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Banking, Commerce and Insurance Committee
February 12, 2008

[LB785 LB831 LB900 LB1045]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 12, 2008, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB900, LB831, LB785, and LB1045. Senators present: Rich Pahls, Chairperson; Chris Langemeier, Vice Chairperson; Tom Carlson; Mark Christensen; Tim Gay; Tom Hansen; Dave Pankonin; and Pete Pirsch. Senators absent: None. []

SENATOR PAHLS: Good afternoon. It is approximately 1:30, want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls, and I'm from Omaha and I represent the 31st District, which is the Millard/Omaha area. I serve as chairman of the committee. The committee will take up the bills as in the order (LB)900, (LB)831, (LB)785, and (LB)1045. As you know this is your opportunity to express your position on the proposed legislation before us today. I'm going to ask, to better facilitate the meeting, most of you are old timers by now, but I'll have you take a look at the chart over here. Of course, we're going to ask you to turn off your cell phone and if you are going to testify, we would like to have you move eventually to the first two rows. We do have the on-deck chair where the speaker was sitting. The order of testimony would be the introducer, proponents, opponents, neutral, and closing. We're going to ask you to, for those of you new to it, to sign in, put it up here in this box. We're going to ask you to spell your name and be concise if at all possible, especially if somebody just before you has given us some of the information. We do need 10 copies, if you have information that does need to be copied. We need 10 of those if you, by chance, need something copied wave your hand. Okay, well prepared, I appreciate that. If you do decide you need some copies, our page can get those for you. To my immediate right is committee counsel, Bill Marienau; to my immediate left is Jan Foster, those are the two people who keep us alive and well up here; and we'll have the committee members introduce themselves starting with... []

SENATOR CARLSON: Tom Carlson, District 38, Holdrege, home of the Dusters and the Lady Dusters, both teams rated in the JournalStar the last two weeks. []

SENATOR PIRSCH: I'm State Senator Pete Pirsch representing the 4th District in Omaha, Douglas County, 4th District's home of the Boys Town History Museum. []

SENATOR PANKONIN: Dave Pankonin, District 2, Louisville. []

SENATOR PAHLS: Missed one. []

SENATOR LANGEMEIER: That's okay. Chris Langemeier, Schuyler. []

SENATOR PAHLS: Hey, Chris doesn't feel well today, so...(laughter) []

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR LANGEMEIER: Got to jump on it. I already did it. []

SENATOR HANSEN: I'm Tom Hansen from District 42, North Platte. That is the home...since this is Abraham Lincoln's true birthday, he had some relation in North Platte, a great-grand niece Lincoln and I married 40 years ago, 41 years ago, so...relative of Abraham. []

SENATOR PAHLS: Thank you and I say we, the banking committee, we do believe in economic development so by listening to these different districts, you may choose to visit them someday. Also, our page over here is Ryan Behrns from Louisville. I'm sorry about that, Ryan. We are ready to start with our bills with our leadership, Senator Flood. [LB900]

SENATOR FLOOD: Good afternoon, Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Mike Flood, F-I-o-o-d, I represent the 19th Legislative District which includes the city of Norfolk and all of Madison County. I, too, believe in economic development and have contributed greatly to the tourism and travel industry of Lincoln simply by introducing this bill, given all the out-of-state folks that have joined us here in the capitol city here today. I'm here to introduce LB900 which would prohibit insurance companies from using a consumer's credit information in connection with the issuance, underwriting, renewal, cancellation, or denial of insurance. The bill would also maintain the current statutory section that prohibits an insurer from using an insurance score that is calculated using the income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor. Currently Nebraska law allows insurance companies to consider a consumer's credit information in the underwriting and pricing of various kinds of insurance, including auto and homeowner's. I doubt that most consumers know insurance companies do this. For this reason, and for other reasons as well, I believe this practice is unfair to consumers. Insurance companies defend the use of credit information by arguing that there is a correlation between credit scores and claims frequency. Even if a correlation exists between credit scores and claims frequency, insurance companies have been unable to provide a reason why this is so. It seems unfair to deny a consumer coverage or charge him or her more for insurance coverage because of a factor that may have no bearing on how well they drive, or how responsible a homeowner they may be. It seems to me that if insurance companies can't explain what they're doing, then they shouldn't be doing it. I'm also concerned that this practice unfairly targets the poor, forcing them to pay more than other consumers. For those that are low income, accessibility and affordability are already critical concerns. An unfair increase in the cost of premiums can make an essential insurance coverage simply unaffordable. In addition, credit reports frequently contain errors. Insurance companies should not be allowed to base decisions on inaccurate information. If the identification of persons who will more likely submit claims is the goal

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

then there are already tools in place. Insurance companies have an ability to screen consumers for claims frequency and severity. Insurers can also terminate a claim-prone consumer or raise his or her rates. With these tools in place, there is no need to base rates on credit. One last thing, I will be submitting an amendment to narrow the focus of this bill. My amendment would make the bill applicable only to personal insurance. Personal insurance would mean private passenger automobile, homeowners, motorcycle, mobile homeowners, noncommercial dwelling, fire, and boat, personal watercraft, snowmobile, and recreational vehicle insurance policies. With that, I'd like to thank you for your consideration of LB900 and I would be happy to answer any questions that you may have. [LB900]

SENATOR PAHLS: Do I see...Senator Christensen. [LB900]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Senator, using the credit score, would that make any difference on people's ability to pay? Would that be part of the reason? Is that a bad thing? [LB900]

SENATOR FLOOD: I don't know that I can answer that. I know there are a number of people from the industry here today that would give you their understanding of why this is an acceptable practice. I guess to answer what I think your question is, even if you had someone that had a poor credit score and prepaid for their insurance their premium would still be higher, because I asked that question when I started this. I thought well if somebody has a history of not paying their bills on time, what if they prepaid their insurance coverage for the year, all 12 months as opposed to a monthly fee, and their rates would still be higher because of the correlation between increased insurance claims and poor credit. They have some information that I'm sure opponents to this bill will pass along later today, some of which is interesting. I don't know that it's compelling, but it's interesting and it's worth listening to. And I'm interested to hear it myself. [LB900]

SENATOR CHRISTENSEN: Thank you. [LB900]

SENATOR PAHLS: Senator Pankonin. [LB900]

SENATOR PANKONIN: Thanks, Senator Pahls. Senator Flood, you may have mentioned it and I may have missed it, but other states on this issue, or did you model this legislation after some other states and what kind of folks have done or do you know? [LB900]

SENATOR FLOOD: Over the summer I attended the National Speakers Conference and the speaker from the state of Maryland advised me that the state of Maryland had passed a version of this bill in the state of Maryland and that the house of representatives in the state of Maryland led the way. And I guess at first when he mentioned this to me, I had no, my own ignorance, I had no idea that this was a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

commonplace practice. And the first thing I thought of were farmers in my area of the state that have never established a credit rating and how they would fare. Now it's my understanding that most companies and the law in Nebraska is that they are not to be adversely affected by not having a credit rating. I hope some of the opponents will talk to that. As that does diminish one of my major concerns. And a lot of people in your area probably just pay their bills with cash and save up for what they want and don't establish some type of an ongoing credit rating, but that's where I got the idea. [LB900]

SENATOR PANKONIN: Okay, thank you. [LB900]

SENATOR PAHLS: Senator Carlson. [LB900]

SENATOR CARLSON: Senator Pahls. Speaker Flood, why did you narrow the scope? [LB900]

SENATOR FLOOD: Well, I narrowed the scope because I didn't know, my focus wasn't on life insurance or other areas of other insurance products, because I was pretty focused on auto insurance. State law in Nebraska says you must carry the 50/100/50 requirement in order to drive a motor vehicle, that vehicle has to be insured. And I felt like as a member of this committee for a couple years we always dealt with the under and the uninsured. And here are these folks that are making...you know a single mom with two kids is trying to make ends meet, she gets behind on her Discover card and now her premium's 30 percent higher. And I thought here we are on one hand making her put insurance on that car, and on the other hand we're saying you're going to pay 30 percent more because the deadbeat dad didn't pay child support or whatever the reason was. There's a 1,000 scenarios out there, I obviously pick one I think we have to be concerned about, but I didn't apply it to life insurance because there is no state law that says you have to have life insurance, but there is one on automobiles and it carries over to the other personal lines that I talked about. And that was my reason. [LB900]

SENATOR CARLSON: Thank you. [LB900]

SENATOR PAHLS: Senator Pirsch. [LB900]

SENATOR PIRSCH: Have you been aware, are there specific cases where people have complained about, or is it just largely an unknown...the problem is is that people aren't aware of this condition and it seems to be an unfair basis for setting rates? [LB900]

SENATOR FLOOD: I've heard from some people since I introduced it. I must confess I haven't had constituents of mine walking into my office asking me about it. Part of that is because I was ignorant myself that this was a practice. Now I don't think my insurance company does it. Some insurance companies do it. Some insurance companies don't do it. It's not a uniform practice as I'm learning. [LB900]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PIRSCH: Okay. [LB900]

SENATOR PAHLS: Senator Hansen. [LB900]

SENATOR HANSEN: Thanks, Senator Pahls. Senator Flood, a follow-up question from Senator Carlson's question. Did it have any effect, the reason for your amendment, as it would deal fleet insurance? I mean, companies that would have fleet insurance, that looks like some fairly high risk there, too. I mean if insurance companies are worried about risk and credit scores, you know, there's probably some people that carry fleet insurance that would be in that category. So, why just... [LB900]

SENATOR FLOOD: I didn't specifically exclude that or quite honestly even consider that issue if the committee felt in advancing the bill it wanted to make a change there, I would be willing to go through judgment on that. I don't know enough about the industry to really suggest something. I guess if I may, and I'm going to waive closing, I think that the discussion we're about to have from the opponents of this bill is a worthwhile discussion. And I'm interested to hear their responses. And there will probably be responses that are compelling in one way or the other. I think this is an important discussion to have. And I look forward to listening to the discussion. I do have to go upstairs for a meeting, so I'd ask to be excused. [LB900]

SENATOR PAHLS: Thank you. [LB900]

SENATOR FLOOD: Thank you. [LB900]

SENATOR PAHLS: We will now start with the proponents. Opponents? Just by a show of hands, how many opponents do we have? Okay, I want to ask you...there's plenty of room in the second...can you move yourself forward so I can keep a better eye on... [LB900]

TED FRAIZER: (Exhibit 1 and 2) My name is Ted Fraizer, I'm an attorney in Lincoln representing the American Insurance Association. I'm not going to provide a full line of testimony. I merely want to introduce Mr. David Snyder, who is very well versed in this issue, but while I'm here I want to present to the committee a couple of handouts. This is a brochure published by the American Insurance Association. The other thing which I'm going to hand you is a NCOIL, a summary of the current Nebraska legislation and attached to it is a list of the 20-some odd states which currently have the NCOIL version of credit scoring. And with that I'll let the better rationale, or the more complete I should say, not better, more complete rationale to oppose the bill to Mr. David Snyder. Thank you. [LB900]

SENATOR PAHLS: Okay, thank you. [LB900]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

DAVID SNYDER: (Exhibits 3 and 4) Thank you very much. Mr. Chairman, I had two additional handouts, a copy of my written statement which I will summarize briefly because I understand you all have been working very, very hard with long sessions, and also a complete copy of the Arkansas study that I refer to as well. And other speakers will have additional information for you. [LB900]

SENATOR PAHLS: Thank you, appreciate that. [LB900]

DAVID SNYDER: Should we take just a minute until he's got the paper handed out? [LB900]

SENATOR PAHLS: Sure. That would be fine. [LB900]

DAVID SNYDER: Okay. Thank you Mr. Chairman and members of the committee. I was struck by the range of things that there are to see and do here in Nebraska. And I can say that I'm very anxious to contribute to the economic well being of the state, and you don't need to put in LB900 to get me back here again in the future. I'm particularly pleased to be here on Lincoln's birthday because my family and I go to the church that Abraham Lincoln worshipped at in Washington D.C. and so that memory is very, very close to us. On the subject of... [LB900]

SENATOR PAHLS: Could I just have you spell your name just so we get it correctly? [LB900]

DAVID SNYDER: Sure, my name it's David Snyder, S-n-y-d-e-r, and I represent the American Insurance Association. I've had an opportunity over the years to deal with this issue in a number of states. I've testified before the Congress. I have a career in the public sector in insurance regulation and other positions, and I'm a chartered property and casualty underwriter. We'd certainly agree with the Speaker that the issues raised in today's hearing are very, very important. I think it's important from time-to-time to take a look at how legislation is working to see if there aren't some things that have come up since you enacted legislation that need some fine tuning and whatever. I think what you'll see though on this particular issue is that Nebraska is very much in the progressive mainstream of the other states in terms of its regulation of credit-based insurance scoring. But the thing that impresses me most about Nebraska is the results of the decisions that you collectively have made over the years. And frankly, there's a lot to be very proud of and I summarize that briefly in my testimony. You have some of the lowest average auto insurance rates in the country, ranking well below average. And this is one of those tests where you want to be below average. You also have one of the more competitive insurance markets with more than 66 different insurance groups offering automobile insurance. Likewise your homeowners insurance market is very competitive as well, and you have virtually a nonexistent pulls for hard to insure

