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Banking, Commerce and Insurance Committee
February 02, 2010

[LB720 LB730 LB888]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 2, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB888, LB730, and LB720. Senators present: Pete Pirsch, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Beau McCoy; Dave Pankonin; and Dennis Utter. Senators absent: Rich Pahls. []

SENATOR PIRSCH: Okay, well, it's a little after 1:30 so we'll get started. Welcome to the...are you ready, Jan? Welcome to the Banking, Commerce and Insurance Committee. My name is Pete Pirsch. I'm from Omaha, represent the 4th District. I serve as vice chair of the committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process, your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceeding, I ask that you abide by the following procedures; the information is posted on the chart to your left. Please turn off your cell phones at this time. If you would move up to the reserve chairs, if you plan on testifying in the front of the room when you're ready to testify, as far as the order of testimony for the bills, we'll start with the introducing senator, move to all proponents of the bill, then opponents, then neutral testimony, and then the senator will close. If you would sign in today if you are going to testify, there's a pink sheet in the back of the room there on the table. Hand in your sheet to the committee clerk here, Janice. When you come up to testify, if you would spell your name for the record when you sit down to testify first, if you could just be mindful of being concise. With respect to written materials, they can be distributed to committee members as exhibits only while testimony is being offered. If you would hand it to one of the two pages for distribution to the committee and staff, we do need ten copies. If you have written testimony, but you don't have ten copies, just raise your hand now, so the page can make copies for you. To my immediate left is committee counsel, Bill Marienau. And to my left, at the end of the table is the committee clerk, Jan Foster. The committee members with us today, if I could have you introduce yourselves, and I'll start at your far left, my right. []

SENATOR UTTER: Dennis Utter, District 33, Hastings. []

SENATOR PANKONIN: Dave Pankonin, District 2; I live in Louisville. []

SENATOR LANGEMEIER: Chris Langemeier. []

SENATOR McCOY: Beau McCoy, District 39. []

SENATOR GLOOR: Mike Gloor, District 35. []

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SENATOR CHRISTENSEN: Mark Christensen, Imperial. []

SENATOR PIRSCH: And I understand that Senator Gloor will be...have to leave for a little bit. He'll be introducing a bill in a different committee. Our pages today are Abigail Greene from Omaha, and Alex DeBrie from Scottsbluff. The committees will take up the bills today in the following order: We're going to start with LB888. Then we'll move to LB730, and finally, LB720. With that said, Senator Conrad, if you'd like to open on your bill. []

SENATOR CONRAD: Sure. Good afternoon, Senator Pirsch, members of the committee. My name is Danielle Conrad. That's D-a-n-i-e-l-l-e Conrad, C-o-n-r-a-d. I represent the "Fightin' 46th Legislative District" here in the Nebraska Unicameral Legislature. I'm here today to introduce LB888. LB888 would enact the Nebraska Uniform Limited Liability Company Act, based upon the Revised Uniform Limited Liability Company Act as promulgated by the National Conference of Commissioners on Uniform State Laws in 2006. LB888 would repeal and would replace Nebraska's current Limited Liability Company Act. An LLC is an entity that shares the limitation of liability characteristics of a corporation with a partnership-like capacity to structure the entity by agreement rather than as prescribed by statute. Like a partnership, an LLC does not pay federal income tax on its profits. Its distributions of income to members are taxed as their income. This characteristic has made LLCs very popular in recent years. As business models and our economy evolve and change, so does the need to update our public policy framework related to the formation, governance, and regulation of such business entities. This legislation provides that framework for limited liability companies or more commonly known as LLCs. This legislation strikes an appropriate balance between providing a stable and uniform policy framework in relation to other business structures authorized under Nebraska law and tailors the model uniform law proposal to meet the specific needs of Nebraska business interests. For the record, the Nebraska commissioners to the National Conference of Commissioners on Uniform State Laws are Larry Ruth, the Honorable Arlen Beam, the Honorable Norm Krivosha, Amy Longo, Joanne Pepperl, Harvey Perlman, and Steve Willborn. This bill was also drafted in cooperation with the business law section of the Nebraska Bar Association, and Julie Karavas, president, is here today. Finally, committee, I would like to take this opportunity to publicly thank the legal counsel of this committee. Bill Marienau has worked tirelessly on this issue for quite some time, and it's really been a pleasure and an honor to learn from him, and his generous provision of expertise related to these issues to me and my office and the others related, who have interest on this bill. There are going to be a variety of people available to testify behind me who have practical experience in relation to these business formation issues who practice in the field and others with interests about this legislation to answer technical questions. Let me be clear. I don't hold myself out to be the ultimate expert when it comes to LLCs or other business formation issues, but this was a wonderful opportunity to learn more about the issues, and it has been a very long process working with the committee, the bar

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association, and others in trying to draft this framework and help it meet Nebraska's needs. So with that, I'm happy to answer any questions and, again, if they're highly technical in nature, I will have to defer to some folks behind me, not to be evasive, but to ensure accuracy for the committee and the record. [LB888]

SENATOR PIRSCH: Well, thank you for your opening, Senator Conrad. Are there any questions? Senator Utter. [LB888]

SENATOR UTTER: Thank you, Senator Pirsch, and welcome, Senator Conrad. You obviously haven't heard about the unwritten rule in this committee against fiscal notes, but I assume as a good member of the Appropriations Committee, you've got this fiscal note adequately covered. It's taken care of, right? [LB888]

SENATOR CONRAD: Well, I think the important thing to remember, Senator Utter, is that unwritten rule doesn't apply just to banking. (Laughter) It seems to have great extension this session and for good reason. But if I could turn the committee's attention to that issue, there is a fiscal note associated with the bill that we'd be happy to work on as we move through the process. But to be clear, there is no new spending or General Fund impact related to this legislation, and rather, would be on a cash basis with existing fund source. So... [LB888]

SENATOR UTTER: So you've found some cash funds. [LB888]

SENATOR CONRAD: Well, and that's what has been allocated to carry out the purposes of this legislation if implemented, and we'd be happy to continue to confine attention to those issues as we move through the process. But it will require some cost to implement...I believe they're primarily associated with the Secretary of State's Office and their existing cash funds and the expenditure thereof. [LB888]

SENATOR PIRSCH: Very good. Senator Pankonin. [LB888]

SENATOR PANKONIN: Thank you, Senator Pirsch, and welcome, Senator Conrad. Just to follow up a little bit on...you mentioned your interest in this activity in this bill, and it's, you know, it's a major...to me, it's a major piece of legislation because LLCs are out there. I've been involved with some that have dissolved and thinking about starting a new one on a farm thing. But what kind...besides lining up with other states, was there anything in particular that we had problems with in the current law with LLCs, or what kind of drove the process here to make the changes? [LB888]

SENATOR CONRAD: Sure and, again, there might be some additional information for testifiers behind me to add to that line of inquiry, but it's my understanding when this bill was first...and these issues were first presented to me, not because there were dramatic problems in terms of the administration of these issues in Nebraska, but rather, a

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continual evolution of public policy that emanates from the National Conference on Commissioners of Uniform State Laws and is then presented to the states in an effort to ensure harmony, uniformity, and some of those kinds of principles in dealing with these issues that have great application. And LLC issues is something that the conference has recently looked at, and we have very active commissioners here in Nebraska that participate in that process. And to be quite honest, it's kind of a personal connection to the district that they found their way to my office because my predecessor, Senator Landis, previous chair of this committee and esteemed member of this body, had previously assisted the Uniform Law Commissioners in bringing forward legislation related to their efforts. So it was definitely an honor and a privilege to carry on that tradition and to use my legal skills a little bit in that regard. So that's really how these issues came to my doorstep and how we got to where we are today. [LB888]

SENATOR PANKONIN: How it ended up, okay. Thank you. [LB888]

SENATOR PIRSCH: Senator Langemeier. [LB888]

SENATOR LANGEMEIER: Senator Conrad, thank you for coming to the committee, and you're doing a great job. I'm going to throw a question out, and I don't know that you're the person to answer it, but I'm going to throw it out anyway, and somebody behind you will answer it. In the world of LLCs, I'm told Nebraska is far behind. We're one of very few states that don't allow LLCs under LLCs in a bundling type mechanism. And I hope somebody can answer as why that is the case, it's my understanding there's only 13 states that don't allow that now, and we're one of them. [LB888]

SENATOR CONRAD: Yeah, Senator Langemeier...oh, I'm sorry. [LB888]

SENATOR LANGEMEIER: That's my only thought. [LB888]

SENATOR CONRAD: I don't have a specific comparative analysis available for the committee, at this point in time, in terms of different treatment amongst states in relation to these issues. But I think your question may be related to something that's also been presented to our office called a Series LLC that is part of the structure or the bundling that has been at least part of the debate surrounding these issues, and I can tell you my office did receive inquiries related to those same issues and having had a chance to visit with the folks involved in this drafting, there were specific and conscious public policy decisions made in terms for how to treat them in this context, and to essentially...I believe, and I'll look forward to being corrected if I'm wrong on this, but those are not contemplated or were specifically excluded from this legislation. [LB888]

SENATOR LANGEMEIER: Okay. I don't know if it's good or bad. I just think it's interesting. [LB888]

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SENATOR CONRAD: And I'm sure that they would be happy to lay out some of the reasonings behind why those decisions were made strategically in the drafting process. [LB888]

SENATOR LANGEMEIER: Sure. Thank you. [LB888]

SENATOR PIRSCH: Thank you. Any other questions? Seeing none, thank you very much. And I see Dean Willborn... [LB888]

SENATOR CONRAD: Thank you. And it's a pleasure to be here before Banking, and, of course, want to lend our thoughts, our prayers to the absence of your chairman. And I'm sure that the committee thinks about that often as well so. [LB888]

SENATOR PIRSCH: Thank you very much. I think you expressed all of our sentiments so. [LB888]

SENATOR CONRAD: Thank you. [LB888]

SENATOR PIRSCH: Dean Willborn, if you'd like to... [LB888]

