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Banking, Commerce and Insurance Committee
January 26, 2009

[LB75 LB80 LB87 LB192]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 26, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB75, LB80, LB87, and LB192. Senators present: Rich Pahls, Chairperson; Pete Pirsch, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Beau McCoy; Dave Pankonin; and Dennis Utter. Senators absent: None. []

SENATOR PAHLS: Good afternoon. I want to welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls. I'm from Omaha, and I represent District 31, sometimes referred to as Millard. I have the pleasure of serving you as the Chair of this committee. The committee will take up the bills in the order posted, (LB)192, (LB)75, (LB)80, (LB)87. As many of you know, this is your opportunity to express your position on the proposed legislation for us today, and to better facilitate our meeting, I'm going to have you take a look at the smaller chart over there. And if I can get you to follow those, our meeting will be more efficient, what I believe in. Of course, the typical one is to turn off your cell phone. We do have reserved chairs up here in front, and what that does is it gives us an idea of how many people are going to be speaking so it makes life easier for us and which, in the long run, will be better for you. The order of testimony is for the introducer, the proponents, opponents, neutral, and then we may or may not have a closing. We have the place for you to hand in your testifier sheets in this little box up here. We're asking you to spell your name, and the reason why, for those of you who are new to testifying, it makes it easier for those people who record everything we say, and I mean everything, because if we laugh, you'll see in parentheses, laugh. So I'm going to ask, and this is very important, that you spell your name. We want you to be concise. If somebody before you has testified, the less repetition we hear, the better off it is, to be honest, for all of us. We will need at least ten pieces of paper if you need to hand something out. If you do not have the number of items to hand out to us individually, please raise your hand, and one of our pages will run those off for you. To my immediate right is our committee counsel who many of you know, been here for quite awhile, Bill Marienau, and all the way over there--this year we moved Jan further over there because she was pestering me (laughter). No, no, no. Jan Foster who many of you know. She's been with us for a long time. I'm going to ask, starting with the senator all the way over here, to introduce. []

SENATOR UTTER: I'm Dennis Utter from District 33 which is out in the Hastings area, Adams County and part of Hall County. []

SENATOR LANGEMEIER: I'm Chris Langemeier, District 23, Schuyler. []

SENATOR PIRSCH: Pete Pirsch. I represent Legislative District 4 containing Millard North High School, Boys Town High School, and Omaha Burke High School. []

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SENATOR McCOY: Beau McCoy, District 39, Omaha. []

SENATOR GLOOR: Mike Gloor, District 35 which is Grand Island. []

SENATOR PAHLS: And we have two pages over there. We have Jared Weikum from Lincoln and Rebecca Armstrong from Omaha. And last night or the night before, my wife said, are you calling her Rebecca or Becky? And I'm going to ask you in front of everybody because she was a former student of my wife. []

REBECCA ARMSTRONG: Either is fine. I go by Becky. []

SENATOR PAHLS: Okay. So my wife corrected me last night when I told her who was on here. Again, we will follow in the order that I designated earlier. So we're going to start right now, and LB192 was introduced by the Banking, Commerce and Insurance Committee at the request of the Director of the Department of Insurance. Director Ann Frohman is here to give us a detailed testimony on this bill, so Ann, are you here? Ann, we're going to let you come right up. And what I'm going to do because it gives...since we have a number of senators who come and go, it just gives me a feel. How many proponents do we have for this bill? I see two. Opponents? Neutral? Okay, and the reason I'm doing that, because we do have senators who come and go, and that gives us sort of a feel of, for coming up here to the reserved. Appreciate that. And, Director, any time you're ready to proceed, we will let you. [LB192]

ANN FROHMAN: (Exhibit 1) Thank you, Chairman Pahls. My name is Ann Frohman. For the record, that's A-n-n, no e, F-r-o-h-m-a-n. I'm the director of insurance, here to testify in support of what we call the "department bill," or what is referred to as LB192 introduced by Senator Pahls. The bill in front of you includes a good number of insurance related topics, and I would say most of them can be accounted for as what we deem housekeeping, clean-up things that we thought were essential to keep our insurance code to be on par with all the needs that are required of it. One of the items in there that I want to draw your attention to is language in the Small Employer Health Insurance Availability Act, and that is language that simply requires that every small employer carrier, insurance carrier, that offers coverage to small employers regarding health benefits, it's a provision that essentially says it actively markets...it does not require that the carriers apply or market health benefit plans only through bona fide association. So it's a provision that we haven't had any problem with, and we felt like we should be able to open that up somewhat and allow carriers to market plans that make sense, and sometimes association plans are in a different ballpark than other health benefit plans. And so, that recognizes that they have the flexibility to work with only those plans that make sense when you're visiting and marketing plans to small employers. We also have a provision in there that is a proposal to...there are few that deal with insurance producers or what, in common parlance, insurance agents. And