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

individuals. These are all good indicators of how well you have dealt with the important public policy issues that relate to insurance, and one way that you've dealt with that is how you've regulated credit-based insurance scoring. We recognize that the issue has been raised from time-to-time. It's been raised in this state as it should be and raised elsewhere, yet the vast majority of the states, 46 of the states fully permit credit-based insurance scoring. Only four have banned it and a few of those of banned it in only one line of insurance. So when you talk about the states that have acted negatively on it, they are far outweighed by large states, small states, and all parts of the country that continue to permit credit-based insurance scoring. Well why do they do it? Well, first of all it's a tool that's allowed insurance companies to expand their writings. And even though there are record numbers of insured homes, record numbers of insured cars and licensed drivers, the reality is that there are very few places where there are shortages of insurance. And one of the reasons is that credit-based insurance scoring allows a cost effective risk measurement tool. But how does it effect consumers? The reality is that far more consumers benefit from credit-based insurance scoring than pay more as a result. Now the numbers differ according to which studies that you look at. For example, the Federal Trade Commission, which you'll hear more about from another witness, estimated that using their models 59 percent of consumers paid less as a result of credit-based insurance scores. We've seen individual companies testify in other states that the number is as high as 75 percent. In Arkansas, for example, and I include a full copy of the insurance department study there, they concluded that 91 percent of consumers had no impact or were favorably impacted as a result of credit-based insurance scoring. So its impact on consumers seems to be quite favorable. But it's not just a matter of rating, it's also a matter of availability. Credit-based insurance scoring has allowed companies to stay in a heavily-regulated, high overheard market by giving them a cost effective risk measurement tool. And it's important because with credit-based insurance scores they know they've got a price that matches accurately to risk, and that they can virtually price and thereby offer insurance to virtually every person that comes to them. That's why we see the hard to insure residual market pull shrinking in state after state and why in this state they're practically nonexistent. Now credit-based insurance scoring is not an unregulated practice. I think when you listen to some people they give you the idea that this is something that's utterly unregulated, and the reality is that it's regulated at the federal level and it's regulated by the state of Nebraska. It's regulated at the federal level through the Fair Credit Reporting Act where Congress, representing the national sentiment, has said the insurance companies have the ability to use credit information in their businesses, but they must provide notices to people that are adversely impacted and there are various protections. The right to a free credit score and other consumer protections like that are based in federal law. And then in the state, and we'll have another person who will go into a little more detail, your state about four years ago enacted basically what's become the national model from the National Conference of Insurance Legislators, that contains a number of protections. It provides an additional notice to consumers that credit information will be used. It provides important protections for consumers. For example, the credit score can't be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

used solely to make various decisions. And importantly, there's an absolute right to have errors that creep into the system be corrected promptly by the insurance company. Now, the other issue that you often hear is well, is it fair or unfair? Well, Nebraska has already defined in the insurance context what's fair and in the rating law which exists in Nebraska, it says that rates shall not be excessive. That means you can't charge people too much. They can't be inadequate which means that the rate can't be so low that it would drive the insurance company into insolvency. And they can't be unfairly discriminatory. What's meant by that, is that insurance companies can't arbitrarily pick and choose between policy holders, they have to have a legitimate, well-documented reason for doing so. And all of this by the way is subject to your general anti-discrimination laws which state that you can't discriminate on the basis of race, religion, national origin. Finally, the insurance department has extensive authority to look at issues when they come up and to regulate on a day-to-day basis to make sure that the legislative structure that you put in place is actually continuing to perform to meet the needs of the people. Alright, so that's a basic summary of my testimony. I did want to address a couple points that were brought up by the Speaker, and each and every one of them is important and worthy of your serious consideration. The first point that was made was that consumers aren't aware. Well, federal law requires that if an adverse action is taken you get a notice. That is if you pay more, or if there's a nonrenewal, or some other action as a result of using credit information, under federal law notice has to be provided. But Nebraska has passed an additional notice which has to be up front when you apply for insurance that insurance companies will be checking the credit information. And then increasingly the news media, agents, and others are aware of this practice and telling their consumers. And in fact, one of the examples of public education is that multi-colored brochure that we've literally made tens of thousands of copies of in both English and Spanish for agents and for general consumers to explain what's going on. So there has been and there will increasingly be good information going out to consumers about what's being done. The second point is that it's proven to be a reliable predictor of risk and far more reliable than some of the traditional measures. The old rating systems tended to have three different rate levels, sort of preferred, standard, and nonstandard. What credit-based insurance scoring has allowed companies to do is much more closely match the price to the individual risk involved using objective not subjective information in the credit score. The second point that was made was, who does it hurt? Well the reality is that it benefits and all the studies show, that it benefits responsible risk in all income groups whether they're rich or poor or whatever. The third question was raised, well how about errors? Well your law already provides for a comprehensive approach if there are errors found brought to the attention of agents or the companies by consumers, or by the credit industry itself those errors have to be corrected within a certain period of time. The next question was, what have other states done? Well as I've said, 46 other states like Nebraska are in the mainstream in allowing but regulating the use of credit-based insurance scores, because they recognize the market value of the score in terms of assisting responsible drivers and homeowners to be identified and providing them lower premiums, and also

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

it's helped the market expand to meet the demand out there for insurance products. The next question was, how about if something really unexpected goes on in someone's life? And I think you'll hear from the companies exactly how they deal with it, but overall the industry...companies have for example, companies using independent agents have an 800 phone number to call to have the specific circumstances dealt with. But most of the companies have in place various mechanisms to address those really unusual circumstances that occur beyond someone's capability to control them. So let me really conclude where I began, that first of all this market because of your work on the public policy arena and because of competitive industry, ranks very, very well in all competitive measures in both homeowners and automobile insurance. One of the reasons why you've done that is that you've kept up with the times, you've allowed developments to occur in the private sector, but at the same time you've provided important consumer safeguards and you've empowered your insurance department to be able to intervene where needed. And by the way, we made a contact with them and they did not indicate that there was significant complaint activity at all regarding credit scoring, and I'm sure you can follow up with them to verify that as well. Questions have been asked, they're entirely legitimate questions. The reality is that your existing legislation answers virtually...actually answers all of the questions that have been raised. Finally, I would urge you to do exactly what they suggest in the medical area, which is at least do no harm and your existing regulation does encourage a competitive market, it does benefit consumers. Unfortunately, LB900 would have just the opposite effect. Thank you very much. I appreciate the opportunity to spend a few moments with you this afternoon and I'd be pleased to take any questions. [LB900]

SENATOR PAHLS: Dave, let me start off with one. The Speaker told us that he attended a function this past summer, if I'm not mistaken, where there were leaders of the different bodies throughout the United States and this is what made him aware of this issue. So somewhere this is being talked about, I'm assuming, on a national level with legislators. Because if I'm not mistaken, he said this is where...he had not thought about this. So if we're at a national, I'm saying convention I don't know what that was, where leaders are talking about this, something must be going on. [LB900]

DAVID SNYDER: Well, the National Conference of Insurance Legislators has addressed the issue with a model law and Nebraska's law closely that tracks that model law. And so the majority of the states, more than 25 of the states have adopted that. The remainder of the states either permit it without legislation or have legislation somewhat in variants from the model. But only four states and he happened to talk to and advocate from one of those four states, that banned--and Maryland did it--banned in homeowners insurance, and there were some market problems created by that. Some companies had to eliminate their best rating tiers because they had no way. That is there most positively-priced tiers because they had no way to differentiate between risk because they were deprived of that tool. So the reality is yes it's been looked at, the states have held debates, hearings such as this, and the overwhelming number of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

states have concluded that it has market value, but there are certain issues which need to be addressed and they've addressed it in a very similar way to what Nebraska has already addressed it. [LB900]

SENATOR PAHLS: Okay, and then I'm just going to lead with another question. A couple years ago, my insurance agent told me, he says we're going to be looking at your credit scores, you shouldn't really be worried and personally I wasn't because I thought my scores were okay. He said but a lot of people really get uptight and a letter was sent to all the policy owners. But by the comments this person made to me is number one, don't get uptight because it shouldn't bother yours, and he said a lot of people are calling me about this. There seems to be some confusion then with the consumer. [LB900]

DAVID SNYDER: Well, there is a transition period which occurs. This has been sort of become more and more one of the advances that we've seen over the past 10 years. And so sometimes when you see a major company in a state put it in for the first time, you do get some questions. Questions from agents, questions from consumers, which is why we've made this public information available, but very rapidly after that transition period the issue dies down. I think agents become more familiar with it, they understand that particularly under the law in Nebraska and in most other states, decisions can't be made solely on the basis of this information but it's useful, relevant information to try to assess risk. [LB900]

SENATOR PAHLS: Okay. Senator Pirsch. [LB900]

SENATOR PIRSCH: Just with respect to the Fair Credit Reporting Act and the NCOIL act as employed here in Nebraska. You'd mentioned that if there's an adverse action with respect to the policy holder then they would be, with respect to their credit record, that they would be then notified. I guess the question is how is adverse action defined? Is that only where they're denied coverage or is that also broad enough to include coverage at a higher rate? [LB900]

DAVID SNYDER: If they're denied coverage, if someone comes in for the first time and this was an issue that was resolved by the courts last summer, if someone comes in the first time and credit is used not to offer them insurance, they get an adverse action notice, cancellation or nonrenewals are the subject of adverse action notices. And in addition, Nebraska has the notice up front and assures that the adverse action notices will go out. So those are the circumstances. [LB900]

SENATOR PIRSCH: So it wouldn't necessarily effect those situations where you're not denying coverage but the coverage would be at a higher rate. [LB900]

DAVID SNYDER: Let me get back to you on that...let me get back to you on that.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

[LB900]

SENATOR PIRSCH: Okay. Thank you. [LB900]

SENATOR PAHLS: Senator Carlson. [LB900]

SENATOR CARLSON: Senator Pahls. Mr. Snyder, the four states that banned the use of credit scores, do you have any idea where they rank in premium? [LB900]

DAVID SNYDER: Well, I don't think any of them do as well as Nebraska does. California, Hawaii, Maryland, and Massachusetts are the four. And partly one of the things that small population states do, which is a positive thing for them in their markets, is to stay within the mainstream in terms of regulatory theory and Nebraska has done that in adopting the NCOIL model. [LB900]

SENATOR PAHLS: Senator Pirsch. [LB900]

SENATOR PIRSCH: I guess one of the...just want to inquiry as to one of the points that was brought up by the introducer of the bill with respect to it's not fully understood what the reason or rationale behind utilizing the credit score is. If through empirical studies there's a hike, that those factors...those credit reports have a predictive value or such that there's the highest correlation between the actual results that you experienced with the policyholder and through these credit reports, does the reason or rationale, should that matter to us? [LB900]

DAVID SNYDER: Well, physical causation has never been required. I mean there are various programs out there. For example, you charge...young drivers tend to pay more than older drivers, there isn't a physical causation there, there's a high statistical correlation and your rating law requires that correlation be established as a matter of actuarial science. So companies can sort of arbitrarily make distinctions and charge higher or lower rates as a result. They have to have strong actuarial support for it. So physical causation, in one sense you never really have physical causation, I mean, even a history, for example, of drunk driving convictions doesn't make you have another one. But you can assume that if a person has a history of drunk driving convictions that they pose a greater risk. So really what you're talking about is statistical correlation and that's what's long been required under your rating law and is required as a general matter. We think that it measures sort of an overall focus on daily activities. People that are concerned with managing their credit and not going off on shopping binges probably are people who haven't figured out that if you drive at 80 miles an hour right up against someone's rear bumper and they stop, you might run into them. It's a sense of responsibility that seems to cross across day-to-day human activities of one kind or another in financial in other areas. And there is some research on that and we can provide it. But again, the strict physical causation in a sense has never been a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

requirement under the law for any rating factors, but this one has a particularly strong...in fact what's interesting is this has a much stronger correlation in some cases than even prior driving record. Partly because motor vehicle records in the states tend to have a lot of gaps in them, and they're really hard to get solid information. Where this tends to be a much more accurate system and it's added a lot in terms of the reliability of the data that you're looking at to assess risk. [LB900]

SENATOR PAHLS: Senator Hansen. [LB900]

SENATOR HANSEN: Thank you, Senator Pahls. Mr. Snyder, let's talk just a few minutes on the errors and the errors would be addressed promptly. Who would correct those errors, and you said the company would correct the errors in the report, but how does the company find out about the errors? [LB900]

DAVID SNYDER: Well, section 44-7707 requires let me see...that's the disclosures and then adverse action notice requirements...okay, (section) 44-7706 contains the error correction language. And if the information is brought to the attention of the insurer from the consumer reporting agency and that, by the way, is where the consumer would input because an error on a credit report would effect many uses of that credit report. So the usual way it would go in, and there's a whole structure for doing this under federal law, they'd report that and then that, the credit reporting agency would have the responsibility to notify all users, including insurers who then have an obligation to re-underwrite an re-rate the consumer within 30 days after receiving the notice. [LB900]

SENATOR HANSEN: Is that information shared with anyone else? Does anyone else have access to that report other than the insurance company? [LB900]

DAVID SNYDER: No, insurance companies can't resell or in any way use that information other than for insurance purposes. [LB900]

SENATOR HANSEN: Okay. I had a little bit of a question on your colorful handout here. Say two people came into an insurance agency in the morning and one of them had a really nice house, a SUV, and a Lexus, and a dog, and three kids, and half a million dollars worth of debt, but they pay regularly on their debt. And then another guy comes in and he has an addiction to feeding cattle and he borrows \$1 million about every 3 months, drives a 1979 Ford pick-up with 1 dog in the back, and how do you tell the difference between those risks on credit? Because the credit for the second guy looks like, you say applies for credit only when needed, well, if he may borrow \$1 million every 3 months for 3 pens of cattle. I mean, that's going to look a lot different than someone with a house, and a boat, and much less risk. [LB900]

DAVID SNYDER: Well the companies that put these scores together will look at different factors and that's what produces this score, the credit-based insurance score.

