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Judiciary Committee
January 20, 2012

[LB768 LB793 LB843 LB862]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 20, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB768, LB793, LB843, and LB862. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Tyson Larson; and Scott Lautenbaugh. Senators absent: Amanda McGill; and Burke Harr.

SENATOR ASHFORD: Welcome, everyone. We have...this is the Judiciary Committee. So in case you're in the wrong place, we are going to Buffalo, not Los Angeles or whatever. We have four bills today. The first bill, obviously, Senator Gwen Howard's bill, LB768; then Senator Schumacher's LB843 dealing with auctions; LB793, Senator Lautenbaugh's bill; and then Senator Coash's LB862. Senator Lathrop is here, Senator Coash, Stacey Conroy is here, my legal counsel, and Oliver VanDervoort, to my left, is committee clerk. We do have, for those who haven't been here before, we have a light system that provides for a three-minute time frame to give your testimony. When the yellow light comes on we'd ask you to start summing up. And obviously there may be questions which would allow more time. But we'd ask you to have your introduction, if you could, limit it to three minutes, with the exception of Senator Howard and the introducers. They can talk all afternoon if they want. All right, Senator Howard, would you like to introduce LB768.

SENATOR HOWARD: Thank you, Senator Ashford and members of the committee. For the record, I am Senator Gwen Howard, H-o-w-a-r-d, and I represent District 9. LB768 is a technical correction to the adoption file bill that I brought before you last year. LB94 was successfully passed. And I am pleased to report that adoptive parents now have access to essential information about their children. However, included in the bill was a section limiting the requirements to cases after the legislation's effective date. This section was inserted during drafting because we did not want to require Health and Human Services to go back and ask all past adoptive parents to sign the form indicating that they were given access to the file. Unfortunately, my office was informed that the section is being interpreted so that only those parents who adopt their children after the effective date of LB94 are allowed access to the file. LB768 would strike that section and clear up any issue about which parents should be allowed access to their child's file. The intent of LB94 was to allow all adoptive parents access to their child's file. This quick and easy fix will make it so. I don't anticipate any testifiers. Like I said, this is a technical fix. [LB768]

SENATOR ASHFORD: Well, I know this is a big issue for you and... [LB768]

SENATOR HOWARD: It is. I think everyone should have access and information on children they're parenting. [LB768]

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SENATOR ASHFORD: So even though it's very technical, the underlying policy is big and we appreciate you... [LB768]

SENATOR HOWARD: (Exhibit 1) Right. And if the committee sees fit to include it in your bigger bill, that would make me even happier. There's no cost, I should let you know that too. And I think you did receive a letter from Voices for Children in support. [LB768]

SENATOR ASHFORD: Okay, and maybe we have that. We do have that. Senator Coash. [LB768]

SENATOR COASH: Thank you, Chairman Ashford. Senator Howard, I just want to make sure that I...that there's not an unintended consequence here. Prior to the enactment of your bill last year, parents who had relinquished or had given their child up for adoption, you know, wanted...there are some cases, as you know, where they want to remain anonymous and not have...they've signed those documents in adoption to say, you know, I'm giving my child up for adoption, I don't wish to be contacted, be a part of the child's life once the adoption has taken place, that's the new parent. Is this going to go back on any of those parents who have said at the time of adoption that I'm... [LB768]

SENATOR HOWARD: Well, I'm trying to think back because I took relinquishments for state wards from biological parents. And in most cases those were older children, they weren't infants,... [LB768]

SENATOR COASH: Right. [LB768]

SENATOR HOWARD: ...the children that you would anticipate that might be the case. And I don't recall any parent saying I don't ever want to be contacted by this child at some date in the future or I want to remain anonymous. We gave them opportunities to put information about themselves or the other absent parent in the child's file just in case they would want to have that information available. [LB768]

SENATOR COASH: All right. I guess the term I was familiar with was kind of a closed adoption where...and it is for infants, not for older children. [LB768]

SENATOR HOWARD: But that's, yeah, usually we didn't. I can't...honestly, I can't think of a situation like that with an infant adoption. We just didn't have them come through this state, unless it was the baby sibling of a string of kids. And it just didn't really happen. [LB768]

SENATOR COASH: Oh, okay. [LB768]

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SENATOR ASHFORD: Thanks, Senator Howard. [LB768]

SENATOR HOWARD: Thank you. Thank you, committee. [LB768]

SENATOR ASHFORD: Anybody wish to testify on this bill either way? Seeing none, let's go to Senator Schumacher, LB843. Paul, welcome. [LB768]

SENATOR SCHUMACHER: Thank you, Mr. Chairman, members of the committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, and I represent District 22. I am here today to introduce LB843 which is a bill regarding creating a right, basically, for attorney fees in certain litigation over issues arising at Internet auctions. Currently, I'm told there are two basic ways of auctioning things. One is with reserve, which means the seller can bid and the seller can reject the buyers bid, seller can set a minimum bid; and the other is without reserve, they kind of call an absolute auction, and that is even if the thing brings very little at auction, very low bid, it's going to go to the highest legitimate bidder. This particular measure applies to goods, not real estate, sold at an Internet auction where the goods are in Nebraska. And I'm told what the problem is right now is that buyers like to bid at nonreserve auctions because they figure they can maybe get something really cheap and a bargain. If the seller is committed to sell and it's on the auction block and there are no other bidders, they can do very well for themselves and because they get a measure of true value if there are other active bidders. If another bidder bids you up and thinks it's worth something, it gives you some measure of confidence that what you're bidding is pretty close to what the market is going to bear and you're not getting ripped off. So it's very much liked and buyers get involved, relying upon the fact that they're bidding against other legitimate buyers. Sellers feel a little squeamish at an absolute auction because they'd sooner know that they're going to get at least some minimum particular bid. But they like to have their cake and eat it too. So apparently there's a practice, which you'll learn about a little bit more today, in which a seller will list property on an Internet auction and say it is without reserve, and then the seller or a party who is acting on behalf or in conjunction with the seller will run up the bid. And as a result, the buyer is misled into thinking that he is bidding against a real buyer and he ends up not getting the property. He really had the last legitimate bid in the particular auction, and then notices maybe that the seller has still got it for sale in the window of his store or on his machinery lot and there really never was a sale that took place. It was just an attempt by the seller to see what the market would bear, and kind of seller holding reserve while representing to the world that the sale was without reserve. The folks from my district who brought this to my attention first thought maybe there should be some regulatory body, some agency, something of that nature set up. But we all know those things cost money and regulations are not a happy thing or an inexpensive thing to develop. So what this basically does is says if a buyer feels that he has been victimized by a seller at such a particular auction, the buyer can ask the seller for a bid history. Give me the bid number of the guys that I was bidding against. And if, after seeing that bid history, this buyer believes that he's been victimized by this

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particular practice, he can make a demand on the seller to close a transaction for the last good bid. And if the seller refuses, they can go to court and battle it out there with all the rights of discovery and due process that might happen in the courts. The material part of this is that if the buyer wins and the seller engaged in that practice, the buyer can acquire attorney fees and court costs from the seller. If it turns out the buyer was just harassing the seller, the judge has the option to make the reverse true. And so it is an effort to protect the integrity of a no reserve sale conducted at a Internet auction of goods located in Nebraska. And with that, I'd take any questions. And the folks that know the details of what's been going on and how this all works I understand will follow me. [LB843]

SENATOR ASHFORD: How do they do that, Paul? How do they surreptitiously do that? [LB843]

SENATOR SCHUMACHER: Well, you have these sites where you see a picture of some gizmo that you want to bid on and it's, what you say, the fair market value of the gizmo is \$1,000, and the last bid shown is 10 bucks. Man, you're in there to get a bargain, so you click, put your bidder ID into the system. Usually I think you have to preregister so the system knows who you are, and it gives you an ID name or maybe an alias name like BidderJoe. And BidderJoe then clicks on 10 bucks and makes his bid, and up and up it goes as different people...well, you may have legitimate bidders who are entitled... [LB843]

SENATOR ASHFORD: Oh, I see. [LB843]

SENATOR SCHUMACHER: ...to believe that they are bidding against other legitimate bidders. And you may have the seller sitting back there saying, well, let me...you know, it's not where I want it yet so let me throw in some more bids. [LB843]

SENATOR ASHFORD: Okay. Okay. I get it. All right. Yes, Senator. [LB843]

SENATOR LATHROP: Can I just ask, Senator, this is in the Uniform Commercial Code? And here's the question I guess. If we're going to amend the Uniform Commercial Code, don't we get away from the whole advantage of the Uniform Commercial Code that we can expect that it's going to be uniform from state to state? [LB843]

SENATOR SCHUMACHER: This is not an amendment to the Uniform Commercial Code. [LB843]

SENATOR LATHROP: Oh, I misunderstood. [LB843]

SENATOR SCHUMACHER: This is a separate act. I talked with the attorney for the Banking Committee because they deal routinely with the Uniform Commercial Code.

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And he recommended, for I think probably the very reason you suggest, that we not tinker with the Uniform Commercial Code because it's been honed and polished and everything, but that this be a supplemental measure that is not in the code but deals strictly with auctions and with other auctioneering-type provisions that are not in the code. [LB843]

SENATOR LATHROP: Okay. We seem to be inviting lawsuits, which may be a surprise coming...that question may be a surprise coming from me. But it...can't we just make it against the law to do this, attach some criminal penalty and leave it to the person who's upset to satisfy the county attorney or the city prosecutor that somebody is breaking the law? [LB843]

SENATOR SCHUMACHER: I think basically to criminalize something which would require a fair amount of investigation and burden of proof beyond a reasonable doubt in a criminal case, possibility of court-appointed attorney if the seller happened not to be the richest person in the world, is an option. But I'm not sure that this kind of conduct rises to crime and criminal investigation, and that we probably have better things to do with our county attorneys and our police. And if this particular provision were there, you know, the sellers do this, I would surmise, because it can be done and there's really no consequence to do it because you know the other side isn't going to go sue you and hire an attorney and do discovery and end up paying that attorney and end up costing them more than what they would gain if they won the lawsuit. So I think this would have a deterrent effect. If the seller knew that, hey, if you do this and if it can be proven, you're going to get hooked for attorney fees. And there are some...when in law school I had a professor pose...or I posed a question to a professor much like yours and said, now wouldn't...doesn't this just encourage attorneys and attorney fees? He leaned over and he said, son, what's so wrong about that? (Laughter) [LB843]

SENATOR LATHROP: Well, yeah. And I'm not in the business of encouraging lawsuits or attorney fees. But I am concerned about whether somebody doing this kind of work is not going to be buried in requests for show me the last bid. [LB843]

SENATOR SCHUMACHER: I think that the auction service that would be putting this out there, they have listing agreements. And the listing agreement could provide if you're a seller and you have come to the auction service, the auction service could charge a fee of so much per request or so much a bid. I think these are all computerized anyway and probably could be produced. The folks that are behind me probably can be more specific on that. I don't think it's the world's hardest thing to produce a list of bidder numbers and then the identity behind those bidder numbers and stuff, that's just left for discovery in a lawsuit if the buyer goes ahead and proceeds or if the seller doesn't at that point sell, if it actually goes to a lawsuit. [LB843]

SENATOR LATHROP: Okay. [LB843]

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SENATOR SCHUMACHER: It's...if this turns out to be a problem... [LB843]

SENATOR LATHROP: I'm a little skeptical only because it just seems like the guy who's bidding, and let's say he's bidding on a bicycle, it gets up to the number he likes and the guy accepts it, he's got the bike. And if he bids it up, even if it's against a ghost bidder, that's really some agent of the seller who's driving the bid up, you get...either your bid gets it or it doesn't. Right? [LB843]

SENATOR SCHUMACHER: And the problem, as I understand, is nobody's bid gets it and the seller retains ownership because he kept bidding it up because it wasn't near what he wanted for it. And so you find this same item back on the seller's lot or the seller's shelf or back on an Internet auction six months later or three months later because it didn't sell. [LB843]

SENATOR LATHROP: And that's something about the representation made at the beginning? [LB843]

SENATOR SCHUMACHER: Right. [LB843]

SENATOR LATHROP: Okay, that that won't happen. [LB843]

SENATOR SCHUMACHER: That that won't happen; that you're bidding against a real person instead of a straw man. [LB843]

SENATOR LATHROP: Okay. [LB843]

SENATOR ASHFORD: Senator Council. [LB843]

SENATOR COUNCIL: I thought that Senator Lathrop was going to address my concern relative to the Uniform Commercial Code. And although I've tried to avoid it at great cost since law school, my recollection is that it governs sales of goods and, unless someone can tell me otherwise, it applies to sales of goods on the Internet. And I have a problem in terms of notice. And, you know, if I think what I'm doing is governed by the Uniform Commercial Code and I go to the Uniform Commercial Code and there's nothing in there about reserve and without reserve auctions on an Internet with attorney's fees, what kind of notice am I placed on? And the second, with the last hypothetical you gave, other than the buyer not getting the goods, what are their damages? [LB843]

