we are licensed to sell here and it's just like your driver's license. They pull your driver's license, you don't have a right to drive anymore. So you know, under this scheme the department has all of the enforcement powers under the Unfair Trade Practice(s) Act including saying you have abused your license to sell insurance, you are not a licensed agent anymore. So, I mean ultimately, I guess that would be the capital punishment of, you know, abuse of any obligation that you would have as far as an agent goes to sell insurance in Nebraska. [LB62]

SENATOR PAHLS: Thank you for that question, Senator Carlson. Do we have any others? Thank you, Mr. Cavanaugh. [LB62]

JIM CAVANAUGH: Thank you. [LB62]

SENATOR PAHLS: Additional proponents? [LB62]

MICHAEL JONES: (Exhibit 1) Senator Pahls, and senators, my name is Michael Jones, M-i-c-h-a-e-l J-o-n-e-s. I am from David City, Nebraska, the owner of Jones Insurance Agency Inc. I first want to thank my senator and his effort in introducing this bill and those that cosponsored it. I do have a handout to share with you. The essence that I would bring to the testimony today has to do with the fact that we are trying to target the hard costs that have been shifted to the agency side. I am from a modest community of 2,500. We do have five branches, but we see a great deal of added stress on the profitability of an agency when you have to keep absorbing the costs and we are not adding to our profit margin. We are just simply trying to pass to that consumer the cost that we incur on their behalf. In particular, the cost that I would bring up as specific examples of data that we have assimilated from our operation are bank charges for transacting a lot of the business on behalf of the customers where they bring cash to us

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or payments because typically they procrastinate and it gets them into a bind in terms of running into a lapse or termination of coverage. The easy fix is to go to the agent and give him the cash or the check and let that company sweep the agency account so that the money is there instantly and coverage remains in force. We incur a bank charge for that transaction, plus then we also incur a bank charge for the deposit that we have made that covers the sweep. Collectively in our agency last year, we averaged just slightly over \$100 a month for just the bank charges, which equates to \$1,200. It may not be a lot to some big firms, but it's significant to us. When it comes to motor vehicle records and other pieces of hard data that we have to acquire, it's not optional any longer. It's mandatory along with some other consumer information that is used in underwriting. Right now, our average cost runs between \$3.50 and \$3.75 per report. Last year we transacted just over 900 of those. The absorptive cost we incurred was \$3,375. Altogether when we look at the number of transactions that we prepared on behalf of our consumers, we ran a little over \$6,000. All of those contribute to these overhead costs, and we are asking for your favorable support to allow us to recover some of that expense. I would be glad to answer any questions. [LB62]

SENATOR CARLSON: You mentioned this, but a lot of these are charges that used to be borne by the companies. No longer? [LB62]

MICHAEL JONES: Senator, a lot were borne by companies or didn't exist at all years ago. We didn't have the sweep capability. The requirement for MVRs being shipped to the agent has happened within the last seven to ten years. So, yes, sir. [LB62]

SENATOR PAHLS: Senator Gay. [LB62]

SENATOR GAY: As far as fees, has there been an increase in the fees? You are saying \$3.50, what document is that? I mean, has there been an increase in the fees that you are being charged over the years? It used to be just go down and get it and now you are...are those going up? [LB62]

MICHAEL JONES: Yeah, we didn't have to bear that cost at all. Many times we would make a submission to a company, the company would run the motor vehicle record report if they deemed it necessary based on whatever underwriting information was on the application. Typically that was when you had youthful drivers. People that have long commutes. Now those are mandatory requests for every submission and we bear that cost now almost all the time versus the time when the companies paid all of it. [LB62]

SENATOR PAHLS: Seeing no more questions, thank you, Mr. Jones. [LB62]

MICHAEL JONES: Thank you for your time. [LB62]

IRWIN NELSON: Good afternoon. I am Irwin Nelson, I-r-w-i-n N-e-l-s-o-n, member of