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Banking, Commerce and Insurance Committee
February 12, 2008

Then that in turn, though, is mixed with information like prior driving record and other sorts of information to develop the insurance score. So I can't tell you in those two hypotheticals you gave me exactly how one would be rated versus the other and you know, I think the industry that does that can provide you some information. But I wouldn't assume necessarily that the second one does worse than the first. I think it's going to be do you take out lines of credit, and do you pay them off. I think the most important factor is are you paying off, are you meeting your obligations. Now there are other factors and people from that industry can come and tell you the various things that go into their models. And those models, by the way, are subject to insurance department review and analysis as well. [LB900]

SENATOR HANSEN: Final question I would have for you is that the Speaker has an amendment and wants to close that down just to, sounded like to personal autos, and homeowners, and boat owners, and personal watercraft, things like that. Would this affect fleet insurance at all? I mean how do you handle fleet insurance compared to personal use? [LB900]

DAVID SNYDER: Well, I think that's an interesting question because really the use of credit information started in the commercial lines. And it started because it became evident pretty early that a business and business people that maintained financially well-run businesses tended to run safer businesses. So it really started in the commercial lines and this is...the recent issue has been the movement of the use of credit information from various sectors of the economy and it's widely used beyond insurance for personal purposes. But within insurance it was long used in commercial insurance where Dun and Bradstreet reports would be pulled for various businesses. In fact, there was a U.S. government study that linked the financial health of a motor carrier, for example, to how its vehicle did on the road because it made sense that if a company was getting into trouble financially, it may not be hiring the best drivers, it may be engaging in deferred maintenance for its vehicles, the brakes may not work, whatever. And the federal government did find that correlation, but that's something that insurers had known for years and years and years using it in the commercial lines. The recent issues have come about as the use of credit information, and again it's used in sector after sector in the American economy, but insurance moved from commercial lines to personal lines in, I would say, the mid to late 1990s. So you should definitely distinguish and I think your current law may, but you should definitely not impact at all the use of credit information in commercial lines because again, that's noncontroversial and whatever. And in personal lines, while there have been more questions raised, they've been addressed by the states with specially targeted legislation as Nebraska has done. [LB900]

SENATOR HANSEN: Thank you. [LB900]

SENATOR PAHLS: Senator Pirsch. [LB900]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PIRSCH: Just kind of as background information. There's in Nebraska you mentioned there's quite a few writers at this time, companies writing policies that was remarked upon. Do you know is this the standard practice of those...how many companies did you say I think, 60-some...? [LB900]

DAVID SNYDER: I think I said 66 autogroups and 50-some homeowner groups... [LB900]

SENATOR PIRSCH: Would you suspect that the majority are doing this? Or, almost everyone are? [LB900]

DAVID SNYDER: I would say the majority, but probably not all. It is a competitive market. Some companies use it, some don't. I think consumers that don't like it have the option to go to companies that don't use it. But I think it has become more and more common because of its power in really assessing and pricing for risk, which has been the real attractiveness. And then as issues came up about, well you have to be careful that it's not overused and you have to have certain procedural protections for consumers if errors are made and things like that, then the states have moved in and provided legislation to make sure that it was used appropriately. [LB900]

SENATOR PIRSCH: Yeah, and there's been studies done...the proposition was put forward that it's from a statistical basis that in being studied was the most accurate way to describe the potential threat or whatnot of...certain studies have been conducted. Could you just comment on the nature of those studies? Who's conducted them, if you have that information? [LB900]

DAVID SNYDER: Right. Sure. Starting briefly, the Federal Trade Commission was tasked by the Congress to do a study. They looked at roughly two million auto insurance records from around the country and concluded that credit-based insurance scoring was extremely reflective of, and very accurate in predicting risk. And that's been the first major federal study. The states have done a number of studies. We refer to the Arkansas study, Texas did a study, there are other studies that have been done as well and they've all concluded that it's very, very effective as a way to predict risk. And the study that I was referring to was a private study done by Epic Actuaries using about two million records. And they found that in each of the auto coverages that credit was one of the top three risk-predicting mechanisms for each of those types of auto coverages. In some cases it was the best. [LB900]

SENATOR PIRSCH: Okay. [LB900]

SENATOR PAHLS: Senator Langemeier. [LB900]

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR LANGEMEIER: Chairman Pahls, thank you and Mr. Snyder thanks for this nice brochure. As we look at credit reports we have on here types of credit report information used in the insurance score, length of credit history, amount of debt, types of credit in use, new applications for credit, and we have college students who won a T-shirt if they applied for credit. Why not add eBay scores in here? We have statistically, you can prove statistically that you have something with a credit score yet we don't know why. We don't ask auto insurance when they apply for a policy, we don't ask them if they own a cell phone. Would that not be statistically provable that, so we're told on the floor, that ownership and use of a cell phone would affect your driving ability. We don't ask that. We don't ask if you typically drive with a seat belt. Would that not demonstrate some reliability in your per se...I can't hear out of this ear, so it's all kind of new to me as I bring it up...would that not be a provable statistic? A statistic is strictly something that we can repeat repetitively on a consistent basis. It's just numbers. [LB900]

DAVID SNYDER: Right and it meets the test of reliability which these models do, subject to review by the insurance department. So these models have to do what they're supposed to do which is predict risk. They can't be arbitrary and so the types of factors you're using, the kinds of things you're talking about and other things as I said, credit scores are only part of what goes into making an insurance score. I mean, the other factors, and there is constant effort to find better and better ways to make sure you're accurately pricing the product. [LB900]

SENATOR LANGEMEIER: Do we take into account deer population? Statistically in Nebraska, most of our wrecks are hitting deer. Matter of fact I've hit two myself this year. I think there's things out there that could statistically be generated that would be better than how much debt someone has or how many times they've applied for a credit card, or types of credit used. Whether I got a diner's card, or a Visa, or a line of credit. I think we're going beyond the bounds that we need to be at. [LB900]

DAVID SNYDER: Well, when you put this data together, again, it's got to pass the test. Does it predict risk? And the answer is that it does predict risk. Now the question is, I think you're asking why? I think there's some research out there which we can share with the committee that indicates that it is a sense of responsibility that carries across a number of day-to-day activities. And that the overall risk that you're talking about, driving risk in Nebraska is picked up in the overall rate level that you sort of start with. But to distinguish who's a better risk in Nebraska versus others than you use as much relevant data as you can use to try and do that. And the reality is in this state, as well as every other state that's looked at it, the credit scores that are used are highly predictive of risk. [LB900]

SENATOR LANGEMEIER: Thank you for your testimony. [LB900]

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PAHLS: Dave, that leads me just to another question. I understand the studies have shown that the factors that you guys utilize for credit rating are effective. Do you also look at, and I don't know if this comes about because of looking at credits, but are there certain parts of town of a city that are targeted? Do you look at that when rates are set? Or, is it just simply on the credit. [LB900]

DAVID SNYDER: Well, credit has to be used equally in a state. You can't decide you're going to use it here and not use it there. That would be discriminatory. So it's got to be applied uniformly and you can't sort of pick and choose so that it achieves its measurement capability by being applied generally and equally throughout the entire state. The rating systems do traditionally consider other factors that have traditionally been permitted in Nebraska. Territory, age, prior driving record, prior claims experience, all these are factors that continue to be relevant and play a role in risk assessment. And then the credit information is simply added to that to produce a more effective measurement. [LB900]

SENATOR PAHLS: Okay, so just one more question. I understand what you're telling me, but where I live in the city of Omaha, everything else being equal does not matter if I live in a wealthy area of Omaha, or if I live in the lower income area? [LB900]

DAVID SNYDER: No, it has nothing to do with wealth. Wealth is not captured in the credit scores and things like race, national origin can't be considered anywhere in the process. [LB900]

SENATOR PAHLS: But there's a strong likelihood, though, credit...where I live would that would have something to do with it, would it not, Or not? [LB900]

DAVID SNYDER: The interesting positive benefit, I think, for people in traditionally high-rated territories like highly urban areas is that with the addition of the credit information you're now able to more effectively identify people within those older classifications that would've been paying more. You're now able to identify that person, pull that person out and charge them a lower rate as a result. So it's been a movement from broad categories and broad classifications to much more specific underwriting based upon the risk. And the other thing that's occurred is now instead of just having three buckets that you place people in, now you can have dozens and dozens of rate levels that are much more accurate predictions of how someone's going to do, and thereby you've been able to expand, and reward, and identify responsible risks that had otherwise been buried in the older classifications. [LB900]

SENATOR PAHLS: Okay, thank you. I appreciate your testimony. [LB900]

DAVID SNYDER: Thank you very much. [LB900]

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PAHLS: Next opponent. [LB900]

ALEX HAGELI: (Exhibits 5 and 6) Good afternoon members of the committee. I have two handouts and I will wait. [LB900]

SENATOR PAHLS: You can get started. [LB900]

ALEX HAGELI: My name is Alex Hageli, H-a-g-e-l-i, and I represent the Property Casualty Insurers Association of America, or PCI. I second everything my colleague, Mr. Snyder has had to say so far today. There are two points I want to emphasize for your consideration. The first relates to correlation, the second relates to causality. The first handout is the executive summary of the FTC study Mr. Snyder referenced. There is one particular paragraph that I feel bears entry into the record and that is the second bullet point on page 3 that reads as follows: Credit-based insurance scores are effective predictors of risk under automobile policies. They are predictive of the number of claims consumers file and the total cost of those claims. The use of scores is therefore likely to make the price of insurance better match the risk of loss posed by the consumer, thus on average, higher risk consumers will pay higher premiums and lower risk consumers will pay lower premiums. Now the insurance business, if anything, is about having consumers, policyholders that represent a greater risk pay more in premium because of that risk than those who represent a lower level of risk and should therefore be charged less for their insurance. And there are also a number of state studies that back up this finding. With respect to causality, probably the number one response I hear when people are told about insurance scoring is, what does how I drive have to do with my credit report? And my response is simply this, we don't know why there's a correlation, but there is. Just as we don't know why there's a correlation between, or why female drivers represent lesser risk than male drivers do, and why married drivers represent less of a risk than single drivers do. As far as I know, there's no definitive study out there that establishes why that is for each of those two groups, yet it is. And companies use that information. And as far as I know, there's no movement out there or effort out there to ban consideration of those two factors. We use those factors, why can't we use insurance scoring? I just want to follow up with a question from Senator Pirsch with respect to adverse action notices. If you do pay more for your insurance because of credit, you do receive an adverse action notice. And I'll be happy to address any questions anyone has. [LB900]

SENATOR PIRSCH: Thank you. [LB900]

SENATOR PAHLS: Senator Hansen. [LB900]

SENATOR HANSEN: Is age, and I can't find this in any of the handouts so far. Is age a component of this way to find out credit risk? Does age come into effect at all? [LB900]

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

ALEX HAGELI: I believe age is prohibited from being factored into the insurance score under Nebraska law. [LB900]

SENATOR HANSEN: What about age of drivers, children? Sorry, just make it plain. You go along real good and you're doing everything right and then you have a child that turns 16. [LB900]

ALEX HAGELI: The age of the driver separate from an insurance score is considered, yes. [LB900]

SENATOR HANSEN: Okay. That's still going to stay the same? No changes there. [LB900]

ALEX HAGELI: Yeah, as far as I'm aware. And I should also add, I'm sorry, the second handout is an excerpt from the FTC study that talks about theories as to causality between insurance scores and risk. And it offers, it reviews some of the theories out there, the most common being those who manage their credit well are more likely to manage other aspects of their life as well. Like I said, the fact that we don't definitively know why something is doesn't prohibit us from using other factors that other companies use and no one as far as I'm aware challenges. [LB900]

SENATOR PAHLS: Senator Carlson. [LB900]

SENATOR CARLSON: Senator Pahls. I would think that, and I wonder if you've run into this any place in terms of we don't know why. Seemed to me like some kind of a measurement of a degree of the importance of where a person places responsibility would have an effect. Generally, somebody with a good credit score is responsible and not careless, and carelessness gets us all into trouble as far as driving and so forth is concerned. I would think that responsibility would really enter in there. The only place that might be a negative is you have people that have the ability to be so thrifty that they never borrow money so they never have a credit score, and in that regard they don't have something that can be referred to. But other than that, I think it's an element of responsibility and I would think somewhere along the line that would have surfaced as a reason. [LB900]

ALEX HAGELI: Yeah, that's definitely a theory that's out there. But like I said, there's no definitive finding that that is in fact why it is. And with respect to those who don't have a lot of credit history, Nebraska law does address that. It says those who have very little credit or no credit at all, insurance companies are to treat them either as to give them a neutral credit score or to simply not consider credit when the underwriter rate their policy. [LB900]

SENATOR PAHLS: Senator Pirsch. [LB900]

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PIRSCH: Just a question. So with respect to these credit reports, they are only part, not the totality, of the factors that you look into. The only question is can you use this as a part or component of the overall process, right, of picking those factors? [LB900]

ALEX HAGELI: Exactly. Under Nebraska law it would be illegal just to use credit to underwrite or rate a policy. [LB900]

SENATOR PIRSCH: And, you know, obviously there are certain categories where the law, constitution would prohibit those along the lines of race, national origin, religion, those type of, but you're saying these factors aren't used. Correct, these constitutionally suspect factors, correct? Right, those are prohibited. [LB900]

ALEX HAGELI: Right, those don't factor into the calculation of the score. [LB900]

SENATOR PIRSCH: So beyond the base score, is it really something that we should as a legislative body be concerned about? The underlying rationale or the rational relation of why this particular component helps lead your industry to reach the right result as far as your experiences with these policyholders in the real world. Should we be concerned about other factors other than these constitutionally suspect categories? Is there any reason why we as a regulating body should be concerned about other factors? [LB900]