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these are, in essence, what I'd call enforcement provisions that enable us to do our job just a little bit better. And one is that insurance producers be required to report either personal bankruptcies or the business bankruptcies within 30 days of such a filing or discharging an obligation. And currently, we do review those on a case-by-case basis but we're required to go out and search and look for that information, and given that these are licensees that make sense to us that this information be reported to us on a regular basis so that we can analyze that information and determine whether the bankruptcy is one of a nature that would indicate financial irresponsibility or not. There's another provision involving insurance producers that would require that, on a similar note, to reporting bankruptcies that they report violations or disciplinary actions taken by self-regulatory organizations. And we have that requirement currently in the law dealing with like SCC and other governmental organizations. But now that FINRA is out there to protect investors, and there's potential for regulatory violations issued by that organization, we think it's just a clean-up that we may have had the authority all along, but we want to make sure that what they call SROs or self-regulatory organizations that any avenue of action taken by those organizations also gets to us on a regular basis. There's another provision in there that deals with title insurance, and it is to amend the Title Insurers Act for the insurance companies, those that underwrite risk regarding their statutory or premium reserve. And what it is, is a mechanism for releasing of the statutory premium reserve on a monthly basis versus an annual. And we learned from experience that if you have a one-time release of a reserve into a company's surplus, it can increase the financial statement on a quarterly basis, spike, and turn around, and drop the next quarter. That can actually, for publicly traded companies affect the markets, and the timing on their securities so what we've tried to do here is include a requirement that allows for a monthly release. It's a smoothing mechanism so that it does give more of an accurate statement of an insurance company's financial condition to the extent they're in the title business, and they're releasing statutory reserves. We have another provision in there that deals with coordination of benefits. It's a provision that has been ran through the National Association of Insurance Commissioners organization for vetting and is a model provision; in essence, is cleaning up some areas that we already...I think we're already pretty well set in terms of policy on coordination of benefits. But to assure that when we're talking about two areas, one being nonduplication of coverage, so that we aren't doubling up on coverage, and coordinating between two or more coverages that there isn't a situation where insurance companies are designing policies that are doubling up. And that can get expensive, so this is a pretty basic concept in insurance already, and, you know, that you don't make money by purchasing health insurance. We also have another provision that's one that simply is a mechanism under the insurance provisions that deal with investments of insurance companies. And, in essence, we already allow insurance companies to utilize banks as institutions for holding and exchanging securities as custodians. And we want to enable, and this provision also came down through the NAIC, but to enable the use of Federal Home Loan Banks as custodians as well, because in addition to Federal Reserve Banks, the Federal Home Loan Banks are out there. They're fairly large. There's, you

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know, 12 regions, some 8,000 members; financial institutions that include at least 1,000 insurance companies. And so their...to enable their transactional work on the investment side of the company operations, they need to have the ability to access one more big group of banks being the Federal Home Loan banks, so it's really a clean-up item that is one that the national association has already recognized, and we want to pick up for domestic carriers. Finally, there's a provision in there. I shouldn't say finally--there's another one after this, but there is one provision that is dealing with insurance company financial exams. And right now we have a four-year examination requirement imposed upon the insurance department whereby we essentially must examine every domestic insurance company on at least a four-year basis. We tend to do that on a three-year basis, however, for the most part, but because state insurance regulators work in tandem with each other and coordinate on a lot of our financial examinations, most of the other states have a five-year examination requirement. And what we want to do is go to the ability and have the flexibility of having a five-year exam requirement in lieu of a four-year for the purposes simply of being able to coordinate on exams, such that if, let's say Iowa was going to engage on an examination of an insurance group of which a Nebraska domestic was a part, and they were going to do it on a five-year cycle, we would want to participate. It's cost effective if we analyzed it and said it makes a lot of sense to coordinate and do that exam with Iowa. We couldn't even consider it now because we're on a four-year cycle so we want the ability to be able to make that analysis and where it makes sense, put a company on a five-year examination schedule versus a four-year or three-year, not that we will use it in every instance, but we will use it where it makes sense, and that's what that provision is about. There is another one dealing with insurance producers, and it's a...what seems like a minor provision, but very important consumer protection provision, and that is the pre-need...we call them pre-need sellers that sell the burial insurance, the small face amount coverage, have a separate act under which we regulate their activities. And in that act, there was an oversight that we did not pick up on until recently, and that is when an insurance department contacts an insurance producer under the statutory rules, they have 15 days in which to reply to us or to request for more time to reply. Well, in this instance, we didn't have any requirement in which a pre-need seller of burial insurance had as a drop dead date to get back to the insurance department on an investigation (laughter), so we would like to simply clarify. We need to throw that in there as well, so that we can get some speed on doing our work on the pre-need side as well as all the other insurance lines. So that's really it with this bill this year, and if you have any questions, I would be happy to answer those questions, and I would also be happy to ask that you advance this to General File. [LB192]

SENATOR PAHLS: Before we do the drop dead dates (laughter), I thought that was very good. [LB192]

ANN FROHMAN: That was a play on words, yes. [LB192]

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SENATOR PAHLS: Do we have any questions for the director? Senator Langemeier. [LB192]

SENATOR LANGEMEIER: Chairman Pahls, thank you. Director, I have a number of questions, but we'll start with where you kind of ended there on going to the four to five years. I recognize the fact that coordinating that has a tendency to save costs and to...just everything about coordinating with another state is good. My fear I have in taking that from four years to five years in a regulatory setting is, is we're starting to let other states dictate the policy we have on when we're going to audit. So I have a little hesitation to want to extend that out another year. I like the idea of being on a three-year cycle, and you've told us that. Now my fifth year on this committee, the same testimony has come from either you or your predecessor. I have some concerns with that, allowing that. If you have any thoughts, that's my thought. The other question I have is in...we're introducing a new term in here, a Federal Home Loan Bank. Is that something we just neglected from statute over the years or...that's not a new concept out there. I'm just curious why we're adding that into the language now. [LB192]

ANN FROHMAN: I'll take your second question first. [LB192]

SENATOR LANGEMEIER: Okay, sorry. [LB192]

ANN FROHMAN: Easily, they've been around since like 1832, and it was simply, I think, an oversight on the part of the NAIC. And they now recognize that it's included in their list of custodians that are acceptable, so that's purely what I call a housekeeping clean-up that needs to be done. [LB192]

SENATOR LANGEMEIER: Okay. [LB192]