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the big I and I have an agency in Fort Calhoun and south Omaha. We write in a south Omaha office primarily risk auto or substandard auto. When Mike was talking about the sweep accounts, the reason why the sweep accounts cost us money today and didn't before because of the new banking system, we are allowed to do it. But the main reason is most of our customers bring their payments in because they don't have a checking account so they bring cash into our office. We have to deposit it in a company sweeps. They are also...most of them are running right at the deadline or a day or two behind. That cost to us at both offices it runs roughly \$250 a month. Some companies run MVRs for us, some don't. I will give you an example, Drive Insurance, if we load it on the Internet and the consumer decides he wants that cost, that insurance, we don't get charged for it. If he decides he doesn't want it, we run the MVR. My bill for December from drive for MVRs is \$116.28 plus there are other companies that are involved that, you know, we get it from. Copy a police report in Omaha, the reason we have to get a police reports when they run an MVR, a motor vehicle report, it will show accidents. That is all it shows. If it wasn't the consumer or our customer's fault, either they have to go get it or we have to go get it. If we have to go get it, it costs us \$10. In our office we run two to ten a month probably on that, it depends. Some months we might not only run one, but we have to get that to show that the accident wasn't their fault so they don't get charged for it for their insurance. All this bill is and all we are trying to do is try to get our hard cost back that we incur daily to run a small agency. We are not trying to put a special fee on or anything like this. We are just trying to get our hard costs back that we have to incur to operate our business. I want to thank the committee for listening to me and if there are any questions, I would be glad to answer them. [LB62]

SENATOR PAHLS: Seeing no questions, thank you, Mr. Nelson. [LB62]

IRWIN NELSON: Thank you. [LB62]

SENATOR PAHLS: Appreciate your time. [LB62]

CARL ZEUTZIUS: Good afternoon, Chairman, members of the committee. My name is Carl Zeutzius, it's C-a-r-l last name is spelled Z-e-u-t-z-i-u-s, and that's a doozy. I am an agent here in Lincoln with Unico and I wanted to thank Senator Langemeier and the cosponsors of this bill. I just want to state one specific example, which you have heard a little bit about of some of the direct costs that we incur that in the past we hadn't incurred. But a lot of it is coming from the motor vehicle records and a lot of that came from the way the privacy laws changed, a lot of our insurance companies are reluctant to run them. We run them, but it costs us \$3.50 every time we do and it does impact some larger agencies. If we are running them for employers that have 100-500 employees and we are running those, it does have an impact as well as possibly some agencies that deal a lot with truckers, that way. And back to the free market end of it, yeah, some of them may not, you know, pass off that cost to those. That may just be a

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part of why they want to do business, hey, we won't charge you for MVRs, but for some of them it is a direct cost that is passed on to us now and it has had an impact on us. That was just one specific example I wanted to touch on and I would be happy to entertain any questions. [LB62]

SENATOR PAHLS: Carl, and you know why I am saying Carl (laughter). [LB62]

CARL ZEUTZIUS: I understand. [LB62]

SENATOR PAHLS: What did you say the cost was? [LB62]

CARL ZEUTZIUS: Usually about \$3.50. [LB62]

SENATOR PAHLS: Okay. [LB62]

CARL ZEUTZIUS: And there are times, too, with some pizza delivery operations where maybe we have to run them quite a bit on the delivery drivers and things like that and some people may pass on that cost, if we are allowed to, and there might be other agents that won't. They might go and say hey, we won't charge you for it. I think it's a good example of where the free market is going to work. [LB62]

SENATOR PAHLS: Do I see any other questions? Seeing none, thank you, Carl. [LB62]

CARL ZEUTZIUS: Thank you for your time. [LB62]

SENATOR PAHLS: Any more proponents? Opponents? Could I just see of hands, how many opponents do we have? Two. Okay, thank you. [LB62]