ALEX HAGELI: Well, I would just say, as with my example, we don't know why married drivers are less of a risk or why female drivers are less of a risk. I know there are a lot of theories about that, but there's no definitive study that says this is why that is, yet that information is factored into, or is utilized by insurance companies. [LB900]

SENATOR PIRSCH: Would it not be in the industry...would it not be in each separate writer...insurance company's own best interest to develop the most sophisticated program for predicting that potential client who will ultimately result in a claim or tend to result in a claim? [LB900]

ALEX HAGELI: Absolutely. Each company develops their own system of rating and underwriting and feels that they have the best method of doing that and the more information I have, the more it allows them to develop their systems and their modeling to give them what they feel is the best approach to the insurance market, which only leads to lower prices and more insurance. [LB900]

SENATOR PIRSCH: Thank you. [LB900]

SENATOR PAHLS: Thank you. Any more questions? [LB900]

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

ALEX HAGELI: Can I also add with respect to you mentioning there being a national discussion of this issue. This issue's been discussed for the last four or five years, and in that time only four states have any kind of prohibition on insurance scoring. And in fact, Maryland allows it for automobile insurance, Hawaii allows it for homeowners, California doesn't allow it, but only passively. They have a law that says you can only rate based on these three factors and insurance scoring isn't one of those three factors. So in all the years of debate, only four states have any kind of prohibition on insurance scoring. I think that speaks volumes. [LB900]

SENATOR PAHLS: And I agree with you, but it also speaks volumes for me when you're telling me--this is just to respond, I don't expect an answer for this--is where you don't have definitive information why boys or young men and young women there's a difference in driving records and things like that. Nevermind, thank you. [LB900]

ALEX HAGELI: Oh, okay. [LB900]

COLEEN NIELSEN: Chairman Pahls, good afternoon. 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. I'm testifying on behalf of the Nebraska Insurance Information Service, which is a local association of property casualty insurance companies doing business in the state of Nebraska. And my purpose in testifying here today is simply to review quickly the existing law in Nebraska. We've talked about it a lot, but I wanted to give you some history. And this particular bill, the prohibition against using credit by insurance companies has been heard by this committee before and in my records at least, there have been at least two bills that would prohibit the use of credit prior to the enactment of the model act that is currently law, in 2003. So I'll just quickly go over the provisions of that act. It is located in (sections) 44-7701 to 44-7712, it's patterned after an NCOIL model act. We had a great amount of discussion about it and a lot of testimony. The purpose of it is to provide consumer protections with regard to the use of credit information in rating and underwriting in insurance, and there are five key provisions in that act. First of all, there are prohibited uses. You cannot use in determining an insurance score income, gender, address, zip code, ethnic group, religion, marital status, or nationality. You cannot use the credit information as the sole basis for denying, cancelling, nonrenewing, or determining nonrenewal rates. You cannot take an adverse action solely because a consumer does not have a credit card, or if a credit report or an insurance score is calculated over 90 days from the date the policy is written or renewed. You can't use discrete factors in insurance scoring such as credit inquiries not initiated by the consumer, or inquiries related to insurance coverage, collection accounts with a medical industry code, multiple lender inquiries from a home mortgage industry within 30 days of one another, and multiple lender inquiries from the automobile lending industry within 30 days of one another. So none of that can be used in the score as well. There is a process of dispute resolution, so if it's determined and I

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

think that the insurance company finds out about this information from the person who's trying to purchase the insurance. If it's determined that the credit information of the current insured was incorrect or incomplete and notice is provided to the insurer, the insurer must re-underwrite or re-rate that consumer within 30 days. As the previous witnesses talked about, there is an initial notification so that when you go in and purchase insurance you'll be told that credit information will be considered. Finally, adverse action and Senator Pirsch you asked about that and I think you had part of that answer with the previous witness, but adverse action is defined to include denial, cancellation, increase in charge, or reduction or adverse change in the terms of coverage. If any of that is taken, the insurer has to provide notification to the insured. And finally all these models, different companies have developed their own models in determining insurance scores. It's not the credit score that you think of when you're applying for a loan, but rather there are certain factors within credit information that each in company uses to determine the predictability of loss, and those particular models have to be filed with the department of insurance. So it's my position that we already are regulating this particular credit information and that a ban is not necessary, and so I'd ask this committee to indefinitely postpone this bill. I'd be happy to answer any questions. [LB900]

SENATOR PAHLS: Senator Pankonin. [LB900]

SENATOR PANKONIN: Thank you, Chairman Pahls. Coleen, appreciate that testimony because I think just looking around the room, except for committee counsel and maybe the clerk, none of us were here in 2003. So to me it's very helpful to have that information and kind of see how we got there and some of your detail is appreciated. This is just one part of the total picture and I think it answered a lot of questions that we already had. Thank you. [LB900]

COLEEN NIELSEN: All right. [LB900]

SENATOR PAHLS: I see none, thank you, Coleen. [LB900]

COLEEN NIELSEN: Thank you. [LB900]

GALEN ULLSTROM: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, for the record my name is Galen Ullstrom, G-a-l-e-n U-l-l-s-t-r-o-m. I'm senior vice president and registered lobbyist for Mutual of Omaha Insurance Company appearing today in opposition to the green copy of the bill. I say the green copy because as I understand, although I haven't seen it, Speaker Flood's amendment may eliminate some of the concerns that I had with this bill. My primary concern is that for the first time in any bill that I've seen around the country and certainly contrary to the bill that's on the books in Nebraska now, the green copy would not limit the scope of this action to personal lines property and casualty. It would expand it to all

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

lines of insurance which would include life and health insurance. And the concern that I have in life and health insurance is that while life and health insurance does not use in the underwriting process a credit score as such, financial information and certain credit information is very important in the underwriting of various lines of insurance. For example the life insurance side, it's very important to determine through needs analysis whether the person qualifies or needs a certain amount of insurance. Everybody would not be allowed to buy \$10 million of life insurance, for example, if they didn't have the means, the need, the ability to pay for that insurance. In a similar way in disability income insurance. We would not sell someone who makes \$3000 a month a policy that paid \$10,000 a month if they were disabled for the anti-selection or for the potential fraud. So it's very important that we have financial information and that's primarily to protect the company and protect other consumers because if someone does collect it goes in the rating process. There's also some requirements in Nebraska law now that require us to get financial information and it may include credit information. This body last year considered a bill which was called a protection and annuity transactions act (NE Senior Protection in Annuity Transactions Act), which provided some safeguards for the purchasers of annuity contracts. The law in the books before applied only to seniors purchasing annuities, last year we expanded it on support of the insurance department and the industry, frankly, to apply to all consumers. But as part of that law it requires insurance agents and companies to determine whether the annuity product is suitable for the individual. And in order to do that we need to determine whether the person has liquid assets outside of what he's putting in the annuity contract, other financial information that we are actually required to get before we can issue the contract. In the same way, long term care insurance. The Nebraska Department of Insurance has a regulation now which is an NAIC model that requires insurance companies selling long-term care to do a suitability assessment before they can sell that product to someone. As part of that assessment, it is getting into the financial status and potentially credit information on that individual. So in those lines, we're actually required to get that information and for other reasons we need that information. It is not a credit score as defined in the PNC side and again I think with Senator Flood's amendment, it may alleviate the concerns that we had of the expansion, which we had not seen in the previous debate on this bill. So I'd be glad to answer any questions if there were... [LB900]

SENATOR PAHLS: Any questions? Seeing none, appreciate your... [LB900]

GALEN ULLSTROM: (Exhibit 7) Appreciate it, thanks. I also have a statement. David McBride, Executive Director of the Nebraska National Association of Insurance and Financial Advisors ask if I would give a statement, too, so I'll pass that up to the clerk. [LB900]

SENATOR PAHLS: Any other proponents, excuse me, opponents? People in neutral? And I think Senator Flood said he would waive closing. Thank you, that closes this

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Banking, Commerce and Insurance Committee
February 12, 2008

hearing on LB900. The next bill will be LB831. [LB900]

SENATOR PAHLS: Good afternoon, Chairman Lathrop. I think we are ready. [LB831]

SENATOR LATHROP: Okay. Good afternoon, Mr. Chairman and members of the Banking, Commerce, and Insurance Committee. It's great to be back. I'm here to day to introduce LB831. LB831 revisits the security freeze provision passed last year in LB674. LB674 dealt with protecting employees' social security numbers in the work place. Right before that bill received its final vote by the Legislature, we amended it into Senator Mines' LB190. This amendment provided for citizens of Nebraska to place a security freeze on their credit report. A security freeze stops any of the three major credit reporting companies from providing your credit report to anyone unless the freeze is suspended or lifted by the individual who placed the freeze. A security freeze is the strongest tool available to the consumer to stop identity theft. Between my decision to amend the security freeze provision into LB674, some changes were made which were not brought to my attention, so this bill is a way to revisit those aspects of the bill which are now law. LB831 does three things. It removes the seven year sunset provision from the freeze. This is done because rectifying identity theft can sometimes take longer than seven years, and some folks would like to maintain a permanent freeze on their information. It seems to makes sense to allow the consumer to make the decision to lift the freeze for him or herself. The second thing, this bill defines a minor for purposes of the security freeze provision as someone 19 and under. LB674 allowed for free security freezes for minors. The definition provided in LB831 is there because several instances were brought to my attention in which the security freeze policy and law had the minor defined at 14 and under. This bill simply brings the law into accord with Nebraska's generally accepted age of majority. The third thing LB831 does is lower the fee to initially place the freeze. That fee would go from \$15 to \$5. I assume this will be the main point of contention here today, and I will say that I don't know that \$5 is the magic number, but I think it's a worthwhile endeavor for the committee to revisit this topic. Currently, at \$15 per freeze, it would cost a married couple \$90 to place a freeze with each of the three credit reporting companies. Since you either place the freeze with all three agencies or none at all, the actual cost to the individual is \$45. Some states have no cost. It seems there is a good indication that security freezes can have a strong overall, detrimental effect on identity theft by lowering the value of stolen data, but in order to do so they need to be fairly common. Lowering the cost can significantly increase the use of the security freeze provision, and I think there may be a worthwhile benefit to the citizens of the state in doing so. Other proponents of the bill will flesh out some of the specific details on cost and utilization, and the resulting detrimental effect on the identity theft. With that, I'll be happy to take questions. [LB831]

SENATOR PAHLS: Senator Lathrop, as I can recall, the fees were increased by an amendment last year on the floor? [LB831]

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Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR LATHROP: I honestly don't remember. What happened is the freeze part, I think, was a piece that was brought to us by Senator Mines' (LB)190 and it was drafted into the bill on select (Select File) as I recall. Which I said I supported with enthusiasm, only to find out there were some things about it that we had to work out and we did. But where the fees came from or how they were put in there, I think Senator Mines was working that piece of the bill at that point. [LB831]

SENATOR PAHLS: Right, as I can recall, because I think it was one of our priority bills of the committee and then I think I stood up and said, I must have been asleep at the wheel because I saw an increase in fees. [LB831]

SENATOR LATHROP: I do remember you saying last year that you were asleep at the wheel (laughter). I don't remember the bill but I do remember that line. [LB831]

SENATOR PAHLS: I say that all the time. I was surprised how now the fees all of a sudden they were changed, and then I asked later on and they said well, not everybody was at the party when that decision was made. [LB831]

SENATOR LATHROP: I wasn't at the party. [LB831]

SENATOR PAHLS: Okay, that was a concern. Senator Pankonin. [LB831]

SENATOR PANKONIN: Thanks, Senator Pahls. Senator Lathrop, I just want to compliment your group. The handout that I received this morning and had a chance to look at between noon and before the hearing is excellent, really answered about every question. I think, like you said, this is basically a technical improvement on what we already passed. [LB831]

SENATOR LATHROP: Right. [LB831]

SENATOR PANKONIN: And lines it up with other states and so those that were responsible, great piece of information that I think we did get off of what our intent was, so I think this will...anxious to hear the rest of the testimony, but I think this is a good concept that you brought back. Thanks. [LB831]

SENATOR LATHROP: Good. I appreciate the compliment. [LB831]

SENATOR PAHLS: I think...Senator Carlson. [LB831]

SENATOR CARLSON: Senator Pahls. Senator Lathrop, I think in your opening here, you misspoke. So I need to clarify it because the bills says minors, a person under 19; you said 19 and under. [LB831]

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Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR LATHROP: That's true. [LB831]

SENATOR CARLSON: So under 19? [LB831]

SENATOR LATHROP: As soon as you're 19, you are an adult in Nebraska. [LB831]

SENATOR CARLSON: The wording in here is correct? [LB831]

SENATOR LATHROP: Pardon? [LB831]

SENATOR CARLSON: The wording here is correct? A minor here means a person under 19 years of age. [LB831]

SENATOR LATHROP: Yes, that's true. [LB831]

SENATOR CARLSON: Okay. Thank you. [LB831]

SENATOR LATHROP: I misspoke. You got me. [LB831]

SENATOR CARLSON: That's alright. [LB831]

SENATOR PAHLS: Are you going to stick around for the closing? [LB831]

SENATOR LATHROP: I might. In fact... [LB831]

SENATOR PAHLS: We're giving you all these compliments, now you want to stick around for the closing when we give you all these compliments, right? [LB831]

SENATOR LATHROP: Or I can go back to Urban Affairs for gas horse (laugh), so I may stay for a little bit just to see how things fair. [LB831]

SENATOR PAHLS: Okay. Thank you. [LB831]

SENATOR LATHROP: Thank you. [LB831]