ANN FROHMAN: On the first question, valid---valid. We intend to stay on a three-year exam requirement for a majority of our companies. But we also recognize that much of (laugh)...and we've seen a lot of it lately. Much of what we do as financial regulators is in coordination with other regulators, and I don't think it's so much that other regulators would dictate the scheduling because five-year is the standard, and we set a higher standard, and that's good. But I do think that there are companies, and there are situations where the companies work in such complexity within their group where you might have one Nebraska company, and the other is an Iowa-based company, and then you might have three others that we have such a really pretty good, sophisticated oversight scheme where we're doing national examinations because so many of the companies aren't just single; they're in groups. And so that's becoming more and more important, and what we find we're doing is even if we continue to put the company...stellar company only because we have ratios we can follow, and we know which companies we would allow to go into a five year, and there wouldn't be many. But in those scenarios, it isn't just a matter of saving on time and money. It's a matter of

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understanding the financial transaction because it can be an inter-affiliate transaction, and you'll find perhaps in the example where Iowa-Nebraska are working together to try to understand a transaction that needs reviewed for the...you know, to understand the numbers on the financial statement that you need, you absolutely need the resources of the other state. So it makes a lot of sense to be able to take part because truly, we can't do them in a vacuum, and with some of those large, complex companies that are in big groups. So that's really the name of the game there on those. [LB192]

SENATOR LANGEMEIER: Okay, and I have one more question, and this is just more of a clarification for my own mind. In section 1, you talk about a licensee having a reasonable amount of time to respond. In your mind, what is a reasonable amount of time? [LB192]

ANN FROHMAN: Fifteen days is usually what we work with, and then if there's a scenario where there's some complexity, or they're relying on another third party that has information that you would expect the third party to have the information, they have to get that. We work with them; we work with the carriers. And so, you know, 15 days, 30, depending on the scenario. It's case-by-case, you know, depending on what issue it is, what line of insurance it is. If it's health insurance, and someone is needing specific, you know, answers right away, depending on a decision, we work pretty quickly on those. [LB192]

SENATOR LANGEMEIER: So in the letter you communicate to these individuals, will you set that timeline in there for them? We remind them. [LB192]

SENATOR LANGEMEIER: Okay. [LB192]

ANN FROHMAN: Yeah, we remind them in the letter that, you know, we need to know within 15 days, and if they have a problem, they'll contact us, and then we'll work with them and figure out if they need more time. And we can grant that, depending on the scenario. [LB192]

SENATOR LANGEMEIER: Okay. Thank you very much. [LB192]

ANN FROHMAN: You bet. [LB192]

SENATOR LANGEMEIER: Thank you, Chairman Pahls. [LB192]

SENATOR PAHLS: Just to add a little more clarification on that. That basically is sort of the standard accepted like a 15-day or 30-day. Is that sort of a standard industry...? [LB192]

ANN FROHMAN: It is. In Nebraska, it's 15 days for all lines for producers pretty much,

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yeah. [LB192]

SENATOR PAHLS: Okay. Thank you. Senator Gloor. [LB192]

SENATOR GLOOR: Thank you, Chairman Pahls. Director Frohman, let me ask you. I think I've got the name of the company correct, First American Insurance? [LB192]

ANN FROHMAN: First Americans, I learned, yes... [LB192]

SENATOR GLOOR: Yes. [LB192]

ANN FROHMAN: Yes, it is. [LB192]

SENATOR GLOOR: How did that bankruptcy come to light to the department? [LB192]

ANN FROHMAN: It was brought to our attention. We do go out and look at those, but the bankruptcy counsel contacted us immediately. [LB192]

SENATOR GLOOR: Anything in these changes that would have resulted in this having to be...if we go ahead with those changes, would it have been brought to light any sooner? Are there components of this, would it have made any difference? [LB192]

ANN FROHMAN: No, not in that...not in that scenario. It just so happened that that bankruptcy counsel has worked with the department quite a bit, and I think he was just sensitive to the issue of being, you know, an insurance agency. So all of...in that regard, they would have had, you know, time to...we would have found out anyway, but (laugh) being a public filing. But it sure makes it easier, because we deal not only with Nebraska producers but producers nationally... [LB192]

SENATOR GLOOR: Certainly. [LB192]

ANN FROHMAN: ...so we can canvass and find out things about our Nebraska producers, but we're not going to know in Florida if they filed a bankruptcy as easily. [LB192]

SENATOR GLOOR: Sure. [LB192]

ANN FROHMAN: So this will help us there. [LB192]

SENATOR GLOOR: Okay, thank you. [LB192]

ANN FROHMAN: You bet. [LB192]

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SENATOR PAHLS: Director, seeing no more questions, thank you. [LB192]

ANN FROHMAN: Thanks. [LB192]

SENATOR PAHLS: Next in line would be our proponents. I see we have two. [LB192]

JAN MCKENZIE: (Exhibit 2) Senator Pahls and members of the Banking, Commerce and Insurance Committee, for the record my name is Jan McKenzie, spelled M-c-K-e-n-z-i-e. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation. I'm having the page hand out a directory that lists the Nebraska companies who are members of the federation. We have, for the new members on the committee, life, health, title, work comp, and property and casualty companies who are members. We are here today in support of LB192, and also, I apologize to the senior members of the committee, but for the new committee members, we are a state that is fortunate to have a very good regulatory agency looking out for our citizens and for our interest as companies, making sure our companies in Nebraska are cutting edge and competitive and sound. And we always appreciate that in this state, the department works with the industry to make sure that changes are vetted early and that companies have opportunities to respond and know what might be changing as we introduce legislation each year through the department bill. We appreciate the work the department does on our behalf at the national level, and we appreciate the fact that Nebraska continues to be one of the top four states in the country in the industry of insurance. With that, I will answer any questions you might have, but we would also appreciate you advancing LB192 to General File. [LB192]

