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Banking, Commerce and Insurance Committee
February 24, 2014

[LB880 LB886 LB900 LB991]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 24, 2014, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB880, LB886, LB900, and LB991. Senators present: Mike Gloor, Chairperson; Mark Christensen, Vice Chairperson; Kathy Campbell; Tom Carlson; Tommy Garrett; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR GLOOR: (Recorder malfunction)...Banking, Commerce and Insurance Committee hearing. Clerk, are we okay? We squared away? Thank you. My name is Mike Gloor, I'm Chair of the committee. I represent the 35th District, which is Grand Island. I serve as Chair of the committee. The committee will take up the bills in the order of the agenda that's been posted outside, a little change for those of you who may have looked at the agenda last week. To better facilitate today's hearing, we have some rules of the road. They are posted up there on the board, but I'll run through a few of them. First is, please make sure that your cell phones, if on, are on either silent, vibrate, something along those lines. We'd ask you to move to the reserve chairs or at least as close to the front as possible if you're going to provide testimony to keep things moving a little faster. We have a light system here, but I'm not going to use it today because I think we have a reasonable number of testifiers and don't have to go that route. However, I would ask you, if you would, please try and keep your testimony to five minutes if at all possible. The order of testimony will be the introducer, and then proponents, opponents, those in a neutral capacity, and then closing. We'd ask testifiers to please sign in. Fill out one of the sheets in the back of the room and hand that to the clerk or the pages as you come up here to give your testimony. Please spell your name. Not for us, we can do it phonetically. But we need it for the record and the transcribers who are working someplace else so that they spell it correctly. And one of the new things we try and remind people of, and it's the senators as much as the testifiers, please make sure you speak close to the mike so that we can pick up every word of your testimony or, for the senators, every word of their question or exchange with the testifier. If you wish to give us some information but not testify, there is an opportunity for you to do so on the sheet in the back. If you have handouts, we would ask that you have ten copies. Hand those handouts to the pages and they'll be sure and distribute them. If you think you need copies and don't have enough now, let the pages know now and so they can run down and get those ready for you. To my immediate right is committee counsel, Bill Marienau. And at the far end of the table is Jan Foster, she's the committee clerk. I'll ask committee members to introduce themselves, starting with Senator Garrett.

SENATOR GARRETT: Tommy Garrett from District 3, Sarpy County.

SENATOR SCHUMACHER: Paul Schumacher, District 22, Platte and parts of Colfax

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and Stanton County.

SENATOR CHRISTENSEN: Senator Christensen, District 44, Imperial.

SENATOR HOWARD: Sara Howard, District 9, midtown Omaha. [LB900]

SENATOR GLOOR: And Senators Crawford, (sic: Carlson), Campbell, and Pirsch I know will be here shortly. We've had a lot of meetings going on over the lunch hour and people are presenting bills in other committees. So they will trickle in as we move forward. Our pages today are Emily Schiltz from Sioux Falls, South Dakota, and Steven Schubert who's right here in Lincoln. And we'll start off with LB900, Senator Janssen, and welcome back to the committee. [LB900]

SENATOR JANSSEN: Thank you. I was hoping you'd start it off with me since I sat here. So it helps out. Thank you, Mr. Chairman and members of the committee. For the record, my name is Charlie Janssen. That's spelled C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent District 15, which is Fremont, Uehling, Winslow, among other villages and townships in Dodge County. I appear today to introduce LB900. LB900 would eliminate a right of the Attorney General to be a qualified beneficiary to a charitable trust. I brought this bill at the request of a constituent from my district. He is an attorney and generous philanthropist. His work on behalf of young athletes in eastern Nebraska is remarkable. He has established a youth sports charitable trust among other philanthropic endeavors. His experience with Nebraska's Uniform Trust Code suggests the need to discuss how our current statutes are structured. He is with us today so I don't want to steal his thunder, but I believe his experience is helpful as we consider our current charitable trust provisions and any possible changes. And, again, I'd like to reemphasize the amount of work that Mr. Schilke, that will probably follow me here as a proponent, has done in eastern Nebraska. Myself, at the ripe age of 43, has actually benefited from his philanthropic endeavors as a child, whether it be the YMCA...recently put together right outside of Fremont, a baseball stadium and softball complex for youth sports. And I think that's actually where this kind of derives from, so. He has been a pillar of our community for my entire lifetime, certainly. And I welcome you to ask questions about this, that he is much more proficient in these codes than I am, so. I could try to answer questions, but I've got an expert coming behind me that would be much better at it. [LB900]

SENATOR GLOOR: Thank you, Senator Janssen. Are there any questions of Senator Janssen? Not seeing any at this point. Are you going to stay around to close? [LB900]

SENATOR JANSSEN: I'm going to stick around and watch. [LB900]

SENATOR GLOOR: Okay. [LB900]

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SENATOR JANSSEN: I don't know if I'll close. Thank you, Senator Gloor. [LB900]

SENATOR GLOOR: Thank you. You've heard the opening. Are there those who would like to speak as proponents of this bill? Good afternoon. [LB900]

NEIL SCHILKE: (Exhibit 1) Members of the committee, I am Neil Schilke, S-c-h-i-l-k-e, and N-e-i-l, from Fremont. I'm giving you handouts which are simply Nebraska statutes that apply. And I've highlighted the portions that I believe are particularly important. What this bill proposes to do is to amend the Uniform Trust Code to eliminate involvement by the Attorney General. You will know that the uniform code is a bill that is prepared by a national commission for introduction with all states. I suspect, but do not know, that some states probably do not have statutes authorizing local enforcement of charitable trusts. And that may be the reason that this particular provision is included in the Uniform Code. I don't know that, but surmise that must be the reason. Nebraska, in section 23-1201 which I handed out, grants broad authority to the county attorney to be involved in both civil and criminal matters of any general public interest. The only reference in the code to the Attorney General is in the statute which this bill would repeal. Now the effect of being a qualified beneficiary, which is a significant portion of this, is what I have highlighted on the statutes given you. The first one, section 3878(a) makes it mandatory that all trusts may keep the Attorney General informed; all charitable trusts. It uses the general word "trust" but that will include charitable trusts, of which there are many. In over ten years, this statute has not been enforced on any general basis. There's been very little enforcement by the Attorney General's office. They have advised that they have no registry of any trusts. They can't provide information as to any waivers they've granted. They do say that they have provided or received reports from some private trust firms, but there's no provision even enabling them to enforce the statutes that are necessary. It simply has not been enforced and I don't believe there's any need for it. The statute is permissive in some respects. It says the detailed information shall be made available upon request. It says the Attorney General's Office may waive that, but that caused a great problem. In my particular instance, they have requested this. They will not waive, and it's a burden. And even if that...if the present Attorney General would waive that, that gives me no assurance for what may happen in the future. There are a great many charitable trusts in Nebraska. You could probably guess as well as I, but based on my experience, I'm guessing there must be over 1,000. If the statute is enforced and there are 1,000 trusts giving this kind of information, it's got to be a burden on the Attorney General's office. It's got to increase the cost of his operation, the office equipment, staff, the whole business. And I believe you seriously want to cut state expenditures. This is one small way that this could be done. I cannot conceive of any purpose that requiring the Attorney General to be involved in this as almost a cotrustee serves. I can conceive of none. But if someone can conceive of a purpose, then I have a question. If that purpose is there, why is there no such requirement imposed on the nonprofit corporations, foundations, and endowments? There's no such requirement. Those are at least as extensive as