SENATOR SCHUMACHER: Well, if the buyer should have gotten an item that he should have got at \$300 and it really turns out to be that he has to go to replace it for \$500, then he has \$200 worth of damage because, you're right, it is in the Commercial Code. And auctions, there is a provision of the Uniform Commercial Code that governs

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auctions in part. So in that case that says the buyer on an unreserved auction was entitled to \$300. If he's got to go out and get a replacement product for \$500, he suffered \$200 in damages. When it comes to farm equipment I think we're talking about substantially bigger numbers than a couple hundred bucks. You could be talking about \$10,000 in difference. [LB843]

SENATOR COUNCIL: Okay. But that's the...I guess that's the point I'm making. Under the Uniform Commercial Code now, on that last example you gave where the buyer ends up paying \$500 for something that they only should have paid \$300, and if they have a cause of action because it was an absolute with reserve or was with reserve and they rejected it. I'm trying to get it. [LB843]

SENATOR SCHUMACHER: Sure. [LB843]

SENATOR COUNCIL: But assuming there were damages, under your bill we'd have to go outside the Uniform Commercial Code to get to the entitlement to attorney's fees. And I guess I'm just concerned that people who look to the Uniform Commercial Code to see what the rules are governing the sale of goods wouldn't see this right to attorney's fees in the Uniform Commercial Code. [LB843]

SENATOR SCHUMACHER: Well, you know if this is a legitimate approach to solving this problem then we can either solve it by putting something in the Uniform Commercial Code and facing the music of the Uniform Commercial Code is a uniform document that a lot of committees and people spent time honing or we can go outside the Uniform Commercial Code. Quite frankly, if the committee feels it's better placed...it's a meritorious idea and it's better placed in the UCC, then we can put it in the UCC but we botch the prettiness. But sometimes the UCC and the states do have the right to amend the UCC. It's just how...whether or not you want information for the notice. And I understand your notice argument. [LB843]

SENATOR COUNCIL: Well, yeah. And if it's that big an issue with the kind of ramifications you're talking about, it would appear to me that the Uniform Commission would want to look at amending the Uniform Commercial Code to address this issue. [LB843]

SENATOR SCHUMACHER: And very well at some point they do. And usually, it's my understanding, when the Uniform Commission begins to seriously tinker with amendments there are some states that have already taken action and begun to call that to their attention that this is an area that needs addressing. And so in fact if we are, and we might be on kind of the leading edge of this, particularly in the category of large sale farm equipment, like we would in a rural state, us taking action may indeed prod or speed up any action at the Uniform...at the drafters of whatever committee or commission they have to put that together. [LB843]

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SENATOR COUNCIL: All right, thank you. [LB843]

SENATOR ASHFORD: Thanks, Senator. Thanks, Paul. [LB843]

SENATOR SCHUMACHER: Thank you. [LB843]

SENATOR ASHFORD: Do we have any proponents for this bill, LB843? Those who wish to speak in favor come on up and, if you would, and you've signed in probably? [LB843]

RON STOCK: Yes, I did. [LB843]

SENATOR ASHFORD: Okay. If you'd bring your sheet up and then we'll get it from...there we go. Good afternoon. [LB843]

RON STOCK: Good afternoon, Mr. Chairperson, members of the committee. I want to thank you for your time. My name is Ron Stock. I am a members of the Nebraska Auctioneers Association. I've been in the auction business for 28 years, much of that time has been spent cultivating the Internet auction business. I want to explain some of the benefits I see of LB843. And in order to do that I'd like to use an example. My brother Mark and I got started in the auction business in Cornlea, Nebraska. Cornlea, Nebraska, is one of the largest on-line, or excuse me, one of the largest consignment auctions in Nebraska. There was...we run two rings all day long. And that sale is with reserve, everything there had a price on it. If it didn't bring the price, it didn't sell. At 1:00 we had one row that was absolute unreserved. The absolute row there would be 600 people there. Prices were up, interest was up, the equipment sold to the highest bidder. So it made my brother Mark and I think about that and we thought we want to be an unreserved auction company. So in 1991 we went totally unreserved. Those first few years were hard because our prices on some of the equipment was reasonable. But the public heard about that, particularly farmers. They heard these Stock boys are selling all of their equipment unreserved, straightforward and honest. They're not letting any buyers price protect and they're policing it so their buyers don't...their sellers don't price protect. Our business boomed. Consequently, a lot of auction companies started putting unreserved on their sale bills. So it's pretty easy to tell on a traditional auction if you're being bid against by the seller or by the auctioneer because you're there and you can see it. You're leaning on the piece of equipment and you can see it. However, on an on-line auction you cannot see the seller, you cannot see the bidders, you cannot see the buyers. LB843 addresses these concerns. I really believe on-line auctions are here to stay. Four years ago we launched bigiron.com. Last year there were approximately five, I'm estimating five Internet auction companies. This year there will be 25 and I'll estimate next year there will be 100. So LB843 protects Nebraskans by giving the buyers an avenue to seek recourse when they feel they have been a victim of skill

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bidding. Consequently, it is my hope that you folks will consider this bill. And that's all I have. Thank you for your time. [LB843]

SENATOR ASHFORD: Thank you, Ron. Any questions? Senator Coash. [LB843]

SENATOR COASH: Thank you, Chairman Ashford. Thanks for coming down today. You mentioned you're a member of the Nebraska Auctioneers Association. Are you speaking for the association today? [LB843]

RON STOCK: No, sir. [LB843]

SENATOR COASH: Okay, I just wanted to make sure that was clear. Just trying to get an idea of how big of a scope of a problem are we trying to solve with this bill? Does this happen every auction all the time? Is this something you've noticed a few times? I mean, how big of a...Senator Schumacher outlined what he's trying to do here. [LB843]

RON STOCK: To answer your question, sir, it's just...there's just a lot more dollars going through an on-line auction service. On our on-line auction service the first year was \$9 million in gross sales, the second year was \$18 million, then \$36 million, now \$100 million. So there's a lot of...every auctioneer is adopting on-line auction of some sort. I'm exaggerating here, but we're only a year away from going to Walmart and buying auctioneer in a box. And so it's going to become more and more prevalent. Auctioneers put unreserved on the sale bill and unreserved on the auction site. And there's not an auctioneer out there that intentionally sets out to deceive the public. What the challenge is, there's very little...a buyer calls us up and feels like he's been shill "bided" against. We go working with the buyer to try and make ramifications. We say, hey, I guess he did, we're going to go...our provisions say we can sue the seller 25 percent of everything he sold if we find out he price protected. We're trying to police it ourselves, and we're just asking some help from the state to help us with that. [LB843]

SENATOR COASH: Okay. You manage the contracts for the sellers, right? [LB843]

RON STOCK: Yes. We're agents of the seller. [LB843]

SENATOR COASH: You're agents for the sellers. If you're working for the seller wouldn't you know if the seller was the one doing this? I mean, because the example Senator Schumacher gave was, you know, the seller would do this because it's their money at the end. But as the agent for the seller, wouldn't you know if the seller was doing this or somebody was doing this on behalf of the seller? [LB843]

RON STOCK: You can find out if you really look real hard. It's pretty easy to look the other way. The seller signs a contract saying that they're going to sell unreserved to the highest bidder without any aliases bidding on the equipment, our particular contract, our

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listing agreement as Senator Schumacher referred to. So our seller knows, we meet with them, we shake their hand, we get their word, we get them in writing that they're not going to price protect, they're going to sell unreserved. And so they know by our paperwork that if we find out that they price protected that we're going to pursue legal action. In our company, we pretend they're trying to take our business away from us. So they hide it from us. They'll have their brother-in-law or cousin or neighbor send a check. So the check arrives, we deduct our standard commission out and pay the seller. They hide it from us. But then a neighbor calls us up and says, hey, that tractor, he's still using it. Or some of these sellers, they'll just call up and tell my secretary, hey, I bought the tractor back, I understand you got some kind of penalty, I'm just going to pay the commission. When we find that out we pursue those people, we pursue that. We don't stand for that. [LB843]

SENATOR COASH: Have you caught many of those? [LB843]

RON STOCK: In the past four years we've caught less than 20 and more than 10. [LB843]

SENATOR COASH: Okay. [LB843]

RON STOCK: And we've pursued it with legal action and we've won. I don't want to brag about winning anything in a court situation, but it's just our...trying to keep the credibility of our unreserved auction. [LB843]

SENATOR COASH: Okay, thank you. [LB843]

SENATOR ASHFORD: Thank you, Ron. [LB843]

RON STOCK: Thank you for your time. [LB843]

SENATOR ASHFORD: Next testifier, next proponent. [LB843]

JAMES ELY: (Exhibits 2 and 3) My name is James W. last name Ely, E-l-y, Jr. My experience in this auction business is that I'm an attorney licensed in the state of Oklahoma. I moved to Nebraska here several months ago and became involved in this process. I had an ex-father-in-law in Oklahoma that's an auctioneer and so I became interested in this process when I was living there. I'm not licensed in Nebraska but I'm making application to become licensed here. My comments on this issue is that we are asking this committee to take a look at this law and recommend that it be passed because we want to protect our citizens of Nebraska who are going to be bidding on auctions. And as Mr. Stock said, we don't...on an Internet auction you don't know who's bidding. That's a good news and a bad news, double-edged sword. It's good that you can sit in your living room or at your kitchen table and be on an auction site and make a

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bid without having to get dressed and go to the auction itself. But it's a double-edged sword because you can also, if you want to, make bids to increase the price. And we think that there needs to be a process to address this issue in the state of Nebraska. It would increase transparency when it comes to auctions. There would not be any mysteries about who bid on what and who had the highest bid. And the other thing is it gives the buyer a redress in the court system to take action if he or she has been shill "bidded." I think this is a good law for the auction trade. On-line auctions are relatively new and they're going to keep on growing, as Mr. Stock said. It's a great way to sell goods. So I think that this bill deserves some consideration by the committee. In part of my getting ready for this testimony I did some research. And I came across two studies, one by two Ph.D.s out of Canada who are accountants, who did studies on the effect of shill bidding on an auction process and found out that just the opposite occurs. The purpose of shill bidding is try and increase the price of goods, but actually the reverse happens; it decreases it. I've got some copies here for the committee. The other article I have is by two Ph.D. economists from...one of them is from the University of Oklahoma and the other one is from Texas Tech University. And they did some studies on the same process and concluded that shill bidding is actually detrimental to the auction process. And it does not increase the bid as the seller hopes it would. So I would leave those with the committee for those of you who want to take a look at it. At this point, that's all I have. [LB843]

SENATOR ASHFORD: Thank you, James. Any questions of James? Seeing none, thank you. [LB843]

JAMES ELY: Thank you. [LB843]

SENATOR ASHFORD: I'm sorry, sir. Sorry, Senator Larson. Welcome, Senator Larson. [LB843]

SENATOR LARSON: Thank you for coming. I have a little experience in the auction business, not necessarily...well, obviously bought things at farm auctions, but on the art side. As I'm reading through this I notice that essentially they're saying that the last good faith bidder can collect attorney fees. I know what it was like. I've been to the farm auctions and, you know, people are nodding and showing. And, you know, how can...at a farm auction, and realistically, can an auctioneer service keep track of everybody that's bidding and keeping numbers? I mean, when I worked at Sotheby's in New York, I mean, we had a handful of 20 people in the art room showing the paddles or not even hardly showing the paddles sometimes and we'd have there spotters and we couldn't even tell all the underbids coming through. How can an auction service actually keep track of all the bidders? [LB843]

JAMES ELY: Well, I think it's difficult. I mean, I think at this point there's not been an incentive necessarily to keep track of bidders and see who may be trying to game the

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system. But I think if we have a statute that addresses this issue, that there will be procedures developed to be able to recognize and... [LB843]

SENATOR LARSON: What type of cost does that bring to a small auctioneer service in Osmond, Nebraska, that, you know, does...I mean, does these farm auctions and has, you know, the big farm auctions? They'll have two or three places going on at once. [LB843]

JAMES ELY: Uh-huh. [LB843]

SENATOR LARSON: I mean, I see this as a problem in terms of enforcement. And who actually says that, you know, who was the last good faith bidder? Again, I come back to my time in the art auctions. I mean sometimes the hammer...or who's actually auctioning has a deal with somebody, you know, if I don't tip my glasses or whatever else then I'm out. And, you know, who are the spotters? Do the spotters know everything that's going? How many spotters do you need at each place? I mean, this just seems like...and what happens if, you know, just because he was the last person to raise his hand doesn't mean he was the last underbid. I mean, there's so many things that go into the process of bidding and you got three things going on at once. And I just see this as very difficult to find who actually was the real last underbid. And who, you know, and open up the case, they could say, well, this is the last underbid, but is that just the last one they caught? I just see a real problem in terms of enforcement here. [LB843]