SENATOR PAHLS: Any questions for Ms. McKenzie? Before you leave, just let me add on to one of your comments. I don't know if I would say pleasure; it was a working convention I went to this summer in D.C., and I had the opportunity to take a look at what our Department of Insurance is doing. It was really sort of a mind boggling experience for me in many ways. But what I found out by looking around, a number of our people who work in our department are in leadership positions at the national level--in the state of Nebraska, not only in banking, but in insurance is well known. And they look for them for leadership positions, not only in our past director but in our present director. But I was amazed at the number of people who worked at the department who were sort of like...I want to use the word like the people who knew what was going on which is good. Thank you for letting me use that time. [LB192]

JAN MCKENZIE: (Laugh) You're welcome. [LB192]

COLEEN NIELSEN: Chairman Pahls, members of the committee, my name is Coleen Nielsen spelled 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. The Nebraska Insurance Information Service is a local trade association comprised of property, casualty insurance companies doing

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business in Nebraska. And I'm testifying in support of LB192. I'm also testifying in support of the process that Ms. McKenzie had just mentioned, and that is is that the department gives us ample opportunity to review this bill before it comes to the Legislature so that we can submit comments and concerns that we may have, and in the event that we have them to try to work them out before the bill comes before this body. And we appreciate the opportunity to be involved in that process. With that, I'd be happy to answer any questions and ask that this committee move the LB192 to General File. [LB192]

SENATOR PAHLS: Mr. Pankonin. [LB192]

SENATOR PANKONIN: Chairman Pahls, thank you. Ms. Nielsen, that just prompted a question in this case. How many...how much input...I'm going to say how many issues did you have that you had to, from the industry standpoint, talk to the department? [LB192]

COLEEN NIELSEN: In this particular bill, there were not a lot of property casualty issues. But we were able to look...I was able to send that bill out to my members. They were able to look at it, vet it, and return it and say that they didn't have any comments or concerns. [LB192]

SENATOR PANKONIN: Thank you. [LB192]

SENATOR PAHLS: And just...since we do have some new people here...and you are always welcome to speak to, or to listen to Bill. Are you not? You're very welcome... [LB192]

COLEEN NIELSEN: Yes, I am. I work...yes, I work very well with your office, Senators. Thank you. [LB192]

SENATOR PAHLS: Yeah, yeah, yeah. Any questions? Thank you. [LB192]

COLEEN NIELSEN: Thank you. [LB192]

SENATOR PAHLS: Any more proponents? Good afternoon. [LB192]

JOE ELLIOTT: Good afternoon. Mr. Chairman, members of the Banking (Commerce) and Insurance Committee, my name is Joe Elliott, E-l-l-i-o-t-t. I'm the lobbyist for the Professional Insurance Agents Association. We have about 300 agents throughout the state of Nebraska, pretty well balanced. And we've met and discussed this. I think we first received it from the insurance department sometime last November or early December, so we had a chance to review it. And one thing that we felt is important, we have been fighting the federal government on regulation of insurance for going on eight,

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ten years, and it really culminated last year. There was a lot of effort to try and orient more under control of the federal government. And with the current financial industry problems, it seems to have died down. From what I read and see, there is not going to be near the push because the only company that's even close to being involved in this financial scandal was the AIG. And the AIG sat up there with a holding company, and that's where all the derivatives and all the debt-ridden items were that were not in connection with the insurance company. So state regulation held up very, very well. And I think this sort of model bill, I think the industry in Nebraska have been very, very supportive of the insurance department over the years, and this is another example of it. We do...we have a number of our agents that are licensed, and the average agency in the state is registered to write business in four states, so that gives them a broad, you know, an outlook. And maybe they don't do a lot of business in them, but certainly the bigger companies do. But anyway, this bill--the insurance producer has to report some of these things directly to the department which is a good thing. Otherwise, some of these probably would go unnoticed totally. And so we support all of those administrative actions, and I think it will help the department to better regulate the insurance producers. And we used to be called agents, but now I see they're calling them producers (laugh) has been the common thing so. But I'm free to answer any questions. Mr. Chairman. [LB192]

SENATOR PAHLS: Any questions for Mr. Elliott? I want to thank you, and let's hope the producers produce. Right? [LB192]

JOE ELLIOTT: Produce. (Laugh) Thank you. [LB192]

SENATOR PAHLS: Thank you, thank you. Any opponents? Anybody in a neutral? So that does close the hearing on LB192. Thank you. Our next bill will be LB75 by Senator Pirsch. You will introduce the bill for us? Again, just help us with...because I know we have another senator who's waiting on us. Proponents, one? Opponents? Neutral? Looks like we have one person, so should be. Mr. Pirsch. [LB192]

SENATOR PIRSCH: I'll talk fast, Chairman Pahls. Members of the Banking Committee, I'm state Senator Pete Pirsch. For the record, P-i-r-s-c-h. I represent Legislative District 4, and I am the sponsor of LB75. LB75 would clarify that Nebraska financial institutions may impose access charges against customers of foreign financial institutions without violating the nondiscrimination provisions of Nebraska Revised Statute Section 8-157.01. While existing law allows for such charges to be imposed on customers of Nebraska financial institutions currently, and customers of out-of-state financial institutions, the law is not clear regarding the ability to impose such fees upon customers of foreign financial institutions. And when I say...so when I utilize the term "foreign," it is meaning from countries outside of the United States, not from states other than Nebraska. So, with that, I will just ask if there's any questions. [LB75]

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SENATOR PAHLS: Okay. Any questions for Senator Pirsch? Life is good, Senator Pirsch. [LB75]

SENATOR PIRSCH: Yeah, thanks very much. [LB75]