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charitable trusts. I don't see any distinction between the two. It may appear, looking at this, that the requirements of the trustee aren't particularly burdensome. Maybe they're not. But let me just briefly explain how an experience...how it affects my trust. And I'm sure there are other trusts similar to that. In December '06, I formed a trust because I thought it was important that we do more to stop obesity, sloth, bad gangs, bad drugs, drinking among our youth. So I started a trust for the purpose of defeating that, to provide financial assistance to kids needing financial assistance to participate in organized sports. I had that trust approved by the IRS as a 501(c)(3) organization and as a 509(a)(2) organization, which is a support organization for a community foundation. At present, the reports are made to the Internal Revenue Service and to the Fremont Area Community Foundation. Those are all available to the public. None of the information they require is as extensive as what would be required...has been required by the Attorney General. Now the trust itself. I contributed something over...a little over \$5.5 million to that trust. In addition, there's been about \$300,000 raised with local support: Fremont, Dodge County, Fremont Foundation, College World Series, Kiwanis Club, a Durham Foundation, and a number of businesses and personal contributors raised that. Now those assets, by request of the Attorney General, have to now be listed for him and appraised, at least as a fair market value; it says, if feasible. Who determines if it's feasible? Obviously, the Attorney General does, and they were going to say these are feasible. The intangibles in that trust at the moment that must be reported will be a checking account, broker account. No problem. Also be a number of contracts: contract for maintenance, contract with the Legion program, contract for operation of the program, contract with the city relating to utilities, and many, many contracts for advertisers on outfield banners and scoreboard banners. Those would all have to be submitted. There's another problem. When I disclose all the disbursements, I've got to violate my agreement to hold in confidence all distributions for needy kids; the applications and payments. My documents require they be held in confidence and I've always honored that and I intend to. And how I do that and report it to the Attorney General's Office, I don't know. And the trust itself, as Senator Janssen indicated, consists of 20.1 acres of land I bought on which I built four ball fields, all top quality, two buildings. I could go through page after page after page of the equipment out there that fully equipped it for running the ball fields, the mowers, the machinery. It's a big deal. And it would take many, many pages to inventory all of the tangible personal property out there in addition to the real estate. And it's going to take a lot of different appraisers in a whole lot of different areas of expertise. But who pays for all this? It's going to be a substantial cost. I run the thing. I don't get any fees. I can't get any fees. I don't even get reimbursed for expenses. I have to handle the distribution to all those kids, the management of the whole program. And I don't like the idea of having to do a whole lot of work for the Attorney General to be almost a cotrustee when it serves no purpose. In this particular case, the cost that would be paid for any inventory or appraisal is going to be paid by needy kids in the Fremont area. Now why do I say this? It's because we now have \$2,350,000 in endowment for needy kids. That is...can be used to the extent of 5 percent per year. But the first use of that has to be paid for the...used to pay for the

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management...not the management, the maintenance of the ball fields. That's the first expenditure. Everything that's left goes to needy kids. What does that mean? It means every dollar I spend out of this trust is taking away \$1 from a needy kid. It's why I pay no one, no bookkeeper, no secretary, no accountant, no lawyer. I pay no one except the contract to handle the maintenance of the fields, the mowing almost daily and a lot of work that's required. That's the only payment I make. Everything else goes to kids. But if I have to start paying appraisers, I'm cutting some needy kids out of money that want to participate in some sport and the money is not there. Now I urge to you that I think it would be appropriate to reduce expenses to the state and reduce the involvement of the Attorney General's Office in private affairs that could best be handled close at home by the county attorney. There has been no hint, and I have no knowledge or belief that there has ever been a hint, of any question as to management or administration of this trust. The trust, I believe, is best for all. And I think that the state and everyone should encourage private philanthropy which improves the lives and the health of our citizens. And this, I believe, does it because I'm a strong believer that kids active in organized sports is one of the best possible things they can do to improve their health and, ultimately, reduce health costs and all kinds of costs, welfare costs, many costs to the state. Long-term it will save money to the state. I think that the state and everyone should encourage private philanthropy and should not hinder them by roadblocks and obstacles. And the involvement of the Attorney General as a qualified beneficiary, giving him the power to require all of these details on an annual basis...well, the one section just says "regular" I think, but other than that, it's annual. It's a burden and it serves no purpose whatsoever. The Attorney General's Office has made no effort to enforce it other than a few, and I don't think they've been enforced. I think they've probably come forward through the large trust departments, as he said, probably based on the mandatory requirement in section 3878 which isn't discretionary. If any of you have questions, I'll be glad to try to answer them. [LB900]

SENATOR GLOOR: Thank you, Mr. Schilke. Thank you, first of all, for your testimony. Second of all, thank you for your philanthropy on behalf of Nebraskans, especially kids. [LB900]

NEIL SCHILKE: Thank you. [LB900]

SENATOR GLOOR: I want to make sure I understand correctly. You have or have not been doing this inventory that you've been submitting? [LB900]

NEIL SCHILKE: I first registered the trust with the Attorney General's Office. After that, I requested that they give me a waiver, which they can do. And from there, I've been arguing with them for probably the last six or seven or eight months. And I've requested information from them. And I just in...last week, received information that they had never...they had no register of any trusts and they had a few...I'd say few, some...reports from some major, principally private investment companies as to their

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reports and so forth. And it's all I've had. [LB900]

SENATOR GLOOR: So there is nothing that you're submitting, but there also is nothing that you're being...there's no enforcement currently underway against you as relates to how you've read the statutes? [LB900]

NEIL SCHILKE: No. No, there's only the demand that I provide them this. I have not done that. [LB900]

SENATOR GLOOR: But the demand is from the Attorney General's Office? [LB900]

NEIL SCHILKE: Yes. Yes. [LB900]

SENATOR GLOOR: So you have gotten the demand that you supply this to them? [LB900]

NEIL SCHILKE: Yes. Yes, I have. They have demanded it and they have refused my waiver, my request for a waiver. [LB900]

SENATOR GLOOR: And that inventory, again, is "if feasible"? [LB900]

NEIL SCHILKE: It's supposed to be at market value, if feasible. [LB900]

SENATOR GLOOR: And so your assumption is, they think it's feasible for you... [LB900]

NEIL SCHILKE: I don't know what they do. I don't know...if this Attorney General says they're feasible, I don't know what the next one will say. It's totally at the mercy of the Attorney General what is feasible. In this case, an inventory and appraisal, that would just be a monstrous job. I could...I've got them listed, page after page after page of equipment for the ball fields and the buildings. And it just...it's huge. [LB900]