STEVE WILLBORN: (Exhibit 1) Thank you. My name is Steve Willborn, S-t-e-v-e W-i-l-l-b-o-r-n. I'm a faculty member and former dean of the University of Nebraska College of Law, but I'm here today primarily in my role as one of Nebraska's commissioners on the National Conference of Commissioners on Uniform State Laws. As Senator Conrad said, LB888 is largely a product of the Uniform Law Commission. I want to say just a few words about the commission and the process that resulted in this bill before others talk with you in more detail about its substance. The Uniform Law Commission is in its 117th year, and this state through you has been a member of it for almost all that time. You support the organization itself financially, and you usually provide the funds for our commissioners to attend the annual meetings where much of the work takes place. The Uniform Law Commission produces laws of the highest technical quality in areas where uniformity across states is desirable. There are more than 200 uniform laws including many that the state adopted such as Uniform Commercial Code, Uniform Probate Code, the Uniform Prudent Investor Act, and by my best count about 40 other acts. This state has gotten good value out of its long-term investment in the Uniform Law Commission. The process used by the Uniform Law Commission ensures bills of the highest technical quality. Each uniform act is years in the making. Each effort, each drafting effort is led by an expert in the field. Each drafting committee has representatives from all of the major interest groups. Each draft bill is read section by section at no less than two annual meetings at a conference, and each bill is approved by the conference through a state by state vote. In addition to this process, you also have other assurances that this bill is of the highest technical quality. Most importantly, the business law section of the Nebraska State Bar Association under

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the outstanding leadership of its chair, Julie Karavas, whom you'll hear from in a minute, and with the very able assistance of your committee counsel, Bill Marienau, conducted a close and careful review of the statute. In their deliberations, they consulted on several occasions with David Walker who is a law professor at Drake University and was chair of the Uniform Law Commission drafting committee for this bill. In addition, you should know that this bill is supported by the Nebraska State Bar Association. I'm going to try to shield off questions. I'm a labor lawyer. I know less about this, I'm sure, than Senator Conrad. I'm no expert in the field, so I would like to turn this over to others who know a lot about the substance of the bill. If you had some questions for me, I'd be pleased to give my best labor lawyer answer to them. [LB888]

SENATOR PIRSCH: Thank you, Dean, for those comments. Are there any questions for Dean Willborn? Senator Gloor. [LB888]

SENATOR GLOOR: Yes, thank you, Mr. Willborn, and I won't make this overly technical, but am I correct in my understanding that the conference, the Uniform Law Commission, I should say, doesn't limit itself to just issues of business? Things like anatomical gifting and, I mean, there's a broad spectrum of different issues that the law tries to touch on. Is that correct? [LB888]

STEVE WILLBORN: That is correct. That's correct. [LB888]

SENATOR GLOOR: Okay. Thank you. [LB888]

SENATOR PIRSCH: Very good. Any other questions for Dean Willborn? Seeing none, I appreciate your coming down here today. We'll move on to our second testifier here today, Julie Karavas. [LB888]

JULIE KARAVAS: Thank you. Good afternoon, my name is Julie Karavas, J-u-l-i-e K-a-r-a-v-a-s, and I am here testifying in support on LB888 for the Nebraska State Bar Association. Specifically, I do chair the business law section of the Bar and am a practicing attorney in Lincoln. What my purpose today is to give you a little bit of an overview as to the study, the homework that has gone into this proposed legislation, and there will be a couple other members of the business law section that will follow me that will also provide some practitioner tips and how this will be of help. First of all, as an overview, most of you, it sounds like, are aware of what a limited liability company or an LLC is, but I would like to point out at least a couple of issues or comparisons of them. And first of all, an LLC is a type of a business organization. It is a state level organization much like a corporation or a partnership, file particular documents with the Secretary of State. Members of the LLC is what they are called, the owners. You could make the analogy to like shareholders within a corporation. Within an LLC, they are members and then they draft an operating agreement which is designed to run the organization. You can think of that as bylaws. They can be managed by members or by

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a manager. The one point I want to make is oftentimes it gets confused as two or it's all lumped together, that the organization is a type of a tax entity. An LLC is not recognized as a tax entity. It was touched on earlier that it's a pass-through entity. The treatment of taxation is passed through to the members. If you have a single-member LLC, by default it would be treated as a sole proprietor. If you have a multi-member, two or more members of an LLC, they're going to be taxed as a partnership. Without going into great detail that would take much longer than you want to today, there are ways that an LLC can elect to be taxed as a corporation. So that may be a topic you want to look at later, but I don't want you to be confused that an LLC is a corporation or it's being taxed as...that might be an elected option. LLC formation...the presence of LLCs, as Senator Langemeier pointed out correctly is on the rise. There's many organizations that wish to be formed as that. There's a lot more flexibility for entities to be run that way. We clearly need a change in Nebraska. We do have an act, and it's not that it's...it has bad provisions to put it simply, rather we lack a lot of provisions. It's a lot of what is absent. For example, it says that an LLC may have an operating agreement. That's it. It really doesn't tell us what should be in there. The concern here is that we need something to provide guidance rather than leaving the option if something goes wrong, that it must be litigated, and that we have a court decide how something should have occurred. We're fortunate to have a uniform act out there that we can use as the base, as the starting ground of where we want our act to be. We have provided you with the great help of Bill Marienau a uniform act that really is that. And we want you to understand we're not disguising something as well, yeah, this is a uniform act, but we've added this and that. And you may hear some comments about that today, and I do want to point out right away, we're aware that there are some issues that are of very importance to some of us that are testifying even today that were willing to look at those as far as the business law section. But, no, it is a uniform act; it's just been a term that I've been using is "Nebraskafied" so that it meets with the procedure that we're used to in this state from the Secretary of State's Office so that it's parallel with other entities' statutory provisions. One final point that I would like to make before we bring up some specific issues as to where this act will be helpful is that this has been a very lengthy process of getting this onto your desks in front of you. Actually, back in February of last year, the business law section provided or presented an event or presentation on LLCs on the current act, and we started noticing a lot of absence of provisions. And David Walker whom Steve Willborn referred to earlier out of Drake University, and the drafter of the Revised Uniform Limited Liability Company Act presented there. Following that, we came up with a working committee of which there were approximately 20 members of the business law section participated over the summer. Summarize this, we ended up with a working group of less than probably ten people; it narrowed down to about five. We presented at the Nebraska State Bar Association annual meeting in October as our member section meeting and presented, more or less what you have in front of you, asked for comments, feedback. At that, there were 113 members of the business law section present and had the opportunity to hear about two hours of this active dialogue back and forth with people with the Uniform Law Commissioners as well there. So, the point

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to this being is that the people that are involved with the bar in terms of bringing legislation as well as practitioners that are a part of the business law section are very well aware of this legislation and generally support it, may have just a few minor comments. But for the most part, are in very general support of this and act that this be brought out of committee. So, thank you. And with that, I'd be happy to answer questions. There will be specific issues addressed behind me. [LB888]

SENATOR PIRSCH: Well, thank you for your comments, Ms. Karavas. Are there any questions? Senator Langemeier. [LB888]

SENATOR LANGEMEIER: Thank you. Thank you for your testimony. Very good. The question I have is as we adopt this, and we revamp our LLC language, what happens to our previous LLCs? Are they grandfathered in to what they're doing? If...you said it was pretty vague before. And as you get more specific in this language, are they grandfathered in because old LLCs, just strictly for new formations as of the date it passes? [LB888]

JULIE KARAVAS: I understand and I would invite either the committee chair or the Secretary of State's Office to correct me if I misspeak on this. The way that the bill is written is it does...it would go in...be enacted in 2011. But there is about a two-year period there where those that are current LLCs can still...will still operate under the current law; 2013 is more or less the date...again, I'm being very general that everyone would have to fall under that. Now, no...with very few exceptions, everything within the proposed bill are default provisions. So if you choose to draft your operating agreement around it and not include these provisions, you would be okay, as long as the companies, the LLCs that are in existence today, have operating agreements that address the issues which are general, you know, operating issues, and have something whether they're the same or different that are in there. For the most part, unless it's a mandatory item, they can still operate as that. If they don't have operating agreements or their operating agreements are silent on these provisions, by 2013, this act will control. And then there is a period of time in there that LLCs that do form would have the option of acting under this particular law at this time and then changing. So, and that again, is something...a perfect example of we wanted to propose something that mirrors uniform language the best it can, and what has been done in other states and trying to accommodate what the Secretary of State's Office usually prefers. But as far as practitioners and the bar, we're willing to accommodate all the various interests in making that work. [LB888]

SENATOR LANGEMEIER: Very good, thank you. [LB888]

JULIE KARAVAS: You're welcome. [LB888]

SENATOR PIRSCH: Thank you. Any other questions? I just have one. Assuming, and

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you mentioned this. It's quite a lengthy statute, so I guess the... [LB888]

JULIE KARAVAS: Yes. [LB888]

SENATOR PIRSCH: ...I have a chance to kind of delve into that at a later time. But just with respect to...you said one of the requirements that would come into effect is it must have an operating agreement that touches upon certain things. Correct? And so, is the...and, obviously, there's a delay date that goes into effect 2011 and then two years kind of a lead-in. But at that point in time, if it doesn't comply with the act, then would it be incumbent upon the Secretary of State then to extinguish the entity's existence? Is that what it basically would mean or? [LB888]

JULIE KARAVAS: No. I...if I understand your question, the act has...for the most part, it provides default provisions, and even if the LLC does not have an operating agreement or doesn't have one that provides all of this information, all of the provisions that the act does, then by default, that LLC really is being governed by the statute or the act that would go in place. There may be, without going into great detail, and I would be happy to talk outside of this hearing. There might...there would be certain things that just like any entity where the Secretary of State's Office would have the authority to, you know, whether it's issue a warning, shut them down, that, but just in terms of if they don't have this particular provision, unless it's something that is spelled out that's mandatory, no, they're not going to go away. [LB888]

SENATOR PIRSCH: Okay. Thank you. [LB888]

JULIE KARAVAS: Um-hum. Thank you. [LB888]

SENATOR PIRSCH: Any other questions? Seeing none, I thank you for coming down here today, your testimony. We'll move on then to...and I see Mr. Rasmussen is in the audience. Good afternoon. [LB888]