COLEEN NIELSEN: (Exhibit 2) Good afternoon, Chairman Pahls, members of the Banking, Commerce and Insurance Committee. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I am a lawyer and registered lobbyist for the Nebraska Insurance Information Service. The Nebraska Insurance Information Service is made up of property casualty insurers doing business in Nebraska. These companies represent the vast majority of the property casualty business in Nebraska. Our members include: Allied Insurance Group; Allstate; American Family Insurance; Auto Owners Insurance Company; Battle Creek Mutual; Berkshire Hathaway Homestate Companies; Columbia National Insurance Company; Farm Bureau Mutual Insurance Company; Farmers Insurance Group; Farmers Mutual Insurance Company of Nebraska; Farmers Union Co-op Insurance Company; Motor Club Insurance Association; State Farm Insurance Companies; and Universal Surety Company. We also have representatives from associations that include Property and Casualty Insurers Association of America, the National Association of Mutual Insurance Companies, and the State Association of Mutual Insurance Companies. I promise I will never do that again. (Laughter) Since

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some of you are new, I thought I would put that in the record. NIIS held their first legislative meeting of the year this morning and it was at this meeting that the members reviewed the legislation and took positions on insurance-related bills. LB62 was discussed at length and the companies held varying concerns about the bill all across the board. There were many suggestions on how the bill might be changed and some suggestion that it couldn't be fixed. In the end, the group voted to oppose the bill. Some of the concerns I noted were that some agents may charge fees that are already a part of the commission structure. Some companies reimburse fees that are incurred by agents. The insurance business is a competitive one and agents charging fees could undermine a company's competitiveness by charging fees in some instances and not in other instances. One company indicated they felt their monthly pay plan could be in jeopardy if this language were adopted. They suggested that insurance companies needed to be added to the bill as well in the language. Some companies felt that the bill could interfere with the contracts that are made between agents and the insurance companies. There was some debate on what language could fix that problem. And finally, there was concern that consumers would be confused about the extra charges, not understanding why one agent would charge fees and another would not. So in conclusion, this association feels that further discussion and work is needed before this bill can go forward and we respectfully ask that you vote this bill down and not move it forward. I would be happy to answer any questions, if I can. Yes. [LB62]

SENATOR PAHLS: Coleen, I have a question. I have heard the word free enterprise market, wouldn't that sort things out if one person is charging and another is not? [LB62]

COLEEN NIELSEN: Well, it's sort of like...it's confusing to the consumer because it seems that many agents could work for...or independent agents work for different insurance companies and so there might be one agent that chooses not to charge fees, but in some way that would affect the insurance company as well. Whereas another guy across the way could be charging fees. So not only does the consumer have to get a quote from an insurance company, but then they have got to check out the agents to see who charges fees or who doesn't. And there is a concern by the insurance companies that that reflects poorly on them. [LB62]

SENATOR PAHLS: Okay. Senator Carlson. [LB62]

SENATOR CARLSON: Coleen, one thing I don't maybe understand about the opposition to it. If a company is concerned about their agent charging, pull the license, don't they? I mean they can control that. That isn't a difficulty, I would not think, to control that. [LB62]

COLEEN NIELSEN: Well, it would probably be difficult for the company to go out and check to see if the fees are...or if you are suggesting that they could, but that is part of the contract between an agent. And we are concerned that maybe that this legislation

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would override that contract between the agent and the insurance company. [LB62]

SENATOR PAHLS: Senator Gay. [LB62]

SENATOR GAY: You said maybe a little further study and I can understand how this could affect a contract. I am a producer for a major company and I have a signed contract that I will get paid X amount commission, whatever. Now someone else over here is also got that contract, but now they are charging. So are you talking about the implementation of I now have 800 agents, 300 are charging, the other 500 are not? How do we enforce this? Where are we going to go? So you are saying you can't control all the agents. If there were more time down the road where that could be worked out, is it a suggestion that you say wait and see, that to me it's like if you don't charge it, you don't charge it. I would be accountable as an agent to my parent company and say, if they told me not to do it, I am not going to do it. I mean, if I am selling a major policy here and it counts for a good portion of my business and the headquarters says don't sell that policy, I am not going to sell it. So would that be...is that something we should or should not get involved in? Why couldn't the companies just handle that with their agents... [LB62]