JAMES ELY: Well, I think in the case of an on-line auction you have a record of the people who have been bidding. [LB843]

SENATOR LARSON: But we're not...you're just talking about on-line. I'm talking...this covers all auctions or is this just on-line? I guess I read through it real quick. [LB843]

JAMES ELY: Well, I think in the bill it says over the Internet and talks about on-line auctions. [LB843]

SENATOR LARSON: But so it won't cover any auctions on-site? [LB843]

JAMES ELY: As I understand the way it's written now it's for on-line auctions. Now should you all decide you want to expand it to traditional auctions, that's another issue. [LB843]

SENATOR LARSON: Okay, okay. All right. Thank you. [LB843]

SENATOR ASHFORD: Yes, Senator Council. [LB843]

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SENATOR COUNCIL: I just had a quick question. I just wanted to make sure I understood the reports you are providing to the committee. Did you say that those reports...the authors, based upon their research and data analysis is that shill bidding does not result in an increase? [LB843]

JAMES ELY: Yes. [LB843]

SENATOR COUNCIL: And so I get back to the question I asked earlier. Where is the harm? [LB843]

JAMES ELY: Well, I think if a person legitimately makes a bid on an item and would get that item, but you've got somebody else that's driving the price up, then that potentially takes away from the person who actually gave the legitimate bid. I think Mr. Stock referred to when he was first in the auction business that on the unreserved part or absolute auction you had 600 people attending. On the reserve part there were 100 people attending. So the more people you get there the more competitions there's going to be for goods and that's going to increase the price. But those who are in the reserved auction where there's a set price that's being looked for and it doesn't sell, those people lose interest. And so the authors of these studies concluded that trying to make a bid strictly for the purpose of raising the price has the opposite effect. People become discouraged and they don't want to participate in that process. [LB843]

SENATOR COUNCIL: But I guess maybe that's what I'm...if it's with reserve then the seller has a right to reject. [LB843]

JAMES ELY: Right. [LB843]

SENATOR COUNCIL: So if a seller is trying to bid the price up and it's not occurring, he or she can reject whatever the bid is, correct? [LB843]

JAMES ELY: Well, that's true. [LB843]

SENATOR COUNCIL: So if they are unsuccessful in bidding it up to what they want to bid it up in a reserve bid situation, doesn't matter because they can...they have the right to reject it. [LB843]

JAMES ELY: Um-hum. They could reject it anyway. [LB843]

SENATOR COUNCIL: Right. So it's in the without reserve, and that's what I understood you said these studies showed that there's really no evidence that the price increases, that the shill bidding results in the price increasing. So I get back to the question, where is the harm? I mean, if the item isn't being...the price being manipulated by the seller and you have someone who's willing to pay that price, where's the harm? When you

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find out, well, I could have got it cheaper? Okay. I want to shop like that. (Laugh)
[LB843]

SENATOR ASHFORD: Thanks. Senator Larson. [LB843]

SENATOR LARSON: Yeah, I was just reading through the bill and it says auctions conducted in whole or part over the Internet. I mean we have cattle auctions at Atkinson, Bassett, O'Neill that are partly over the Internet. So we're talking about adding in the cattle auction here, somebody at the auction having to keep track of all the bids, all the underbids because part of it is over the Internet. We're talking about farm sales. You know, you watch RFD-TV, you see the cattle auctions and sometimes farm auctions on there. All these places would have to keep track of all their bids too, not just Internet sales essentially, correct? [LB843]

JAMES ELY: Sure. [LB843]

SENATOR LARSON: So it's not just Internet, it is at the physical locations as well.
[LB843]

JAMES ELY: Uh-huh. [LB843]

SENATOR LARSON: So, I mean, I can understand it because it's much easier to keep track of Internet bids and phone bids. I mean, again, going back to my auction house experience, those are relatively easy to keep track of because you have them. But my problem is when you're at the physical location just keeping track of them is not feasible.
[LB843]

JAMES ELY: You don't think there's way to work that out? [LB843]

SENATOR LARSON: As I said, as somebody that's been in the business and been around it with a lot less people than show up at farm auctions (laugh)... [LB843]

JAMES ELY: Right. [LB843]

SENATOR LARSON: ...and cattle auctions, and people aren't always just raising their hand or raising a paddle. There's lots of different ways that people can bid and go about it. How many spotters are they going to have to have? What is this going to do to the business? I mean, maybe this...a bill like this that's forcing their costs up so high forces everything onto the Internet and then we lose those small-time auction businesses because they can't afford to process or do this stuff. So, I mean, I understand if it was just completely over the Internet but "or part over the Internet" I think will really hurt a lot of auction businesses. [LB843]

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JAMES ELY: Well, I think the important thing to remember is that this is for auctions who say that they are unreserved. If you're going to advertise your auctions unreserved, it should be unreserved. It shouldn't be unreserved, wink. You follow me? [LB843]

SENATOR LARSON: I get the concept. I just don't see the...I think it's tough to enforce. [LB843]

JAMES ELY: And so I think there are ways to work out how to detect shill bidders. I mean, I'm not saying it's easy and I'm not saying I've got the answer sitting right here today, but I do think it can be figured out. And we're not asking auctioneers to be absolutely 100 percent correct on eliminating this. We'd like them to but... [LB843]

SENATOR LARSON: Well, when you're asking them for the last good faith bidder to collect attorney fees and, you know, sue the seller, you are asking kind of...I mean, we're putting this in statute. [LB843]

JAMES ELY: Well, sure. [LB843]

SENATOR LARSON: I mean, you're asking them to do it absolutely. There is no half point at that point. [LB843]

JAMES ELY: But my point is that there's going to be, you know, there's going to be some that get away with it, quite frankly. And so you can't always prevent everybody getting caught, you know, from not getting caught. But we do the best we can. [LB843]

SENATOR LARSON: I appreciate it. [LB843]

SENATOR ASHFORD: Okay, thank you, James. [LB843]

JAMES ELY: Okay, thank you. [LB843]

SENATOR ASHFORD: Any other proponents? Opponents to the bill, who are opposed to the bill? Is anybody opposed? Do we have any other opponents? Two or three, okay. Good afternoon. [LB843]

KELLY KLIEWER: (Exhibit 4) Yeah. Chairman Ashford and members of the Judiciary Committee, my name is Kelly Kliewer and it's spelled K-l-i-e-w-e-r. I'm with Kliewer Auction Service in Aurora, Nebraska, and I also serve as president of a 250-plus member Nebraska Auctioneers Association. I appear today on their behalf. We appear in opposition of LB843 as drafted. With the advent of technology, virtually all major auctions conducted in Nebraska offer Internet bidding as part of any live auction. This technology is offered through auction firms themselves or through auction Internet services. Senator Schumacher's bill outlines a problem which we understand is a

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concern for bidders at any action, that being that the seller may buy back an item when the auction is listed as absolute, without reserve. This is illegal as we see it under the Uniform Commercial Code of Nebraska law. Auctions in Nebraska and throughout the country are governed under the Uniform Commercial Code, Section 2-328. Under this section there is an explanation of the differences between an auction with reserve or without reserve or an absolute auction. In an auction with reserve, the seller or the auctioneer, as his or her agent, may withdraw an item if a certain price is not achieved. In an auction without reserve or an absolute auction this may not happen. The sale is final; the seller may not bid on his or her item. LB843 would address the auction without reserve or absolute auction. If a bidder believes he or she has the last bona fide bid, they may ask for a bid history, may initiate court action and have attorney fees and court costs rendered if it is determined that the seller violated the current law. Our concerns include the following: It is impossible to produce a bidder history for auctions which are live and include Internet bidding. As bidders in the live audience bid, auction companies do not record each bid as the rapid voice transmission between the auctioneer and the ring personnel and the bidders go on. The Uniform Commercial Code already is specific in defining differences between auctions with reserve and without, also known as absolute auctions. The Uniform Commercial Code is also clear in that the sale is final when the auctioneer so announces by the fall of the hammer or any other customary manner. We believe that legislation will expose the confidentiality or privacy of an auctioneer's buyers, customers, lists of anyone who would choose to refute the sale or any item at auction. We could be subject to piracy of our buyers and customer lists. Many (sic) sellers subject potential lawsuits may result with sellers no longer being willing to sell items at Internet auctions, thus limiting their income. The language appears to be punitive for those wanting to sell their items on the Internet. The change would also alter the Uniform Commercial Code in Nebraska without review by the UCC Committee or the American Bar Association. With the advent of Internet sales...and you guys may finish out what I've said. We also have on our copy a few recommended amendments to the bill. [LB843]

SENATOR ASHFORD: Okay. And we have your testimony, so we can review that. [LB843]

KELLY KLIEWER: I thank you for your time. [LB843]

SENATOR ASHFORD: Any...thank you. Any questions of Kelly? Yes, Senator Larson. [LB843]

SENATOR LARSON: Typically when you're auctioneering, they move rather fast, don't they, in terms of how you're speaking and people are bidding? And, I mean, I've been. I'm trying to... [LB843]

KELLY KLIEWER: Yeah, say that again, please. [LB843]

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SENATOR LARSON: When you're auctioneering, it moves quick. I mean... [LB843]

KELLY KLIEWER: Right. Oh, you bet. [LB843]

SENATOR LARSON: ...you can give a quick example. And people are bidding. And how difficult is it to, at a live auction, what would it take or how difficult would it be to record every single bid? [LB843]

KELLY KLIEWER: It would be extremely difficult. It's just...Senator Larson, I could probably...if it was a high dollar, very high dollar item at an auction I could probably tell you who the second last bidder was at the end of the day, but the previous bids, no way. And the thing of it is, when you're selling at auction you're not only selling the item in front of you. In the back of your mind you're looking at the next item coming up for sale and you're multitasking, so to speak in today's language, to try to keep track of what's going on. You've got help out there that you're considering. And so you're calling numbers. I could tell you half of the items I sell at auction I couldn't even tell you what the last bid amount was or who the last bidder was, until the end of the day. I can go back and look at the paperwork and find that out. But to see who all bid during the day is virtually going to be very hard, very hard. [LB843]

SENATOR LARSON: And I won't make you sound out your auctioneer voice and... [LB843]

KELLY KLIEWER: I can if you want me to. [LB843]

SENATOR LARSON: ...(laugh) to let people know how fast you're actually going through this process. And what...I know what it's like. So my next question is, what would it take for your company, is it Keeler,... [LB843]

KELLY KLIEWER: Kliewer. [LB843]

SENATOR LARSON: ...Kliewer, Kliewer Auctioneering Service, if you were to record every single bid? What--and if this passes that might be the case--what would it cost in terms of overhead for your business? And is that even possible? [LB843]

KELLY KLIEWER: It would be tough to tell, Senator Larson. You know, we run typical...say, a typical estate auction that we would do, we try to average selling between 100 and 120 items in an hour. And that's not moving as fast as what some companies move. Some companies will sell 200 items an hour. So you're going to have to have two to three, possibly four trained personnel that can watch the crowd. But, see, not everybody holds their paddle up when they bid. They just...they'll wave at you, they'll wink at you, they'll tip their hat, they'll use eye contact. And so if they don't hold their bid

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number...if you force everybody to hold their bid number up to bid, we'd have to retrain all of our audiences and I would have to have spotters trained to say...to be able to write that down, and they would have to physically either put it in a computer or write it down as we go. [LB843]

SENATOR LARSON: And the number that was bid. [LB843]

KELLY KLIEWER: And the number that it was. I mean, we do keep a list of the buyer numbers, buyers according to their bid number. [LB843]

SENATOR LARSON: Uh-huh, of course. [LB843]

KELLY KLIEWER: That we have on file, that's not a problem. [LB843]

SENATOR LARSON: Yeah. [LB843]

KELLY KLIEWER: But to say, you know, asking for a dollar opening bid and you jump in and we go on, I mean, I can't tell...I can say, yeah, you were a consecutive bidder all day long. But how often you bid or how many times I have no clue or no record anyway. [LB843]

SENATOR LARSON: And the concept of, again I'll bring my experience in the auction world up, just the concept of releasing, if you could, assuming you could, you know, track every bid, I know that underbidder information is very valuable in and of itself in terms of your client information and just...that's something that is very valuable in terms of marketing and other things. And I think you bring up a great point in terms of, you know, protecting your client's identity and their interests and what they're doing. I appreciate you coming in here today. [LB843]

KELLY KLIEWER: Well, thank you, Senator Larson. I do appreciate it. And, you know, we just...if it's monetary value, I can't...have no clue what it would cost us. [LB843]

SENATOR LARSON: It would be significant. [LB843]

KELLY KLIEWER: It would be significant. [LB843]

SENATOR LARSON: Okay. [LB843]

SENATOR ASHFORD: Senator Council. [LB843]