WAYNE RASMUSSEN: Good afternoon, Senator Pirsch, other members of the committee. My name is Wayne Rasmussen, W-a-y-n-e R-a-s-m-u-s-s-e-n. I'm a practicing attorney in Omaha. I'm a member of the business law committee of the Nebraska Bar Association, and we have had a number of meetings and a number of us have spent a fair amount of time on this bill. I'm in private law practice in Omaha. I practice primarily in the area of small business, real estate--primarily commercial real estate, some farm real estate, and in estate planning. I've been using LLCs in my practice since they were first authorized in the state of Nebraska which I think was in 1993. They are often the entity of choice for many business applications. One writer recently referred to them as the Swiss Army knife of business entities because they are so flexible and can be used in so many different circumstances. I was actually on a subcommittee of the bar in the mid-1990s when we made or when the Legislature made

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some amendments to the LLC Act as it then existed. And at that point in time, we were plugging some holes in some problems that had arisen as how certain things worked, but we were primarily responding to some changes in the tax laws that allowed us to make some changes in the LLC Act at that time which allowed for perpetual endurance for the entity. Originally, they had to have a certain limited term years, 40 years or less, and we made just some technical amendments to it at that time. And if you look at the statute, you can see that there were only a few changes made in 1996 and a few more in 1997 that responded to that. The last amendments that were made to the Nebraska LLC Act were made in 1997, and a lot of things have changed in, I guess, the business world and the tax world with respect to the use of LLCs during that period of time. Legal precedents have been set in other jurisdictions. Other states have adopted new acts including the revised uniform act which a couple of years ago was adopted actually into law by the state of Iowa. So this law is currently, in effect, I believe 2009 was the first year that it was fully in effect in the state of Iowa. This is a revised uniform act. The first uniform act was proposed back in about 1995, and one of the reasons for doing it at that time as noted by the Uniform Law Committee was that the states basically had a hodgepodge of statutes that dealt with LLCs and in a lot of cases that's still the case, and Nebraska is probably one of those because we have a statute that goes back 17 or 18 years. For estate planning purposes, for business purposes, this act will provide certainty as to a number of matters such as who can be an organizer of an LLC? How does a person become a member of an LLC? What constitutes an operating agreement? You can designate authority on public record with the Secretary of State's Office as to who is authorized to act for and speak on behalf of the LLC? And it also provides for dissociation of members which currently there's no provision for in any of those things in Nebraska law. In the last few years, in my practice, particularly in commercial real estate, I've seen a fair amount of forum shopping for people that want to establish LLCs, and most of those LLCs have been formed in the state of Delaware. One of those reasons might be because of the Delaware Bankruptcy Act, the Delaware Bankruptcy Court there handles a lot of business bankruptcies, but there has been a lot of interest in the Delaware act, and this uniform act does contain a number of provisions that are present in the Delaware act. If the Legislature does not want to provide answers to some of these questions and basically fill in the blank spots in our legislation, those blanks will be filled in by the judicial branch at some point in time. I think those are some of the issues that I see within the current law. You asked about problems with the Nebraska law. A lot of those we haven't necessarily seen at the present time. There could even be legislation...I mean, litigation going on on these items, but, for example, who can be an organizer of the LLC? The current act has no specific provision for that. Does it have to be a member? Does it have to be all of the members? Can it be the attorney and then assigns all of his rights in the entity to the members? The designation of authority...if you're in business, and you want to enter into a contract with an LLC, is the person you were dealing with authorized to act on behalf of that LLC? And under the revised uniform act, the LLC can and probably will file a designation of authority with the Secretary of State's Office for anyone dealing with this entity from the public realm, so

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they will know that they are dealing with the right person, not just a person, who is a member or maybe a subordinate manager. Series LLCs, you had asked a question about that, Senator Langemeier. I'm not aware, I guess, of any restrictions right now on one LLC actually owning an interest in another LLC. I've actually seen that happen in a number of occasions, but what the uniform act provides for, and our committee did not approve it, is what they call a Series LLC, and that's a totally different animal where, basically, the entity forms an LLC, and then you can form a number of sub-LLCs under that without even making a filing with the Secretary of State's Office. And the IRS right now has a bunch of problems with that that haven't been resolved. We did not include that as part of our rendition of the uniform act for that purpose, and I think there's some other issues with that from a legal standpoint. But we would promote; we would ask the committee here to take seriously the introduction of LB888, and we look forward to its passage. [LB888]

SENATOR PIRSCH: Thank you very much for your comments. Senator Gloor. [LB888]

SENATOR GLOOR: Thank you, (Vice) Chairman Pirsch. Mr. Rasmussen, help me understand what the impetus is now to make this change, and what as the commissioner is saying now is the time to go to the well of knowledge, and, you know, drink from it and bring it back to Nebraska and implement it? Were we having problems or was it just a function of it had been a long time since we had really done this? [LB888]

WAYNE RASMUSSEN: Well, it has been a long time since we've done anything. I think that based on experiences in other states, we can see that there are problems on the horizon, particularly with issues regarding management of LLCs, dissociation of members of LLCs, and actually having the members have a right to bring derivative actions on behalf of LLCs, none of which is included in our present statute, and the uniform act is available. It's something that other states are going to have. The state of Iowa, on our eastern border here already has it, so it seems like a logical choice rather than going through and selecting certain provisions of our own act to amend. It seems to take something that somebody has studied, put a lot of thought into, and generated this type of thing. [LB888]

SENATOR GLOOR: Okay, thank you. [LB888]

SENATOR PIRSCH: Any other questions? Seeing none, I thank you for coming down and testifying here today. [LB888]

WAYNE RASMUSSEN: Thank you. [LB888]

SENATOR PIRSCH: And we will move to Mr. Maser. [LB888]

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MATTHEW MASER: Good afternoon. Thanks for...Senator Pirsch, for...and the committee for listening to what I have to say. My name is Matthew, M-a-t-t-h-e-w Maser, M-a-s-e-r. I practice law from Koley Jessen in Omaha, Nebraska. I also maintain an office in Grand Island, Nebraska, in Mr. Gloor's fine legislative district, and I live there as well. So a bit of a different perspective I bring from Wayne as I practice both in Omaha and in out-state Nebraska. My practice generally focuses on basic corporate entities, real estate, and mergers and acquisitions law. Most clients that I see now want to do LLCs opposed to a corporation due to the tax benefits at the federal level associated with an LLC, so it is definitely something that we see in practice every day. And there are two main things I think that the uniform law adds that Nebraska does not have clarity on right now. And the first one is the Nebraska act, as it's currently constituted, does not state clearly that the operating agreement controls versus what might be in the statute. The uniform act makes it very clear that the operating agreement controls except for a limited number of things which you cannot contract around. And the importance of that in practice is, is that allows the practitioners to actually document in the operating agreement what the parties want to have in the operating agreement say and know going forward that you can't be challenged later on that well, the statute says something different. If there's a conflict with the operating agreement of the statute, which one governs. The uniform act that we're asking to have passed here clearly takes that issue away, and that's a big thing when you're doing a multi-state practice, and you're dealing with lawyers in other states, if they ask you that question, and you say, well, it's unclear in Nebraska. What ends up happening is, well, let's go to Delaware; let's go to another state where it's clear that's the case, and the state of Nebraska then loses out, and that LLC gets formed somewhere else. The revenue associated with that goes to that state, and we lose out on that. So I think this is a real helpful thing that a state from that standpoint as well. And the second issue that it clearly clarifies, and we slightly modified the uniform act on this to make it very clear was the fiduciary duties that are owed from one member of an LLC to another member. Wayne slightly touched on this, and this relates to managing an LLC, and if there's disputes between the members, what duties are or are not owed from one member to another. The current Nebraska law and the laws of a lot of other states is silent on that, so do you have an obligation to be fair to your other member or not? And what the uniform act says is yes, you do. You have a duty of care; you have a duty of loyalty; and you can't contract around those. What that does is it codifies the law on that, and makes it very clear that in Nebraska you have those obligations, and you cannot somehow contract around them which is another important thing that when you're looking at doing LLCs with people from other states, they ask that question and, you know, Delaware is very clear on that; Nebraska is not; and this brings us in line with what the Delaware act provides. So those are the two big points that I wanted to make that the committee was aware of. And, any questions? [LB888]

SENATOR PIRSCH: Are there any questions for Mr. Maser? Senator Utter. [LB888]

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SENATOR UTTER: Thank you, Senator Pirsch. Mr. Maser, is the uniform act truly uniform or is every state tweaking the thing to suit themselves? [LB888]

MATTHEW MASER: Generally, it is very uniform. There is, you know, as you've seen, the bill is very long. There was a few tweaks that we made to it. One is the shelf LLCs. Another one is not allowing for an LLC to be formed, sit around in perpetuity, and then be revived at a later date. Other than that, you know, we've pretty much taken it as drafted and adopted it. That's what's proposed. The state of Iowa had some minor tweaks as well, but generally speaking I would say, 99.9 percent of it is uniform. [LB888]

SENATOR UTTER: Okay. Thank you. [LB888]

SENATOR PIRSCH: Any other questions? Seeing none, thank you for coming down and testifying here today, and we'll ask for others to...who are...well, we'll...other proponents. [LB888]

ROBERT HALLSTROM: Mr. Chairman, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraska Bankers Association to testify in support of LB888. While the bankers have general interest in the statutes that are applicable to limited liability companies and have ongoing lending and deposit relationships with LLCs that are governed by other statutes, our primary interest in this bill deals with, I believe, section 42, pages 52 and 53, dealing with charging orders. We are going to be here next door in the bill to talk in more detail about what LB730 would do with regard to charging orders. But for purposes of this hearing, we just want to suggest that the uniform provisions regarding charging orders are in this bill, should be adopted, and the reason that (LB)730, as I'll explain in further detail in a few moments is here, is because of the delayed effective date of this LB888 and to fill the gap with the uniform charging order provisions, the passage of LB730 would be appropriate in our estimation. With that, I'd be happy to address any questions. [LB888]