COLEEN NIELSEN: Well... [LB62]

SENATOR GAY: ...directly and the agent would then have the choice, I don't want to sell whatever it is and they could run their own business? Because I don't know the situations in every community is going to be different, you know, so that some of the proponents are from smaller communities and that service they provide, I think an agent provides a service. But I guess where is the opposition? How would that be a problem that you just say we don't want to do it? As a company we are not doing it and if you do it we are not going to... [LB62]

COLEEN NIELSEN: There was some debate about that and the concern was that the language would not permit that and we had a short time to discuss all that, but there was some discussion about what language would fix that problem to assure that a company could do that, could contract with the agent and say if you are going to work for me, you can't charge fees. But then there was other discussion about how that all affects...can then the agent charge fees and cannot charge fees for anybody as a result or...anyway, and so we were kind of going down that path, but we didn't have time for further discussion. But there was some discussion about trying to fix that with some language added to the bill. [LB62]

SENATOR PAHLS: So you are willing to work, is what you are telling us? [LB62]

COLEEN NIELSEN: Yes and, you know, there was an interim study scheduled for the summer, but it didn't occur and so, you know, perhaps an interim study would be

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appropriate. [LB62]

SENATOR PAHLS: Any other questions? Okay. Thank you, Coleen. Appreciate it. [LB62]

COLEEN NIELSEN: Thank you. [LB62]

KORBY GILBERTSON: Chairman Pahls, members of the committee, for the record my name is Korby Gilbertson, K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America. Without being repetitive of what Coleen talked about, I wanted to talk about two particular standpoints or parts of this bill that my clients have some concerns about. Number one is from the consumer standpoint and how consumers may perceive these charges as being from the insurance company, because many consumers might not know the difference between a captive insurance agent or an independent insurance agent who represents a number of companies, that any of these fees that are charged to those consumers may be looked at as being part or an additional charge on top of whatever fee they were told would be in the rate for their insurance. Secondly, one of the things that Senator Gay brought up about, I think it was Senator Gay, about how would this work with the department or how would complaints be brought in order to enforce this if someone was charging fees that were above and beyond what this legislation proposed to allow for? That would also require that you have consumers that are savvy enough to understand how to do a consumer complaint with the Department of Insurance and I am guessing that would be, you know, few and far between. Consumers would most likely just pay those fees and then possibly not like that insurance company or hold a grudge because of those fees but not understand that there is something going on that shouldn't be going on. Another concern, overall, was the contractual agreements that agents have with the companies, and I know Coleen touched on that somewhat. But many of these overhead costs are contemplated in the contractual agreements. And the way that this is currently drafted, we fear that those contractual agreements would be overridden by this legislation and agents could charge for these fees above and beyond what their contractual agreements provided for with the insurance company. So those are our two overriding fears. And we, last year when this bill was introduced, had said that we were willing to work on it and discuss. I know I was on the record last year. I was never contacted during the interim nor were any of my clients to be part of the study that Mr. Cavanaugh referenced in his opening. So we would be happy to continue to work with people that would hope that the committee would hold the bill until some work can continue on this. I would be happy to answer any questions. [LB62]

SENATOR PAHLS: You are telling me right now the fees that this actually may be just charging the same fee twice then? [LB62]

KORBY GILBERTSON: Well, part of... [LB62]

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SENATOR PAHLS: In the contract? [LB62]

KORBY GILBERTSON: I think Senator Gay made a good point that it depends on what the contractual agreement is between the producer and the insurance company. Some contracts may provide for it, some may not. A number of the members of PCI do have contracts with their producers that specifically cover overhead costs like this, so the implementation of this, we are afraid, would override those contracts and then they could charge fees that they were not supposed to be charging based on their agreements. [LB62]