SENATOR PAHLS: Yes. Proponent? Before you begin, I know there's several people here would like to sign on this bill. I will pass this around. I know you may not testify, this will be part of the record. So this will be going around in just a second. Thank you. You may begin. [LB831]

JAIMEE NAPP: (Exhibits 1 and 2) Okay. Thank you, Chairman Pahls and members of the committee. I thank you for this opportunity today to speak in support of LB831, and I'd like to say thank you to Senator Lathrop for introducing this legislation. My name is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

Jaimee Napp, J-a-i-m-e-e N-a-p-p, and I'm the executive director and founder of the Identify Theft Action Council of Nebraska. As Senator Lathrop said, the Credit Report Protection Act gives all Nebraskans the opportunity to place a freeze on their credit report. And a security is an identity theft prevention tool that gives consumers control over who has access to their credit. I am a victim of new account fraud, myself personally. A manager from a former employer stole my personal information and used it to open up four new credit card accounts. It's been almost three years now, and my family and I still feel it's effects. So I sincerely believe that in security freeze in being able to prevent this from happening to people. Currently, 39 states across the country have security freeze laws on their books. In 2007, the 3 major credit bureaus began offering freezes nationwide to the consumers in the remaining 11 states. Some of those states are moving forward with their own legislation this year. Again, we talked about last year this committee passed to the floor a consumer-friendly security freeze bill. Actually that bill had a placement fee of \$5, a lift fee of \$5, and a removal fee of \$5. It was praised by national consumer advocate groups and seemed destined to be included in the top ten security freeze laws in the country, and this committee made it one their priority bills. A closed-door meeting was held and an amendment was added that reduced the bill's effectiveness. It increased the fee to \$15 and also added the 7 year automatic expiration. The bill was passed and Nebraska's security free law instead took its place among the bottom five states in the country because of the combination of those two things. And LB831 highlights three things that we can improve that. In my testimony today, I will focus on the reduction of fees. Placing a security freeze in Nebraska is expensive at \$15 per credit bureau. Eleven states have enacted laws with placement fees of \$5 or less. Those states are listed in your handout. They've realized that more consumers could afford and would be willing to pay and take advantage of the law if the freeze was easy to use and at a reasonable cost. States would see a reduction in new account fraud if more consumers were protected by a security freeze. On page 5 of your handout is a newspaper article from Montana. It reports over 1,000 Montana consumers requested a security freeze in its first 4 months in existence. Even though that number may seem low, it's very encouraging. In contrast, Nebraska's request for a freeze are estimated to be around 200. More than likely Montana is seeing almost five times more consumers enacting freezes because of the combination of they have a low placement fee at \$3 per credit bureau and an awareness campaign by the state. On page 6 is a newspaper article from Georgia. Georgia is one of the states that's currently covered by the credit bureau's nationwide freeze announced last fall. But they weren't content with what the bureaus were offering their consumers. Georgia recently passed a house bill with a \$3 security freeze placement fee. Before the bill passed at \$3, they were considering a \$10 fee. A Georgia lawmaker stated his thoughts regarding a \$10 fee when he said, "I don't want to stand out there and demonize the credit agencies, but \$10 is a bit piggy for them." If Georgia says \$10 per credit bureau is being a bit piggy, then I think \$15 per credit bureau for Nebraska is very piggy. On page 7 and 8 is a summary of a research study to be published later this year in the Journal of Business Research. Eric Eisenstein, associate professor at the Johnson School of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

Management at Cornell University, authored this study. He finds that identity theft is continuing to be a growing problem in this country and the most effective tool to combat new account fraud is the increased use of convenient, low-cost security freezes and thaws. Nebraska law currently has thaws at \$0. I believe leaving this benefits not only consumers wishing to get credit, but also Nebraska retailers who want to give them credit. When consumers freeze their credit, the less useful personal information is to thieves. This concept seems simple enough, but the professor's research states that asking credit bureaus to reduce identity theft is difficult. He finds that there is a conflict between what's good for the bureau's bottom line and what's good for consumers. Electronic credit monitoring is a product that's created by the credit bureaus. It's extremely profitable with high profit margins. These monitoring services do not prevent identity theft and only lessen the amount of time between the theft and its detection. The study also finds that bureaus make more money selling the monitoring services. They have a financial incentive to make security freeze as expensive and tedious as possible to make it unattractive to consumers, while security freeze benefits consumers because it prevents them from becoming a victim in the first place. Credit bureaus are in a similar position to a burglar alarm company in the midst of a crime wave. Unwilling to publicly state that crime is a good thing, yet happy to profit from it. The bureaus frequently cite extensive costs in implementing the security freeze system. This study finds that these costs to be largely fictional. Professor Eisenstein conducted a study estimating the bureau's cost to provide a security freeze. Looking at labor costs, telecommunication costs, and mail costs his research estimates a bureau's total cost to place a freeze to be around \$1. The bureaus are working on being able to accept freeze placement requests through the Internet. It is a requirement made by nine state laws due by the end of January 2009. Using the Internet, the costs to the credit bureaus could be cut in half. Details of Professor Eisenstein's cost study can be shown to the committee if asked, but I cannot submit it into the official hearing record due to copyright. Today, this committee has an opportunity to change Nebraska's security law and return it back to its original intention this committee had last year, and benefit consumers. We can reduce the amount of new account identity theft in Nebraska simply by having more consumers use this freeze. By reducing the placement fee to \$5 per credit bureau, we will follow the 11 other states that offer consumers a convenient, low-cost security freeze. Credit bureaus won't do this on its own and it's up to state government to lead the way on this. I urge you to pass LB831 out of committee and I thank you again. I'll take questions now.
[LB831]

SENATOR PAHLS: Okay. Any...Senator Christensen. [LB831]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Why are we not trying to add the Internet? I assume you have to call each bureau independently then? [LB831]

JAIMEE NAPP: Adding Internet is something that we could add to this bill to make it easier for Nebraskans. Right now to place a freeze, the Nebraska law we have only

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

requires consumers to submit it by certified mail. So we're making the consumers take an extra step and go to the post office to mail these. But if we put this into the Nebraska law that we can accept Internet like other states have done, consumers would be allowed to do that. [LB831]

SENATOR CHRISTENSEN: To me if you want it used, which I see is a benefit, then the easy access which is Internet in our day, should be there. [LB831]

JAIMEE NAPP: Um-hum. I agree. [LB831]

SENATOR CHRISTENSEN: Thank you. [LB831]

SENATOR PAHLS: Just to address, last year when I said I was asleep at the wheel, I did ask the question on the floor, was there any major changes in this bill and it was implied it was not. I saw this was a major change because it was our priority bill and we had not been...at least some of us were not even...this was not even discussed with us before that decision was made, which to some degree disappointed me. Any questions? Thank you. [LB831]

JAIMEE NAPP: Thank you. [LB831]

SENATOR PAHLS: Next proponent. [LB831]

PATRICK J. HENRY: (Exhibit 3) Good afternoon, Chairman Pahls, members of the committee. My name is Patrick J. Henry. I live at 1460 Buckingham Drive here in the city of Lincoln. I prefer to be called Pat. Only people that are mad at me call me Patrick. I appear before you today as a volunteer registered lobbyist. Volunteer... [LB831]

SENATOR PAHLS: Pat, I'm going to have to have you sit down so we can pick up. [LB831]

PATRICK J. HENRY: Okay. Just a minute, I'm going to pass these out. [LB831]

SENATOR PAHLS: And also spell your name [LB831]

PATRICK J. HENRY: Okay. [LB831]

SENATOR PAHLS: And I'll call you Pat (laugh). [LB831]

PATRICK J. HENRY: Call me Pat. Okay. It's Patrick J. Henry, P-a-t-r-i-c-k J. H-e-n-r-y. I appear before you today as a volunteer registered lobbyist for AARP and I'm here to support LB831. AARP Public Policy Institute has published a study in October of 2007 entitled Barriers to the Use of Security Freezes by Older Consumers. A copy of this

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

study is attached to my comments. According to this study, identity theft continues to dominate the Federal Trade Commission's list of top frauds being committed in the country today. Professor Eisenstein, whom the prior testifier referred to, in his study, which you have heard of, identified it as the fastest growing crime in the United States today. Prevention has become a top priority for consumer advocates. State legislatures have been passing laws in the last three or four years designed to help protect consumers. These laws have focused on two areas, the first of which is the mandatory notification of consumers when a security breach has occurred at an organization which might enable personal information to fall into the wrong hands. The second area of activity involves laws enabling security freezes and thaws to be applied by consumers to their credit accounts. Some 39 states had such legislation at the time of the study. In many cases, consumers are not aware of their ability to apply for a security freeze and those that have encountered potential barriers. I will not bother you with the methodology of the study. It is in the report and is available for your review. The study found that older consumers, people 50 years of age and older, had these problems. These consumers were concerned about becoming victims of this crime. The study found that 81 percent of the respondents had such fears. Older Americans are generally not aware of the security freeze availability. It's a relatively new phenomena. Only 31 percent indicated they had heard or read of the feature, and many of them had very little understanding of the how it works. Older Americans face a number of other barriers. Over 57 percent said they did not know where to obtain information, and of those who thought they knew, 30 percent said they'd go to their bank or a credit union. Many also said it would be difficult for them to provide the information to the credit bureaus to implement the freeze and to send each of those three credit bureaus by certified mail, a requirement in most of the states, including Nebraska. Most also thought the time it takes to thaw the account when they want to establish new credit is a problem. Sixty-six percent of the respondents thought it would be important to be able to thaw the account within approximately 15 minutes. Respondents generally thought the cost to implement the freeze or thaw would prevent them from doing so. Most thought they would use a freeze should the cost decline. If you'll give me a minute...this cost has come up several times and Professor Eisenstein on his study--I've got the wrong file--said that the cost in the United States was \$8.10 in the states that have passed the law to implement the security freeze, and \$7.85 to implement a thaw. AARP urges you to give favorable consideration to LB831 and to advance the bill. Security freezes allow consumers to add some additional protection to their identity, helping to thwart the fraudulent misuse. Studies have shown them to be better than monitors, but the cost is stopping some and the delay in placing a thaw is a problem for others. If you have any questions, I will be happy to try to answer them. Thank you for your time. [LB831]

SENATOR PAHLS: Do you have any questions for Pat? [LB831]

SENATOR PIRSCH: Just one and I may have misheard you, Pat. Appreciate your testimony here today. Did you just say there at the end the Professor...was it

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

Eisenstone (phonetic)? [LB831]

PATRICK J. HENRY: Professor Eisenstein. [LB831]

SENATOR PIRSCH: ...had kind of gone over the cost to the credit agencies of actually... [LB831]

PATRICK J. HENRY: They went over the cost that the credit agencies charged to install the credit freeze or to thaw it. [LB831]

SENATOR PIRSCH: Oh, to charge... [LB831]

PATRICK J. HENRY: Yes. [LB831]

SENATOR PIRSCH: ...not their actual cost. [LB831]

PATRICK J. HENRY: No, not their cost, no. [LB831]

SENATOR PIRSCH: Okay. [LB831]

PATRICK J. HENRY: In his study, he indicates their cost is substantially lower than \$8. [LB831]

SENATOR PIRSCH: Okay. [LB831]

PATRICK J. HENRY: It's probably closer to the \$1, \$1.50 that... [LB831]

SENATOR PIRSCH: Okay. That's what I thought I heard earlier. Is the 11 states that were kind of highlighted by the previous testifier, do you know, are there other states out there that are using them more or are those the only 11 states that are? [LB831]

PATRICK J. HENRY: The only...I'm only aware that there's 37 or 39 states that currently have a security freeze legislation at all. [LB831]

SENATOR PIRSCH: Okay. [LB831]

PATRICK J. HENRY: There could be others, but I'm not aware of them. [LB831]

SENATOR PIRSCH: Okay. Well, very good. I tell you, it's a very timely topic. Just got...my wife's university just wrote her a letter this last weekend and indicated that somebody had broken into the university and made away with... [LB831]

PATRICK J. HENRY: It's a serious problem, you know. [LB831]

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PIRSCH: ...thousands and thousands of files. [LB831]

PATRICK J. HENRY: This is a little bit off the subject matter of today's bill, but I just renewed my driver's license and I receive that 8.5 by 11 sheet of white paper that you fill out before you go into to renew it. And up in the upper right-hand corner is a spot for your social security number for which reason, I know not. But when I went over to the Lancaster County office to renew my license, there were a number of people there either with a form in hand or filling it out. It would have been very easy for me to walk out of there with five different social security numbers had I wanted to. I think that's something that somebody in the state ought to approach and move that line. If they need the social security number, move it over to, say, the left-hand side and down into the body of the material where people are more apt to being holding onto it and it would be a lot less easy for a thief to grab that number. [LB831]

SENATOR PAHLS: Is this...you're talking about dealing with the DMV? [LB831]

PATRICK J. HENRY: It's the DMV, but I wouldn't be surprised that it's throughout the state where people have to ask for it. You know, that's beyond this committee right now, but I just thought I'd throw it out. I don't know who to talk to about it. But if there's any other questions about this...about my testimony... [LB831]

SENATOR PAHLS: I see none. Thank you, Pat. [LB831]

PATRICK J. HENRY: Okay. [LB831]

SENATOR PAHLS: Thank you for your... [LB831]

PATRICK J. HENRY: Thank you for your time. [LB831]

SENATOR PAHLS: (Exhibit 4) Anymore proponents? Any opponents? I see one. Do we have anymore opponents? Okay. You may...the floor is yours. [LB831]