SENATOR GLOOR: Okay. Other questions? Senator Schumacher. [LB900]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your charity and for your testimony today, Mr. Schilke. [LB900]

NEIL SCHILKE: You're welcome. [LB900]

SENATOR SCHUMACHER: In the bill, itself, all that does is strike one line taking away the Attorney General's right to have standing as a qualified beneficiary. But this would apply to all trusts, not just yours, right? You'd be taking... [LB900]

NEIL SCHILKE: Well, if this...that would apply to all charitable trusts. [LB900]

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SENATOR SCHUMACHER: So...and there's a lot of them in this state. [LB900]

NEIL SCHILKE: I'm guessing 1,000, I don't know. [LB900]

SENATOR SCHUMACHER: Okay. And if...and you're saying the Attorney General has rarely, if ever, used this power? [LB900]

NEIL SCHILKE: He has told me that they have...that they're not required to register a trust, which is right. The statute only says they're to get information, it doesn't say they have to keep a record of it. He's told me they have no record of trusts. And he said that he has no record as...I requested information as to waivers given. He said, they hadn't found any so far. [LB900]

SENATOR SCHUMACHER: Have they singled out your trust or you're the only one that's got this request? The only one in the state? [LB900]

NEIL SCHILKE: To my knowledge, I'm the only one. [LB900]

SENATOR SCHUMACHER: And so of all the hundreds and thousands of trusts in the state, you're the only one that the Attorney General has focused on? [LB900]

NEIL SCHILKE: To my best knowledge, that's correct. [LB900]

SENATOR SCHUMACHER: And because of your particular situation, you're asking that the law be changed for all trusts. [LB900]

NEIL SCHILKE: Yes, because I don't think it serves any purpose. If a statute has not been enforced and it would serve no purpose, I don't think it should be a burden on the private citizens to comply with it. [LB900]

SENATOR SCHUMACHER: Wouldn't it serve a purpose if you had a trust, let's say, that was...whose beneficiaries were children--and, of course, children have a hard time bringing a lawsuit--and so that the only person who could speak for those children if the trustee was making off with the assets or improperly administering the trust would officially be the Attorney General or the county attorney? [LB900]

NEIL SCHILKE: No. No. The county attorney. [LB900]

SENATOR SCHUMACHER: And usually in this state, the county attorney and the Attorney General have concurrent jurisdiction. [LB900]

NEIL SCHILKE: But statute specifically gives the county attorney the authority. [LB900]

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SENATOR SCHUMACHER: And this also gives the Attorney General the authority to step in. [LB900]

NEIL SCHILKE: Way more than what...the county attorney doesn't demand anything like that. [LB900]

SENATOR SCHUMACHER: Okay. So... [LB900]

NEIL SCHILKE: It gives him the authority. I'm not sure that...I think the Attorney General would still have the authority without this statute if there's a claim of a crime or something wrongdoing with a trust, he'd still have authority to enforce it with, as you say, with the county attorney, certainly. But he doesn't have to get all these reports. [LB900]

SENATOR SCHUMACHER: And you got a letter from the Attorney General requiring you, and as far as you know, you alone to file these reports. [LB900]

NEIL SCHILKE: I don't have knowledge, but I don't know of any other trusts. I know of a lot of charitable trusts in Fremont, and I know none of...and I'm a cotrustee with a large trust with an Omaha bank and I know they haven't been contacted. [LB900]

SENATOR SCHUMACHER: One...should something happen to you, who is going to run your trust? Do you have a... [LB900]

NEIL SCHILKE: There's a line of succession. My next one is my daughter and then my son-in-law and on...it's family. But there can be no trustee fees ever paid; forever going to be charitable. [LB900]

SENATOR SCHUMACHER: Right. But...and who's going to do the work that you're now doing? [LB900]

NEIL SCHILKE: My daughter or my son-in-law. They can't get any fees, but they may hire...they may have to hire a bookkeeper or something that I don't do. They may have to do that, but they can't take any trustee fees ever. [LB900]

SENATOR SCHUMACHER: Yes. Thank you for your testimony. [LB900]

SENATOR GLOOR: Senator Carlson. [LB900]

SENATOR CARLSON: Thank you, Senator Gloor. And thank you for your testimony. I came in late and maybe you had mentioned this. And if you did, just tell me that. But what function do you think the Attorney General has that in existing statute he's got the

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rights of a qualified beneficiary? What is that supposed to serve? What's the function?
[LB900]

NEIL SCHILKE: You go back to the other statute. It said then I have to give him...all charitable trustees then have to give him notice of the...what the statute says. He says he has no record of that, ever. Ever. They also, at his request, has to give an inventory of all of their assets, report of distributions, receipts, disbursements, everything that's in the statute. Otherwise the Attorney General...I don't know what he does with them after he gets them, but the statute requires it, and that's a burden on the trust. [LB900]

SENATOR CARLSON: Well, and it's not necessarily a truth, but you normally think when we have a law and we have it in statute, that that was put in there for a particular purpose that he's supposed to fill a responsibility. But I don't know what that is and you don't know what that is. [LB900]

NEIL SCHILKE: There's no provision to how he can enforce it, even. I don't know how he...as I indicated, the only reason I can think of why that's there is that it went in a uniform code and that some states may not have local representatives, such as we do with the county attorney, that would have powers of enforcement. The only reason I can think it's there. I don't know what it accomplishes. What does it accomplish to give the Attorney General...have him get file cabinets full to keep all these reports and information and the statute doesn't say he's supposed to do anything with them. If there is a crime, he's not going to find it by looking at those reports anyway and he's still got authority to act on crimes. This is simply taking away the obligation of the trustee to have to give him all this paperwork. [LB900]

SENATOR CARLSON: Okay, I understand. Thank you. [LB900]

SENATOR GLOOR: Senator Pirsch. [LB900]

SENATOR PIRSCH: Thank you for your testimony here today, Mr. Schilke. Am I saying that right? [LB900]

NEIL SCHILKE: Yes. [LB900]

SENATOR PIRSCH: Wonderful. So now are these the ball fields...my mom lives in Fremont there. Is this on Old Highway 275 then? [LB900]

NEIL SCHILKE: Yes. [LB900]

SENATOR PIRSCH: Okay. And with respect to...let me just ask this. The way that Nebraska has this structured with the Attorney General currently having that duty, how does this compare, or do you know, or contrast in neighboring states, Iowa, Kansas,

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Missouri? Do they place that...specifically, that task on their Attorney General? [LB900]

NEIL SCHILKE: I can't answer, I don't know. I'm sorry. [LB900]

SENATOR PIRSCH: Okay. Thank you. [LB900]

SENATOR GLOOR: Any other questions? Seeing none, thank you, Mr. Schilke. I appreciate it. [LB900]

NEIL SCHILKE: Yeah. I thank Senator Janssen for introducing the bill and thank you, committee, for your time. [LB900]

SENATOR GLOOR: Thank you. Other individuals who would like to speak as proponents? We'll now move to those who are here as opponents of this bill and would speak in opposition. Afternoon. [LB900]