SENATOR PAHLS: Okay. Senator Carlson. [LB62]

SENATOR CARLSON: Korby, I hope this is an appropriate question, if not, don't answer it. Do you, as a lobbyist, primarily represent companies or agents? [LB62]

KORBY GILBERTSON: PCI is the companies primarily, yes. [LB62]

SENATOR PAHLS: Senator Pirsch. [LB62]

SENATOR PIRSCH: Just a quick question just to make sure I understand your points. So the concern, with respect to the contracts, is that this legislation that...is it your understanding that it allows for but doesn't require insurance agents to do that then, it would be independent insurance agents may, but it's not required to, correct? [LB62]

KORBY GILBERTSON: Yes. [LB62]

SENATOR PIRSCH: Would that contract...and I guess I am just trying to understand what your concern is, in cases then, I guess, the insurance companies which already have separate independent contracts with certain representatives then that say you may not or you may charge these fees. Is there a concern that somehow those separate second set of contracts may be interfered with by the legal allowance of those insurance agents collecting? [LB62]

KORBY GILBERTSON: Either interfered with or that there could be a potential that you would have to have all new contracts in Nebraska with all of the agents that represent any companies to clarify anything, that they are currently allowed to charge for. So it's just that it's not clear enough that we are afraid of any potential impact on the existing contracts with the producers at this time. [LB62]

SENATOR PIRSCH: Okay. Thank you. [LB62]

SENATOR PAHLS: Seeing no more questions, thank you, Korby. [LB62]

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KORBY GILBERTSON: Thank you. [LB62]

SENATOR PAHLS: Any more opponents? I see none. Neutral? I think we have two. Come right ahead. Thank you. [LB62]

TIM WAGNER: Good afternoon. My name is Tim Wagner, that is T-i-m W-a-g-n-e-r. I am the Nebraska Director of Insurance and this is clearly the first time that I have appeared before you. I extend the invitation, at any time, for any of you to contact the department if you have questions about things that are going on there or issues that we might be able to assist you with. Well, I am here to testify in a neutral capacity. The department has no objections to agents being able to charge fees in given instances or recoup direct costs of doing so. We do have some careful consideration and what we heard today was an example of that. We tend to try to create marketplaces that are competitive and transparent to Nebraskans so that they can make the best insurance decisions. And what we are seeing is, in some cases, insurers are not...they are paying for those fees, paying for the MVRs, paying for the accident reports, but in other cases other insurers are not. What we wouldn't want to encourage is a general shifting of fees to the agent. We would like to see the premium that is charged encompass as many services as possible. We would also express some concern with regard to certain segments of the market. Most insurance operates in a very competitive marketplace, but there are a few instances where insurance is not really bought as a result of price. Some examples of that would be forced place insurance, credit insurance and to a certain extent title insurance, where products are bundled with another service. And, when we regulate rates, we would not...in those instances we regulate the rates stringently, and we would not be very happy to see a shifting of some of the costs of those services passed on to agents and moved into the fee structures of the agent rather than the rates that we're regulating. We believe that the introduced version of the bill may be a little too open to interpretation in allowing for perhaps some inappropriate recoupment of fees. And what we in the department are willing to do is work with everyone, the stakeholders, to set out some instances, perhaps the authority to provide some oversight or regulate oversight or regulation over those fees. And we realize that that might be controversial, but I believe that from the standpoint of some that maybe we would not allow certain things or allow certain things that we should not have. But in any event we just kind of feel that there should be some flexibility there. I know it's going to be very important to identify those fees. We certainly know motor vehicle records are going to be one. We know that accident reports are going to be one, but there may be other things that come out that really should remain with the underwriter. I would like to entertain any questions that individuals might have, you may have. [LB62]

SENATOR PAHLS: Senator Hansen. [LB62]