SENATOR COUNCIL: Yes, thank you, Mr. Kliewer. I have one question. In your testimony you indicated that if the auction is absolute, without reserve, and somehow the buyer...the seller buys the item back somehow. [LB843]

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KELLY KLIEWER: Okay. Okay. Right. [LB843]

SENATOR COUNCIL: I'm going to read, when a seller may buy back an item at an auction that had been listed as absolute without reserve, you state this is illegal under the current Uniform Commercial Code. I don't have a copy of the Commercial Code in front of me, okay. [LB843]

KELLY KLIEWER: Okay. [LB843]

SENATOR COUNCIL: So tell me what is the penalty currently if a seller violates the absolute, without reserve bid statement, if you know. [LB843]

KELLY KLIEWER: I'm sorry, Senator, but I do not know. We have read the code through and I do not know what the penalty is. [LB843]

SENATOR COUNCIL: Okay. But your statement is it's illegal, so I hope somebody will...that to violate the provisions of a...for a seller to violate the provisions of an absolute auction without reserve. [LB843]

KELLY KLIEWER: As far as I know, I'm not sure what the penalty is, if there is one. [LB843]

SENATOR COUNCIL: Okay. Okay. [LB843]

KELLY KLIEWER: There probably should be one. [LB843]

SENATOR COUNCIL: Okay. [LB843]

KELLY KLIEWER: But the Commercial, as we interpret the Commercial Code, it is in violation of that. [LB843]

SENATOR COUNCIL: Okay. That's a violation, okay. [LB843]

KELLY KLIEWER: Yes. [LB843]

SENATOR COUNCIL: But whether or not it's illegal, I have to look at the Code to see if there's...okay, thank you. [LB843]

KELLY KLIEWER: Thank you. [LB843]

SENATOR ASHFORD: Thank you, Kelly. [LB843]

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KELLY KLIEWER: Thank you, Senators. [LB843]

SENATOR ASHFORD: Next proponent, opponent, I'm sorry. [LB843]

MARK BEACOM: Good afternoon, Senator Ashford and Judiciary Committee. My name is Mark Beacom, B-e-a-c-o-m. I'm with Auction Solutions out of Omaha, Nebraska, and also the secretary-treasurer of the Nebraska Auctioneers Association. And I'm here to represent them today, as well as myself. I basically agree with everything that Kelly Kliewer has mentioned here today. And I think that what we're dealing with here is a bill that the intent...I understand the intent and I agree with the intent. It is fraudulent, in my opinion, for a seller to bid on one of their items in an absolute auction. That's basically what the Uniform Commercial Code covers. And the way I understand the Uniform Commercial Code is it allows that person who's been defrauded, by being the underbidder, to either accept that piece of property at the price that their last good faith bid was or to say, no, I don't want it. And that's really all that the Uniform Commercial Code does. And I understand there's no penalty assessed. But I would think that that's a fraudulent act and you could prosecute someone for fraud for doing that. So I think that the law already probably is able to cover that. I just want to make one example here and I'll keep it as short as I can. Almost all of our auctions are conducted on the Internet. We did 93 auctions last year. We conducted the Rosenblatt Stadium auction, we did Ironwood Country Club. We did 93 of them, about 80 of them, maybe 85 of them we used an Internet simulcast and we used Proxibid. They're hometown guys and we used them as our provider. That allows people on the Internet to bid along with the crowd. We'll have a clerk sitting with a computer and another one recording the actual bid price. But what I'm afraid will happen is if, the way this bill is written, it allows the seller...the bidder to protest all bids, I'm afraid what's going to happen is that if I just have a bad day or if I feel like I should have won that I can say, you know, you had 400 items on your Internet catalog that you sold this afternoon; I bid a penny on all of them and I want the bidder records for everybody that outbid me on any of those items I bid for, for a penny. In any case, that's what I wanted to bring forward. And thank you for your time. [LB843]

SENATOR ASHFORD: Okay. Thanks, Mark. Appreciate it. Next opponent. [LB843]

SHAYNE FILI: Good afternoon, Senators. I'm Shayne Fili. I am from Omaha, Nebraska, and I am... [LB843]

SENATOR ASHFORD: Shayne, can you spell your last name? [LB843]

SHAYNE FILI: F-i-l-i, Fili, from Omaha, Nebraska. I also work for Auction Solutions, Inc. We conduct a lot of auctions. We do not let our sellers bid for themselves if it is an unreserved auction. We very seldom do an unreserved auction. We prefer to have them as Uniform Commercial Code with reserve. It just, for us it just makes things a lot

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simpler. And when we use the Internet we also use the reserve method. And I just am completely opposed to this bill because of the paperwork it would generate and the additional staff that we would have to have in our offices to make this happen. [LB843]

SENATOR ASHFORD: Thank you, Shayne. Next testifier. Okay. [LB843]

JEFF TEMME: Senator Ashford,... [LB843]

SENATOR ASHFORD: Yes. [LB843]

JEFF TEMME: ...committee, my name is Jeff Temme, Petersburg, Nebraska. T-e-m-m-e. I am a board member of the Nebraska Auctioneers Association and opposed to LB843 in its present form. I believe we need something. Just three quick deals, and Mark hit on one: the time limit, how much time goes by before someone makes a complaint; the value of the item, would it be \$1 or \$1 million? And then what about vendettas or an estate auction where you wanted your Aunt Pearl's necklace and got angry at your sister. So we need something done, but would like to have a little more work put into it. Thank you. [LB843]

SENATOR ASHFORD: Okay. Thanks, Jeff. Any questions? Yes, Senator Lathrop. [LB843]

SENATOR LATHROP: Yeah, if I can. Do you have an association that's working on this issue? I appreciate, it sounds like we recognize the problem that Senator Schumacher is bringing to us. [LB843]

JEFF TEMME: Yes. [LB843]

SENATOR LATHROP: My question is, is there an association that's working to come up with some model legislation that might be helpful? [LB843]

JEFF TEMME: We are in the beginning stages of that, the Nebraska Auctioneers Association is, yes. [LB843]

SENATOR LATHROP: Okay, is there a, like a... [LB843]

JEFF TEMME: ...a committee group? [LB843]

SENATOR LATHROP: ...group that's more a federal or a group that involves auctioneers from all the different states working on something? [LB843]

JEFF TEMME: Yeah, that would be the National Auctioneers Association. And I can't answer that, if they are working on that. [LB843]

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SENATOR LATHROP: Okay, thanks. [LB843]

JEFF TEMME: Good question. [LB843]

SENATOR ASHFORD: Thanks, Jeff. Next opponent. Okay. [LB843]

ANDREW LIAKOS: Good afternoon, Chairman Ashford,... [LB843]

SENATOR ASHFORD: Afternoon, yep. [LB843]

ANDREW LIAKOS: ...members of the Judiciary Committee. My name is Andrew Liakos, from Proxibid, Inc. in Omaha, Nebraska. Last name L-i-a-k-o-s. Proxibid stands in support of the Nebraska Auctioneers Association's opposition to LB843 as drafted and would like to express our concerns to the committee on the problems this bill will create. Since 2002, Proxibid has provided Internet bidding services to over 100 Nebraska-based auction companies, foundations and organizations, with more than 15,000 Nebraska residents participating in these auctions hosted on our site. Seller participation in an auction, sorry, seller participation in an auction without disclosure is illegal. And Proxibid goes to great lengths to protect its bidders and auction companies from deceptive bidding practices. In observation of Uniform Commercial Code 2-328 and the potential abuse of seller participation in nonqualifying auctions, Proxibid requires auction companies who allow seller participation to disclose this information by way of messaging displayed in a prominent location on the auction on our Web site. Proxibid does not condone seller participation in any auction. We understand seller participation is allowed in auctions so long as proper disclosure is provided to participating bidders. Our concerns include the following: This bill will require sellers, auction companies, and Internet auction service providers like Proxibid to disclose confidential bidder information to anyone who challenges the sale of any item at auction. Disclosing of this confidential information will have devastating effects on the Internet auction business as auction companies and Internet auction service providers will be required to release confidential buyer and customer information to any party which requests, thereby violating the privacy agreements bidders and auction companies enter when participating in such sites. Violation of these agreements will discourage bidders from further participation in Internet auctions. This bill discriminates against Internet auctions, the fastest growing and most efficient method of bidding at auction. This bill does not address nondisclosed seller participation in non-Internet auctions. This will create an uneven playing field between these two methods of bidding. Tracking, preservation, and presentation of this data creates an unreasonable burden and cost on all parties. This bill does not provide clarity on what qualifies as an Internet auction. Auctions today are a blend of both Internet and non-Internet auctions. Any item within an auction can receive bids exclusively from Internet bidders, exclusively from non-Internet bidders, or a combination of both. Auction companies use

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the Internet to list their auctions on multiple Web sites and Internet-based tools to list their auctions, attract bidders, and facilitate live Internet and absentee bidding. Since 2002, Proxibid has hosted and provided bidding to more than 2,000 auctions conducted in the state of Nebraska, exceeding \$328 million in gross auction sales, and \$22 million in sales to successful Internet bidders. More than \$16.5 million of that \$22 million of this inventory was sold to Internet bidders participating in these auctions from outside the state of Nebraska. In closing, we support the underlying good intentions of this bill, however, we do not believe that this bill can be saved through amendment. Thank you for allowing us to testify today. If you have any questions, I'm happy to answer them now. [LB843]

SENATOR ASHFORD: Any questions of Andrew? It's good to see you, Andrew. [LB843]

ANDREW LIAKOS: Thank you, sir. [LB843]

SENATOR ASHFORD: This morning on the floor of the Legislature we discussed the robocall issue. I mean, we're struggling with technology that is just speeding past, well, me for sure and maybe others. And I suspect we're going to be dealing with...I think Senator Lathrop made a great point. Senator Schumacher doesn't bring this bill frivolously. He has concerns here. And I think it would be helpful as we deal with technology and think about how do we make sure that this bidding process is as fair as it can be, those bidding processes that are located in Nebraska, it would be helpful maybe for your group to sit down with Senator Schumacher's group and see if there is something that can be done here because, obviously, there's a concern, legitimate concern. But I understand what you're saying and I understand...I know a little bit about your business and I know it's grown quite quickly. So how do you reconcile all that is going to be a continual issue for all of us to struggle with as policymakers because, you know, making policy or making laws certainly can be a slow process. And technology scoots right by you. So anyway, any questions of Andrew? Seeing none, thanks. [LB843]

ANDREW LIAKOS: Thank you. [LB843]

SENATOR ASHFORD: Any other testifiers today on this bill? Paul, do you wish to...Senator Schmit, I thought maybe you'd talk about auctions. You know about this stuff, don't you? (Laugh) You could be an expert witness to it. [LB843]

SENATOR SCHUMACHER: Thank you, Senator Ashford, members of the committee. I think we've established a few things here today and one is that I hope we all understand a little bit the difference between reserved and not reserved auctions. [LB843]

SENATOR ASHFORD: That's as far as I got, but I'm sure there's more to it than that.

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[LB843]

SENATOR SCHUMACHER: Okay. We're working on it, and that we have a growing Internet auction phenomenon and it's only going to continue to grow. This bill is not intended and certainly could, I think with a little fine-tuning, be made very clear that it's not intended to deal with traditional auctions or bids taken at traditional auctions. It's also I think the reason for the "in part" language in there was because you could circumvent the bill by having an Internet auction and have one live bidder. But this is...the intent of this bill is not to deal with Internet auctions or bids or with non-Internet auctions or... [LB843]

SENATOR ASHFORD: So it wouldn't apply necessarily to what Senator Larson was talking about. [LB843]

SENATOR SCHUMACHER: Right. [LB843]

SENATOR LARSON: How it's written it would apply though. [LB843]

SENATOR ASHFORD: No, no, I understand that. [LB843]

SENATOR SCHUMACHER: Yeah, it may need to be tweaked to make clear what the intent is. [LB843]

SENATOR ASHFORD: But Senator Larson makes a good point. I mean, in his experience of seeing some of those art auctions where you have Internet and... [LB843]

SENATOR LARSON: And those move a lot slower too. Art auctions aren't cattle auctions, aren't farm auctions. An art auction is much different. These auctions move very quickly. [LB843]

SENATOR ASHFORD: Got it. [LB843]

SENATOR SCHUMACHER: And conversely at an Internet auction all bids are recorded in a large database that's ongoing. It's not like if you don't see it, it isn't there. If you...you see it if it's there and it's recorded and preserved for enough period of time in order to be useful here. So we've got a problem. We've got a mechanism, we know how the Internet auctions are basically conducted. We have rights. Under the UCC as it exists today the buyer can go and sue for what he's been damaged. Under the rules of the game he was supposed to get something for \$300 and he was cheated out of it by a shadow bidder; he's entitled to the benefit of his bargain and his participation in the auction. The business about...and could bring a suit. And there is no such thing as an auctioneer-bidder privilege. If that buyer brings a suit then clearly the auction company today could be subpoenaed and asked to provide that listing for the bid history on the

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particular item. So the business about the sanctity of the auctioneer-bidder privilege doesn't exist, never has been recognized in law. They're not attorneys and they're not doctors. That being said, I think we made progress today. The folks that in my district who are involved in this indicate that they really do not have objection to the proposed amendment by the auctioneer's society. I will work with the auctioneer's society, see if we can fine-tune this. If not, I think it's become very clear that it's an issue that their group needs to address, we need to address, because right now quite frankly there are buyers being cheated. And I supposed it's our obligation to try to do something about that. [LB843]

SENATOR ASHFORD: And in some cases these are big dollars. [LB843]

SENATOR SCHUMACHER: Right. If you're dealing with a \$50,000 combine... [LB843]

SENATOR ASHFORD: Right. [LB843]

SENATOR SCHUMACHER: ...and the seller puts it out there and the buyer thinks he, you know, under the rules of the game should have gotten it for \$30,000, that's big money. [LB843]

SENATOR ASHFORD: Right. [LB843]

SENATOR SCHUMACHER: And even if it's a little, with the volume of this, a little cheat times a large number of bidders, this is a big problem. [LB843]

SENATOR ASHFORD: Okay. Thanks, Paul, very much. [LB843]

SENATOR SCHUMACHER: Thank you. [LB843]

SENATOR ASHFORD: That's very interesting. That concludes the hearing. We'll now go to Senator Lautenbaugh, LB793. Okay, Senator Lautenbaugh. [LB843]

SENATOR LAUTENBAUGH: Can I clear a room, or can I clear a room? Mr. Chairman, members of the committee.