ABIGAIL STEMPSON: Good afternoon, committee. I am Abigail Stempson, A-b-i-g-a-i-l, Stempson, S-t-e-m-p-s-o-n. I'm chief of the Consumer Protection Division in the Nebraska Attorney General's Office. The Consumer Protection Division is the division in the Attorney General's Office charged with protecting charitable assets. I'm here to testify in opposition of LB900, which would eliminate the Attorney General as a qualified beneficiary. Recognizing the importance of the Attorney General's supervision over charitable assets is part of the Nebraska Uniform Trust Code. In 2003, this Legislature chose to give the rights of a qualified beneficiary to the Attorney General with respect to charitable trusts whose principal place of administration are in Nebraska. This is consistent with the historically recognized, *parens patriae* and common law role of the Attorney General in protecting charitable assets in the state of Nebraska. The rights of a qualified beneficiary allow our office to be more efficient and more effective in our pursuit to protect charitable assets. These rights include the requirement that trustees of a charitable trust provide notice to our office in certain circumstances. In addition, trustees must keep the Attorney General reasonably informed about the administration of any charitable trust and of the material facts necessary for us to protect the public's interest. While trustees have a fiduciary duty to a charitable trust, the Attorney General has a duty to the citizens of Nebraska. We work very hard at the Attorney General's Office to protect charitable assets in this state, as we work with a variety of charitable trusts with assets that range from under \$3,000 to over \$7 million. We have the expertise to appropriately protect the public interest. Without the notices and information provided to our office pursuant to our status as a qualified beneficiary, we would have to rely on referrals regarding fraud or misuse of charitable assets, making us reactive instead of proactive. Furthermore, our status as a qualified beneficiary puts trustees and the public on notice that the Attorney General has responsibilities regarding charitable trusts. Charitable trusts are for the benefit of the public. And because the public is the object of the settlor's gift, private parties may have insufficient financial interest in

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charitable trusts to oversee their enforcement. Consequently, the state, itself, must perform this function to a proper supervision of charitable trusts on behalf of the public. For this reason, the Nebraska Supreme Court has long recognized the Attorney General has the right to maintain an action for enforcement of a charitable trust or prevent misuse of the property. Both before and after the Nebraska Uniform Trust Code was passed, our Supreme Court has stated that the Attorney General is, in any case, a proper party in litigation involving a charitable trust whether he or she appears as plaintiff or as defendant. While charitable trusts may take on many forms and serve many functions, ultimately the assets held in those trusts must be accounted for. And as our Nebraska Supreme Court explains, the privileges provided by law to charitable institutions carry a corresponding obligation to be accountable to the public for the actions such institutions undertake. In Nebraska, the Attorney General is tasked with holding them accountable. To summarize, the Attorney General being named as a qualified beneficiary gives our office the tools to more efficiently do the job that we must do even without the qualified beneficiary status. We protect the charitable assets in Nebraska. But without the rights of a qualified beneficiary, the role of the Attorney General turns from one in which proactive action may be taken by our office after identifying possible fraud or misuse to one which is entirely reactive and dependent upon referrals from others. Therefore, we oppose LB900, removing the Attorney General as a qualified beneficiary. And I want to thank the committee for allowing me to testify today. In regard to the statements made earlier about the Attorney General's role concerning charitable trusts, we do not agree with some of those statements. I welcome any questions the committee has in regard to our role. [LB900]

SENATOR GLOOR: I'll bet you'll get a few. [LB900]

ABIGAIL STEMPSON: I think I will, too. [LB900]

SENATOR GLOOR: Ms. Stempson... [LB900]

ABIGAIL STEMPSON: Yes. [LB900]

SENATOR GLOOR: ...your comment was, paraphrasing initially... [LB900]

ABIGAIL STEMPSON: Yes. [LB900]

SENATOR GLOOR: ...that the AG's office, that there's a responsibility to keep the AG's office informed in certain circumstances. [LB900]

ABIGAIL STEMPSON: Certain circumstances. [LB900]

SENATOR GLOOR: So this may be part of the challenge we've got here. What are those circumstances? [LB900]

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ABIGAIL STEMPSON: You know, they are enumerated out in the statutes the certain circumstances that there are. And so, for instance, some of the examples are: If a trustee resigns we are to get notice, as is every other qualified beneficiary. So again, we're on the same level as other qualified beneficiaries. Another place we get notice at is the modification or termination of an uneconomic trust. And an uneconomic trust is when a trust goes below a certain level. It's \$100,000, I believe, by statute. So if that trust has been depleted, it would be a good thing for us to know as to why it's been depleted. Maybe it was just because all the assets were spent in an appropriate manner. But it is a great way for us to make sure that is actually what's happening. [LB900]

SENATOR GLOOR: How about detailed inventories of baseball equipment... [LB900]

ABIGAIL STEMPSON: Right. [LB900]

SENATOR GLOOR: ...and the issue of where the gifts have gone that gets to be a confidentiality issue with the recipients of those monies? [LB900]

ABIGAIL STEMPSON: Yes. I will tell you, confidentially-wise we, obviously, as the Attorney General's Office get...almost everything we get is in some form or manner confidential so we understand that. But as to what they actually have to report to us, the statute outlines what it is. And, for instance, it doesn't say specifically...it doesn't give a bright line you have to have this format, exactly this. It gives a lot of leeway as to what you need to do. But I will read to you the statute that does require the reporting. It is in 30-3878, I believe. It says: A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and the amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. So it's not very specific in, you know, you have to have it. But we do need to know what trust assets there are. And this isn't just us. This is also other qualified beneficiaries who ask as well. [LB900]

SENATOR GLOOR: And so is the AG's Office getting these, what I would imagine are hundreds and hundreds and hundreds, of reports? [LB900]

ABIGAIL STEMPSON: We do. Yes, we do. [LB900]

SENATOR GLOOR: Okay. Quick questions from the committee. Senator Christensen. [LB900]

ABIGAIL STEMPSON: Uh-huh. [LB900]

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SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for appearing. So you do require reports of everyone, it's not just upon request? [LB900]

ABIGAIL STEMPSON: No. We request every one that we know of. If we know a charitable trust is in existence, we then go and request, hey, in the future, we want to know about your trust accounting. And there's also rules that say they have to give us the actual trust document because we feel that is the best way we can serve our purpose. [LB900]

SENATOR CHRISTENSEN: So there is an annual report that all of them are doing? [LB900]

ABIGAIL STEMPSON: They're supposed to be. We don't have...as Mr. Schilke stated, the registration of the trust is not with the Attorney General's Office. Again, we are to oversee charitable assets are being used appropriately, but the statute and actually the Legislature back in 2003 determined that there is no requirement to register trusts. It actually says that trustees may register trusts. So there's no "shall." There's just a "may." And they may register them with the county courts. And the reason for that is for jurisdictional purposes. And so that, specifically, also was taken care of in the statute. They said exactly, this is what we want registration to mean. [LB900]