SENATOR PIRSCH: Thank you. Senator Pankonin. [LB888]

SENATOR PANKONIN: Thank you, Senator Pirsch. Mr. Hallstrom, tell me a little more about these charging orders. What are we talking about? [LB888]

ROBERT HALLSTROM: Well, without repeating my testimony that you'll hear later, a charging order is...basically, last year LB35 was adopted, and it had a provision relating to charging orders that contained only a portion of the uniform act, and there is a provision that relates to charging orders which is, in essence, the judgment or the lien that you get against a transferable interest of a member of a limited liability company. It's much like the concept of buy-sell agreements where parties may join together to form a business organization. They came together based on who they wanted to have

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in the governance of their organization. They don't want outsiders including creditors coming in for the governance of the operation. So the limiting factor of a charging order only goes to the transferable interest or the financial interest, the distributions that can be made from the LLC to that particular member. Again, the problem that we see with the law is when the charging order provisions were adopted last session, they only went partway. The aspect of the exclusive remedy doctrine has been interpreted since that time by the courts to mean that the creditor needs to simply sit back and bide their time and wait until a distribution is made from the LLC, and discounts what would normally be equitable enforcement remedies that are part of the uniform act such as the appointment of a receiver, the ability to go into court and get a foreclosure order for the foreclosure of the lien or the charging order. [LB888]

SENATOR PIRSCH: (recording malfunction)...some creditor rights issues there, and I appreciate those comments. Are there other questions? Seeing none, I certainly appreciate your testimony here today. Are there others who wish to testify as proponents? Seeing none, we'll move on then to opponents. Is there anyone here to testify in opposition to LB888? Seeing none, we'll move on to those who wish to testify in a neutral capacity. Good afternoon. [LB888]

COLLEEN BYELICK: Acting Chairperson Pirsch, members of the Banking, Commerce and Insurance Committee, my name is Colleen Byelick. It's C-o-l-l-e-e-n B-y-e-l-i-c-k. I am the associate general counsel with the Secretary of State's Office. First, on behalf of Secretary of State John Gale, we'd like to thank the committee and Senator Conrad for including our office in discussions about this legislation and for listening to suggestions that we proposed. Our office has observed the rise in popularity of limited liability companies firsthand, and I just kind of wanted to give you some stats about that. Last year, 4,299 limited liability companies were formed in Nebraska in comparison to 2,084 corporations. The number of limited liability companies on file with our office has grown from 5,544 in 2001 to 33,302 in 2009. So, due to the increasing popularity of the LLC, we see the need to review and revise existing legislation in order to keep up with changes and provide a solid framework for these entities to operate within. The existing LLC Act is silent on many subjects typically spelled out and enumerated in other business entity acts. Because of the limited nature of the existing act, we have to come before the committee and ask for patches and quick fixes in order to better administer the act. And we believe that LB888 addresses many of the subjects not addressed in the existing act. So although we generally support LB888, there are a few provisions that we believe may need further study. For example, section 71 provides that an LLC may merge with other organizations if the governing statute of the other organization authorizes the merger. Currently, the Business Corp Act only references mergers with other corporations and does not authorize mergers with limited liability companies. So, therefore, corporations and limited liability companies would not be able to merge under the proposed language. Similarly, section 75 provides that an organization may convert to a limited liability company if the other organizations governing statute authorizes the

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conversion. The Business Corp Act does not authorize conversions and, therefore, conversions with corporations would not be able to occur under the proposed language. There's also been some concerns raised about section 56 with respect to foreign limited liability companies who transact business in Nebraska. The existing law specifically provides that foreign limited liability companies who transact business in Nebraska must apply for a certificate of authority. The proposed act provides that foreign limited liability companies may apply for a certificate of authority. So implying that the certificate is optional and, you know, we think that clarity is beneficial for both the business community and the state. In closing, just thank you for allowing me to appear today, and I can try and answer any questions you may have. [LB888]

SENATOR PIRSCH: Thank you. Are there any questions for Ms. Byelick? Senator Pankonin. [LB888]

SENATOR PANKONIN: Thank you, Senator Pirsch. My only question is, with your suggestions, at what stage or...we've had interaction, but will there be continued discussions in your opinion that...? [LB888]

COLLEEN BYELICK: Yeah, I think there's continued discussions, and it may be something that since we've got this gap between 2011 and 2013, before all of the existing LLCs will come under this act, that maybe during that time period, that can be looked at to make sure that all of these different entity acts are working together. [LB888]

SENATOR PANKONIN: So your suggestion is then that the bill possibly moves forward with changes later or that you will be working with Senator Conrad on these suggestions to see and others...other interested parties to see if that happens before the bill moves. [LB888]

COLLEEN BYELICK: I think I'm less concerned about that issue initially because there is going to be kind of that gap time period where we can further study it. I think the concern is, we don't want to go into all of these other entity acts prematurely without really taking a good look at what needs to be done, so, you know, that would kind of be my suggestion is that going forward that, you know, we do look at that, and that just doesn't kind of get dropped because this bill is...has been adopted or moved forward. [LB888]

SENATOR PANKONIN: Okay. Thank you. [LB888]

SENATOR PIRSCH: And I appreciate your testimony. We haven't, apparently, according to the prior testifiers here today touched anything with respect to this act since '97. And you think it's a good bill overall? I mean, that there's positive aspects of the bill in terms of clarifying things that were otherwise silent. [LB888]

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COLLEEN BYELICK: Right. There's a lot of things that the existing act...I mean, there's a very limited term section which is usually very crucial to, you know, any act, and so I think there's a lot of things that this does to kind of fill in those gaps that the existing bill doesn't have. [LB888]

SENATOR PIRSCH: Why hasn't there been any action taken in prior legislatures then to address cloudy language, do you know? [LB888]

COLLEEN BYELICK: You know, I really don't know. It may be that now that there's, you know, a revised uniform act, there's kind of a...more of a movement then to go with that, and when you've got a uniform act there's so much thought put behind that, that maybe that's...you know, you're more comfortable with moving forward with the uniform act versus trying to come up with something just for Nebraska, so that may have been part of it. [LB888]

SENATOR PIRSCH: Very good, just sometimes takes awhile to develop a clear path and momentum, huh? Okay. Seeing no other questions, I thank you for your testimony here today and would ask if...is there anyone else here to testify in a neutral capacity? Seeing none, that will conclude the hearing today on...oh, I'm sorry, Senator Conrad, I apologize. I almost cut you off. [LB888]

SENATOR CONRAD: That's okay. Number one, thank you to the committee and staff for your kind attention and careful consideration of this issue today. I think we had a great dialogue on it and is a great starting place to move this legislation forward. There are a few additional points that I did want to make to be responsive to questions that came up thus far. There were a lot of questions related to...I'll characterize them as time frame issues. Why now? Why does this need to move forward now? And to be clear, I think it's really a natural progression of work that was started a long, long time ago that brought us to this point today, rather than a specific issue that needed to be addressed or to be reactive to, but rather, it was a very proactive approach in the continuing evolution and modernization of these kinds of public policy issues. And as I mentioned in my opening, the National Conference on Commissioners of Uniform Laws first issued the Revised Uniform Limited Liability Company Act in 2006. From that point forward then, the interested parties have come together to review that. I introduced an interim study on these issues with this committee in 2009. That provided additional dialogue and platform for these discussions, and really as Julie mentioned and other testifiers, this was a painstaking process over the course of many months and many years to get not only those who have expertise and who practice in the field, but the affected administrative agents from the Secretary of State's Office and otherwise, and to the folks with business interests as well. I'm bored looking at this line by line by line and making specific policy choices about what needed to comply with the uniform law as written, what needed "Nebraskafication." I think that's a great word; we may have to

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patent that. But it was really the culmination of that hard work that led us to where we are today and really that expanded that time frame to the point that got us to where we are today. So that's one thing I wanted to address in terms of the time frame questions that were presented today. And furthermore, I believe the statistics provided by the Secretary of State's Office, as you can see, really the true explosion in growth in terms of the utilization of this formation and entity helps to prove that point in terms of the time frame issues that were brought forward. Finally, I would be remiss if I, again, did not thank all the testifiers who came forward today, who worked painstakingly upon this piece of legislation, and many others who are not with us today to be respectful to your time and otherwise, but who were definitely a part of the process. And, of course, to your committee counsel who has done the work of ten men plus in relation to this bill. Finally, the points brought forward by the Nebraska Bankers Association, I want to thank them and have thanked them for identifying potential synergies that exist with LB730 introduced by our friend and our colleague, Senator Lautenbaugh. Senator Lautenbaugh and myself have visited about these issues and are committed to working together as we move forward. And to be clear, there is not a conflict that exists in relation to these bills, but if you think about it, maybe in terms of visual representation as a smaller piece and underneath the umbrella that LB888 might be that really they, in fact, work together and can both move forward there. Otherwise, we did not hear any substantive opposition today. We have heard additional technical concerns and questions that have been brought forward. I remain open to working with this committee all throughout the process to address those and, again, want to thank you for your time. [LB888]

SENATOR PIRSCH: Any closing questions by committee members? Seeing none, thank you very much. I appreciate it. [LB888]

SENATOR CONRAD: Thank you. Thanks. [LB888]

SENATOR PIRSCH: We will then move on to the next bill that is set for hearing today, LB730. That is Senator Lautenbaugh's bill. [LB888]

BRENT SMOYER: Thank you, Senator Pirsch, members of the committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, here to testify on behalf of Senator Lautenbaugh. He apologizes for sending the B-team, but unfortunately, he was tied up in Transportation right now. Basically, Bob Hallstrom actually covered (LB)730 quite well initially in his testimony, (LB)888. Quick refresher, last year in the Christmas tree bill of LB35, we included a provision regarding charging orders from the Revised Uniform LLC Act to try and bring things a little more up to code, a little more up to speed here in Nebraska. Unfortunately, when we built the...more or less built the boat that was the charging order bill, we forgot to put on a propeller. We forgot to give the court an option to enforce them. That's why (LB)730 is currently in front of you. This allows the courts to provide...well, basically allows them to enforce the charging orders through appointment