SENATOR ASHFORD: The only people here are the bar association. Go ahead...and Senator Chambers.

SENATOR LAUTENBAUGH: Yeah, I suppose that's it. My name is Scott Lautenbaugh. I'm the senator from District 18, and I'm here to introduce LB793, which is unfortunate on a certain level because I realize I have the talking points for LB807, so we could either talk a bit about concealed carry or I can go from memory here on this actual bill that's before us. [LB793]

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SENATOR ASHFORD Huh. Do you need the statement of intent or...? [LB793]

SENATOR LAUTENBAUGH: I'm just thinking my closing would be better than my opening, for once. [LB793]

SENATOR ASHFORD: Okay. [LB793]

SENATOR LAUTENBAUGH: It's all relative, but. What this suit...or what this bill basically does is attempt to rein in the problem of frivolous--and countless, if you will--lawsuits by inmates. It has been misreported in the media, this bill does not say after three frivolous suits you may not file suit anymore--that's how it was reported. It says after three suits that have been declared frivolous you may not proceed in forma pauperis anymore. You still have access to the court; you just...the taxpayers are not picking up the filing fee. And I think that's a huge difference between how this was reported and what the bill actually states. Simply put, there are some prisoners who have abused the filing process in the past. One gentleman filed, if memory serves, over 600 such suits. One filed I think 60--some in one day. This is something that needs to be addressed. And many of us in this room and on this committee are attorneys, and I think we all know that judges do not routinely find things to be frivolous just on a whim. There is a very high standard that the courts apply before denying someone's lawsuit to go forward. So I don't see that as a danger that this will be cavalierly done but I think we do need to do something to assist our overburdened counties and our overburdened court system. And this has been effective in other states and at the federal level, and this was patterned after the federal act. I know the Attorney General's Office is here with some statistics and other documents as well, as am I now, but I'd be happy to attempt to answer any of your questions as well. [LB793]

SENATOR ASHFORD: Any questions? Senator Council. [LB793]

SENATOR COUNCIL: Thank you. Good afternoon. Senator Lautenbaugh, a fellow member of the Judiciary Committee, it probably comes as no surprise that I have some concerns with LB793--serious concerns. And one of the problems is, although the paper may not have reported correctly, it does report a concern. Under the bill as drafted, if an inmate has had three frivolous lawsuits at any time, regardless of the merit of the fourth suit, under this bill that inmate could not bring that suit in forma pauperis, even though that suit was meritorious, unless they demonstrated that there was an imminent threat of serious bodily injury. [LB793]

SENATOR LAUTENBAUGH: Yes. [LB793]

SENATOR COUNCIL: And, you know, that is denying access to the courts when there may be merit. I understand that there may have been frivolous actions brought in the

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past. But I have a meritorious claim and I qualify for an in forma pauperis filing, but I can't establish that there's an immediate threat of serious bodily injury. I am being deprived of an opportunity to remedy a harm. I mean there's no time period in here. So if I have filed three frivolous lawsuits over a ten-year period, the eleventh year, whether there's actually, you know, I have a meritorious claim, I could be denied access. [LB793]

SENATOR LAUTENBAUGH: Well, I would say we're not being denied access. It's just not...the costs are not being picked up by the taxpayers for the... [LB793]

SENATOR COUNCIL: But I'm still in forma pauperis. [LB793]

SENATOR LAUTENBAUGH: That's true. [LB793]

SENATOR COUNCIL: That status hasn't changed... [LB793]

SENATOR LAUTENBAUGH: That's true. [LB793]

SENATOR COUNCIL: ...and I have a meritorious claim. [LB793]

SENATOR LAUTENBAUGH: That may be true. [LB793]

SENATOR COUNCIL: I just have problems with it and I have problems, you know, basing it on the fact that there are a couple of litigious inmates. One of the individuals will file his and has filed as many in forma pauperis civil actions outside of the correctional facility as he's filed inside the correctional facility. So, I mean, when I saw that individual being included, I said, well, that shouldn't be the standard. And I have a real problem with saying...and who determines the imminent threat of bodily injury? Because presumably that's some determination that's made after I have filed in forma pauperis, correct? I mean, you can't do it in advance. [LB793]

SENATOR LAUTENBAUGH: No. It would probably have to be at the time of filing. [LB793]

SENATOR COUNCIL: And who do you or maybe the Attorney General envisions making that determination? [LB793]

SENATOR LAUTENBAUGH: I was... [LB793]

SENATOR COUNCIL: Because the case is going to be assigned by then. So, I mean, essentially the costs associated with it have already been incurred because the document has been filed, that's where the filing fees go to. So what are we saving? [LB793]

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SENATOR LAUTENBAUGH: Well, there may have to be some...well, first of all, every suit would not allege an immediate imminent bodily harm. [LB793]

SENATOR COUNCIL: Well, if the inmate wants to get his or her case heard, and it's their fourth and they already have three frivolous lawsuit findings, you better believe they're going to allege. [LB793]

SENATOR LAUTENBAUGH: Well, there's a difference between alleging it, and even if it were assigned to a judge, a judge could review it and say, no, there is no serious threat here, and the thing presumably would be dismissed. [LB793]

SENATOR COUNCIL: Okay, but... [LB793]

SENATOR LAUTENBAUGH: So it would still save the ongoing cost of having the suit in the system. It would... [LB793]

SENATOR COUNCIL: Yeah, but the cost of having the suit in the system is the up-front cost. I mean, that's what's waived at the filing fee. [LB793]

SENATOR LAUTENBAUGH: I don't think that's correct. That's not...the filing fee isn't the only cost to the system. The burden on the system is the existence of the case and the life of the case as well. [LB793]

SENATOR COUNCIL: Well, you know, I understand, you know, that they have to schedule a time and the judge has to hear the case and the clerk has to...but in terms of the filing, the in forma pauperis filing relieves that person of paying the filing fee, okay? [LB793]

SENATOR LAUTENBAUGH: Yes. [LB793]

SENATOR COUNCIL: So the taxpayer is going to pick that up under this, in any event, because all the inmate has to do is allege an imminent threat of serious bodily injury, and somebody has to make that determination. [LB793]

SENATOR LAUTENBAUGH: Well, the filing fee isn't the cost that we're seeking to save here. It's the cost of the ongoing litigation. The filing fee would never be received unless the inmate paid it. I think we're getting sort of confused about the order of things and what we're actually trying to address here. If the inmate alleged there's imminent bodily harm, I need to proceed in forma pauperis--and it was determined relatively quickly that's not true--there's a remedy: You pay your filing fee or this gets dismissed, because you've already had three frivolous suits. So it's not like they... [LB793]

SENATOR COUNCIL: But that's the problem I'm having, Senator Lautenbaugh. I mean,

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so now we're going to have a new system of filing for inmates? If the inmate is going to go in, file a suit, and complete the form that accompanies that so that there's no filing fee, and then that's going to go into the system, it's going to be assigned to the judge. And presumably under the bill, initially that judge is going to have to determine whether it's...there's a serious...an imminent danger of serious bodily injury. The other thing is, who's going to record...say, you're going to have somebody that keeps...that goes through and pulls every inmate filing to see if they've had three frivolous filings? Doesn't that add cost to the system? [LB793]

SENATOR LAUTENBAUGH: I would assume that the state would probably be the ones to point that out, more often than not. I don't think...I don't envision some central database of this type of thing that would be maintained elsewhere, or in the court system necessarily, although I suppose that is a possibility. [LB793]

SENATOR COUNCIL: And I'll reserve my questions...the remainder of my questions. [LB793]

SENATOR LATHROP: Any other questions for Senator Lautenbaugh? Seeing none, I assume you want to close? [LB793]

SENATOR LAUTENBAUGH: Yes. [LB793]

SENATOR LATHROP: Okay. [LB793]

DAVID COOKSON: Vice Chairman Lathrop, members of the committee, my name is David Cookson, C-o-o-k-s-o-n, Chief Deputy Attorney General from the Nebraska Attorney General's Office, here today in support of LB793. I think I can address some of Senator Council's questions up-front in my general comments. This legislation is patterned after the federal inmate Litigation Reform Act, although it is not as onerous as the federal act. And the way the federal act worked is, when the cases come in they're screened to see if in fact this particular inmate has previously filed the...or had determined a number of frivolous actions. Currently, in the JUSTICE system, the clerk's office can pull up that inmate's name, find how many actions have been done, have access to the docket. The bill requires that the docket reflect that there was a finding of frivolous. So the ability of the court system to make that initial determination is fairly straightforward. Also in the bill, in addition to the imminent bodily harm, it provides...the court...the inmate cannot proceed after three strikes without leave of court. So again, in the situation where the court sees that there may be a meritorious claim, obviously the court has the discretion within the leave of court standard in addition to the serious bodily harm to allow the inmate to proceed. But again we're talking a very limited class of cases. We're not talking about post-conviction relief. We're not talking about habeas relief. We're not talking about tort claims or judicial review of disciplinary procedures, nor are we talking about the three-step grievance process in the state institutions. We're

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simply talking about inmate litigation in forma pauperis with regards to conditions of confinement. Some of the suits that we've seen is suits because they didn't...they got a phony junk mail check and corrections wouldn't cash it, so they sued. Inmates such as Eric Lewis filed 60 lawsuits in one day while he was "interred" in the Lancaster County jail. We talked about Billy Roy Tyler who has filed over 600 actions and describes himself as the world's greatest writ writer. We're talking again about a limited situation. Access to the court is still permitted. They simply, once they get past the three strikes where a court has found the action to be frivolous--and the definition of frivolous in the bill is taken from Nebraska Supreme Court decisions--then the inmate is no longer allowed to file in forma pauperis without leave of court or to show imminent threat of serious bodily harm. The costs incurred in these situations...and we see these cases. We get about 200 of them a year. And about 20 percent, or roughly 40 to 50 of these cases, we would consider would fall within the ambit of this statute. Washington, the state of Washington, enacted this bill last year. They've estimated that they've saved over \$100,000 on about the same number of cases--44 cases--which they believe will be determined to be frivolous. There's also the savings to the county and savings to other agencies, including the court, and it relieves on the court's docket, which we've heard from judges in Lancaster, Douglas, and Johnson County, where the majority of these go. And I see my time is up, so with that I'm happy to answer any questions. [LB793]

SENATOR LATHROP: Senator Coash has a question for you. [LB793]

SENATOR COASH: Thank you, Senator Lathrop. Thank you, Mr. Cookson. I'm just trying to get my head wrapped around the cost of the types of lawsuits that this is trying to...obviously...after three...or up to three, the filing fees are waived. [LB793]

DAVID COOKSON: Right. [LB793]

SENATOR COASH: And after that, we've got...the litigant has to pay the filing fee. [LB793]

DAVID COOKSON: Unless he gets...unless the court grants under leave or there's imminent. The court determines him... [LB793]

SENATOR COASH: Right. So that's \$60, \$70. We seem to add fees to that all the time. In these cases, then is there also a cost of appointing counsel for...? [LB793]

DAVID COOKSON: Generally, not... [LB793]

SENATOR COASH: I mean does it get that far where...and a lawyer has to be appointed in each one of these cases? [LB793]

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DAVID COOKSON: No. These aren't criminal cases so there isn't necessarily a right to counsel. But what happens is there's service. They have to serve us, the state. They have to make additional copies. [LB793]