SENATOR CHRISTENSEN: So do you...where are they registered, then? [LB900]

ABIGAIL STEMPSON: Again, if you want to... [LB900]

SENATOR CHRISTENSEN: Right. [LB900]

ABIGAIL STEMPSON: ...it's with the county court. [LB900]

SENATOR CHRISTENSEN: But if you...nobody registers it, then you won't be getting them reports. [LB900]

ABIGAIL STEMPSON: Well, we should be getting them. Again, you don't have to register it. But you do...since we are a qualified beneficiary, you are supposed to be sending the Attorney General these reports. [LB900]

SENATOR CHRISTENSEN: Okay. Thank you. [LB900]

SENATOR GLOOR: Senator Carlson. [LB900]

SENATOR CARLSON: Thank you, Senator Gloor. Now you made the statement that they're all supposed to file a report annually? [LB900]

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ABIGAIL STEMPSON: That's, again, if we request it. [LB900]

SENATOR CARLSON: I don't know if you said many or most or some don't. [LB900]

ABIGAIL STEMPSON: We don't know. Again, there is no registration out there that specifically says here is a list of all the charitable trusts in the state of Nebraska. But they are supposed to be sending us information as a qualified beneficiary. [LB900]

SENATOR CARLSON: Is there a consequence if they don't? [LB900]

ABIGAIL STEMPSON: If they don't register, then what we would do is send them a letter right away and say, it's our understanding you are a charitable trust with your principal administration in the state of Nebraska. Why have you not been sending us the information that is required under the statute? Please give us your trust documents and so on. [LB900]

SENATOR CARLSON: And if they don't? [LB900]

ABIGAIL STEMPSON: And if they don't, then we have to go to court to have them send it to us. We don't typically or almost ever have an issue with that. Right away, people send it to us. It's usually a lack of knowledge that they need to send it to us. [LB900]

SENATOR CARLSON: Okay. Thank you. [LB900]

ABIGAIL STEMPSON: Uh-huh. [LB900]

SENATOR GLOOR: Senator Pirsch. [LB900]

SENATOR PIRSCH: How many charitable trusts are you aware of that you're acting as a beneficiary...qualified beneficiary, then, in the state of Nebraska at this point in time? Any ballpark, you know, if you don't... [LB900]

ABIGAIL STEMPSON: Ballpark, well over 100. We get all sorts of statements. I'll say well over 100 for right now without having the specific number. [LB900]

SENATOR PIRSCH: Okay. With respect to these entities, then... [LB900]

ABIGAIL STEMPSON: Uh-huh. [LB900]

SENATOR PIRSCH: ...have you experienced any...have there been problematic instances with respect to this kind of entity? [LB900]

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ABIGAIL STEMPSON: Absolutely. [LB900]

SENATOR PIRSCH: And can you tell us what the harm is, again, that supposedly this language was put in statute to prevent? Can you kind of gild over that? [LB900]

ABIGAIL STEMPSON: Yeah. Yeah, I mean, the whole purpose of it...and if you look at the comments of the Uniform Trust Code, which we did adopt back in 2003, this particular statute actually had in there surrounding Attorney General brackets because it was...they wanted each Legislature who may adopt it to determine whether they wanted the Attorney General to be named there or, for instance, whether there's another entity in the state that might have those same things that they need to do in regard to charitable assets like one of our neighboring states. The secretary of state just happens to have that same type of duty that we have. So every state is a little bit different. But what we do then, let's say, if we have an issue with something or maybe we get a trust document we see that, for instance, the money went to zero yet nobody has told us why the money went to zero. We'll send them a letter and inquire about it and see if it's a good reason, bad reason. And also if they were following the actual document that created the trust because we've found times where money will be attempted to be given to someone that was not supposed to actually take under the charitable trust documents. So we do have all sorts of issues that, I guess, do come up. And we guess the reason that we are able to make sure the charitable assets are going where they need to is because we receive this notice. Otherwise, we would have to depend on people calling us up and saying, hey, we think something odd is going on here. [LB900]

SENATOR PIRSCH: So there have been instances where you've rooted out...is it material or significant problems in terms of how the money should have been spent with compared to how it actually was consumed? [LB900]

ABIGAIL STEMPSON: Oftentimes what we do is we try to, I guess, because of these trust reports we can catch it before it happens and then call the trustee up and say, you know, this has went down. Or maybe, for instance, we see that you want this to happen because people do give us notice. They just don't quite understand sometimes what is supposed to happen. And so we try to work with the trustee, tell them, hey, here is the state law. Do you have reasons why you don't think you should need to be following it? And so we do try to stop it, I guess, before it has to go to court. [LB900]

SENATOR PIRSCH: Does this require...how many individuals at the Attorney General's Office do you have working on this? Does this require an inordinate amount of your time? Or how many man-hours? [LB900]

ABIGAIL STEMPSON: In our Consumer Protection Division we have four attorneys, including myself. And we also do have quite a bit of oversee in regard to nonprofit corporations and endowment funds. So between charitable trusts, nonprofit

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corporations, and endowment funds, with our four attorneys, each of us probably spends at least a fifth or a fourth of our time working on these matters. And that's why notice is so important in these because by us getting the notice, it makes us much more efficient in making sure charitable assets are used for what they're supposed to be used for. [LB900]

SENATOR PIRSCH: Okay. Thank you. [LB900]

SENATOR GLOOR: Senator Campbell. [LB900]

SENATOR CAMPBELL: Thank you, Senator Gloor. Most of the time, is it an attorney or a trust officer that files that notice? [LB900]

ABIGAIL STEMPSON: Oftentimes it is because trustees are often going to be maybe a financial institution or an attorney. [LB900]

SENATOR CAMPBELL: How...what is the requirement of an out-of-state charitable trust? [LB900]

ABIGAIL STEMPSON: The charitable trust and the reporting, at least to us, it's for a charitable trust that has their principal place of administration in Nebraska. If it's out of state, then they are not required. They would be required in their home states to follow those rules. [LB900]

SENATOR CAMPBELL: Thank you. [LB900]

ABIGAIL STEMPSON: Yes. [LB900]

SENATOR GLOOR: Senator Schumacher. [LB900]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony today. Does your office do any coordination with, like, the register of deeds office when deeds are filed claiming charitable exemption from documentary stamp taxes or coordination with the IRS or where somebody claims a charitable deduction or with the Department of Revenue when someone claims charitable deductions to try to see whether or not they've registered with you guys? [LB900]

ABIGAIL STEMPSON: Again, we don't have registration with our office. So they just have to notify us of certain documents. So in regard to whether we work with them, we do work with the IRS quite often. We do go around the state speaking to people to try to make the Uniform Trust Code known. In regard to the county, I do not remember ever getting any notices like in regard to your example of the property taxes, and the same with the Department of Revenue. But I also know the Department of Revenue is under

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quite a bit of confidentiality restrictions as to what they share because I was an attorney there as well. [LB900]

SENATOR SCHUMACHER: Okay. So, I mean, this procedure, this whole mechanism looked kind of happenstance that if...your biggest mistake you could do is report yourself to your office and that would trigger you knowing about them. Is that a fair statement? [LB900]