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of a receiver or engage in collection activities such as foreclosing on the lien of the debtor. Essentially, it's just kind of a piece of tidy work, fix things up, tighten it, make sure that the charging orders work as they were intended from the very beginning. (LB)730 brings in all the language from the Revised Uniform LLC Act in regards to charging orders and charging order remedies in order to do that tightening. In addition, there will be a friendly amendment to LB730, a couple of friendly amendments that Bob will, of course, explain a little better as he is the relevant expert here, that would also bring in further LLC Act language cutting out...well, let's see, the amendments would eliminate proposed nonuniform language in subsections 11 and 12 relating to single-member LLCs. It would also conform the nonuniform provisions currently in Nebraska law from last year's LB35 which were their counterpart uniform provisions in the Uniform LLC Act. Finally, it would remove all remaining nonuniform language that was contained within last year's bill, so we're polishing, we're cleaning, and we're going to make this a more effective procedure for all involved. I guess that's the basics for the opening. If you have any questions, I'd be happy to try and answer them. Otherwise, there will be a litany of experts following this introduction. [LB730]

SENATOR PIRSCH: Thank you. Are there any questions? Seeing none, I appreciate it. [LB730]

BRENT SMOYER: And we will waive closing. [LB730]

SENATOR PIRSCH: You will waive closing. Okay, thank you. Yeah. [LB730]

BRENT SMOYER: Yes. Thank you. [LB730]

SENATOR PIRSCH: Good afternoon, Mr. Hallstrom. You know, there's a...is it officially Groundhog Day? I think it is and you may be living that shortly here. [LB730]

ROBERT HALLSTROM: (Exhibits 1, 2) That it is, and I think we're going to have a short winter. Yes, no shadow this morning is my understanding. Mr. Chairman, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association to testify in support of LB730. As Mr. Smoyer has indicated, LB730 fills some gaps that were left out of LB35 last year relating to the issue of charging orders against the transferable interest of a member of a limited liability company. Specifically, LB730 would authorize equitable enforcement remedies such as the appointment of a receiver and the authorizing of a court to enter a foreclosure order to realize the charging order lien and order a sale of the LLC members' transferable interest. One other item that is addressed in the green copy of LB730, from last year the charging order was the exclusive remedy as to all limited liability companies, both single-member LLCs and multiple member LLCs. LB730 would expand beyond just the charging order the types of remedies that could be used by a judgment creditor against a single-member LLC. As I indicated previously, the problems

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that have arisen in the aftermath of passage of LB35 are that courts have disavowed the ability to use some of those equitable remedies that are contained within LB730, so we would fix that particular problem or issue. The reference to the amendments which I have passed out to the committee, I've worked with Professor Willborn, who as indicated, is a member of the Uniform Commissioners here in Nebraska. The amendments that have been submitted to the committee are designed to make sure that the provisions of LB730 are in conformity with the uniform provisions of the charging order statutes under the Revised Uniform Limited Liability Company Act. They accomplish that by first removing the proposed changes under LB730 that I referenced relating to remedies available against single-member LLCs. Those would be removed from the bill, and they also make changes to subsection 8 to match the uniform language that's contained within LB888 and then remove subsections 9 and 10 which were nonuniform provisions that were adopted by the Legislature last year in LB35. With that, I'd respectfully request advancement of LB730. Again, I would reiterate that the significance of not just moving LB888 if the committee is so inclined, are the delayed effective dates of that provision, particularly as they relate to charging orders. LB730 will fill in that gap until LB888 officially and effectively becomes law. Be happy to address any questions the committee might have. [LB730]

SENATOR PIRSCH: Okay. Well, thank you. Senator Utter, you have a question. [LB730]

SENATOR UTTER: Thank you, Senator Pirsch. Bob, I've sat here through all of this. I'm still not...is there a layman's definition of charging order that I can understand? [LB730]

ROBERT HALLSTROM: Well, a charging order...we'll boil it down. A court enters a judgment against a member of an LLC who happens to have a loan that's in default with a bank. And the bank has got that interest against or that judgment against the member of the LLC. It's called a charging order or a lien that is effective that gives notice to the LLC itself that if there are any financial distributions that are to be made from the LLC to that member, that they are subject to that lien or that charging order of the LLC, and they should be distributed pursuant to the charging order to the creditor rather than to the member of the LLC. So the charging order effectively is a formal notice to the company that henceforth any financial distributions are subject to the judgment creditor's rights. And so those are to be paid directly to the judgment creditor. [LB730]

SENATOR UTTER: Thank you for that, and don't tell any of my banking friends that I didn't understand that (laughter) but... [LB730]

ROBERT HALLSTROM: You're more than welcome. [LB730]

SENATOR PIRSCH: Senator Pankonin, you have a question. [LB730]

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SENATOR PANKONIN: Thank you, Senator Pirsch. Mr. Hallstrom, just as an example, you had two individuals. They own some real property whether it's a farm or a building or whatever, and under the LLC. And the...for whatever reason, they have debt problems with a financial institution. They come after them. Does that LLC shield them from, you know, they might get a charging order on distributions, but as far as that asset themselves, that asset...say it's a building, that that bank can't come into the LLC and grab it, right? [LB730]

ROBERT HALLSTROM: I believe that's correct. It's the financial interest in the LLC that they would be entitled to, so if there was some type of dividend type of distribution, that cash outlay would be subject to payment to the creditor in recognition of the charging order. [LB730]

SENATOR PANKONIN: But we're not doing here that can trigger the sale of the underlying asset. I mean, that's not...that's not permissible. [LB730]

ROBERT HALLSTROM: No. It's the interest of the member. Yeah. [LB730]

SENATOR PANKONIN: Right, okay. [LB730]

SENATOR PIRSCH: Are there any other questions? Seeing none, thank you very much, Mr. Hallstrom. Are there any other proponents of LB730? Are there any opponents of LB730, seeing no proponents...no further proponents? Any opponents? Are there any here to testify in a neutral capacity? Seeing none, I believe Mr. Smoyer said that he would waive closing, so that will conclude our hearing on LB730, and we will move to our third hearing of the day, LB720. Senator Avery is the sponsor so if you'd like to open. [LB730]

SENATOR AVERY: Good afternoon. []

SENATOR PIRSCH: Good afternoon. []

SENATOR AVERY: Thank you, Vice Chair Pirsch. My name is Bill Avery spelled B-i-l-l A-v-e-r-y. I represent District 28 here in Lincoln. I am bringing to you LB720, and what this bill will do is allow customers of businesses to request funds that are promised by way of customer loyalty, bonus, or incentive programs to be given to the customer in the form of cash at the point of sale, negotiate a check, or a general use prepaid card. In Nebraska statute, general use prepaid cards are defined as a plastic card or other electronic payment device usable with multiple unaffiliated sellers of goods or services. The bill also prevents negotiable checks and prepaid cards from expiring for one year from the date of issuance and eliminates all administrative fees and shipping or handling fees. The reason I brought this bill was that I had some consumer...or some

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constituent complaints, and I was becoming frustrated with the growing practice of companies that put consumers in situations where they find it difficult, if not impossible, to spend the full amount on their cards that are promised. The full amounts might be \$50, \$100, or whatever it might be, but in the process of using those prepaid cards, the consumer finds that they almost never can spend it all. What happens then is that the companies keep...say, the \$2.38 or your \$1.73 or your neighbor's 25 cents that remains on the card and on and on. Millions, in fact, billions of dollars have been taken from consumers because companies rely on the fact that you and I and many others are going to have a tough time extracting those few cents or those few dollars off the general use cards. And these are dollars that were promised to us as consumers in return for a purchase. General use prepaid cards carry Visa or Mastercard logos. It's important to remember that Visa and Mastercard are transaction systems; they're not banks. The money on these prepaid cards is actually on deposit at an issuing entity such as Citibank which sells Visa or Mastercard general use, prepaid cards to wholesalers and retailers. These wholesalers and retailers, in turn, issue these as general use, prepaid rebate cards to consumers. Also, it's possible that issuing entities who often are not headquartered in Nebraska offer discounts to businesses to encourage them to choose Visa or Mastercard cards rather than cash or checks for their consumer rebate programs. It's hard to know exactly where in this list of transactions your unspent rebate may wind up. It could be the issuing entity; the business you patronized; or it could be in a Visa or Mastercard transaction system. But one thing we do know is pretty certain that it doesn't wind up with the customer or with the consumer. It begins to appear to the public that the existing system is not an accident, but perhaps a scheme designed to increase revenue to companies by making it difficult for consumers to claim their full rebates. An example, I have here four rebate cards. Two of these expired after one year. One, I think, had 38 cents on it, and the other had about \$4 and something on it. That was money that was promised to me in a rebate, and it was money I was not able to claim. This one...it's a \$50 rebate on my son's contact lenses. I went online to find out how much was on it, and every time I tried to enter a personal identification name, number, whatever, it would reject that. Then when it didn't reject that, it would reject my telephone number. When it didn't reject my telephone number, it rejected my password. It could never seem to get the right combination of information that the program wanted. Now, I left my telephone at home today, so I wasn't able to call the 800 number and find out exactly how much is on it, so I don't know. But I do know there's a good chance that when I do finally get tired of trying to use this thing down to the last penny, that I will probably wind up with money left on it. It will not go to me as promised, but it will go somewhere else. Here's another one. Verizon, probably a purchase for a telephone. In this case, I had a problem with getting it down to somewhere around a dollar and wanted to buy a cup of coffee, gave this as part of the transaction. I was told it's not because you don't have enough money on it, and I said, well, why don't you do a split transaction? Why don't you take what it does have? I'll pay the difference in cash. And they said, we don't know how much is on it; we can't find out. You have to call the 800 number. Well, you can understand the problem.