ROBERT HALLSTROM: (Exhibit 1) Chairman Pahls, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for both the Nebraska Bankers Association and Networks Inc. to testify in support of LB75. Senator Pirsch has outlined what the bill is designed to do. He's done a nice job of laying out the fact that we would simply clarify Nebraska law, so that customers of foreign financial institutions could be imposed access charges for their ATM transactions in the state of Nebraska by Nebraska financial institutions. Just a couple of extra things for the record. The need for the legislation has arisen out of the fact that Visa and MasterCard, who are the two primary national organizations that will work in the international ATM market, or debit card market, have operating rules that the banks are subject to. They have provisions in those rules that do not allow for the imposition of access charges unless state law specifically or expressly authorizes those types of charges. Thus, the need for LB75 to come in and clarify that, there has been a movement in recent years, I think about 21 states have already adopted similar legislation to what we're attempting to do under LB75. One other thing in closing, then I'd be happy to address any questions, there might be some concern about consumer protections or consumer disclosures or notifications. We have both under state law and federal law requirements for postings and disclosures, both on the ATM machine and as the transaction is being consummated or prior to the transaction being consummated, that alerts the customer to the fact that there may be access charges imposed on the particular transaction that they're dealing with and gives them the opportunity to opt out or rescind the transaction if they are not interested or willing to pay the access charge that may be applicable to that transaction. And with that, I'd be happy to address any questions that the committee may have. [LB75]

SENATOR PAHLS: Any questions for Mr. Hallstrom? Seeing none,... [LB75]

ROBERT HALLSTROM: Thank you, Senator. [LB75]

SENATOR PAHLS: ...again, life is still good. Any more proponents? No opponents I see? No one in the neutral? Senator Pirsch, I'm assuming you're waiving. [LB75]

SENATOR PIRSCH: I am. [LB75]

SENATOR PAHLS: Okay. That ends the hearing on LB75. All right, okay, come on down. We are now ready for LB80. [LB75]

JOHN MURANTE: Thank you, Mr. Chairman, and members of the Banking, Commerce

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and Insurance Committee. My name is John Murante spelled M-u-r-a-n-t-e. I'm the legislative aide for state Senator John Nelson, and I'm here today to introduce LB80 on Senator Nelson's behalf. Senator Nelson is sick and is unable to attend today's meeting. LB80 amends the Uniform Principal and Income Act. The changes to the act are largely technical in nature, and are a result of a pertinent ruling by the Internal Revenue Service. The changes include ensuring that certain trusts qualify for the marriage deduction in accordance with the decedent's intention and plans, and clarifies that certain trusts will keep enough money to pay its taxes and distribute the balance of the income to the mandatory income beneficiary. Following me are several speakers who will be able to better clarify, in great detail, the purposes and effects of LB80. Thank you for the opportunity to open, and I will answer any questions that you might have. [LB80]

SENATOR PAHLS: Do we have any questions for Mr. Murante? Seeing none, thank you. Are you planning to stick around for closing, if need be? [LB80]

JOHN MURANTE: Yes. [LB80]

SENATOR PAHLS: Okay, closing... [LB80]

LARRY RUTH: (Exhibit 1) Senator Pahls and members of the committee, my name is Larry Ruth. I'm not appearing today as a registered lobbyist, and I'm here to support LB80 as one of Nebraska's Uniform Law commissioners. I appreciate the opportunity to speak on this bill, and I'm sorry that Senator Nelson is ill and unable to be here today. Actually, the Introducer's Statement of Intent pretty well says it all. It's a very brief bill. Let me give you just a little bit of background on what the Uniform Law Commission is, and I have some material here I'd like to have handed out, if I could. There are several different colors of the folder; they're all the same material inside. So I'm just getting rid of some old folders. The Uniform Law Commission is an actual state commission of...it's a conference of all the commissions of all the states. Every state has a Uniform Law Commission representative or two on our national conference of state uniform laws. The commissioners from Nebraska are Judge Arlen Beam whose on the Eighth Circuit Court of Appeals; Chancellor Harvey Perlman, and he was appointed when he was dean of the law school. The current dean of the law school is on it. Amy Longo, an attorney from Omaha is on it. Joanne Pepperl, your own Revisor of Statutes, is on that commission, and myself. Judge Krivosha, former chief justice, is retired and is in an inactive status. Basically, this commission was established over 100 years ago in an attempt to find...identified those areas where there should be uniformity in the laws by all the states. And it's really, really valuable especially when you're talking about interstate transactions, commercial transactions; when you're talking about what jurisdiction rules should apply to certain kinds of litigation, of certain kinds of lawsuits. It's important sometimes to have uniformity of the laws, and what we do is we identify those areas where there should be uniformity, and then draft a uniform law. And then it's our duty to bring it back to the states for your consideration for passage. In the handout that I gave

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to you, I have a couple of different things. One of them is a list of the uniform laws that you have in Nebraska. Now there are uniform laws and there are uniform laws. The ones that we work on, I think we have 45 or 50 in this state, and there are a few that come in from other organizations that are likewise called uniform. But the uniform laws that we work on have been a well long...well-established types of bills in this legislature, probably the most one being the Uniform Commercial Code which takes up a whole volume behind your desks. This is one of those kinds of bills called the Uniform Principal and Income Act that was passed about 10 or 12 years ago, and then we look at that and update it to make any uniform changes or make any suggested changes that we then bring back to the states. This is in the area of principal and income which has to do with trust law. But I would like to turn over any questions and answers that you might give to Professor Gradwohl when he comes up and speaks. Also, a matter of your handout is a summary of the arguments in favor of adopting these amendments. That's a one-page piece of material, and then we have the actual amendments with a very long annotation or at least an annotation behind each one of the sections, and then another little handout just on the Uniform Law Commission, but I leave that for your information. Professor Gradwohl will be addressing the two changes that are singular to this bill, and I would like to ask him to come forward and speak. Thank you. Unless you have questions...I'm sorry. [LB80]