ABIGAIL STEMPSON: Well, yeah. We know about it oftentimes if they do follow the law, so it is a bit of a Catch-22 that way. But know that we do try to get our information from other places such as even media. You know, you'll have something in the local media that will say this charitable trust has given this much money to X organization. And if we don't know about it, we send them a letter, and we say, hey, why don't we know about you? You're supposed to be sending us this information. So we try to get our information as best we can. [LB900]

SENATOR SCHUMACHER: Should we generate...since they're supposed to be doing this and right now it doesn't appear to be much consequence in not doing it, should we...should there be an administrative penalty that we put in place to make them do it? Or is this really all that necessary? [LB900]

ABIGAIL STEMPSON: You know, again, I think they...when I was looking back at the legislative history, I think that was one of the things they were contemplating as to what they should do. But, in the end, they thought that it was best just to do the registration with the county, only if you wanted to, and then make us the qualified beneficiary so we were seeking...getting some notice. And, again, that notice for the annual report is only if we request it. But we have, in order to protect charitable assets, made a point to whenever we find out about one, we request it. [LB900]

SENATOR SCHUMACHER: So would it be safe to say, then, that what the function of this law is, if you get wind of something that is not quite kosher... [LB900]

ABIGAIL STEMPSON: Uh-huh. [LB900]

SENATOR SCHUMACHER: ...you have standing to go in and start enforcing the rights of a qualified beneficiary? [LB900]

ABIGAIL STEMPSON: Yes. And even though without us...again, the qualified beneficiary just serves to make it so you give us notice. [LB900]

SENATOR SCHUMACHER: Okay. [LB900]

ABIGAIL STEMPSON: Without the qualified beneficiary status, we still, under our

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Supreme Court's ruling and under our common law and parens patriae authority, have authority to bring any matter in regard to any charitable trust. And that's been long held, I would say, for the last hundred years in this state in regard to our common law. So it makes our job easier by receiving the notice. [LB900]

SENATOR SCHUMACHER: Just a couple other quick questions. [LB900]

ABIGAIL STEMPSON: Yes, please. [LB900]

SENATOR SCHUMACHER: You mentioned that there was like only 100 of these out of all the what has to be thousands charitable trusts? You guys are only aware of 100 under this mechanism? [LB900]

ABIGAIL STEMPSON: I wouldn't say 100, but I would say more than 100 but not thousands we haven't received. [LB900]

SENATOR SCHUMACHER: Okay. [LB900]

ABIGAIL STEMPSON: And, again, why we try to get out there and make it known, this law has been around for...it was passed in 2003 so we do what we can to get out there and tell people, you know, you need to be following the law. [LB900]

SENATOR SCHUMACHER: And finally, I think you mentioned that the largest charitable trust that you guys are aware of is only \$7 million? [LB900]

ABIGAIL STEMPSON: I believe that...I did a quick review to see. And it was between \$7 million and \$8 million was one of the bigger ones we pulled. Again, I would...I could get back to you to tell you for sure if that was the largest. [LB900]

SENATOR SCHUMACHER: It just seems to me that's a pretty small number for the, what I would guess would be, the number and size of charitable trusts in this state. [LB900]

ABIGAIL STEMPSON: Uh-huh. [LB900]

SENATOR SCHUMACHER: Okay. Thank you for your responses. [LB900]

ABIGAIL STEMPSON: Absolutely. [LB900]

SENATOR GLOOR: Any other questions? Senator Carlson. [LB900]

SENATOR CARLSON: Yeah. Thank you, Senator Gloor. I'm going to go back to what I started to ask before... [LB900]

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ABIGAIL STEMPSON: Yes. [LB900]

SENATOR CARLSON: ...and I'll ask you again. So the requirement is for that annual report, and I asked you what happens if they don't give the annual report. And you said...what did you say? [LB900]

ABIGAIL STEMPSON: I believe I said then we would have to go to court to enforce it. [LB900]

SENATOR CARLSON: And why would you do that? [LB900]

ABIGAIL STEMPSON: Because usually when people don't want us to give...get the information, we have found it's because they don't want us to know what is the underlying information. I've been dealing with white-collar fraud-type matters for a long time. And hiding the ball is definitely something that heightens your curiosity as a regulator as to, well, why don't you want me to know about it because charitable entities are supposed to operate with glass ceilings, glass walls. And if you don't want to tell us, okay, what is really going on...and truthfully, again, it's very limited in my experience. I've been here for about six years. I can remember two occasions, I believe, whenever anyone has not wanted to give us the information. [LB900]

SENATOR CARLSON: You're not saying there's just two cases where they haven't filed the annual report? [LB900]

ABIGAIL STEMPSON: When we've requested it and they have tried to say, no, we don't want you to have it. [LB900]

SENATOR CARLSON: Okay. Okay, thank you. [LB900]

SENATOR GLOOR: Senator Garrett. [LB900]

SENATOR GARRETT: Thank you, Senator Gloor. Have there ever been any cases where you've granted a waiver such as was requested here? [LB900]

ABIGAIL STEMPSON: We...Mr. Schilke had given us a public records request for that. In my time, I can never remember it. But to do that, in the whole time since the Trust Code has been passed which was 2005 it went into effect, we have to do quite a search through all of our records. So I would say to my knowledge, never have we ever waived it. But my predecessor...I would have to look through all of those records. So we are in the process of doing that to answer Mr. Schilke. [LB900]

SENATOR GARRETT: Thank you. [LB900]

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SENATOR GLOOR: Senator Pirsch. [LB900]

SENATOR PIRSCH: With respect to the information that you request...have requested or do request... [LB900]

ABIGAIL STEMPSON: Uh-huh. [LB900]

SENATOR PIRSCH: ...from individuals like Mr. Schilke, how involved, I guess...you know, I think he had related that there was some number of ball fields. [LB900]

ABIGAIL STEMPSON: Uh-huh. [LB900]

SENATOR PIRSCH: And itemizing the amount of equipment down to baseball bats, gloves, light bulbs, things like that... [LB900]

ABIGAIL STEMPSON: Uh-huh. [LB900]

SENATOR PIRSCH: ...is...can you comment on that, on the regulatory burden on...it would impose on these type of entities? [LB900]

ABIGAIL STEMPSON: Absolutely. There's actually a fiduciary duty under the trust that you know what assets the charitable trust has. So in our opinion, just knowing what charitable trust assets you, as a trustee, have is, under statute, you're supposed to know. So do we need a specific outline, you know, appraisal every year done of the property? I'm going to say, no. You know, we need a ballpark what is this worth. And us, in addition to any other qualified beneficiary, should be able to get it pursuant to this statute. [LB900]

SENATOR PIRSCH: Okay. [LB900]

SENATOR GLOOR: Any other questions? I think the metaphor of ballpark figure has different meanings as relates to this bill. [LB900]

ABIGAIL STEMPSON: Yes, yes. [LB900]