SENATOR HANSEN: Mr. Wagner, do you keep track of the costs from east to west,

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from county to county? Do they change? I mean, if you are going to regulate what the insurance agent charges, do you not have to know what those fees are in the counties, towns, villages, and like as someone said earlier, you know, it might be different in Douglas than it is in Arthur County? [LB62]

TIM WAGNER: I am sorry, Senator Hansen, what kinds of fees could be charged? I had no intention of getting into the price of those fees. I think the bill pretty much says it's recoupment of the fees, the expenses that are made and I certainly would not want to get...and I don't think a bureaucrat should get into that kind of thing. [LB62]

SENATOR PAHLS: Senator Pirsch. [LB62]

SENATOR PIRSCH: Just a brief question, you had mentioned as a matter a good policy you like the paradigm of encouraging cost to stay with the underwriters. What is the basis of that policy? [LB62]

TIM WAGNER: Because it provides clarity. The policyholder or the applicant is not comparing this price to this price plus this fee. Historically, it has been a relatively recent event that some of these fees have been shifted by some insurers to agents. And in some respects it is somewhat logical, in terms of an independent agency, where that agent goes out and shops the marketplace for the best deal for the customer and so it's more cost-effective to get that motor vehicle once or that accident report once than having each insurer that they may submit an application to for a quote to pay for that, so there is some efficiency in what is being said. But we work within several distribution systems in the insurance industry which makes decisions like this a little complex and a little fuzzy. For instance, I would doubt that a direct writer or a captive agent would ever charge or pass on the fee to its agent. But in the case of an independent agent that is representing a number of companies and is expected to shop the marketplace, you know, it is a different scenario. And we heard earlier about contracts and the contractual relationships are far different with an independent agent than they are with a captive or a direct-writing agent. [LB62]

SENATOR PAHLS: Senator Gay. [LB62]

SENATOR GAY: I am not sure that, Tim, this question should be for you. Maybe it's Bill, but when Senator Hansen referred to this as far as the fee, you know, in one county could be completely different. Are those fees, and I should know this, but are those fees different in different counties? Because I know the counties are always trying to get the fees up a little bit because, you know, for fees. So if those change, I don't know what the present law is, but I assume they're level throughout. You know, you can't charge more in Sarpy County than you could in Lincoln County or something like that. But is there...do we know that for sure? [LB62]

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TIM WAGNER: The only one that I know is an MVR, a motor vehicle record, is a state set rate. I don't know on accident reports. I really don't know if there is any... [LB62]

SENATOR GAY: I guess that would be a question I had, but then again a follow-up question on that is would this burden the department, the enforcement of this thing? At the end it says bill would provide...violations are subject to the enforcement and I think they talked about how you would lose your license. Well, obviously I don't think...I would hope that wouldn't happen if something went wrong here. But as far as the enforcement, I wouldn't want an overly strict slap on the wrist for somebody who made a common mistake. But as far as you look, the enforcement of something like this, how could it be done or would it be a burden on the department or how would you incorporate this if it were to proceed? How do you enforce it? [LB62]

TIM WAGNER: That would be rather difficult. We don't want to get in the position of walking into insurance agencies and examining their records as a result of whether or not they imposed fees. I would suspect what could happen in the enforcement arena is if we did get an inquiry from someone, and the agent is required to give a receipt for the fee and we follow that, you know, went up the chain to see whether or not that was an actual fee. Whether the fee was \$10 and they were charged \$50 would become quite apparent to us, I believe. [LB62]

SENATOR GAY: So complaint driven is how you would enforce it then? [LB62]

TIM WAGNER: I would think. [LB62]

SENATOR GAY: So it wouldn't be, even if this proceeds, it wouldn't be a huge burden. It would be driven by a complaint. [LB62]

TIM WAGNER: That's correct. [LB62]

SENATOR GAY: The complaint would then spur an investigation and find out what you find out, because it sounds like there has been no complaints in a lot of these states. [LB62]

TIM WAGNER: Yeah. [LB62]

SENATOR GAY: Thanks. [LB62]