SENATOR PAHLS: Thank you, Mr. Ruth. [LB80]

JOHN GRADWOHL: Senator Pahls, members of the Banking Committee, I am John, J-o-h-n, Gradwohl, G-r-a-d-w-o-h-l. I'm a teacher at the University of Nebraska law school. You have before you some good explanations of a very technical bill amending the Principal and Income Act which the uniform commissioners adopted last summer on an emergency basis. The Principal and Income Act is an accounting bill that applies to trusts and probate estate. It exists for the purpose of defining what is income and what is principal if the trust or the will doesn't specify what is income or what is principal. It's really a default provision. This problem that's corrected by LB80 arose with an unforeseen revenue ruling or really part of a Revenue Ruling 2006-26, in connection with the federal estate tax marital deduction. To get a federal estate tax marital deduction, the surviving spouse, if it's based on a receipt of income or a power with respect to income, has to have it vested as of the moment of death alone by her and in all events. Now the problem that you're dealing with here is that you have retirement benefits that are paid or an IRA, any kind of retirement benefit, that are paid to a trust, and then the trust income is paid on to the surviving spouse. And so the problem that LB80 deals with is defining what is income and what is principal when it goes from the IRA to the trust to the surviving spouse. And if you want to identify what the glitch is that was dealt with, I think stupidly, in the internal...and I think that most practitioners, lawyers, accountants, trust officers were caught by surprise by this interpretation. It's actually...the revenue ruling dealt with three circumstances in which you got the federal estate tax marital deduction without any problem, but then it threw some language in,

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saying, but if the Uniform Principal and Income Act were to apply, then maybe the surviving spouse wouldn't get all of the distribution clearly that was paid from the IRA to the trust. And so the glitch...if you want to see right where it is, is on page 3 of LB80. It says, "If no part of the payment that would come from the IRA to the trust is characterized as interest, dividend, or equivalent payment, then it's allocated 90 percent to principal and only 10 percent to income." And so if you get a distribution from an IRA to the trust, you might...it might not be characterized as income. And so what this bill does is and it's convoluted; it's hard to read. But the language has been presented to the person writing the Internal Revenue Service ruling who said that she and her boss don't rule in advance, but wink, wink, the amendment that you find in section 2 of this bill looks good to them. It simply says that the...if it isn't qualified, then the trustee makes a demand in its income, and the trustee gives the income to the surviving spouse. The surviving spouse can demand it, and you get a federal estate tax marital deduction. And that's what all this language boils down to. It was a serious enough problem that the national commissioners took it up on an emergency basis and asked the states to implement it, 43 states have the Uniform Act, as soon as possible. The amendment in section 3 deals with a situation in which a trust owns an interest in some kind of a business where the business doesn't pay the tax, but the owners of the business pay the tax, and the trust is the owner of the business. And so it's going to either have a tax to pay or have to distribute out to the surviving spouse or a beneficiary of the trust. And the businesses don't usually...usually pay out all of their income. They pay out just enough to pay the taxes. And this amendment is a technical amendment to allow for an accounting of the...who's got to pay the tax on the closely-held business. It's analogous to the emergency ruling with respect to the federal estate tax marital deduction. I think the two statements that you have the introducer's statement and the one-page summary statement are perhaps clearer than my statement, but I'd be glad to answer (laugh) any questions if I can do it. I thought maybe Senator Pirsch would even some scores that he has from his (laughter)...his past life with me. [LB80]

SENATOR PIRSCH: That was many, many years ago, Professor... [LB80]

JOHN GRADWOHL: I was hoping you'd forgotten (laughter). [LB80]

SENATOR LANGEMEIER: I'll kick him if he does. [LB80]

SENATOR PAHLS: Well, you're leaving us smiling. That's one thing to say, Professor (laughter). Thank you. [LB80]

JOHN GRADWOHL: Thank you very much. [LB80]

SENATOR PAHLS: Any more proponents? Opponents? People in neutral? And closing has been waived. Thank you. That completes LB80. Thank you. Our next one up would be LB87. [LB80]

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SENATOR PIRSCH: I'm sorry about that. This is LB87. Senator Pahls, you are the introducer so whenever you're ready. [LB87]

SENATOR PAHLS: Thank you, Senator Pirsch, members of the committee. My name is Rich Pahls, P-a-h-l-s. I represent District 31. This bill would delay the applicability of amendments made last year in a section of the Uniform Commercial Code from September 2, 2009, to September 2, 2010. That's all it does. It changes a date. For those of you who were here last year, remember we did discuss this in the past, but I'll just give a little bit of explanation. I think we have someone following me who will give more detail. The bill would amend UCC Section 9-506 which governs the effect of errors and omissions in a financing statement. A financing statement is what a lender called a secure party, files with the Secretary of State to establish priority of its security interests in personal property that serves as collateral for an obligation. This section was amended by the Nebraska Legislature in 2008 to provide that a financing statement with minor errors or omissions is not seriously misleading if a search of the debtor's correct last name in the records of the filing office would disclose the financing statement. This section otherwise provides as a general matter that a financing statement substantially satisfying the requirements of the code is effective even if it has minor errors or omissions unless the errors or omissions make the financing statement seriously misleading. The 2008 amendments to this section are nonuniform and do not become applicable until September 2, 2009. The bill would move back the date of applicability in order to provide that the nonuniform 2008 amendments would not become applicable until 2010 (laughter). This has been sort of a humorous afternoon. Other states have adopted various nonuniform amendments to this section regarding the debtor's last name. It is expected that the Uniform Law Commissioners will be considering uniform amendments regarding this matter for recommendation to all states. LB87 would put the 2008 Nebraska amendments on hold pending completion by the Uniform Law Commissioners of their work. That ends my introduction. [LB87]