SENATOR GLOOR: Thank you. [LB900]

ABIGAIL STEMPSON: Well, thank you, committee, for your time today. [LB900]

SENATOR GLOOR: Other opponents of this bill? [LB900]

MATT SCHAEFER: Senator Gloor, members of the committee, my name is Matt

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Schaefer, M-a-t-t S-c-h-a-e-f-e-r, representing the Nebraska State Bar Association today in opposition to LB900. Our House of Delegates did vote to oppose eliminating these notices on charitable trusts to the Attorney General's Office. We see it as a protection for charitable trusts. Notices to the AG, even if each trust can't be thoroughly examined individually, can still serve as an important deterrent and discourage misuse and improper administration of trusts. And as the term "charitable" would imply, these funds are supposed to be used for the public's benefit. So it's appropriate for the Attorney General to be involved. Thanks. [LB900]

SENATOR GLOOR: Questions? Senator Schumacher. [LB900]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony, Mr. Schaefer. It almost seemed, from what we've heard today, the Bar Association has got some work to do in educating lawyers of this obligation if there's only about 100 or so of these trusts that are complying with the law. There certainly has got to be a whole lot more than 100 trusts out there. [LB900]

MATT SCHAEFER: There could certainly be a CLE opportunity, yes. [LB900]

SENATOR SCHUMACHER: Thank you. [LB900]

SENATOR GLOOR: Other questions? Senator Pirsch. [LB900]

SENATOR PIRSCH: So are you familiar with some of these...well, I guess with respect to Mr. Schilke who testified here today, his particular situation in Fremont? [LB900]

MATT SCHAEFER: No. [LB900]

SENATOR PIRSCH: Oh, okay. With respect to the information that's requested by the Attorney General's Office, are you familiar with what types of information is required then? [LB900]

MATT SCHAEFER: That's probably a better question for the AG's office, I think. [LB900]

SENATOR PIRSCH: Okay. Thank you. [LB900]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Schaefer. [LB900]

MATT SCHAEFER: Thanks. [LB900]

SENATOR GLOOR: Other folks who wish to speak in opposition? Anyone who wishes to speak in a neutral capacity? Senator Janssen, you are recognized to close. [LB900]

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SENATOR JANSSEN: Thank you, Mr. Chairman. And like I told you on the floor of the Legislature, it would be a quick hearing. I promised. I actually wish Mr. Schilke could get up and actually talk a bunch about this, but I know that's not the protocol. A couple notes I took going through this...and I appreciate the Attorney General's Office getting in touch with me beforehand to tell me where they fell on this particular legislation. And by no means was I saying that they're shirking their duties. I just don't think they have what's necessary to actually follow through with it. And I think, through their testimony, that became very, very obvious that they do not have the resources and they're not adequately doing the job that's put in statute right now. You know, I've heard hundreds and I heard \$5 million, \$7 million. I believe there's people in this room that have trusts that are more than that, that aren't being reported right now. So it's not being followed through on. And I heard that assets must be accounted for. And in legislative language, I would say they should probably put "may" because they're not being accounted for. And there was an admission by, I took it, the AG's office that they're not all being accounted for. It's just not possible. When this bill came to me, I talked to Mr. Schilke close to a year ago, and it kind of reminded me of being in private business and government getting in the way of the objective. Sometimes it's necessary to stop certain practices from happening and sometimes it's not necessary. And to me, this fell into it's really not necessary. And this is government getting in the way of a charitable trust that is doing so much good. And in this case, and I didn't know this until I listened to the hearing, that there's no teeth in this whatsoever. It's kind of like the cop chasing someone and says, stop or else I'll say, stop, again. And then if you don't, I'll say, stop, even louder. There's just nothing happening here. So we have an unnecessary law that, admittedly, is not being tracked down because probably lack of resources from the AG's office to track down probably the thousands of trusts. This is a bill that I've become more and more serious about, especially in...recently. And let's just bring it back to the intent of this ball field. And there's much more than Mr. Schilke's done throughout his life in the area, not only Fremont, but in this area, for youth. And that's been a very big focus of him and his family. The other day, I'm sitting at a restaurant and I talked to a friend of mine. And he comes over and his daughter, she's 11 years old and she knows me. And she comes up and she says, hi. And I asked her, you know, how things are going. And she said, I'm getting ready to play softball. I'm like, well, how did you do last year? Well, I didn't play the last two years. And it's not a real well-to-do family. I said, why didn't you play? She said, well, I didn't have a glove and my glove broke. And she didn't have the proper equipment. I said, are you playing this year. She's like, yeah, I'm playing at the new ball fields, the Schilke family ball fields. And that's one of many things. So I don't think the statute is...admittedly it appears from the negative testimony that it's not being followed up on, it's created a burden for people. And, perhaps, if it costs thousands of dollars probably to comply with this, how many kids could be playing baseball in Fremont and other cities across Nebraska right now? What's this...and we always talk about keeping our money here. Based on the testimony today, what's to stop Mr. Schilke from moving to Council Bluffs so he doesn't have to comply with this? He'd never do that but he wouldn't have to comply. And unless you get caught in the

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first place, there's no teeth in it. So I hope you see, like I saw, even learning more today from the questions, that how...just how unnecessary this is. The Attorney General loses absolutely no power. If Mr. Schilke was doing something with his trust that was afoul, paying trustees exorbitant wages, it would be reported. And we have a tip hotline and I know they get used in all the offices. In fact, the Consumer Fraud Protection Division in the Attorney General's Office does an outstanding job. I've referred many people to that division as well as the Auditor's Office. We've referred people to those tip hotlines. So there are whistle-blower hotlines out there. And the Attorney General would be more than authorized to follow up on those. So I would ask you, if you have any further questions, to contact Mr. Schilke. He's an absolute expert in this area, much more so than I, obviously. So thank you, Mr. Chairman. [LB900]

SENATOR GLOOR: Any final questions? Senator Schumacher. [LB900]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Janssen. It's not exactly so, though, that this is a toothless tiger because if the Attorney General smells that something is not right as a qualified beneficiary, he can go into the local court and have standing to have the local judge start issuing subpoenas under contempt powers and they can do a lot of things. If they actually smell that there's something wrong and decide that they want to investigate, that they couldn't do if they weren't a qualified beneficiary. So it's...I mean, this does give them some extra oomph in investigations, I would think. [LB900]

SENATOR JANSSEN: I would throw that back to the...well, one, the Attorney General has broad power, which we're aware of, if there's wrongdoing. I would say, it's going to be tough for the office to smell something out because I would surmise that they're not even sniffing right now, based on what I've heard today. They don't know who has a charitable trust or who does not, and I would have to also think that the people that do self-report are probably the absolute best trusts out there. [LB900]

SENATOR GLOOR: Other questions? Seeing none, thank you, Senator Janssen. [LB900]

SENATOR JANSSEN: Thank you. [LB900]