MURRAY JOHNSTON: Thank you, Senator Pahls, members of the Banking, Commerce and Insurance Committee. My name is Murray Johnston, M-u-r-r-a-y J-o-h-n-s-t-o-n, and I'm director of state government affairs with Experian, and I thank you for giving me the opportunity to testify on this bill. I was here last year when this bill was being considered and I appreciate the consideration that was given to making sure that we had a law that was workable for Experian. Let me just go a couple things. In terms of security freezing...as Ms. Napp has done remarkable work here with the Identify Theft Action Council of Nebraska. As a former victim, she is, you know, been one of the leaders in trying to help people who have been the victim of this awful crime. We deal with those people as well. At Experian we have spent a lot of time and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

resources. We have been on the front line of this battle and so we respect her work. On the freeze beginning with last year, we made the freeze available to consumers across the country, regardless of whether or not they were victims. And as we continue moving forward, we have...but it is one of many options that are available to victims of identify fraud. There are fraud alerts. There's a variety of fraud alerts. There is free access to a report. There is the ability to block fraudulent trade lines. There is a list of options that are available to consumers. A freeze is one that we have made available to those consumers who looked at it and chosen it. We are working at Experian to make it easy to use. This is something we have done. Currently today, any consumer with a frozen file can lift in real time if they make a phone call to lift it or if they go on-line to lift it. I hope I'm not speaking out of turn, but we are preparing to allow for on-line placements sooner rather than later. I don't want to give a time. I can't give a time, unfortunately, until we actually provide it. But we have also...so the freeze is something we have been spending a lot of time on. We've been investing a lot of money to make it work well for consumers. And one thing that maybe misunderstood about a frozen file is a frozen file continues to incur costs. In fact, it incurs more costs than other files. There are additional notices that are required for it, additional rights for the consumers, and yet consumers still have all of their rights under the Fair Credit Reporting Act. A freeze does not diminish any of those rights under the law. As for specifically on LB831, we are neutral on the change and definition of minor. It may have actually been Experian that was the source of whether or not it's 14 or 19. There's a federal law called the Children's Online Privacy Protection Act that if anyone has information on a minor 13 or younger that they have to have the parents consent, and so that is one requirement we're under. But we also are now aware that the Nebraska law is...and then in terms of the operation of a freeze, we've always operated under 18 because a minor cannot legally contract. In terms of a credit report, we've used under 18 because minors cannot legally contract. However, for Nebraska law, it is under 19 years of age and we are making that change to make sure that all persons under 18 in Nebraska may place a freeze at no charge. The seven-year expiration, again, Experian is neutral on that provision. It can be in, it can be out. We just need it to be consistent. Some states have provided for it, other states have not. It's not an issue for my company in whether it's deleted or not. The one is the reducing the fee. We do want to preserve the right to the ability to charge consumers a fee. And while the last version of the bill I saw before it was passed was \$5 to place, \$5 to temporarily lift, and \$5 to permanently remove. You know, the final version had \$15 to place, but then from there on the consumer would incur no additional charges, and actually a couple of other states have gone that way. That's the approach that Delaware took and that's a similar approach that the District of Columbia took. So I guess our policy nationwide on fees is that we charge \$10 to place...where permitted we charge \$10 to place, \$10 to temporarily lift, and \$10 to permanently remove. And obviously we would like to have that consistently across the country, but you know, states have enacted different requirements. I guess one other thing I would like to say on fees of the freeze law is that these fees are not a profit center for Experian. We don't reasonably expect to ever recover the present value of the investments we would sink

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

into building the freeze system in that we continue sink into improving and making it better. But the costs due defray it, and as we make decision on whether or not to build innovations to the system. If we can't recover some of those costs, then that effects that decision as well. So I'd be glad to answer any questions for the committee. [LB831]

SENATOR PAHLS: Senator Pankonin. [LB831]

SENATOR PANKONIN: Chairman Pahls. Thanks for coming. I remember your testimony last year and I think that's the most positive opponent testimony I've ever seen. You're neutral on everything and the fees, I don't know. You have a good argument where so many states have already changed. And I realize the point you brought up about the way the \$15 up front and then we don't have the changes down below. So to a certain extent, its somewhat similar. But I think to be consistent with other states, it would be smart for Nebraska...there would be \$5, \$5, and \$5 and it doesn't sound to me like you have any huge problem. I mean, obviously you'd rather have larger than smaller. I understand that, but I think the line up of the other states... [LB831]

MURRAY JOHNSTON: Well, a reasonable fee, right. [LB831]

SENATOR PANKONIN: And it's probably reasonable that other states have been set up that way, so I think being consistent, wouldn't that be a better situation for your company as well to be consistent with other states? [LB831]

MURRAY JOHNSTON: That's what we aim for, yes. Yes, Senator. [LB831]

SENATOR PANKONIN: Okay. Thank you. Thanks for coming. [LB831]

SENATOR PAHLS: Senator Christensen. [LB831]

SENATOR CHRISTENSEN: Yeah, thank you for coming. If a guy had a freeze on and he wanted to lift it to get, say, a house loan done and put it back on. So that would cost him \$5 and \$5, \$10, \$5 to lift and \$5 to put it back or... [LB831]

MURRAY JOHNSTON: Oh, good question. No. A temporary lift is lift and then it would placed again, but that's a one... [LB831]

SENATOR CHRISTENSEN: One-time fee. [LB831]

MURRAY JOHNSTON: ...it's a fee for that whole transaction. [LB831]

SENATOR CHRISTENSEN: Okay. And then is this something...because I think the Internet access you mentioned is very needed. I'd love to see an amendment that way,

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

but you're saying you'll probably have that within a year anyway? [LB831]

MURRAY JOHNSTON: Oh, definitely within a year and, I mean, it could be within weeks or months. [LB831]

SENATOR CHRISTENSEN: Will that be all companies or just yourself? [LB831]

MURRAY JOHNSTON: I can only speak for Experian. But as Ms. Napp stated, there are laws requiring on-line placement by next year. So I presume the other companies are working on that, but I can't speak for them. [LB831]

SENATOR CHRISTENSEN: There's a national law to make it within a year? [LB831]

MURRAY JOHNSTON: No. Some of the states have that requirement, and they have to come up with a compliance plan for those states. I don't know if they'll make it available nationally. We are. That's our policy. [LB831]

SENATOR CHRISTENSEN: So nobody has it right now? [LB831]

MURRAY JOHNSTON: For the placement of a freeze, not today. No, Senator. [LB831]

SENATOR CHRISTENSEN: Okay. Thank you. [LB831]

SENATOR PAHLS: Seeing no questions, thank you. [LB831]

MURRAY JOHNSTON: Thank you. [LB831]

SENATOR PAHLS: Opponents? Neutral? [LB831]

JUSTIN BRADY: Chairman Pahls, and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for Nebraska Financial Services Coalition. And just to go on record to keep this committee and everybody notified that we've been working with Senator Lathrop's office really on the temporary lift of freezes to be able to come up with procedures for these services to do, whether that's by telephone, by Internet, by fax. But something when you're standing there getting ready to do a transaction to be able to call, e-mail, do whatever to lift, do that temporary lift to allow that. And we've been working with Senator Lathrop and with that, I'd attempt to answer any questions. [LB831]

SENATOR PAHLS: Any questions for Justin? Seeing none, we thank you. [LB831]

JUSTIN BRADY: Thank you. [LB831]

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PAHLS: Seeing any other neutral? If not, Senator Lathrop. Senator Lathrop waives. That closes this hearing. Thank you. That closes the hearing on (LB)831. Now we will be getting ready for LB785. Senator Howard, the chair is yours. [LB831 LB785]

SENATOR HOWARD: Thank you, Chairman Pahls and members of the banking committee. For the record, I am Senator Gwen Howard and I represent District 9. I'm bringing to you today LB785 for your consideration. LB785 would require that residential property sellers inform home buyers about where to obtain information regarding the state sex offender registry to better protect children. This requirement does not create legal liability on the part of the seller to actually determine the presence of sex offenders. It would simply require the following statement as a part of the disclosures residential property sellers are already required to provide. Information regarding registered sex offenders may be obtained from local law enforcement agencies or the Nebraska State Patrol. This notice is intended only to inform you of where to obtain this information and is not an indication of the presence of a registered sex offender. Nebraska state law statute 76-2,120 requires the disclosure of many items to protect people who are buying homes. We want potential homeowners to know about the condition of the roof and the water heater and whether the washer and dryer are included in the purchase. We ask other questions such as whether there is asbestos insulation, and this is done to protect the health and the well-being of people who will live in the house. LB785 simply adds to that protection. I know there are people who would argue that such disclosure does not belong with the other information we require to be disclosed to buyers, but it seems to me that if it's important for a home buyer to know whether a neighborhood school has a good record of performance, then it's important for a family to know if a sex offender lives on the block. And I'll give you just some brief background on the registry. The general provisions are that the Nebraska Sex Offender Registry (Registration) Act requires those persons convicted of kidnapping a minor, false imprisonment of a minor, sexual assault of an adult or a minor, incest, pandering, or possession of child pornography to register their address with the sheriff in the county where the offender resides. The offender must keep that registration current for at least 10 years after released from prison, parole, or other form of state supervision. There are approximately 1800 offenders that are on the state registry. The state patrol is required to release information regarding the offender based on the threat of recidivism posed by the offender. The patrol determines this by dividing the offenders into a low, a medium, and a high risk category based on the risk assessment developed by the University of Nebraska/Law Psychology Department. Most individuals would not consider checking the registry prior to purchasing a home. Individuals who learn after the purchase that there is a registered sex offender living in the vicinity of their home, feel betrayed by their seller. We need more people to become aware. We need more people to take the steps necessary to prevent harm to a vulnerable child. Knowledge is power and LB785 increases our power to protect our families by simply giving people information about the registry. I would also like to point out that LB785 also provides liability protection for the sellers of residential homes. It

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

clearly states that the seller is not responsible for the registry's content or for investigating whether sex offenders live near the property. This is not a bill that is intended in any way to make the task of selling homes more difficult for realtors. Quite the opposite. This is a bill that encourages and strengthens the partnership between the professional who is knowledgeable about the needs of the family and the purchase of a home, and the purchaser of a home who trusts the seller to provide information. We all have a responsibility to provide the highest degree of credibility and this bill certainly provides that opportunity. Thank you. [LB785]

SENATOR PAHLS: Any questions for Senator Howard? Senator Pankonin. [LB785]

SENATOR PANKONIN: Thank you, Chairman Pahls. Senator Howard, we serve together on Health and Human Services, I know your sincere interest in children and families. [LB785]

SENATOR HOWARD: Thank you. [LB785]

SENATOR PANKONIN: But on the other hand, I think this potential law could have many unintended consequences of entire neighborhoods having a decrease in value. And if you're a homeowner, as I think you are, and had nothing to do with your circumstances. Your water heater and your roof you may be able to fix, or take care of, but if two houses down there's a registered sex offender and your property plummets to 50 percent of value, and obviously you've got the situation where lenders are then under water as well, I think this could be very, very concerning to me because, you know, it's not your fault if someone moved in. You can't control that, but now your property and really could be a lot of properties, would be decreased in value. How do you answer that? [LB785]

SENATOR HOWARD: Well, I certainly appreciate your concern and I did bring this bill in the first year I was down here because as you pointed out, my genuine concern for children and safety, and to prevent tragic things from happening to children. I don't see this as a negative connotation regarding the purchase of property. I see it more as a sharing of information and assisting with how to access information regarding child protection, child safety, and the site where this information is. I don't see it as a mass decrease in property values, that would be unrealistic. Hopefully we don't have a proliferation of individuals that are at risk in every location. But I do see it as a way to increase the trust factor between the seller of the home and the purchaser. [LB785]

SENATOR PAHLS: Senator Carlson. [LB785]

SENATOR CARLSON: Senator Pahls. Senator Howard, there's nothing in the bill that addresses a penalty for failure to comply. [LB785]

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Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR HOWARD: No, you're absolutely right about that. There is not a penalty of failure to comply. [LB785]

SENATOR CARLSON: I do have a concern, too, along with Senator Pankonin. If this house was up for sale, and I went through it and looked at it, and then he told me two houses down...I'm afraid I'm out of there. [LB785]

SENATOR HOWARD: I appreciate that. [LB785]

SENATOR PAHLS: Any other questions for the Senator? Thank you. [LB785]

SENATOR HOWARD: Okay, thank you. [LB785]

SENATOR PAHLS: Proponents? Opponents? [LB785]

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'm appearing today as a registered lobbyist on behalf of the Nebraska Realtor's Association in opposition to LB785. While we understand Senator Howard's attempt to protect children and to provide information, we don't feel that this legislation is the best way to do it. During discussions with the realtors, there are a number of realtors that actually provide this type of information to prospective clients. However, during the transfer of property, the idea's always been that information that is disclosed during that transfer is information regarding property itself. And while there could probably be a number of social issues that could be easily done or notice provided during this process, we don't feel that this is a necessary or a good idea to add this particular notice there, especially in light of the fact that it's readily available in the newspaper, on-line ways in the community to find it, open the phone book you can see where you can get that information. And adding yet another piece of paper to a real estate transaction does not seem to be the best way to go about it. And with that, I'd be happy to try and answer any questions. [LB785]

SENATOR PAHLS: See no questions, thank you. [LB785]

KORBY GILBERTSON: Thank you. [LB785]

SENATOR PAHLS: Any more opponents? Anybody in the neutral? [LB785]

LES TYRRELL: Senator Pahls, members of the committee, my name is Les Tyrrell, L-e-s T-y-r-r-e-l-l, and I'm director of the Nebraska Real Estate Commission appearing here today on behalf of members of the commission. We are not here today with regard to the issue of whether or not this notification should be made, although the commission is understanding of the fact that people would be wanting to have this type of