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What I'm trying to do is to stop this practice. In 2007, MSNBC's consumer fraud investigation division conducted an investigation on rebate cards and reported that many consumers who buy products promising rebates are surprised when a plastic card arrives instead of a paper check. According to the Maryland Office of Consumer Affairs, rebates in the form of gift cards or, in this case, rebate cards are more common but not always disclosed well in advertising even when the ads involving a gift card rebate make it clear that that is the form of rebate. They don't often state the limitations of the cards. MSNBC also found that the amount of rebates consumers never claim on gift cards referred to the industry as breakage...it's an interesting phrase for that or word. MSNBC found that the nonclaimed amount of money totals nearly \$8 billion annually nationwide. That represents about 10 percent of all of the cards' value. These breakage amounts are absorbed back into the issuing entities or Visa or Mastercard transaction systems, and sometimes to the wholesale and retail companies that issue them. It should be...I do want to stress that I do not intend by this legislation to prevent retailers...local retailers...from offering programs or rebates that boost return sales. I don't want to discourage individuals from patronizing Nebraska retailers that offer incentive programs to attract customers. But I do think that the customer or the consumer is not being well served by these. Let me turn to the fiscal note just a little bit. I spoke with the Attorney General's Office, and they relayed a concern to me regarding language on page two of the green copy. In section 3, the Attorney General is authorized to bring action in the name of the state against any entity that is in violation of this section. The language indicates on line 15 that attorney fees and costs of action are recoverable by the prevailing party. If the Attorney General were unsuccessful in litigating a case against a party in violation, this statute would require the state to pay costs and fees to unsuccessful parties. That was not the intent that we had going into this, and I would ask the committee to strike this language from the green version of the bill. Congress has recognized the confusing, obscure, and unclear practices of credit card companies and just last year passed the Credit Card Accountability and Disclosure Act. The act establishes fair and transparent practices relating to the extension of credit under an open end consumer credit plan and for other purposes. That bill goes into effect later this month, I think, and among the changes will be protection against interest rate hikes and misleading terms and excessive fees. It's obvious that the credit industry, if left to their own rules and left to create their own rules, will not behave in ways that benefit consumers. Nebraskans deserve better than confusing, ambiguous trade practices, and I think we ought to make sure that that does not continue in Nebraska, and I urge you to advance this bill to General File. Thank you. [LB720]

SENATOR PIRSCH: Thank you very much, Senator Avery. Are there any questions?
Senator Pankonin. [LB720]

SENATOR PANKONIN: Thank you, Senator Pirsch. Senator Avery, appreciate you coming. Can understand the issue a little bit being very frustrating, but did you model this legislation after any other state or just kind of come up with it on your own, or what

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did you kind of base that on? [LB720]

SENATOR AVERY: No, I did not, and I don't know if other states have legislation like this. But it was brought to my attention early on when we were talking about this. Well, you don't have the authority to do that in Nebraska, and I pointed out that well, we do have the authority to regulate interest rates on credit cards. I mean, you can look on the back of any credit card, and it says this does not apply in these states, so there are, obviously, states that do have different rules for credit card companies. [LB720]

SENATOR PANKONIN: And I assume if you went to someplace and it was a \$50 card and a \$100 purchase, that really wouldn't be the issue there. I mean, you'd use all the card in one shot. It's when you try to use it incrementally... [LB720]

SENATOR AVERY: Yeah, it's when you use it for multiple transactions and there's a partial debit on the card...the \$50 or the \$100 debit. You know, and, you know, 22 cents...most people will say, okay, so I've got 22 cents on here, and I'm not going to be able to spend it. Throw it in the drawer and forget about it. And it doesn't matter that much to that individual, but when you collect this over millions and millions of people or hundreds of thousands in the state of Nebraska, it adds up. And the principle here is that the consumer is promised something that they aren't able to claim. [LB720]

SENATOR PANKONIN: Thank you. [LB720]

SENATOR PIRSCH: Just a question. Is...is one of the things your...I mean, is it...is it your concern that there isn't adequate disclosure up-front about the limitations and terms of the usage of the...? [LB720]

SENATOR AVERY: That's part of the concern, but additional concern is that the consumer doesn't have enough choices. And what the bill calls for is a choice of a cash refund at the point of sale, a negotiable check, or if you want the rebate card, fine. Some people, I think, enjoy having the rebate cards they can carry around, you know, and use it to buy coffee and whatever it is they want to buy. But they experience the same frustration that other consumers do is that, at some point, they get down to a few cents or maybe a few dollars, and they can't spend it without jumping through so many hoops that it becomes a disincentive. [LB720]

SENATOR PIRSCH: Thank you. Senator McCoy, did you have a question? [LB720]

SENATOR McCOY: Thank you, Vice Chairman Pirsch and thank you, Senator Avery, for coming in and bringing us this legislation. You mentioned, and I want to just give you the opportunity to maybe go into a little greater detail if you don't mind. You mentioned an 800 number on the back of one of those cards. Do you know if you were to call that 800 number and find out what the amount was on that card, could you then walk in

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somewhere knowing the amount if you were to write it with a Sharpie marker on the card or whatnot? Would you be able then to use it? [LB720]

SENATOR AVERY: If I knew the exact amount on this ACUVUE card, I could probably go in and say, all right, this has \$2.50 on it, and I want a purchase of \$5. And I don't know if they'd take my word for it or not, but most of those...a lot of those card reading machines don't tell you how much is on the card, so the...the retailer can't even do a split transaction. [LB720]

SENATOR McCOY: Sure, I'd just gone off...I think you'd asked in your Verizon on there. You went in and you tried to use it for a cup of coffee and they said, well, we don't know how much is on there. If you did, they could then, I assume, process that card based upon what you are saying that was on there, and one clear way to know would be if it would accept it, then that would be a correct amount, would it not? [LB720]

SENATOR AVERY: If they would accept it. But, you know, if you're Joe Blow Consumer, and they don't know who you are, and I said I had \$2 on this--they don't know that. Would they take my word for it or would they take the time to call the 800 number to verify it? [LB720]

SENATOR McCOY: Correct. But would they not know, based upon whether or not it would process? [LB720]

SENATOR AVERY: If it has enough money to cover the full cost of your transaction, it processes right away. In some instances, though, the card readers can actually read the amount on there, and it will show how much, and they'll do a split transaction right on the spot. But that's not in all cases. In fact,... [LB720]

SENATOR McCOY: Okay, and my last question will be did I...and perhaps I didn't catch it quite right. Did I hear you say that there was \$8 billion that's unused on rebate cards? Is that correct, and you believe that to be 10 percent? [LB720]

SENATOR AVERY: Yes, nationwide. That's 10 percent on average for every one of these cards...10 percent of the amount. [LB720]

SENATOR McCOY: Okay, thank you. [LB720]

SENATOR AVERY: And I might just say in Verizon's defense, they didn't ask me when I bought my telephone, would I like to have a card or a check? They did just send me the card, and then in the fine print, and I did read it, it informed me that I could use this card or if I preferred, I could call a number, and I could get a check written to me or I could take this to a bank and cash it. That's responsible, and it is rare. [LB720]

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SENATOR McCOY: Okay. [LB720]

SENATOR PIRSCH: Thank you. Any further questions? Seeing none, I appreciate you coming down and... [LB720]

SENATOR AVERY: I will stay to close. [LB720]

SENATOR PIRSCH: Very good. Thank you. We'll start with proponents then. Are there any individuals here to testify in favor of this bill? [LB720]

JOE ELLIOTT: Mr. Chairman, my name is Joe Elliott. I appear as a personal individual and not on behalf of any group. The name is Elliott, E-l-l-i-o-t-t. I can certainly say amen to everything that the senator has said. I've got 13 grandchildren, and I have had a lot of credit cards, and I have been confused by them, and I've lost \$200 or \$300 within the last two years because I didn't use them or because they didn't honor it in some way. One particular one was Village Point in Omaha. They have a credit card for all the stores in Village Point, and my son bought me one two years ago, and there was no card in there, and I didn't notice it because I didn't use it for six or eight months. All of a sudden, I go and find out I can't use it, so I told him to call and get a card. And he called, and then he couldn't find the check number right away, so that took another two months of fooling around. He finally got the check number and told them, and they wouldn't honor it. So there's been a lot of frustration. One other one, a \$100 one to a fine restaurant in west Omaha, couldn't use it because it had expired. That's what, four years ago when they had expiration dates on them? I see the one I'm looking at now doesn't have that, but it does say, this card is redeemable for merchandise only. I did never know that was on some of these. But it's also confusing too when you leave a tip. You get a \$70 bill, and you want to leave a tip, and sometimes they say, do you want to leave it on the card? And I say yes, and that gets very confusing to try and figure out when they put the bottom line on, what they're going to take out of the card because they're doing a double entry of some sort. In that particular case, I left the card on the table, and I called them and tried to get the remaining amount, and I just jumped through a lot of hoops before I got the...what, 30, 40 bucks that I was supposed to get back? So I just feel very frustrated in dealing with gift cards, and I've told all my children and grandchildren about three years...two years ago, I didn't want any more gift cards. And that's an ideal situation for a lot of kids, you know, they want to do something for you. And so I don't know what the answer is, but I certainly like what Senator Avery has said, and there is a lot of frustration in this, and not know whether you're going to get cash back or not. But I'm sure there's a lot of other frustrated people, and a lot of people leaving tips that are the difference in the final amount. And, in other words, they overtip because of it. And I've asked this one restaurant that said that it expired. I said, did you report this on your income tax? I mean, you just made \$100 on me. Well, they said, we don't know. Obviously, you're not going to find out from anybody even the manager there whether or not they reported it, but they did give me two desserts out of that

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hundred bucks anyhow so (laughter). I never did take advantage of it, though. I don't know. But any...that's my comments, Senator. [LB720]

SENATOR PIRSCH: Well, I appreciate the testimony. Are there any questions here for Mr. Elliott? Thank you very much for your testimony. [LB720]

JOE ELLIOTT: You bet. [LB720]

SENATOR PIRSCH: Are there any other proponents to testify here today? Okay, seeing none, we'll move on to opponents. [LB720]