SENATOR COASH: They--I'm sorry--they as in the counties? [LB793]

DAVID COOKSON: They as the inmate. [LB793]

SENATOR COASH: The inmate. Okay. [LB793]

DAVID COOKSON: But because they're in forma pauperis, basically corrections is required to make the copies for them. The service fees are waived because they're in forma pauperis. And then there's a number of other costs. And as you go forward with these motions, what happens is you start to pick up innumerable copy costs. One inmate left corrections and had an outstanding over-\$10,000 bill for the costs of copying depositions, transcripts. When they appeal the denial, they order the transcript. The court reporter charges for the transcript. And basically what ends up is, because the inmate doesn't have funds in his corrections account, corrections gets left holding the bag. And another problem we see is a lot of times, especially with new judges, they ask us: Why aren't you settling these cases for nuisance value? Well, we can't, because once you settle these cases for nuisance value, you invite another hundred cases. And so the problem is, unless you get to the core problem cases--not the legitimate claims. And, believe me, we represent the state and settle a lot of legitimate claims. But the claims, the frivolous claims, are what we've tried to drill down to and address, and not address the meritorious claims. Hence, the limit of what this actually applies to. [LB793]

SENATOR COASH: I understand. Thank you. [LB793]

SENATOR LATHROP: Dave, I do have a question for you. Under the current system now, are these generally cases that are filed in the state court or in federal court? [LB793]

DAVID COOKSON: State. And we've seen an increase in the state court because of the passage of the federal prison litigation reform. [LB793]

SENATOR LATHROP: Okay. If someone files a claim from...let's say they're in the Nebraska penal complex and they want to file a lawsuit over the conditions of their confinement, that will start out with a complaint and then a motion or some kind of an application to proceed in forma pauperis. [LB793]

DAVID COOKSON: Right. [LB793]

SENATOR LATHROP: Is that right? [LB793]

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DAVID COOKSON: Generally. [LB793]

SENATOR LATHROP: Does the court presently review the complaint to determine whether or not, if true, it has alleged sufficient facts to create a cause of action? [LB793]

DAVID COOKSON: No. It's treated just like any other civil action. We have to respond. We usually raise the equivalent of the 12(b)(6) motion to dismiss for failure to state a claim or cause of action. [LB793]

SENATOR LATHROP: But that's not until after the court has agreed to accept the complaint. [LB793]

DAVID COOKSON: The complaint gets filed just like... [LB793]

SENATOR LATHROP: ...for free. [LB793]

DAVID COOKSON: Yeah. As long as...once they satisfy in forma pauperis, it proceeds like any other...at the present time, like any other litigation. [LB793]

SENATOR LATHROP: So there is no...the court engages...currently, engages in no screening process for legitimacy before it is set on the docket. [LB793]

DAVID COOKSON: There is one limited circumstances, and it's a rather onerous process given the size of Lancaster and Douglas County. All of the judges can sign off on limiting a specific inmate's litigation, but it happens very rarely. And it almost inevitably what has happened is they've been limited to 6 or 12 lawsuits a year. [LB793]

SENATOR LATHROP: Okay. So under the current system that's in place, a district court judge in Lancaster County could say: Cookson, I'm only giving you three of these lawsuits a year. [LB793]

DAVID COOKSON: He has to get all the other district court judges in Lancaster County to agree. [LB793]

SENATOR LATHROP: Do they do that currently? [LB793]

DAVID COOKSON: They have with a couple of inmates. I think at one time Billy Roy Tyler actually was limited in Douglas County in the number he could file. [LB793]

SENATOR LATHROP: Okay. All right. Senator Council. [LB793]

SENATOR COUNCIL: Yeah. And thank you, Senator Lathrop, because that kind of gets

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to the point I'm making. The inmate files a complaint, and along with the complaint is the in forma pauperis application. [LB793]

DAVID COOKSON: Right. [LB793]

SENATOR COUNCIL: So the complaint is filed. [LB793]

DAVID COOKSON: Right. [LB793]

SENATOR COUNCIL: And under the statute as proposed is, in order for them to proceed in forma pauperis, there has to be some determination and basically going to the merits of...let me finish. Because in order to say you can proceed with leave of the court, the court has to make some determination or preliminary determination as to whether or not there's some merit. Wouldn't you agree? [LB793]

DAVID COOKSON: If...let's expand the hypothetical. A prisoner comes in, docket shows that in three...after the effective date of this statute, there's been three times the court has determined that he's filed a frivolous action. The clerk would then...the process would be either the court gives him leave to...the court would review it, as you suggest, to determine whether or not he can proceed with leave of the court or that there is a situation of serious...imminent and serious bodily injury, or what...the specific language in the statute. So, yes, there is a screening process, which is exactly what occurs in the federal system as well, both at the district court level, the Eighth Circuit, and the Circuit Courts and the U.S. Supreme Court. The U.S. Supreme Court does basically that same screening on its petitions for cert. in forma pauperis. [LB793]

SENATOR COUNCIL: Okay. And see the problem I have with that is it's a... [LB793]

DAVID COOKSON: But again that's... [LB793]

SENATOR COUNCIL: To deny it is a predetermination without the participation of the plaintiff and having an opportunity to be heard on what are the allegations in the complaint, that it's almost like I file a complaint, the defendant files a...it used to be a demurrer but that's not it anymore. But it says...it fails to state any facts upon which a claim for relief could be granted. Okay? [LB793]

DAVID COOKSON: And again... [LB793]

SENATOR COUNCIL: But even in that case, I as the plaintiff have an opportunity to be heard. Under this, there's no opportunity for the plaintiff to be heard. [LB793]

DAVID COOKSON: Again, the plaintiff, assuming they...you have to assume they've already had their three previous determinations of frivolous, because otherwise they go

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through the process. But once that happens, they still have a judicial review of the complaint that's filed for the court to decide whether they're going to grant leave to proceed in forma pauperis; whether they're going to require them to pay the filing fee, which still gives them the opportunity to be heard; or if there's the element of serious injury, imminent serious injury involved. The complaint is still the opportunity for the court to look at the allegations. And again, the frivolous standard...and the federal courts have been doing this now for some time, and it's all...basically we're getting on board with what the feds have been doing because, in part, you saw a shift from these being filed in federal court, because you can get damages against the state in a 1983 action, to filing these in state court. But again, this doesn't apply to tort claims. It only applies to terms of confinement. So there's still the majority of inmate litigation with regards to grievances, the institutional grievance process, disciplinary procedures, anything related to their conviction; and tort claims are not affected by this act. [LB793]

SENATOR COUNCIL: Again, I still am troubled, because the court is making a determination on the face of the complaint without even hearing the response of the defendant, may make a determination that possibly the defendant could admit to some of the allegations in the complaint, and then there would be a genuine dispute that needed to be resolved. And I just have fundamental problems with limiting access to the courts, even though we're just talking about a condition of confinement cases. I still have problems with that. [LB793]

DAVID COOKSON: Right. I guess from our perspective, we're used to this. We've been operating both in the state and the federal system, and have seen it work fairly efficiently. [LB793]

SENATOR COUNCIL: That's all I have. [LB793]

SENATOR LATHROP: Okay. Thank you. I see no other questions. Thanks for coming down. [LB793]

DAVID COOKSON: Thank you. [LB793]

SENATOR LATHROP: Are there any other proponents? (Laugh) Are you sure you want to testify on this bill? [LB793]

WARREN WHITTED: Well, after hearing, no, but I'm charged with the responsibility. My name is Warren Whitted, W-h-i-t-t-e-d. I'm president of the Nebraska Bar Association. I'm here to testify in support of LB793. On behalf of the bar association, I must take a more global view of this than the specifics that have been discussed by Senator Council and by the other witnesses. It is our position that we must assure that there is full and complete access to our court system but that it is access to cases that are legitimately before it. The problem with the situation here with frivolous lawsuits is that it's adding to

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an already serious situation of courts that are overburdened and clogged with frivolous filings, and I'm not just talking about frivolous filings made by prisoners but frivolous filings, period. The number of cases is increasing, the number of pro se litigants is increasing, and we definitely need to assure that there is access. This bill assures adequate access to redress by prisoners while at the same time preventing the increase in frivolous litigation. I think that as I read the bill, and it certainly would be open to further interpretation, but when it says without leave of court, it means there has to be a presentation to the court and a determination by the court as to whether or not on its face the petition or the complaint is frivolous. It doesn't leave the prisoner without recourse if they have a legitimate claim, and I think that's important to understand. It's not intended to prevent the legitimate claim. It is intended to prevent the claim that's just utilizing court resources and time. Also when we talk about the costs, it goes far further than filing fees. It talks about courtroom time and it talks about court personnel time, and when these cases are being considered and decided by the courts that some other litigation is not being considered and is being postponed. And I think this bill addresses a legitimate interest. I think it is in the interest of justice that we consider the substance. If there needs to be amendments to clarify your concerns, Senator Council, then that needs to be addressed. But I think that we need to take action which will address this situation and will eliminate these frivolous lawsuits. And I'll answer any questions. [LB793]

SENATOR LATHROP: Very good. [LB793]

SENATOR COUNCIL: Actually it's not a question, just a comment. With all due respect, President Whitted, I disagree. (Laugh) And I think that LB793, the practical effect of it, it will be to prevent access to the court for legitimate claims by inmates. And that's problematic for me. [LB793]

WARREN WHITTED I appreciate your opinion, Senator. [LB793]

SENATOR LATHROP: Thanks. And I didn't mean to imply that the bar shouldn't be here, but if there is a certain irony in your testimony today,... [LB793]

WARREN WHITTED: I came by myself, though, this time. [LB793]

SENATOR LATHROP: ...for those who follow the Judiciary Committee, they can appreciate that I think. (Laughter) Anyone else here in opposition who cares...or pardon me, anyone else here in support? Anyone here in opposition who cares to testify? Welcome, Senator. [LB793]

ERNIE CHAMBERS: (Exhibit 5) Mr. Chairman, members of the committee, my name is Ernie Chambers. I'm from Omaha, Nebraska. And based on my experience when I testified on the pipeline, I know I'm not going to have enough time to say what I want to

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say even though this is an extremely serious matter. So before I get into the substantive issues that Senator Council was approaching, I have problems with the drafting of the bill. And the reason I want to do that, this bill supposedly is patterned after federal legislation; the Attorney General's Office presented it or wanted it presented; a licensed attorney presented it to the committee. So if you look at the drafting and you find problems with the drafting by trained lawyers, trained in the law, you must remember that these inmates by and large are not trained in the law. They proceed pro se. So if there can be problems in the drafting at the hands of trained lawyers--and I'm going to go into some of it, and I hope somebody will ask me a question. I'm not being frivolous but I think this bill itself could be considered frivolous based on the definition. The first thing I'll do is go to the definition. On page 2, beginning in line 13, "Frivolous means the law and evidence supporting a litigant's position is wholly without merit or rational argument." That language applies to the law. It says the law is wholly without merit. Why would a lawyer say that? Why would the Attorney General say the law is without merit, and in addition to that, or rational argument, which would mean the law itself is irrational? That's not what they meant to say. But if they did, then it's frivolous. Here is what they ought to say if they want to get the Supreme Court's definition, and I'll give a copy of this to the members. Strike all language after the (d), and put this language: Frivolous means a legal position wholly without merit; that is, without rational argument based on law and evidence to support a litigant's position. You're not saying, as this draft does, that the law is wholly without merit. The Supreme Court said that the position is wholly without merit. It's wholly without merit based on the law and the arguments presented--not that the law is without merit. Then I see something that doesn't make sense to me. In line 17, "A prisoner who has filed three or more civil actions, commenced after the effective date of this act." A lawsuit is commenced with a filing, so when the filing occurs the action is commenced. So this means that after this bill takes effect, a person can file not just three but maybe more...and I see my time is up so I'm going to see what the committee would like me to do by engaging me. [LB793]

SENATOR LATHROP: Senator Council has a question for you. [LB793]

SENATOR COUNCIL: Yes. Thank you, Mr. Chambers. You introduced yourself as Ernie Chambers. Thank you, Mr. Chambers. With regard to the section that you were just referring to, is there any other language in that provision that is inaccurate, inappropriate? [LB793]

ERNIE CHAMBERS: Yes. I think this language--because I didn't get to finish--is contradictory to what the thrust of the bill is. When you say three or more, the triggering line is three. There can be no more, because the only way that can happen is through leave of the court. But before you get down to that part of the statute, it's saying a prisoner who has filed three or more civil actions, and they would all have to be commenced after the effective date of this bill. So how do they get past three to the more or additional? That's not what they meant when they drafted this. It's sloppy,