SENATOR PAHLS: I see no more questions. Thank you, Tim. Appreciate your... [LB62]

TIM WAGNER: Thank you. [LB62]

JOE ELLIOTT: Mr. Chairman, Senator Pahls, my name is Joe Elliott, J-o-e E-l-l-i-o-t-t. I

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am a lobbyist with the Professional Insurance Agents Association. We have some 300 agents throughout the state of Nebraska and, obviously, have great interest in a bill of this type. We have been talking about submitting a similar bill for the last four or five years. Our national had aspirations to do this on a national basis. You have already heard there's about 16-17 states that do have this type of law and they haven't gotten to it because of all the other issues we have at the national level, including contingent commissions, which is of great concern to agents which they might lose, I should say. I've written up publications to our agents for the last two years on this subject and the last one I sent out was in August of this year, because I knew this bill was coming up. And I said, are you interested in this issue and please respond to me. I am sorry to report I didn't get a single response to that, which concerned me. They knew of the issue and some of them made the statement over the years, well, I wouldn't charge it if they did pass it. I think I have seen in the last 30 days some feelings otherwise, because I have called three agents this morning and talked to them about it that were big agencies represented in about five or six cities. So there is interest in it, no doubt about it, but there are some agents, flatly, that won't use it. I talked to a lobbyist friend of mine in North Dakota. They have had this law for several years. It's very similar to this. That law was repealed last year by one vote. They have a Senate and a House and the life agents oppose it and I haven't even heard of that group appearing in this particular hearing, and I don't know if they met with the interim people or not. But anyway he referred me to the state of Virginia lobbyist and I talked with him and they have had fairly good success. It's a very similar law to the North Dakota law and very similar to Minnesota law, which has a primary function of disclosure. That is the big thing that they've been concerned about that you tell the people, and you have a list in your office of what you are going to charge, and it's up to them to make the acceptance. In Virginia, you have to sign a form for the independent agency understanding that these are the fees and each one of them is marked out clearly, so that is a concern. But in Missouri they have had very good success, and again that is where Jim Cavanaugh got part of this bill, and they've told me that the two big things is policy reinstatement fee. So if someone cancels their insurance and they want to reinstate it, there's a lot of underwriting and reunderwriting and company back and forth. They have a \$25 fee for that. It's just flat and it's written out and you know it when you come in, so you can go to another agency and get a different policy, if you're not happy with that. They also have to have a card listing all the fees down, and that's posted in your insurance agency, so they are well informed on that. I think this one appears to be a good bill to me. I think it's well drafted and I think it explains the situation and the fact that the insurance department, I think, has gone along with it. There is very little opponents and in the Missouri law, there was no opponents, none whatsoever, he told me, and the insurance department had no concerns about it. Our legislative committee felt the key thing is making it optional. They just didn't want to get in a situation where you have got two agents in town, one's charging and one isn't, then you have probably got a problem. I don't think that will probably happen in Omaha and Lincoln, but it certainly would happen outstate. I would be very reluctant as an agent of good insured to do it. I talked

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to an agent from St. Paul this morning. He's going out 200 miles to do a farm inspection because it required take a photo and he's going to bear that expense himself. Now under this law, is that an incidental fee? Probably, because we are asked all the time to go and take pictures of houses before we can insure them, although the number of companies asking for those photos is going down. Some of that is online now, but nonetheless, there is a lot of fees that they do endure, and I think that the agents are concerned with the goodwill in their relationship. Obviously you think banks would be, too, but there have been very...I asked my banker one time, are you going to charge me if I enter your bank, I mean, the fees are that long. And I think that an agent is got so much at issue in the hometown, because he is going to be sitting across having coffee with a state senator or something and he is not going to want to put that fee to them, and I certainly feel that the agents are not going to abuse this law. I think there is too much goodwill, and I have been dealing with agents for 50 years and I just sense that the integrity issue is certainly a factor in here. I think there is some value to all of our agents in the future to this, because we have seen commission reduction for sometimes different lines, different places, but it certainly has been a trend and I think it will continue with the Geicos of the world and the direct writers, the independent agent has got to stand tall and compete. And so, he is not going to be frivolous about the way he uses these fees; I certainly wouldn't think so. And I think the fact that they have the right to waive the fees, that's enough incentive for them to want to continue to have a good relationship, because that customer is worth a lot of money. When you sell your insurance agency, that is where the value is, is the book of renewals that you have and if you lose that, then you are going to drop your value of your agency. So why would he want to foolishly overcharge somebody for something and lose that relationship? That is the end of my testimony. [LB62]