ROBERT HALLSTROM: (Exhibit 1) Mr. Chairman, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association to testify in opposition to LB720. LB720 would dramatically limit the availability of retailers to provide their customers with general use prepaid cards as part of customer loyalty and incentive programs. More specifically, LB720 is likely to prevent retailers from ever providing their customers with general use prepaid cards as part of their incentive programs. The restrictions contained within LB720 are limited only to prepaid cards that can be used generally at various unaffiliated retailers. These are generally offered by banks, particularly national banks and generally will contain some form of expiration date and fees that could be assessed against those cards. I might add that recently Congress has enacted legislation and regulations are on the table to impose those significant restrictions on both expiration date requirements and fees that can be imposed for these type of multiple merchant general use prepaid cards. We believe that this bill will have the practical effect of discontinuing the use of these cards for the incentive or loyalty types of programs. While we are not unsympathetic to the experience of Senator Avery, we do not believe that he should have encountered these difficulties either in practice nor do we believe that legislation is the...is required to address this situation. Obviously, there are issues of retailer education that could be undertaken and are undertaken in connection with these programs, but I would note in the testimony that I've handed out, I've got an attachment entitled Visa partial authorization. The Visa program is set up, and that was one of the prepaid cards that Senator Avery specifically referred to. It's set up, and it requires all issuers and acquirers in the United States to participate in the partial authorization and makes it optional for merchants to do so. If the merchant that Senator Avery had been dealing with had been participating in the partial authorization program, there would have been a transparent treatment of this particular transaction in that they would have immediately had on-line access to the remaining balance of the card, and they would have processed the card and asked the cardholder for the balance, either by card, check, or credit card. Even in those cases where merchants don't voluntarily participate in the partial authorization program, there's a toll-free number on the back of these cards that can be called. My understanding that is on-line real time information that can be provided to determine either in advance of going into the store or by cell phone

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perhaps at the store to get the actual balance. Senator Avery referred to split-card transactions, and that is what we would be referring to. If the customer is able to tell the merchant that there are \$2.33 on the card for a \$15 purchase, they will do a split-card transaction. The first step would be to apply the remaining balance of \$2.33 towards the purchase, and the balance then would be payable by card, check, credit card, or otherwise. To suggest that that merchant would not accept that...the word of the cardholder is not really the issue, and I think Senator McCoy, you focused in on that. As long as the item is processed for the amount that's on the card. If the cardholder says that there's \$3 in it, and you run it through for \$5 it's going to be rejected because there's not sufficient monies. If there's \$3 in, and they run step one through at \$3, they will say, bingo, we've got a full credit. Authorize that, the balance of \$12 on the purchase price will be the second part of the split-card transaction. So it's not incumbent upon the word of the customer or trusting the customer, it's the fact of whether or not the merchant can determine that it's been authorized for the amount that they initially run through on the card. There's an old saying that one should not look a gift horse in the mouth. I don't think we should lose sight of the fact that the general-use prepaid cards addressed and restricted by LB720 are a gift provided by a merchant to a customer in recognition of their loyalty to the business or as a tool to promote additional buying activity. As such, we believe the merchant should retain full freedom to design and implement the parameters within which the gift program is to operate. Giveaways that are good for today only or only with purchases over a predetermined amount should not be subject to legislative restrictions such as those proposed by LB720. With that, we would again request that the committee indefinitely postpone LB720, and I'd be happy to address any questions of the committee. [LB720]

SENATOR PIRSCH: Are there any questions? Senator Langemeier. [LB720]

SENATOR LANGEMEIER: Mr. Hallstrom, thank you for your testimony. Sir, are you saying on those cards, if I took those cards from Senator Avery, and I called that 800 number without passwords, without codes, without anything, I should be able to find out what that balance is? [LB720]

ROBERT HALLSTROM: I believe you have to have some type of authorization that would go into that to get access to that account. I have not performed one of those transactions myself, but in talking with people from Visa as to how the program operates, it is such that you can call in and get that information immediately. [LB720]

SENATOR LANGEMEIER: And if I get the card in the mail, and I have on occasion, where do I get that information that I need to call in, or how does that get connected? [LB720]

ROBERT HALLSTROM: Generally...generally, and it may be, Senator, I won't discount that it's a toll-free number, and from that point, much like you might do on a Web site,

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while they'll ask for particular information. I'm not exactly sure how the components work from that point, but you are supposed to be able to get into that toll-free number and access the information to find out whether there's a number on the card or something that you have to provide them. I assume there's some mechanism by which that card and that account and that balance are tied together. [LB720]

SENATOR LANGEMEIER: And then my other question is, is...I'm curious. If you just call in, you have to give all this information. Where's the security breach? Why can't we just...these cards be available to know that balance if you called in? [LB720]

ROBERT HALLSTROM: I'm not sure I can answer that question, Senator. I know they've got the technology for those merchants that sign up for the partial authorization to have that interconnectivity direct, so I think that's up to the merchant to determine whether or not they're going to participate. My understanding is that there is no cost to the merchant directly for making the decision to sign up. Whether or not there are some costs associated, perhaps with a specific electronic cash register or something of that nature, I was unable to get answers for that question. [LB720]

SENATOR LANGEMEIER: I guess I'm more concerned that the individual that holds this card, and I got this card, and I call this 800 number to get my balance, why can't...I guess they're automated systems anymore, why can't I just get the balance without introducing anything else? Just dial the 800 number, put the card number in, and there's my balance. [LB720]

ROBERT HALLSTROM: I may work that way, Senator. I'll have to find out whether or not that's in actuality how it works. [LB720]

SENATOR LANGEMEIER: Okay, okay. Thank you. [LB720]

ROBERT HALLSTROM: Yeah. [LB720]

SENATOR PIRSCH: Seeing no other questions, I appreciate your testimony here today. [LB720]

ROBERT HALLSTROM: Thank you. [LB720]

SENATOR PIRSCH: I will ask for other opponents to come forward. Good afternoon. [LB720]

KIM ROBAK: Good afternoon, Senator Pirsch, members of the committee. My name is Kim Robak, R-o-b-a-k. I'm here today on behalf of First Data Corporation based out of Georgia that has a large presence in Omaha. First Data is a merchant processing company. It processes credit cards and debit cards and cards like these loyalty, bonus,

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and incentive program cards that we're talking about today. What I wanted to focus on specifically is the fact that these are cards that you don't pay for. I think one of our other testifiers today indicated that he had received a gift card that someone had paid cash for. These are not cards that anyone comes in and pays money for. These are gifts from a retailer, from a company; it may be a rebate that is at the discretion of the company. And so they're saying for buying my product, for buying enough of my products, I'm going to give you this card. And I'm going to determine the parameters of that card. What First Data objects to in this bill is in section 1 where it requires that not only do you have to offer cash or a check, but you have to allow a prepaid card to last for a year, and you can't charge any administrative, shipping, or handling fees or any...I guess any fees on that card. As a handler of these cards, First Data does take fees, and so over a period of time, if the card is not used, there may be a fee that's charged, a dormancy fee of some sort. Often these cards last three to six months in length. They don't last a year. I had exactly the same experience that Senator Avery had. I received a rebate from a telephone company for my daughter's phone, and I saw on the card when I got it that it said that it lasted six months. I put it in my wallet, and I forgot about it. Six months...literally, six months and three days later, I realized it was in there, and I went to the bank to deposit it, and it was worth nothing. The bank card had expired. But the point was, they made it very clear up-front, I could have gone the next day to the bank and received my \$50 rebate; I could have deposited it right into my account, but this was something that was noted on the card that it had this limitation. From First Data's perspective as a business, the business ought to be able to determine the parameters of any gift that it gives back to its customers, or the retailer ought to be able to do that. And as the processor of those cards, First Data would set forth those parameters. So with that, I'd be happy to answer any questions. [LB720]

SENATOR PIRSCH: Are there any questions? Senator Langemeier. [LB720]

SENATOR LANGEMEIER: Thank you for your testimony. I'm going to ask the same question. Since First Data is the processor of these cards, is it possible to have a simple call-in, get your balance? [LB720]

KIM ROBAK: I actually think that you can get the balance, Senator. I think that there is as I...I believe that there may be a pin that comes with the card that has a code that you can type in or punch in when you call in, and I believe you can get your balance on the card. [LB720]

SENATOR LANGEMEIER: Thank you. [LB720]

KIM ROBAK: Um-hum. [LB720]

SENATOR PIRSCH: I have a question. With respect to these and not with regard to, I guess, the purview of this bill which is time limits and whatnot, but are there any federal

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or state regulations when these are being offered by programs...I'm sorry, by retail businesses, etcetera, that with respect to disclosure? This...this is only good for, until this date. Does federal or state law require those to be posted and prescribe the manner in which that they must be posted conspicuously or otherwise? [LB720]

KIM ROBAK: I'm not aware of federal law that requires that type of disclosure, although I wouldn't be surprised if there was. I will say that in a short examination, we did look to see what other states did in this area. Many states, and I know this state does govern the cards that you purchase and tell you how long those cards can last whether they escheat to the state, whether or not you can charge fees. Most states or many states exclude these loyalty cards, these bonus and incentive programs, and there's specific language that excludes those from that type of legislation. I'm not necessarily asking you a question with regard to disclosure, but I do know that these cards are often excluded from other types of legislation that set forth those requirements. [LB720]

SENATOR PIRSCH: Yeah, that's helpful to know. Any other questions? Seeing none, thank you for your testimony here today. Are there any other opponents? [LB720]

TIMOTHY KEIGHER: Good afternoon, Senator Pirsch and members of the committee. My name is Tim Keigher. That is K-e-i-g-h-e-r. I appear before you today as the executive director and registered lobbyist for the Nebraska Petroleum Marketers and Convenience Store Association in opposition to LB720. I did have a conversation with Senator Avery this morning. My biggest initial concern was, is that a lot of my members have loyalty programs that they use. You come in; you get a card; you get points every time you buy things; and at some point in time, you have enough points that you may get a free cup of coffee or a dollar off of your purchase or whatever. I guess after speaking with Senator Avery and reading the bill again, I don't see where that...we would be restricted from doing that. I guess I still have concerns about the fact that if we're going to restrict how these general prepaid cards are used, should some of my members decide to use these prepaid cards, I don't think they want to be giving out cash or checks, so that's my opposition at this point. So with that, I would be happy to answer any questions. [LB720]