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careless, slapdash drafting by those trained in the law, and they want to place a high standard on people who are under great stress anyway and proceeding pro se. But let me go on with what you had asked. In line 19 is the word "declared," but I will go to line 18...well, let me just read this: A prisoner who has filed those three and these actions "have been declared to be frivolous by a court," it has to have been declared. Then when I go down to line 25, it says, "A court may include in its final order or judgment in any civil action a finding that the action was frivolous." If it must have been declared frivolous, where are you going to find that declaration by the court if not in the judgment or the final order? Are you going to have to comb through arguments that were presented during a hearing, if there was a hearing? But if there is not a declaration by the court in its final order or judgment, then there's no place I know of to find the declaration. And it makes that action by the court discretionary. If you're going to do that, say a court "shall" include in its final order. Then you can at least go a specific place to find the declaration. Senator Council was touching on a very important issue, when in line 22 we're talking...well, above that... [LB793]

SENATOR COUNCIL: It's above that 21 and 22. [LB793]

ERNIE CHAMBERS: ...but "leave of the court." [LB793]

SENATOR COUNCIL: "Leave of the court,"... [LB793]

ERNIE CHAMBERS: Yes. [LB793]

SENATOR COUNCIL: ...and as well as "to proceed in forma pauperis." [LB793]

ERNIE CHAMBERS: Yes. That word "may," before I go into an analysis, should be "shall." If a court has determined that the person is in imminent danger of serious bodily injury, why do you leave it to the court's discretion and say, well, despite that, you're not going to be able to file this action? If the preliminary determination made by the court is that the person is, in fact, in imminent danger of serious bodily injury, the court should be compelled to allow that to proceed. But based on the drafting, the slapdash, careless, sloppy drafting by trained lawyers, the court can deny it. And I think that's wrong. But the threat of bodily injury...imminent means right now. Maybe it's not today or tomorrow, but you can establish that there's a plan afoot two weeks from now to do something very bad to you. You've complained to the administration. You have evidence to establish that this has been planned because you have a party who is involved, but you can't go to court and get the court to take any action because the threat is not imminent. It's real but it's not right now. And the bodily injury has to be serious. Well, serious bodily injury is a high standard to reach when you're a person locked up in prison and you're subject to attacks at any point. Is it serious bodily injury if somebody just cuts me across the cheek with a knife or something modified so it would cut me? Is it serious bodily injury if they break one of the knuckles in my little finger?

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This legislation I think does prevent people from bringing action where they should. And the Chair was touching on something, but I'm not going to go into his words because I don't want to seem to be putting words in his mouth. But I was shocked that the bar association would support some trash like this, and let me tell you why. The courts have what is called--and they should know this--inherent powers. And the Nebraska Supreme Court and federal courts have said these are powers that do not derive from statute; they do not derive from the constitution. They derive from the very nature of the judiciary, the court and how it functions. And that means it can exercise these powers to protect the integrity of the court, the integrity of the process, and allow the courts to proceed as they need to. The man from the bar association acknowledged...or maybe it was Mr. "Crookson"... [LB793]

SENATOR COUNCIL: It was Mr. Cookson. [LB793]

ERNIE CHAMBERS: ...Cookson from the Attorney General's Office, that the courts can deal with this. They didn't say this was happening willy-nilly and helter-skelter. They can give you the names of the two people involved and they can point out that the judges in Lancaster County handled it. If all the judges are not persuaded that this person has been clogging the court to such an extent that there ought to be a limitation, then that is an argument against this being allowed. The judges right now have a way to handle this without the Legislature getting involved. This is a law because lazy people don't want to have to answer these cases. The Attorney General's Office doesn't care about the courts or how many of these cases are filed, for the court's sake, because if the judges feel that one person is doing this, they just do as they did: They all sign and say this is how we handle it. They can do that anywhere. And so if it ain't broke, don't fix it. If the courts have the wherewithal to protect themselves, and this bill is brought to you all to protect the courts, you don't need to do it, because the courts have not said they cannot handle this situation. I was waiting for somebody from the Supreme Court, from the organization of district judges, the organization of county court judges, an organization of juvenile court judges--although they're talking about adults, so we'll leave the juvenile court judges out--I wanted to hear them explain why the Legislature must do this. I would be one of the first ones to acknowledge that there can be frivolity at such a level, or frivolousness, that the courts need to address it. But let the court address the real problem in the same way they say: We do not give advisory opinions; we have to have an existing dispute between parties who have actually clashing interests. And if that doesn't happen, you can't come into court and proceed. You can get in the court; the doors are open to anybody. But the court has expeditious ways of handling anything that arrives. So my hope is that this bill will be killed with the explanation that the courts have not asked for it. I didn't hear Mr. Cookson say that they had asked for it. He said they want to tailgate on what the federal government is doing. Oh, Mr. Chairman, I'm sorry I didn't acknowledge your entry--protocol. But here is the thing: I hope the Judiciary Committee, even if the Attorney General's Office follows that practice, does not become a "monkey see, monkey do" entity. You see, oh, the federal government did

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this, then we're going to do it too; not because it's needed. Now let me wrap this up because I don't want to seem to be taking advantage of an opportunity. I don't think it would be unreasonable, if something is going to be done, to set a time frame. I'm concerned about people who are locked up. I don't say people who have committed crimes shouldn't be punished. I think the state should not overpunish. I don't care what anybody has done, there is a certain human dignity that attaches to every human being, and that is why the Supreme Court--and they said it in England--certain things you cannot do to people. Maybe you feel that this person is a throwaway individual. But whatever he or she did, he or she does not cease to be a human being endowed with that basic human dignity that remains attached to a person no matter what. And that's why you can't defile a corpse. Even though that life is gone, you cannot defile a corpse without violating the law. It's a crime. So we should not have one of those situations where you come forth with a bill like this and put people in that impossible set of circumstances where, if you're sentenced to life or a long term of years, and at any point it can be shown that you've filed three civil frivolous lawsuits, separated by years, then this comes into play and you have to get leave of court. It's so poorly done, so lacking in thought, lacking in prudence, lacking in the responsibility that the code of professional responsibility on lawyers requires them to inquire into situations and circumstances to determine what is really there and act in accord with it. I think it would be the height of irresponsibility for the committee to advance this bill, no matter how drafted, no matter how amended. And I'm going to present these amendments just to show some of the things that I was looking at. Did I already put them up here? Okay, thank you. This final thing: This shows how easily somebody can fall into being frivolous. The lawyers, this is the work of lawyers. This is the work of the highest legal officer in this state. And without going into the substance of the ideas, you can find problems with the drafting, like the "three or more." There won't be the "more." You've got to get leave of court. These other things that I mentioned, the definition of frivolous would get a person flunked in an English class: the law is without merit; the law is without rational argument. And when you look at that sentence, since they're talking about two different things, the law and the evidence, the verb should be "are" instead of "is." When you use "and" as a conjunction, you're joining more than one thing together and you come up with a plural. You can if you're ignorant and illiterate. You can say, "Senator Ashford and Senator Council is here." If you're taught basic grammar at the eighth grade or lower level, Senator Ashford and Senator Council "are" here. If you want to say neither Senator Ashford or Senator Council, then you can say "is," because you've individualized and you're talking about them one at a time. But for these lawyers trained in the law to put two things together, "law and evidence is," they ought to be ashamed of themselves. But they're not. They didn't carefully read this and they don't expect the committee to do so. And I promise this committee... [LB793]

SENATOR ASHFORD: Ernie, I don't know if there are going to be some questions...there may...Ernie, there may... [LB793]

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ERNIE CHAMBERS: ...if I come again, I won't go on like this. [LB793]

SENATOR ASHFORD: No, no, I know. But there may be some questions or... [LB793]

SENATOR COUNCIL: No. I had asked the question, Senator Ashford. [LB793]

SENATOR ASHFORD: Okay. [LB793]

SENATOR COUNCIL: And I thank you because the one point in the question I had earlier about I have three frivolous lawsuits declared but ten years later I have a meritorious claim, that was one of the concerns that immediately jumped out, and I was trying to get some clarity from either Senator Lautenbaugh or Mr. Cookson, because that's problematic, because...and the point about the advisory opinion. In my humble legal estimation, the way this is drafted we're asking the courts to render an advisory opinion before they've determined that there's an actual case and controversy... [LB793]

ERNIE CHAMBERS: Uh-huh. [LB793]

SENATOR COUNCIL: ...to render an advisory opinion to grant leave to file in forma pauperis. Because ordinarily when people are being granted leave to file in forma pauperis, it's because there's an issue about whether or not they meet the poverty standard to file in forma pauperis. [LB793]

ERNIE CHAMBERS: Right. [LB793]

SENATOR COUNCIL: So I appreciate your response to my question, Senator Chambers, and I trust that my colleagues can see some of the flaws in the bill. [LB793]

ERNIE CHAMBERS: And the one thing I would underscore...do you have a question, Mr. Chairman? You're peering at me. [LB793]

SENATOR ASHFORD: No, I didn't mean to peer. [LB793]

ERNIE CHAMBERS: Oh, that's all right. You have that prerogative. [LB793]

SENATOR ASHFORD: (Laugh) I can peer at will, I suppose. [LB793]

ERNIE CHAMBERS: Yes. [LB793]

SENATOR ASHFORD: No, I don't. Thank...go ahead. [LB793]

ERNIE CHAMBERS: But I want...in all that I've said--maybe I lost the main point. The courts can handle this right now. [LB793]

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SENATOR ASHFORD: Right. [LB793]

ERNIE CHAMBERS: I've seen a lot of criticism of time wasted by offering bills for things that don't exist. Now if frivolity or frivolousness is a problem indeed for the courts, and the courts can handle it, let them handle it. If too many bills are being introduced, the court doesn't come over here and say do something about it; the Legislature has the power and it has to do it. [LB793]

SENATOR ASHFORD: Thanks, Ernie. Thank you, Senator Council. Thank you. Good to see you. Next...I'm not even sure...opponent. [LB793]

AMY MILLER: (Exhibit 6) Good afternoon. My name is Amy Miller; it's A-m-y M-i-l-l-e-r. I'm legal director with the ACLU of Nebraska, the American Civil Liberties Union of Nebraska, and we oppose LB793 for many of the reasons that have been discussed already. It is not fair to expect prisoners to meet the same standards that attorneys have to meet in trying to decide whether or not their claim is frivolous. Civil rights lawsuits are an incredibly complex area of law, and in 1983, section 1983 civil rights lawsuit, is the style of case that an inmate challenging a condition of confinement would be asked to bring. There are simply too many barriers to inmates who are acting as their own advocate to figure this sort of thing out. As the United States Department of Education recently assessed, as many as 53 percent of prisoners in America have below basic literacy skills. This is both in reading comprehension and writing comprehension. These are not people who can easily advocate for themselves in a way that is perhaps a frivolous lawsuit because they can't understand what a statute of limitations is. We're concerned as well that this bill actually doesn't impact all prisoners, just the poor. Since the only hammer in the bill is that inmates would lose the ability to file in forma pauperis, this means the inmate who has money at his disposal could continue to file frivolous lawsuits until the cows come home. This would only prohibit inmates who needed the in forma pauperis service to be barred from bringing further lawsuits. Finally, I'd like to point out I rarely get to talk about the separation of powers clause as part of my work with the ACLU, but there is a serious concern about the Legislature ordering what judges may and may not do. The Nebraska State Constitution is significantly broader and more explicit than the federal Constitution. This is not simply granting discretion to the judicial branch as to whether or not they may grant IFP status to an inmate; it actually limits the judicial branch to only granting that power if the person is in imminent danger of serious bodily harm. As the Nebraska Supreme Court has recently ruled, our state constitution contains an express separation of powers clause. We are less willing to find overlapping responsibilities among the three branches of government. As my time is running out, I would like to take the moment to say that of all the attorneys in the room, I'm one of the few that actually does work on prisoner litigation cases. We have only had three examples of abusive prisoner lawsuits. The name Billy Roy Tyler being the primary among that means this bill nearly amounts to a bill of attainder, that one

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inmate in the past has abused the system. If I may overlap very briefly, I have an example of three cases that I have been involved in that would not... [LB793]

SENATOR ASHFORD: Why don't we do this: I don't want to go over the red light because we're...but if you do have...well, why don't you give us one, and then if you have a couple others... [LB793]

AMY MILLER: I can give you one. [LB793]

SENATOR ASHFORD: ...you can give us a written summary of your... [LB793]

AMY MILLER: I'd be happy to do that. These would be cases of inmates who were not in danger of serious bodily injury because they already had been injured. These are cases that were just condition of confinement cases the Attorney General referred to, these are just those sideline cases. Two women prisoners in York correctional facility were raped by the same guard. The guard was found guilty--this is not a factual dispute--and is now serving time in the state penitentiary himself. Those women, after the fact of a rape, are no longer in serious bodily harm. Their only recourse is to either sue in order to be protected in the future, to obtain medical care for the injuries, mental healthcare for the injuries, or monetary damages for what happened to them. This is the sort of case that a pro se litigant who has been serving a long sentence and does not have the past education to figure out what they're doing, this is the sort of case that could be barred by LB793. And it's for those reasons that we oppose it. [LB793]