SENATOR PAHLS: Thank you. Any questions? Seeing none, thank you. [LB62]

JOE ELLIOTT: Surely. [LB62]

SENATOR PAHLS: Appreciate it. [LB62]

KIM ROBAK: Senator Pahls and members of the banking committee, my name is Kim Robak, R-o-b-a-k. I am here today on behalf of the Nebraska Land Title Association in a neutral capacity with regard to this bill. The bill as it's drafted applies to all insurance producers. And the Nebraska Land Title Association simply wanted the committee to know that, if this bill should move forward, that we would appreciate the fact that land title agents also be included in the ability to be able to pass on fees. What happens today in a number of instances is that fees that title agents are...actually experience, have been increased over time as our court system is increasing their fees in the county court or the district court, and so those fees have been absorbed by title agents. I will give you an example. In a case of a commercial transaction where there might be 300 pages of documents that need to be photocopied for a title insurance policy and if that

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actual policy gets cancelled for some reason, maybe for the reason that the 300 pages are being charged at a dollar a page and they decide that they don't want to pay that rate, the title insurer has to eat the cost of those 300 pages of copies that were made by the court and there is a filed rate with the Department of Insurance, a cancellation fee of \$50. So the insurer actually eats the cost of those photocopies that were made and were never able to be charged. The Land Title Association does not have an opinion of whether or not you should go forward with this particular piece of legislation. Obviously, many of the agents would appreciate it, but if the committee decides that this is the direction they want to go that we would appreciate the fact that all agents, all insurance producers, are treated the same. Thank you. [LB62]

SENATOR PAHLS: Any questions? Senator. [LB62]

SENATOR HANSEN: The \$50 cancellation fee compared to the \$300 of mimeographing or whatever, have you ever thought of just raising the cancellation fee rather than charging back all the other fees? [LB62]

KIM ROBAK: There is a long history with that, Senator, and there have been attempts made to negotiate fee increases with the department and we are working on that at this point. We continue to work with the department at increasing our fees. [LB62]

SENATOR PAHLS: Thanks, Senator Hansen. Any other questions? Seeing none, thank you. Seeing no more testifiers, Senator Langemeier, would you like to close? [LB62]

SENATOR LANGEMEIER: Of course. First of all, I would like to thank Mr. Elliott for his news articles. It may not have got him phone calls, but it definitely got me phone calls. I want to thank him for that. I hope today, and as you consider this legislation that we don't look at our complaint process for enforcement with no regard. I think that would throw out our insurance industry, it would throw out our banking industry, it would throw out the real estate industry. We live on a society that is complaint driven for most of enforcement, whether it's your neighbor's dog barking too loud or what that happens to be. Sixteen states have adopted this type of legislation. I hear one repealed it, that's news to me. I appreciate that. I think this has an opportunity to be worked out and I will spend some time working with the opponents and trying to address their concerns. And with that, I would like to thank the committee and it looks like you get out early, and it's a great leadership and thank you. [LB62]

SENATOR PAHLS: I think we are concluded on this bill. It looks like that is it for today. Appreciate your input, thank you. [LB62]

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Disposition of Bills:

LB24 - Advanced to General File, as amended.
LB26 - Advanced to General File.
LB62 - Held in committee.
LB63 - Advanced to General File.

Chairperson

Committee Clerk