SENATOR PIRSCH: Well, Senator Pahls, you snuck up on me there. But does anyone have any questions here for Senator Pahls? [LB87]

SENATOR PAHLS: As I said, I think Mr. Hallstrom will be up here explaining this more in depth. [LB87]

SENATOR PIRSCH: Very good. Then we'll go with proponents? [LB87]

SENATOR PAHLS: If it's applicable (laugh). [LB87]

SENATOR PIRSCH: If it's applicable (laugh). [LB87]

ROBERT HALLSTROM: (Exhibit 1) Senator Pirsch, members of the committee, my

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name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association, testifying in support of LB87. As Senator Pahls has pointed out, the main purpose of this bill is to delay implementation currently scheduled to go into effect on September 2, 2009, until September 2, 2010, of legislation that was passed last year as a part of LB851. The bill was passed initially last session, and then Senator Langemeier in the waning days of the session, introduced LB308A or an amendment to LB308A that delayed the effective date until after the end of this session. The reason that we had delayed the implementation was, as Senator Pahls has pointed out, we enacted a nonuniform amendment to the provisions of Uniform Commercial Code Section 9-506 last session, relating to the debtor's correct name when dealing with an individual debtor. The folks at the National Conference of Commissioners on Uniform State Laws, among others, had contacted us, suggesting that if there was any way to delay the implementation to allow NCCUSL to try and put together a uniform amendment to resolve the problems that have resulted in this area, to please do so, which we did initially in the form of LB308A. Since that time, the NCCUSL folks have put together a drafting committee. The drafting committee has just recently forwarded some initial rough draft language for consideration by the states. We don't think it's going to be finished in time for us to come forward with an amendment before the end of the session. If it were to, we would like to reserve that judgment, but not expecting to do so, we have agreed to come forward with legislation that will push the effective date back until September of next year to allow us to come in, hopefully, next session to address the issue in a uniform fashion. Now, having given you all the procedural background, I think in fairness to the members of the committee who had to sit through the explanation of what the substance of the matter is, I'll go through fairly briefly for the new members of the committee and refresh the memories of those who have returned to the committee. Essentially, what we're talking about is when a bank files a financing statement, they are required to identify and utilize the name of the debtor, the correct name of the debtor. Anyone searching the record is protected under the code that if they search the record using the debtor's correct name, that they...if they do not discover that prior financing statement that was filed, the prior financing statement is deemed to be seriously misleading, and thus, ineffective against any interest that they may file on. The problem with the code as it exists is that there's nothing in the code that tells either a filer or a searcher what is the debtor's correct name. So whether or not you're working with my name, for example, is it Robert or Bob? Are you required to use my middle name, James or my middle initial, J, or does it make any difference? It certainly does make difference in terms of what the court is required to do if they have issues that are brought in the form of a lawsuit because there is only one correct individual debtor's name at the end of the day. And we have had a number of cases that I've referred to in my testimony, both in Nebraska and Kansas, that have addressed this issue. There's a winner and a loser, depending on one case in Nebraska, the Borden case, where the question was whether or not the debtor's proper name was Michael or Mike, and so those types of issues come up in the context of the way that the code is currently drafted. We are seeking a resolution that will provide greater certainty to this

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area, and for all of those reasons, we're awaiting with bated breath what NCCUSL will come up with in hopes that the 50 states can adopt that as a uniform resolution of the problem. I'd be happy to address any questions that the committee may have at this time. [LB87]

SENATOR PIRSCH: Okay. Are there any questions for Mr. Hallstrom? Senator Langemeier. [LB87]

SENATOR LANGEMEIER: Thank you, Vice Chairman Pirsch. Mr. Hallstrom, I do have a question. We put this into law nonuniformly in 2007. There's obviously some willingness to see what NCCUSL, I think is the stating of the acronym, what they would do in '08. Now we're going to wait '09. Why don't we just get rid of the language we put in in '07 because we obviously are going to take what NCCUSL comes out with when they come out with it? Why do we just keep delaying the inevitable? [LB87]

ROBERT HALLSTROM: Well, Senator, I would probably withhold judgment at this time. I'm hopeful that NCCUSL will come up with a uniform solution that will be accepted by all states. I don't think the practitioners...and we have appointed a group of lawyers in Nebraska that work regularly in this area including Larry Ruth from the State Bar Association formally. And we have looked at some alternatives on our own that may be put forward and have been passed along to NCCUSL for consideration. I don't think it's a slam-dunk at this time that NCCUSL will necessarily come up with the absolute solution. We're certainly more hopeful than not that they will, but until we see the language and determine whether or not that's something that the bankers' associations across the nation, among others, that are interested in this issue will be accepting of, that's probably why we keep things on the book. We have what we think is a Nebraska solution that we brought forward because we think it will work, but we are willing to sit back and wait until NCCUSL comes out with their approach; hopefully, it'll work. [LB87]

SENATOR LANGEMEIER: If I remember correctly, back in 2007 when we passed this the first time, it was crucial we did it. Something had happened that we had to get this language in, and we had to do it that year if I remember, looking back at your testimony. We had to do it, had to do it, but now we're going to delay it two years and then maybe they'll come up with the solution? [LB87]

ROBERT HALLSTROM: That...that's... [LB87]

SENATOR LANGEMEIER: I'm confused. [LB87]

ROBERT HALLSTROM: Well, that's correct, Senator. We think it is a problem area because of the litigation that has resulted, and that's why we were probably more urgent to try and get it passed initially when we adopted the legislation, I believe in 2008 is when the legislation was adopted. But we are willing, under the circumstances, to try