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

information. We are here more, I guess, in a preemptive mode. This legislation as written indicates that sellers of residential real property who have to give a seller property condition disclosure statement under (section) 76-2,120 would have to give this notification also. The commission promulgates a seller property condition disclosure statement. This bill does not currently as it's written place this notification under (section) 76-2,120. It only says that those individuals who have to give the seller property condition disclosure statement under that have to give this notification. We would urge you not, if this bill should go forward, to not place this notification requirement in the seller property condition disclosure statute or as a part of the seller property condition disclosure statement. That statement currently only deals with the condition of property and not any other matters, it's just a seller property condition disclosure statement. We as a commission promulgate the disclosure statement, and we would urge you not to go forward with that because of the fact that it does not, that we do not consider this a property condition disclosure. This notification along with any other notifications that could come in the future would open up the seller property condition disclosure act to numerous types of notifications. We do not feel that this particular disclosure statement should become some type of a Christmas tree for various types of notifications that are not property condition issues. Secondly, you need to look at the number of exemptions that are in (section) 76-2,120. There are 12 exemptions in this act, including new construction, foreclosures, and properties in a decedent's estate. Those are exempt from this, and I think would be three of the exemptions that are in this act for the seller property condition disclosure statement, and we would think based on that that there would be many types of properties that would need to have this type of notification that would not be covered by the seller property disclosure act. So therefore, if you do go forward with this, we would urge you not to make this requirement part of (section) 76-2,120. And I'd be happy to answer any questions that you might have. [LB785]

SENATOR PAHLS: Do I see any questions? I do not. Thank you for your testimony. Any more in the neutral? Senator. [LB785]

SENATOR HOWARD: Thank you, Senator Pahls. Although I come in with many good ideas regarding children's issues, there are other states that have addressed this or have similar legislation. And I'm aware of six just in my initial research that we've done, two of those states are Louisiana and Wisconsin. This is just for your general information. There's no fiscal impact with this proposal. LB785, as I state previously, provides an opportunity for people to use the valuable resource through the State Patrol Sex Offender Registry to protect their families. I appreciate your attention and I thank you for giving me your time. [LB785]

SENATOR PAHLS: Any questions? Thank you, Senator. [LB785]

SENATOR HOWARD: Thank you. [LB785]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PAHLS: That concludes or closes the hearing on LB785. We are now ready to proceed with LB1045. Senator Pankonin. [LB785 LB1045]

SENATOR PANKONIN: Go ahead? [LB1045]

SENATOR PAHLS: The floor is yours. [LB1045]

SENATOR PANKONIN: (Exhibits 1 and 2) Good afternoon, Chairman Pahls and members of the committee. I am Dave Pankonin and I represent the 2nd Legislative District. I am here to introduce LB1045. The bill would require that an insurer who reduces, eliminates, or introduces a more restrictive condition in an existing policy, other than at the request of the insured, must notify the policyholder by e-mail or first-class mail of the change prior to renewal of the policy. LB1045 would also require the insurer to notify each agency about the reduction, elimination of coverage, or restrictive condition. The issue that resulted in the introduction of LB1045 was brought to my attention by Tom Farrell, who is a constituent and long time insurance agent in Nebraska City. When Mr. Farrell learned that one of his clients had had a claim denied and discovered the reason for the denial, he contacted the Nebraska Department of Insurance. I have provided a copy of Mr. Farrell's initial letter for your review. The department suggested that Mr. Farrell's client might want to file a complaint about the matter and sent Mr. Farrell a complaint form for his client's use. Mr. Farrell then contacted my office to discuss the possibility of introducing legislation to require a change notification. I agreed that the problem was important enough to pursue. My staff and I discussed our concerns with committee counsel, Bill Marienau, and organized a meeting with Mr. Farrell and representatives from insurance companies and the Department of Insurance. There has been great cooperation and collaboration among the interested parties. The Department of Insurance gathered examples of similar legislation from other states. Language provided by the state of New Hampshire served as the initial framework for the changes proposed in LB1045. In an effort to further improve and clarify the changes proposed in LB1045, I am offering AM1819. The amendment strikes section 1 and inserts a new section. The changes to note are the substitution of the words "named insured" for the original term "policyholder" and the stated ability of the insurer to provide notification to the named insured via first-class mail or e-mail. LB1045 and AM1819 reflects the efforts of several individuals and will hopefully prevent other Nebraskans from discovering unexpected changes in their insurance policies. I would be happy to answer questions, and Mr. Farrell will follow me to provide more details about his client's experience and the need for the changes proposed by LB1045. Thank you. [LB1045]

SENATOR PAHLS: Any questions for Senator Pankonin? Senator Gay. [LB1045]

SENATOR GAY: Thank you, Senator Pahls. Senator Pankonin, when they notified the

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

insured that the coverage was changed, he said mail or e-mail, are they then done? Do you have like an e-mail? I'm just wondering. A lot of times you delete these e-mails. How do you...an acceptance... [LB1045]

SENATOR PANKONIN: There may be people behind me, Senator Gay, that will better be able to answer that question. When I talked to the lobbyist for the insurance companies, they said even though this might be part of the application, it's either implied or actually folks have their option of whether they want e-mail notification. So there are some people that want e-mail notification, but I think that that's kind of the default that it will be by first-class mail. But there may be people from the industry that better, and I had the same question. [LB1045]

SENATOR GAY: Okay. Thank you. [LB1045]

SENATOR PAHLS: Seeing none, thank you. Next proponent. [LB1045]

TOM FARRELL: (Exhibit 3) I have some handouts. Good afternoon, Senator Pahls, committee members. My name is Tom Farrell, F-a-r-r-e-l-l, and I'm here to testify in favor of LB1045. And I think probably the best way to testify would simply to be to tell the story about what occurred with one of my clients. On or about 1999, I sold a policy to an insured who has a pharmacy and in that insurance coverage in 1999, there was coverage provided for professional services in the pursuit or in retail pharmacy. And I would direct your attention to Exhibit A which you have in your hands. It's often said that the guts of a insurance policy or the exclusion, what's not included. And so I will direct you to Exhibit A, the first page I just highlighted professional services, letter J, and then there's a number of things under professional services that are excluded. And if you would go back to the second page that I provided you, number 9, it says services in the practice of pharmacy. But this exclusion does not apply to an insured whose operations include those of a retail druggist or drug store. So only as an insurance industry can do, we give you something back in an exclusion. And so simple terms, they had coverage for professional liability in retail druggist or drug store. Okay? So that happened in 1999. In 2004, this particular insurance carrier chose to go to a different newer form that ISO, Insurance to Service Offices provided for them to use. And so they sent out the renewal policy to the insured. And if you would notice Exhibit C, I'll note that first for you, the company was kind enough to include an endorsement that said this endorsement changes the policy, please read it carefully, and it says business owners policy changes. And not to bore you with every line, but no where in this notice or endorsement does it say, hey by the way, if you're running a pharmacy, you no longer have professional liability coverage. Okay? It told them other things, but it didn't tell them that we removed that. And so after this policy renewed in 2004, as would be the case, there was a claim that occurred a few months later. And that claimant involved both the pharmacist, the person who was hired by this pharmacy, and the pharmacy itself were both named in the suit. The company determined that there was no

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

coverage, and this went on for a period of time. And I said, well, no, wait a minute, there has to be coverage. I sold the policy in 1999 said there was coverage. There's been no change. We didn't request coverage to be deleted. The insured didn't request it. Therefore, there has to be coverage. Well, come to find out that when they changed the forms, the new form that was introduced that they adopted in 2004 removed coverage for pharmacies. And I would have you look at Exhibit B, and the same or similar exclusion J, professional services, and if you'd go down to number nine highlighted you'll note that the services in the practice of pharmacy are now completely excluded. There was no buyback or give-back of coverage for retail pharmacies. So in fact, that coverage was taken away from the insured without notification. They had no idea that that coverage was gone and quite frankly as a professional insurance agent, I had no idea at the time that that coverage had been removed. And I thought that cannot be right. We're not protecting the consumer. There's no way that that ought to happen. And so I became very concerned about this, wrote some letters and finally in the end, the company thankfully has agreed in this particular instance that they were going to cover the claim because they said we did a bad job and we should have provided better notification. And so they are going to cover that particular claim because of the background work. But I thought in the future we need to do a better job of protecting consumers in the state of Nebraska. And I would just note for the senators that on the bottom of this Exhibit B, you'll note this is page 33 of 46. And so what we're expecting if we don't have this law passed is that every time an insured gets a policy...of course we tell them please, read your policy, but we're going to ask them to read 46 pages of policy every time and compare it with the other policy that they had before and detect the needle in the haystack. And I really think there's a better way, and I think the insurance industry agrees that there would be a better way and that would be a form of notification to the insured prior to or at renewal that says, hey we changed this, we reduced this coverage. And that's what we're about with this law today. And that's the end of my testimony. Take any questions that you may have. [LB1045]

SENATOR PAHLS: Senator Carlson. [LB1045]

SENATOR CARLSON: Senator Pahls. Tom, appreciate your testimony and I'm guessing that your reputation made some difference with the company to try to convince them to eventually pay the claim. How did, to begin with, the premiums for this company compare with other companies? [LB1045]

TOM FARRELL: Well, they were very competitive and one of the reasons that they were competitive is because that the professional liability for the pharmacy was included as part of the business owner's coverage. And so it was a very competitive premium. [LB1045]

SENATOR CARLSON: And I'm not trying to paint you into a corner. [LB1045]

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Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

TOM FARRELL: Yeah. Sure. [LB1045]

SENATOR CARLSON: But do you shop by premium? [LB1045]

TOM FARRELL: No. We shop by service, coverage, and premium, and we provide...I'm an independent insurance agent, Senator, so we provide multiple quotes to our insured and we go over, here's price, here's coverage, here's service. What's best going to be the combination that's going to please the consumer and it's up to them to choose that coverage. We recommend, of course. [LB1045]

SENATOR CARLSON: Would you call this a reputable company? [LB1045]

TOM FARRELL: Absolutely. Yup. Absolutely I would. They were at the time either A or A-minus rated. Carry...we still have them in our agency, you know...respect the carrier. I think it's just a bad thing that happened and I think they would agree, and we just want to kind of plug that hole. [LB1045]

SENATOR CARLSON: Okay. Thank you. [LB1045]

TOM FARRELL: Yeah. Sure. [LB1045]

SENATOR PAHLS: I see no more questions, thank you for your testimony. [LB1045]

TOM FARRELL: Sure. Thank you. [LB1045]

SENATOR PAHLS: Next proponent. [LB1045]

ANDY BASSETT: Senator Pahls, members of the committee, good afternoon. Thank you, Senator Pankonin, for doing this for us. I am Andy Bassett, B-a-s-s-e-t-t, with Ellerbrock-Norris Insurance out of Omaha. I am here representing the Independent Insurance Agents of Nebraska, our state association, 800-plus agents in the state. We are obviously as I say are a proponent of (LB)1045. As Mr. Farrell stated, he's speaking on a more specific case. I'll just speak in general terms and very briefly as to why our position is as a proponent. We understand without a doubt that it is our responsibility to provide a policy to our clients, our insureds, that lays out the coverage as stated to them when we issue a policy to them. We also understand that it is a responsibility of the insured as we put in every policy and anything we send from our agency that is their responsibility as well to read their policy. We simply feel that when you're making changes at renewal of a policy, especially to the detriment of the insured or taking away coverage, that by putting a separate piece of paper in there simply stating what coverage has been taken away or reduced, it makes it very much easier for the...again, the insured is responsible to read their policies to understand that that's there. They can obviously...as he stated in a 46-page policy or more, 1 line is going to be hard for them,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

and it's hard for our agencies and our offices to pick up on all of those. We do have obviously hundreds or thousands of policies a year that we are renewing and issuing. And we do, as professional agents, obviously go through them individually. But again, there are going to be occasions where something like this does get overlooked. That's just human nature and we feel that if there is a separate notice in there, it's going to be much easier for us to do our job, which is protecting our consumers with the appropriate policy. And again, providing them with what they are under the impression they're purchasing, and then like is said before, giving them a simpler ability or a simpler way to understand and read their policies. Really I think that is it. That just to let you know that the Independent Insurance Agents of Nebraska is a proponent of the bill and I'll leave it to any questions if there are any. [LB1045]

SENATOR PAHLS: Senator Gay. [LB1045]

SENATOR GAY: Thank you for your testimony. Just looking at this amendment, I know we're just looking at it for the first time too, is this...is says the name insured. [LB1045]

ANDY BASSETT: Um-hum. [LB1045]

SENATOR GAY: So the person buying insurance... [LB1045]

ANDY BASSETT: That's the policyholder. [LB1045]

SENATOR GAY: But shouldn't the agent get it? A policyholder is just...it's junk mail maybe. Shouldn't the insurer...if you have an policy, shouldn't you be on there, too? [LB1045]

ANDY BASSETT: The insurer would be the insurance company. We're the agency that provides...as Tom said earlier, we're independent agents, so we represent insurance companies to the client and represent our client to the insurance company. [LB1045]

SENATOR GAY: So you would get the notice. [LB1045]

ANDY BASSETT: We would get as well as the insured... [LB1045]

SENATOR GAY: Okay and that's in here? [LB1045]

ANDY BASSETT: Exactly, yes. [LB1045]

SENATOR GAY: Okay. [LB1045]

ANDY BASSETT: If I'm correct, it's the... [LB1045]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR GAY: It just says other than the request of the name insured. [LB1045]