SENATOR ASHFORD: Any questions? Seeing none, if you want to give us some more information on those that would be great. [LB793]

AMY MILLER: Thank you. [LB793]

SENATOR ASHFORD: (See also Exhibits 7 and 8) Thanks, Amy. Any other testifiers on this bill? Any neutral testifiers? Senator Lautenbaugh, you do you wish to...? [LB793]

SENATOR LAUTENBAUGH: Yes, briefly. I do have my closing here, which was my opening, and I will address parts of it. The language regarding the definition of frivolous came from a Supreme Court case, a Nebraska Supreme Court case, not the federal as was misstated before. You could have three or more before someone notices that you've had three or more, which is why that language is there, plain and simple. Frankly, I'm not really sure what to say in my closing because I was very tempted to say when we cut off Ms. Miller that she should be allowed to go on as long as she saw fit also, the same courtesy that we inexplicably accord others regardless of whether or not what they're saying is meritorious or personal shots at the Attorney General or whatever. This is the second time this week I've sat through this in a committee on one of my bills, and I think the rules should apply to all. I think this bill should apply to

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everyone equally. I think the rules of the committee should apply to everyone equally. And I'm not going to belabor the point, but we show disrespect to the public when we tolerate what we all inexplicably tolerate. So thank you, Mr. Chairman. [LB793]

SENATOR ASHFORD: Okay. Let's move to the next bill. Senator Coash. [LB793]

SENATOR COASH: Thank you, Chairman Ashford. [LB862]

SENATOR ASHFORD: LB862 for the record. [LB862]

SENATOR COASH: Members of the committee, this is LB862. It's the last bill of the day so it should only take a couple hours. (Laugh) Chairman Ashford, this is a very straightforward bill. This increases the salary of the Supreme Court judges. [LB862]

SENATOR ASHFORD: I think everyone has gone on strike, Senator Coash. (Laugh) [LB862]

SENATOR COASH: I'm here with you, Senator. This bill increases the salary of the Chief Justice and the judges of the Supreme Court and by doing that also increases the salary of the other judges across the state--district court, county court, and juvenile court judges. This bill on purpose does not have a percentage increase in it because it is my hope that by advancing this bill we can give this over to the Appropriations Committee and they can find the money in their budget to increase these salaries. I'll leave it at that and see if you have any questions. [LB862]

SENATOR ASHFORD: I don't have any questions. I don't see any other questions. (Laughter) Maybe Senator Schmit would like to ask you some questions. I don't know. (Laughter) [LB862]

SENATOR COASH: Well, I do have a few...there are few folks following to testify on this. [LB862]

SENATOR ASHFORD: No, I understand. I'm not trying to be flip. And for the record, I understand some of the frustration that happens when we have sometimes long answers to questions. But I think in fairness I think Senator Chambers was answering a question. And so with that, I certainly was not trying to be disrespectful to anybody. Why don't we...Warren, welcome back. [LB862]

WARREN WHITTED: My name is Warren Whitted, W-h-i-t-t-e-d. I am the president of the Nebraska State Bar Association. I am here in support of LB862 which deals with the...increasing the salaries of the judges within our judicial system. I believe this state is very fortunate to have a dedicated and qualified judiciary. We have not seen a salary increase among our judges since 2010. We believe that during the last budget cycle,

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(laugh) is anybody listening, we believe that during the last budget cycle the court and the... [LB862]

SENATOR ASHFORD: We were consulting on sidebars, Warren. [LB862]

WARREN WHITTED: ...the court and the judiciary made legitimate attempts to participate in reaching a solution on the budget situation. And we think now that it is an appropriate time to consider an increase in the judges' salaries. Also, when we're looking for qualified judges, and there's been an inordinate number of retirements from the bench over the last 18 to 24 months, when we're looking at qualified replacements we're looking for people that are not only public servants, but we also need to adequately compensate them to maintain the high quality of the bench in this state. I think we are very fortunate to have a bench with the quality we do. And I would stand in support of an increase in the judges' salaries pursuant to LB862. [LB862]

SENATOR ASHFORD: And I think it's...the history is that over the last few years that judges' salaries have been consistent with the other, generally, state employees' salaries. They have not exceeded those in any way as far as I can recall. I believe that's right. Someone else can talk to that. Anyway, thanks. Thanks for your comments. [LB862]

WARREN WHITTED: Thank you very much, Senator. [LB862]

SENATOR ASHFORD: And I think some of it was used for retirement, but we can get to that. [LB862]

LORAN SCHMIT: (Exhibit 9) Chairman Ashford, members of the...or any members of the Judiciary Committee, I thought you might have to call Senator Chambers up and fill the room in order to maintain a quorum. But you can do that anyway, Senator. My name is Loran Schmit. I'm here today speaking on my own behalf in support of LB862. I have prepared testimony which I will not bother to read. I prefer just to make a few comments and read the last paragraph of my testimony. My first experience in the area of judges' salaries occurred when I first arrived in the Legislature many, many years ago. And I was I guess astounded to learn that my own county judge was earning a salary of \$500 a month. And so I drafted a bill. In those days I was inexperienced and did not understand the intricacies of lobbying as a Senator and I drafted a bill to increase the salary of the county judges. And the judges' salaries were not tied together at that time. And Judge Rouse called me and he said, Loran, I appreciate your efforts. He said, \$500 a month is enough for me. I'm a bachelor, I don't have a lot of needs. But, he said, we need to encourage young people to get involved in the judicial system and you could never do it with the present system. He said, you will not get any accolades for introducing that bill but, he said, it needs to be done; and if there's anything I can do to help you let me know. So throughout my legislative career I was fortunate to meet

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Judge Norman Krivosha and he further advised me and from that time forward I've been lucky to meet most if not all of the Chief Justices and have encouraged them to become involved and to support this kind of activity. I just want to read my last paragraph. We talk about benefits to the judicial system by a decent salary. And we know that judges cannot earn money outside of the system. But I want to emphasize that it's the members of the public who appear before the court who have the right to present their case before a highly qualified judge. We have a good judiciary, but we need to continue that tradition because if you do not have qualified people on the bench those of us who appear before the judges are the ones who are going to suffer. I ask the committee to advance the bill and to do so with adequate compensation. Thank you, sir. [LB862]

SENATOR ASHFORD: Senator Schmit, I had the pleasure of serving with you, as you know, for many years. And on every occasion, every year or every couple of years you gave this same speech. So you've been very consistent. And what has always been...I was always impressed with is the tack you took, which is that a free society made up of citizens who are not lawyers, it is critical, essential to the operation of our society that judges be compensated in a fair manner and that we have an independent judiciary. And I think your efforts and now Senator Coash after you, your efforts at making certain that judges are adequately compensated, not unfairly or compensated more than they should be, was...for years you carried that banner. And so thank you for that. And we...sometimes we pooh-pooh it or become complacent about those things. But I know you reminded us of it every couple years. And I just wanted to thank you again. I probably thanked you then but not enough. [LB862]

LORAN SCHMIT: Well, thank you, Senator. You're very generous. This committee does not need to be reminded, I know that. I appreciate very much Senator Coash, he's here, he's a young man. Too bad we have the term limits situation which prevents him from continuing with this for the next 20 or 30 years. But I know... [LB862]

SENATOR ASHFORD: Well, we'll have to find someone after Senator Coash. [LB862]

LORAN SCHMIT: I'm sure you will, Senator. [LB862]

SENATOR ASHFORD: But that won't be for a while, but luckily you'll be coming back all those years and reminding us. [LB862]

LORAN SCHMIT: Thank you. Thank you very much. [LB862]

SENATOR ASHFORD: Thank you, Senator. Judge Randall. [LB862]

GARY RANDALL: Good afternoon. Members of the Judiciary Committee, my name is Gary Randall, R-a-n-d-a-l-l. I serve as a district court judge in Douglas County, Nebraska. And it's my privilege to represent the Nebraska District Judges Association

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today with regard to LB862. Thank you, Senator Coash, for introducing the bill, we appreciate it. I really don't have a lot to add beyond what President Whitted has stated and what Senator Schmit stated. The two primary issues here are the fact that we need to ensure that quality people continue to apply for the judicial vacancies in our state to serve the public. It's a three-legged stool to a certain extent. The individual has to have an interest in being a public servant, they need to be compensated well, and there has to be some form of retirement that is adequate in order to make that work for somebody to change from private practice to become a judicial officer. And I think that we know that those are issues that have all been considered here. So adequate compensation is significant. And, as Senator Ashford pointed out, in the past it has generally followed the increases that state employees receive, and we understand that. And nobody is asking for a bonus. Nobody is asking for a benefit beyond that. And we appreciate your consideration. Are there any questions? [LB862]

SENATOR ASHFORD: And thank you for your service and thanks for your comments. [LB862]

GARY RANDALL: Thank you. [LB862]

SENATOR ASHFORD: I don't see any...see anybody down there? No. Senator Council is okay, so you can go. (Laugh) I'm not sure we can operate with three of us. [LB862]

LAURIE YARDLEY: Senator Ashford, committee, my name is Laurie Yardley. I'm here on behalf of the County Judges Association and here as a proponent of the bill. Again, we are concerned about the quality of the applicants. Myself, personally, I know it's not always all about me, but the judges in Lancaster County are growing older. And I think (laugh) within the next five years there may be four, I could see four of them retiring. I don't know that will happen but they certainly can do that. And it just seems like, and I don't have any data to support this, but it seems like maybe outside of Omaha the number of applicants for judicial openings seem to have decreased to some extent. And again, I'm not sure why. But I certainly don't want to see that happening. I think when I was appointed, Judge Hendry and I were appointed at the same time, and there was 24 applicants at that time, which is a lot. And we haven't seen that lately. So I think it's important to...that we maintain a salary at least that would get people willing to put in for it. And again, it's mostly concern about keeping the quality of the judiciary that we have. The judges that we certainly have I think are very good. And I wouldn't want to depart from that so. [LB862]

SENATOR ASHFORD: Thanks, Judge. [LB862]

LAURIE YARDLEY: Uh-huh. [LB862]

SENATOR ASHFORD: Thanks for your service. Chief. [LB862]

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MIKE HEAVICAN: Thank you, Mr. Chairman, committee members. I am Mike Heavican, the Chief Justice of the Nebraska Supreme Court. I really don't have a lot of extra to add that has not already been said. But, obviously, we want our judges, our judiciary to be adequately compensated. And we anticipate that there will ultimately be a raise here that is fair and it probably will be modest. Just for your information, a 1 percent raise costs about \$181,000 and that's...I'm not advocating for a 1 percent raise, but you can multiply. I suspect we want a little bit more than that. I should say I think...I was just at the judicial qualifications meeting that we have on a bimonthly basis. And we had a discussion about how few serious complaints we have about judges. And I remarked, as I've remarked before, that we are virtually without public corruption in regard to judges. And, frankly, that's true of our Legislature and most of our other public servants, too, here in Nebraska. And that is, of course, because in Nebraska we just have good, old-fashioned, basic strong ethics. But what we pay, and I know this is sometimes a sore spot with legislators because you truly are volunteer public servants and you are not in any way adequately compensated for what you do. Judges are full-time folks. They have given up the potential for perhaps more lucrative compensation in their private practice to come to be judges. They make a sacrifice, many of them, in that regard. My point being we have virtually no public corruption in regard to our judges. That is not true in many other parts of the world. So it's important to have adequate compensation. I'd take any questions. [LB862]

SENATOR ASHFORD: I don't see any. Thanks, Chief. [LB862]

MIKE HEAVICAN: Thank you very much. [LB862]

SENATOR ASHFORD: Any other proponents? Do we have any opponents? I thought maybe Alan (phonetic) was in here opposing. (Laughter) My goodness, that's an interesting tack. Senator. [LB862]

SENATOR COASH: Thank you, Chairman Ashford. And I want to thank those, the Chief and the judges who came down to talk to us, especially Senator Schmit, I really appreciate his comments as well. In closing, you know, we get what we pay for. I suppose that applies to us too, so... [LB862]

SENATOR ASHFORD: With a few exceptions, we get what we pay for. [LB862]

SENATOR COASH: I would note that the Supreme Court Justices were making what we earn in 1955. And then in 1959 they started to outearn us. But we do get what we pay for and we have a great judiciary in our state. [LB862]

SENATOR ASHFORD: I was nine at that time. I don't know about the Chief, what he was, but...(laughter) [LB862]

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MIKE HEAVICAN: I was eight. [LB862]

SENATOR COASH: We get what we pay for here and we have a great judiciary and we want to keep it. I'm not a senator who brings bills to spend more taxpayer money. But we need this and we need the judges to understand that their role is important to all of our citizens, so that's why I brought it. Thank you. [LB862]

SENATOR ASHFORD: And we appreciate you bringing it and taking an interest in the judiciary, Senator Coash. Thank you. And that concludes the hearings. [LB862]