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and see if we can come up with a uniform solution that will get it right. We have adequately informed our bankers of the problems that are out there. I don't know that that necessarily allows them to avoid any potential exposure, but the problem is well known. The question is, do we have the right solution, and we think with one more year we'll either have NCCUSL get it right or we will come forward with the language to address it in a solely Nebraska fashion. [LB87]

SENATOR LANGEMEIER: Okay. Thank you. [LB87]

ROBERT HALLSTROM: Thank you. [LB87]

SENATOR PIRSCH: Any other questions? Senator Utter. [LB87]

SENATOR UTTER: Bob, first of all, I'm really sorry that your name wasn't James Robert instead of Robert James because I think we could have had a lot of fun down through the years with Jim Bob (laughter). [LB87]

ROBERT HALLSTROM: Well, Senator, what you might not know is I had used an example, at one point, as to whether or not my driver's license which was another solution, what if I used the name Bubba on that driver's license, and I've rued the day I ever made that example too, so. [LB87]

SENATOR UTTER: (Laughter) My question is, are you suggesting to us that we hold the...this legislation in committee till the last possible date to see if there is a answer to this problem that it would come forth this year, or is that not possible? [LB87]

ROBERT HALLSTROM: No, Senator, and I appreciate that. I think our preference would be that we get the bill out and running. We get it as far as we need to. If we determine that there's a possibility that NCCUSL could come up with a resolution that's going to be embraced by the various bankers associations and others across the nation, we might want to hold the bill down further on the line. But I think right now, it would be important, because we want...we have decided that we don't want it to go into effect on September 2 of this year, that we get it far enough long that we ensure that it's going to be passed this session if it's the inclination of the committee to move the bill today. [LB87]

SENATOR UTTER: Thank you. [LB87]

SENATOR PIRSCH: Senator Langemeier. [LB87]

SENATOR LANGEMEIER: One more question. So you're hoping to move...did I get that right? You're hoping that we move LB87 which is a delay in implementation for a year. Correct? [LB87]

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ROBERT HALLSTROM: Yes. [LB87]

SENATOR LANGEMEIER: You're hoping we advance this to put NCCUSL's decision or their model legislation in later? [LB87]

ROBERT HALLSTROM: If NCCUSL comes up with something that is approved, Senator, I would only hold that option out. I think the more likely scenario is number one, I don't think NCCUSL is going to get done quite that quickly, and if they do, we probably will not have sufficient time to finalize it. It's only if NCCUSL is in a perfect scenario, a perfect storm comes together, they come forward with the language everybody embraces and immediately, and we have sufficient time to do something yet this session. Otherwise, I think the more likely result is we pass the bill. We delay the implementation until 2010, and we come forward with a bill to be introduced next session. [LB87]

SENATOR LANGEMEIER: Something of that magnitude would have to be a bill to come in, though, to amend into this; it would have to have a hearing. [LB87]

ROBERT HALLSTROM: That would be the most likely scenario. [LB87]

SENATOR LANGEMEIER: Okay. Thank you. [LB87]

ROBERT HALLSTROM: Or there could be a hearing on the amendment. We've done that on occasion if it's significant enough. [LB87]

SENATOR LANGEMEIER: Sure, sure. [LB87]

ROBERT HALLSTROM: Thank you. [LB87]

SENATOR PIRSCH: Senator Christensen, question. [LB87]

SENATOR CHRISTENSEN: Thank you, Chairman Pirsch. Bob, so if we don't put this and allow this to become law, are we not leaving the loophole out there for people to continue playing the game that was...happened in these cases? [LB87]

ROBERT HALLSTROM: The loophole will continue, Senator. I don't know that there's anybody playing games. It's just that it leaves open the prospect that somebody can go into court if they're willing to, and suggest in the example that I gave, should the filer who filed under Robert J. Hallstrom have instead filed under Robert James Hallstrom because when I searched under Robert James Hallstrom, the search logic did not reflect the filing under Robert J. Hallstrom. So it's not a game; it's just an issue that there's a loophole out there or a problem out there that people can, after the fact, see if

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there's a port in the storm to grab onto and litigation to try and protect their interest. [LB87]

SENATOR CHRISTENSEN: So wouldn't we be better to have this in place and take care of the hole, and then if something changes, address it at that time? [LB87]

ROBERT HALLSTROM: Well, in the minds of some, yes. There have been some suggestions that there has to be a better solution than the one that Nebraska has come up with on the debtor's last name. And so you'll probably find a slight division of interest out there as to whether or not we should keep the current system in place till we get the right resolution as opposed to putting in the Nebraska resolution from 2008. [LB87]

SENATOR CHRISTENSEN: Thank you. [LB87]

SENATOR PIRSCH: Very good. Any other questions for Mr. Hallstrom? Seeing none, we'll call for any other proponents. Any other proponents, LB87? Okay. How about any opponents? Any opponents? Seeing none, any individual who would care to testify in a neutral capacity? Very good, that will conclude our testimony. Oh, well, I think I have to ask, is there an applicability of the closing here, Senator Pahls? [LB87]

SENATOR PAHLS: We'll have to...we'll [LB87]

SENATOR PIRSCH: I mean, I don't want to be presumptuous so. No? Okay. He'll waive then. That will conclude the hearing on LB87 and I'll cede the chair back to Senator Pahls. [LB87]

SENATOR PAHLS: Thank you. That concludes our hearings for the day. [LB87]

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Disposition of Bills:

LB75 - Placed on General File.
LB80 - Placed on General File.
LB87 - Placed on General File.
LB192 - Placed on General File.

Chairperson

Committee Clerk