ANDY BASSETT: Yeah. I think it's under number two. It says, of this section shall be sent to each agency that holds an agency contract with the insurer prior to the introduction. So that would be where it comes to us as well as the insured. [LB1045]

SENATOR GAY: Thank you. Sounds good. [LB1045]

SENATOR PAHLS: Senator Carlson. [LB1045]

SENATOR CARLSON: Senator Pahls. Andy, does this kind of thing happen very often in your experience? [LB1045]

ANDY BASSETT: Changes to policies are, yes, very common. Do you mean changes or do you mean situations where it's missed? [LB1045]

SENATOR CARLSON: Well, changes that would effect coverage and taking away an item without proper notification. [LB1045]

ANDY BASSETT: Yeah. Well, they're pretty regular. Again, proper notification being to this point, they're just change in policy wording and sometimes without something that's requiring, they send us...you know, at renewal they give us a separate layout of every change. As he stated, as Tom stated, there are certain things that they do sometimes put in front of you on a separate sheet, but not always. And so in a case like that, you know...and oftentimes unfortunately, changes to policies are often reductions in coverage. And most of the time there is a way to get that back, whether it's by paying more premium or whatever it is or for us to have to go out and find another insurance provider that will offer that coverage. And that's what we have to do as professional agents. Again, it just...I think it simplifies for our office staff to be able to pick up on those differences so we can, if needed, go out and provide a better policy to the client. Does that answer... [LB1045]

SENATOR CARLSON: Well, it helps and I've not dealt in property and casualty over the years. But I can think of a good friend that owns an insurance agency...I call him friend, he is, but the advertisements are constantly about low premium. And generally there's a reason why there's a lower premium. [LB1045]

ANDY BASSETT: Well, and I'll speak I guess at least on behalf of how myself and our agency does business and for that matter, most of the independent insurance agents that are members of our association. As he mentioned earlier, premiums are very...I mean, it's definitely a part of what we're selling to policyholders. But it certainly is not by any stretch the most important thing. I mean, people are buying policies to get protection. And most people, most educated consumers are willing to spend the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

premium to know that the coverage is there because really if you're paying a premium that's less than maybe you can get elsewhere, but you're not getting coverage what are you buying? Paper, I guess, you know, because when you need it, it's not there. And so no, we don't...unfortunately yes, a lot of advertising does base advertising around premium. But that's not what we're in business to do is sell you the cheapest policy. [LB1045]

SENATOR CARLSON: Okay. Thanks. [LB1045]

SENATOR PAHLS: Senator Pirsch. [LB1045]

SENATOR PIRSCH: And I'm sorry, but you know as far as the industry, whether it's a common practice...the language--and I'm looking at the bill on page 2--with respect to the notice...essentially mailing requirement says first of all on line 9, if the policyholder does not receive the notice, then the reduction or elimination of the coverage or restrictive condition shall not become part of the policy. And then in lines 11 through 13 creates a presumption that if it was sent via first-class mail, it's presumed that the policyholder did receive that rebuttable, I guess presumably. Is that utilized in the industry, this type of presumption? [LB1045]

ANDY BASSETT: Well, I mean, I suppose it is in some sense, but we...and in most agencies I would like to think we try to make a practice or we do make it a practice where we annually at renewal meet personally with our insureds. And if we're getting, as we spoke about earlier, if we're getting copies of these and it's assumed or presumed that the insured also got a copy, when we sit down, hopefully it's our job to go over that change with them face-to-face. And therefore, they're reading their copy, as well as we're going over what we have received. So is that somewhat of what you're looking for? [LB1045]

SENATOR PIRSCH: Yeah. It says the words it shall be conclusively presumed, conclusively presumed that a policyholder receive the notice. So does that mean that it's above rebuttal if it's... [LB1045]

ANDY BASSETT: I probably can't...I don't know that I can answer that question for you with confidence because I can just tell you how we...I mean, like I mentioned earlier, I can speak on the fact that we'll sit down face-to-face at renewal and go over that. [LB1045]

SENATOR PIRSCH: Yeah. I'm just wondering if the words conclusively and presumed were used in any... [LB1045]

ANDY BASSETT: Yeah. It's probably better to...I may not be the correct person to answer that question for you. [LB1045]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PIRSCH: Sure. And I do appreciate...and is this in place in other jurisdictions? You know, I think that I get behind it is to make sure no one is caught unawares of policy to keep things on the up-and-up and transparent. Was this law patterned off of language from other states? [LB1045]

ANDY BASSETT: I can't personally speak on that because I don't know the answer. Although as was noted in the Senator's opening remarks, there are other states obviously that...speaking of New Hampshire as noted in his opening remarks as...and there's several other states, some surrounding states that have taken some form of...have some form of this law already in effect. [LB1045]

SENATOR PIRSCH: Okay. Thanks a lot. I appreciate it. [LB1045]

SENATOR PAHLS: Thank you, Andy. Next proponent. [LB1045]

COLEEN NIELSEN: Good afternoon. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Insurance Information Service, testifying as a proponent for LB1045. I want to thank Senator Pankonin for bringing this bill and including us in the process. We worked hard on this bill and we did start out with some proposed legislation that reflected the New Hampshire law. And Senator Pankonin was very patient with us as we sent out that language to our members. We've tweaked this bill quite a bit. And so we understand what Senator Pankonin wanted to do. This sort of notice is not currently in the law and we felt important, after hearing the situation with his constituent, that we work with him and move this bill forward. I will tell you that the section 1 deals with the notice that's actually given to an insured in the event that insurer reduces or eliminates coverage. And you talked about e-mail, and the intent is not to just send an e-mail out to the insured and that's notice, but rather most likely insurance companies will still utilize first-class mail. But I am guessing...and my understanding from the comments from some of the insurance companies is that many of the them are moving toward e-mail at the request of their insureds. So they're giving them the option of receiving notices by e-mail. The second paragraph deals with the notice to the agent. And one of the things that we try to do and one of the things we try to tweak in this bill was to make sure that whenever changes were made to a particular policy, that the agent wouldn't necessarily receive a notice for each policyholder that he had in his book of business. And so that's why we have the notice sent to the particular agencies so that they're aware of the changes. And the third paragraph deals with the right of the insured to approach the insurance company for an endorsement that's separate and outside of the renewal policy so that they can make a change. And in those instances, because most likely it's brought through their agent or by the insured directly, notice isn't required. I'd be happy to answer any questions. [LB1045]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

SENATOR PAHLS: Apparently you did a good job. None to ask. Thank you, Coleen. [LB1045]

COLEEN NIELSEN: Okay. Thank you. [LB1045]

SENATOR PAHLS: Anymore proponents? Opponents? Neutral? [LB1045]

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'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America in a neutral capacity on LB1045. I think one thing during the discussions I've seen thus far...everyone seems to be referring to the green copy. The green copy...this is kind of version 847, I think, of this bill it seems, and I also need to thank Senator Pankonin for his patience. And now he understands what we deal with on a daily basis when you send something out and have 50 different people look at it. There's a lot of different comments that get brought on. One of the main comments and the reason why PCI has remained neutral on this legislation is that notice is not something that is new. It's already required in Nebraska under case law. And one of the comments that was made right out the box after this proposed legislation was distributed was well, we're already doing this. And so now is this going to create something that has new rules that are going to get us in trouble with how we're doing our notices and things like that. And I think that's why we've gone through so many different versions of the legislation. So while notice is already going out, the instance that Senator Pankonin brought forth as the reason for this legislation was the mistake made by a company, and they luckily stepped up to the plate and covered the claim. Unfortunately that same kind of mistake could still happen under this legislation. We would hope it wouldn't, but that's the kind of fact of the matter. And for that reason, PCI stayed neutral on the legislation. However, we did have input and are comfortable with the bill as it stands. With that, I'd be happy to try to answer any questions. [LB1045]

SENATOR PAHLS: Senator Hansen. [LB1045]

SENATOR HANSEN: Thanks, Senator Pahls. Korby, you said the company made a mistake. They didn't make a mistake, didn't they change the policy? [LB1045]

KORBY GILBERTSON: They made a change in the policy provision, they did not provide notice, which under case law in Nebraska right now is already required. The company obviously did not provide notice of that, of the ISO. [LB1045]

SENATOR HANSEN: I thought they sent out a 46-page policy and they had that member... [LB1045]

KORBY GILBERTSON: I think that that was just given. My recollection or at least what

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Banking, Commerce and Insurance Committee
February 12, 2008

we were told, I think, is that was just given to them at the time of the actual renewal, so not prior to the renewal that that notice was not given of that change in the ISO form. And I think they just missed that the form had changed one sentence. [LB1045]

SENATOR HANSEN: If this is sent out as a 46-page e-mail and you have to compare this to the existing policy. I can't imagine very many people comparing one page to another. [LB1045]

KORBY GILBERTSON: It's my understanding that that's not the way the notices are done. The notices would be here's what has changed, not here's a 46-page document, figure out what's changed on your own. It would be what reduction, or change, or elimination in coverage has occurred. [LB1045]

SENATOR HANSEN: Thank you. [LB1045]

SENATOR PAHLS: Senator Carlson. [LB1045]

SENATOR CARLSON: Senator Pahls. Korby, I don't know this and I don't necessarily expect you to, but the company made a mistake. Yes, they made a mistake. Do we have any penalty for those mistakes? [LB1045]

KORBY GILBERTSON: I suppose if you could establish that there was a pattern in that type of behavior, you could say it was an unfair trade practice that they were, you know, systematically doing something like that. But I would leave it someone much more learned in that than I. [LB1045]

SENATOR CARLSON: Well, yeah, and that maybe isn't your area. But to have a law on the books and that could have been a real serious thing for Tom, except that he convinced the company to go along with it. If the company had wanted to be ornery about it, he's have been in a bad spot, and maybe they should have been docked a few thousand dollars right off the bat to get their attention. That's a statement. I'm not asking you a question. [LB1045]

KORBY GILBERTSON: I think the flip side of that though is that every separate insurance policy is a separate contract, and you kind of run the risk on either way. Any time you sign a contract, you're saying that you've read it and you understand it. I realize a 46-page contract, there aren't many lawyers, me included, who would say I fully understand any of my insurance policies. But you know, that's the flip side argument. So how much of it is...where does...you know, you can't lay the blame I think all on one specific party. [LB1045]

SENATOR PAHLS: Thank you. [LB1045]

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Banking, Commerce and Insurance Committee
February 12, 2008

KORBY GILBERTSON: Thank you. [LB1045]

TED FRAIZER: I'm Ted Fraizer, an attorney in Lincoln representing the American Insurance Association. We're taking a neutral position on this bill, not because we haven't reviewed the amendment. The gist and the general principles of what the legislation is attempting to do, the insurance industry and through the National Association of Insurance Commissioners is attempting and seeking, and with a good deal of success to simplify the procedures for policy approval. It used to be that every policy had to be submitted to the Department of Insurance. They had experts there who would go through the policy forms change by change, and put their stamp on it before a policy could be issued. Now, there's a more centralized procedure so that policies can be approved in general for a whole series of insurance departments. And it's not done on an individual insurance department basis, unless to speed up the process of policy rate approval and to remove a lot of objections to the policy approval procedure. Now, that does not necessarily pertain to this bill. But in general, that's the philosophy of policy form approval. Policy changes are still going to have to be reviewed by agents, by of course by the individuals, but I'm not sure that this bill has all the wishful objectives that are intended. We tend to want to...the senator's meetings last summer was very, very informative. Mr. Farrell was there and provided all the background information leading up to this bill introduction. We're not necessarily taking issue with the Nebraska Insurance Information Service or the independent agents on it, but I guess neutral is kind of a way to say we're not sure that everything is being accomplished that would be wished for. I don't really know how to contribute to the committee's consideration of the bill, but the American Insurance Association as an active and major player in the industry nationwide, does not quite feel like it's in position to support the bill as written and proposed supposedly with these amendments nor to oppose it. So we're taking a neutral position. Thank you. [LB1045]

SENATOR PAHLS: Okay. Okay. Any questions for Ted? Seeing none, thank you, Ted. Anymore neutrals? I think the floor is yours or the chair is yours, Senator. [LB1045]

SENATOR PANKONIN: Just want to make a brief closing. As always, I appreciate this committee's good questions and diligence. And I got to thinking here the ones that are here right now, many of us, except for Senator Pahls, are fairly new to the process as of last year. And this is one of these situations where a constituent came and had a legitimate concern and as I think Senator Carlson asked a couple of good questions about frequency and we really don't know if this is a one-time thing or just happens every once in a while. But many of us have a background of small communities and knowing that you have good agents that try to do a good job for their community and their customers, and in this particular case, we didn't talk about how large this claim was. It was large and, you know, an agent has got his reputation on the line and it could have been an altering situation for the business involved. And so I appreciate Mr. Farrell bringing it to our attention, and if this notice can prevent this sort of situation in the

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Banking, Commerce and Insurance Committee
February 12, 2008

future, I think it's a worthwhile thing to pursue. I just want to close by reading the last, or couple of sentences of the last paragraph of Mr. Farrell's letter that you have. I believe a simple insert to the renewal and the same notice to agents isn't too much to ask if a company is reducing coverage. I don't think the state of Nebraska is interested in having our citizens play a game of seek and find every time a policy contract is altered. I'll close with that. Thank you. [LB1045]

SENATOR PAHLS: No questions? Thank you, Senator. That closes the hearing on LB1045. Thank you. [LB1045]

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Banking, Commerce and Insurance Committee
February 12, 2008

Disposition of Bills:

LB785 - Held in committee.

LB831 - Held in committee.

LB900 - Held in committee.

LB1045 - Advanced to General File, as amended.

Chairperson

Committee Clerk