SENATOR PIRSCH: Thank you. Senator Christensen, you had a question. [LB720]

SENATOR CHRISTENSEN: Thank you, Senator Pirsch. Thank you, Tim. Would you have any samples that this committee could all (laughter) go try and demonstrate to see how these work? [LB720]

TIMOTHY KEIGHER: Unfortunately, I do not have any. [LB720]

SENATOR CHRISTENSEN: Okay. Thank you. [LB720]

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SENATOR PIRSCH: Any other questions? Seeing none, thank you for your testimony. Are there other opponents of LB720? Good afternoon. [LB720]

RON SEDLACEK: Good afternoon, Senator Pirsch and members of the Banking, Commerce and Insurance Committee. My name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce and testifying on LB720, and we've been receiving, particularly in the last...later part of the morning, early afternoon, we received a number of other contacts from particular members, asking us to take a review of this bill, and had some concerns in regard to how the bill is covering a number of various programs and using some very general terms in that many of these programs are distinct, yet the legislation would cover not only particular concerns that were expressed by Senator Avery and can understand by personal nature some of the frustrations he's gone through. But by the same token, there's a number of other programs that are affected that may not have also been intended to be affected. One of the issues in regard to the legislation is the very first line, and that is if a retail business establishes...if a retail business. What happens in the case where the retailer does not establish a program, but its manufacturer type programs, and they have those types of manufacturer programs that are shipped into the business. They have no control over them. The assumption is, if it's not in compliance or those goods have to be refused and are not sold as such, who's going to pay the option of...the customer's option? It's not going to be necessarily the retailer because it's not really their program. It's money...it would be money out of their pocket as opposed to the manufacturer or the distributor who is offering these particular programs. So the question is, it refers to a business itself. You can go into some of the larger department stores, or big box stores, and you can say that they'll be camera companies, and they have in the form of an incentive a card. Some of them are restrictive and say, available anywhere where whatever brand camera is sold, so it can be in multiple stores--Target, Walmart, Dillard's, wherever. And televisions. There are some cases that...where you have again a sort of rebate card...telephones--purchased a telephone this summer--came with a card. The salesperson was very sharp because he said, you know, the best thing to do is when you get that card, Ron, he said, just take it to the bank and just put it in your account. Just cash it in; you have the cash and nothing to worry about because, otherwise, you try to use it--you kind of run into some problems. So and it just...you got to know how to go through the hoops essentially. So took his advice and availed myself of the full amount. At any rate, if this legislation were to pass, I just would not really like to see a number of ads saying that there are offers available except for in Nebraska and with that I'll close my testimony. [LB720]

SENATOR PIRSCH: Thank you. Any questions? Seeing none, I appreciate your testimony here today, and we'll move on to the next opponent of LB720. Good afternoon. [LB720]

KATHY SIEFKEN: Senator Pirsch and members of the committee, my name is Kathy

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Siefken, S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association, and I'm going to repeat some of the things that have already been said, and number one, these are loyalty cards. We have a lot of loyalty programs in our grocery stores. Now, we are not currently paying with a prepaid card, but these kind of transactions are so much cheaper than just a paper check. It is an avenue that our members may go down, and if this bill passes, it will completely shut us out of that market because it would be too expensive to give consumers the choice of how they're going to get those rebates. And keep in mind, these are rebates. These are not items that consumers have paid for. They are thank you for shopping in our stores, and in return, this is what we would like to give you. There are complete instructions on the back of the cards. Consumers have a responsibility to read the instructions, follow them, and if they do that, they can get their money. So with that, if you have any questions, I'd be happy to try to answer them. [LB720]

SENATOR PIRSCH: Super. Thank you. Senator Pankonin. [LB720]

SENATOR PANKONIN: Thank you, Senator Pirsch. Kathy, thanks for coming. From listening to the testimony today, the thing that is confusing to me or just I can't quite understand the concept. You would think the business offering or the...maybe not the business, but the manufacturer through a retail business offering these cards, would be that they'd want a point of goodwill and, you know, you say loyalty to bring people back. But if people are having bad experiences and even like we heard with Ms. Robak where she forgot to use it in time, but I'm sure she wasn't happy because, you know, that is kind of like darn. But why do businesses want to use these and then have people frustrated? I would think that's not...it's counterintuitive to me that it's going to promote much loyalty. [LB720]

KATHY SIEFKEN: Grocery stores are oriented to customer service, and what we have discovered in our stores, if you disappoint your customer, they won't come back. That in itself should drive the correction in this industry, I would think. I can tell you that if we don't treat our customers right in our grocery stores, they shop elsewhere. And I heard the frustration that people have, but you also have to understand that the consumer has a responsibility to follow the guidelines in order to obtain the gift. Consumers do have a responsibility. They have to read the card and follow the instructions. [LB720]

SENATOR PANKONIN: And most of your...the people you represent do not use these cards, correct, any longer? [LB720]

KATHY SIEFKEN: Not yet, but there is...there is a trend in our industry to use plastic more and more because it is a cheaper transaction than paper. It's easier to track; it's easier to escheat back to the state when you need to. It's easier to see the balances. Paper is simply a thing of...a thing that's going away, and the cheaper these transactions become, the more even our small stores will start using them. But this

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legislation will shut us completely out of this business. Our people will not go in this direction. I am not aware right now of anyone that is using the multiple user prepaid card. Right now, they're doing their gift cards...they're doing the loyalty programs, and they're doing gift cards back to their own stores, so that as a thank you, you have to come into their stores and use...and purchase their products. But I can see as these transactions become cheaper, it may be a direction they'll want to go. [LB720]

SENATOR PANKONIN: But I'm sure you'll warn them about some of the pitfalls. [LB720]

KATHY SIEFKEN: Absolutely. But...and another thing along that line like in Nebraska, we've got Affiliated Food Stores, and there are many small rural grocery stores that are all associated with Affiliated because it's a cooperative. I can see them using this kind of a card as a rebate, so that you can use it at other grocery stores because it would be a very economical way to set up a loyalty program that everyone could afford, even the small stores. [LB720]

SENATOR PANKONIN: Thank you. [LB720]

SENATOR PIRSCH: Any other questions? Seeing none, thank you for your comments today. [LB720]

KATHY SIEFKEN: Thank you. [LB720]

SENATOR PIRSCH: Are there any other opponents of LB720 who wish to testify here today? Seeing none, we'll move on to those who wish to testify in a neutral capacity. Good afternoon. [LB720]

JIM OTTO: Good afternoon. Senator Pirsch, members of the committee, my name is Jim Otto, O-t-t-o. I'm a registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association, and I'm here on behalf of both associations to testify in a neutral capacity on LB720. The real thing I want to point out is the reason that retailers and restaurants are neutral is because this bill does not affect store-issued cards. In other words, if you got a Valentino's gift card, if you got a Best Buy gift card, if you got a Home Depot gift card, a Menard's gift card, on and on and on, this does not affect those because those are not general use prepaid cards. Those are cards good in those merchants only. General use prepaid cards in a practical sense, not always but mostly, refer to prepaid Visa cards, and so I just wanted to make that clarification. The reason that we are neutral is, for the most part, it does not affect the cards issued by retailers or restaurants. And one other point. If you go to...let's just say Valentino's, and you have a \$25 Valentino's gift card that has \$4.76 left on it, and you have a meal that costs you \$30, it will be a seamless transaction. They will swipe the Valentino's card. It will automatically show that there's \$4.76 left, and you will pay the balance. There won't

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be any...and that's...that is true of most store-issued cards. I would say all but...I'm sure there's some exception. But in almost all cases, store-issued cards do not have this challenge that Senator Avery is facing of not knowing the exact balance on the card. And Senator Pankonin...I just...to answer the concerns that you brought up, the last thing the retailer wants is the confrontation at the cash register that what's this worth; what's this not worth? So the only real issue is, to me, for the committee to determine...and also I wanted to answer the other question that was brought up. I don't think you need a password. If you have a Visa prepaid card, I'm almost positive that you do not need a password to find out what the balance is. You just call the number, put in the card number. I always tell people...my kids, whoever I give a gift card to whether that be a Visa prepaid card or any merchant card, it's like cash. You lose it; you lost it, whoever finds it can use it. So for that reason, I don't think you need a password. But the real...I don't want to put words in Senator Avery's desire, but to me, the fact that it is not quite as seamless of a transaction on a Visa prepaid card as it is on a store-issued card must be the rub. It's not...it doesn't seem to me to be a huge request to ask the customer to call the number on the back and find out how much is still left. But that is a step that is not required on other gift cards. So with that, I'd be glad to answer any questions. [LB720]

SENATOR PIRSCH: Thank you for your testimony. Any questions? Seeing none, thanks so much, Jim. And we will see if there's any other individuals wishing to testify in a neutral capacity today. Seeing none, I'd ask Senator Avery to close. [LB720]

SENATOR AVERY: Thank you, Senator Pirsch. I do want to thank Mr. Elliott for coming forward to testify on behalf of this bill, but I suppose you noticed that we didn't have a roomful of consumers here to protect their own interest. Bills that protect consumers and have broad public objectives are usually orphans. However, if you have a bill to advance the interests of a special group, it has a thousand fathers. And I would suggest to you that this bill does affect some important interests in the state or at least they think it does. But for the most part, listening to the testimony, it sounded to me as if perhaps what the real issue is, is that there are companies and card issuers that really do want you not to spend all of your rebate, or else they are hooked on the fees and the transaction costs and the administrative charges. Is the real issue here the desire to retain the breakage that should go to the consumer that was promised to the consumer, and to make it so difficult for you to claim it? Everyone around here seems to be organized but the people. I mean, that's an observation I made very soon after I got here. Everybody's organized but the people...consumers. So what is our responsibility? Our responsibility is to stand up for the public interest, and I believe that this bill serves the public interest. It may not serve some private interests, but it does serve the public interest. That broad public out there of consumers that are basically being cheated out of what they've been promised. Thank you. [LB720]

SENATOR PIRSCH: Any questions? Thank you very much, Senator. Okay. That will

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conclude the hearings for today. [LB720]