SENATOR GLOOR: And that will end our hearing on LB900. I would say this. If you're hearing some background noise, that's happened to us on occasion. And as best we can determine it may relate to a older-model cell phone, analog. If you do have such a phone and you noticed the background chirping and buzzing, you might turn off your phone and see if you happen to be the person who could help us with our electronics malfunctioning that's going on around here. [LB900]

SENATOR JANSSEN: Somebody still has one of those phones? [LB900]

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SENATOR GLOOR: So other than that, we apologize to the testifiers for the background noise. But it's the best we can do in figuring out where it's coming from. Welcome, Senator Nordquist. We'll open the hearing on LB991. [LB991]

SENATOR NORDQUIST: Thank you, Chairman Gloor and members of the Business or Banking, Insurance and Commerce Committee (sic: Banking, Commerce and Insurance Committee). State Senator Jeremy Nordquist from District 7 in downtown and south Omaha and here today to introduce LB991 which would prohibit payment card networks from collecting interchange fees on taxes and fees. This is an issue that came up a few times before the Tax Modernization Committee this interim and that's what piqued...got my interest in it. Nebraska retailers and restaurants, the primary collectors of sales tax, are forced to remit to the state over \$8 million more annually in sales tax than they collect on a net basis as a result of fees charged by credit card companies when tax is added to the credit card sale. The credit card fee is charged on the total amount, including tax, not just the sale itself. So for an example, if I bought something for \$100 in Omaha, the sales tax would be \$7. Depending on the contract with the credit card processor, there would be a fee of somewhere between probably 9 cents and 21 cents on that \$7 tax. It would be...it's calculated, though, based on the total amount of the purchase, including the tax at the bottom. So out of that \$7 tax, the retailer, essentially, would be collecting between--with the fee...after you subtract the fee--somewhere between \$6.79 and \$6.91. But yet, they still have to remit the full \$7 of sales tax to the state. The business, essentially then, eats that charge. The Legislative Fiscal Office has determined that this...that the fee on the tax equates to about \$8.4 million total statewide for retailers to...that retailers would have to absorb. Prior to 2002, the state allowed businesses to retain a very small percentage of the sales tax to compensate for the collection cost. But due to budget cutbacks, that was essentially eliminated, kind of with the idea at the time, that it would be restored when times were better. This bill prohibits the imposition of the interchange fee or swipe fee, as sometime's it's called, by the credit card payment processing networks on the sales tax portion when a credit card or debit card is used. To accomplish this, the bill allows a payment card network to deduct the sales tax portion of the purchase prior to calculating the fee that they add to it. If a person's credit card or debit terminal isn't set up to be able to do that, the retailer would be allowed to submit monthly documents to the processor and get a rebate for the interchange fees on the sales tax. There is a provision of the bill, also, that allows the Attorney General to bring action against any of the payment card networks that have intentionally violated the requirements of the bill and it creates a civil penalty. And there will be folks behind me from the retail industry who can talk about the impact on them. With that, I'd be happy to take any questions. [LB991]

SENATOR GLOOR: Thank you, Senator Nordquist. Questions from any of the committee members? Seeing none, thank you. [LB991]

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SENATOR NORDQUIST: All right. [LB991]

SENATOR GLOOR: And do you plan to stay? [LB991]

SENATOR NORDQUIST: Yeah, I'll be here. [LB991]

SENATOR GLOOR: Okay. We'll move to proponents of the bill. [LB991]

JIM OTTO: Senator Gloor and members of the committee, my name is Jim Otto, that is J-i-m O-t-t-o. I am a registered lobbyist for the Nebraska Retail Federation and the Nebraska Restaurant Association and I appear today in support of this bill on behalf of both associations. And first of all, I want to thank Senator Nordquist very much for introducing it. This has been a long challenge of the retail and restaurant industry. As Senator Nordquist explained, prior to 2002, there was a significantly higher collection allowance to retailers and restaurants that was taken away in 2002. And, as he said, we understood, with the idea that someday it would come back in better times. But it never has and there have been several bills. I've been involved for over 12 years and almost every session, some senator has been gracious enough to introduce a bill to reinstate the fee as it was prior to 2002. I have to thank Senator Schumacher because he has a bill to do that right now in the Revenue Committee. However, because it has a significant fiscal note, somewhere between \$6 million and \$8 million a year to reinstate that, we have not been able to get that done. So basically, what this bill does is, provides another solution to the Legislature that would not cost the state anything. It would simply shift the burden from the retail and restaurant industry to the payment card collection industry. Now you may...so what would...that's basically what this bill would do. And you'll hear many people...at least there will be testimony after me that says this is impossible to do or very difficult to do, to figure it every day. I do want to point out that, as Senator Nordquist said, there is an option in the bill that would only have to be done monthly. And the retailer would then calculate how much it is and request reimbursement from the payment card network. So it does not have to be done daily. It can be done daily if that technology exists. But the big discussion, I'm thinking, will be that it's too hard to do. The real issue is, retailers and restaurants are tired of paying the \$8 million. Somebody else ought to. So that's what the bill does. I guess, in...just to give a little analogy, you know, the...if we were to describe the retail and restaurant industry in comparison to the state and the entire business community, it would kind of be like the story of Cinderella in that the...except that the state is the wicked stepmother and these daughters are all of the other businesses in the state. And Cinderella, the one that does all the scrubbing and gets practically nothing for it, are the retailers and restaurants. Retailers and restaurants get practically no tax benefits, no (LB)775 benefits, no...there is practically no tax incentive or very few that actually go to retailers and restaurants. Understandably so, because it is spin-off employment, it isn't primary employment like a manufacturer or someone like that that sells...creates jobs, sells goods on a broad spectrum. But in return, the retailers and restaurants are asked to do

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all kinds of things and get practically nothing for it. They collect sales tax, get practically nothing for it; occupation tax goes at point of sale; we have an E911 fee that goes at point of sale. Constantly, the point of sale is becoming the popular place to collect everything and kind of like Cinderella, we don't get anything for it. The only difference is that there was a Prince Charming in Cinderella and we see no Prince Charming here, so. We're just simply saying that this is an issue the Legislature really needs to take a close look at. The situation is unfair. And is it fair to have one sector of the business community, you know, do the entire burden of collection and remitting? With that, I'd be glad to answer any questions. [LB991]

SENATOR GLOOR: Are there questions for Mr. Otto? Senator Schumacher. [LB991]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Mr. Otto, for your testimony today. The essence of the problem, then, is that the retailer is getting hooked for the credit card fee to collect the sales tax. [LB991]

JIM OTTO: Correct. [LB991]

SENATOR SCHUMACHER: That's the...and if I'm not mistaken, there are at least three ideas to fix this floating around currently in committees. The one is the one from last year that said, basically, reinstate the fee that the merchant could take when they submit their sales tax material on a--whatever it is--a monthly or weekly basis to the Department of Revenue; go back to the way it was. Another one, I believe there's a bill in Revenue Committee by Senator Harr, and then there's this particular bill which tried to sort out those fees in a different way. Can you explain, if you know, the difference between Senator Harr's bill in Revenue Committee and this bill because in Revenue Committee, we heard that Senator Harr's bill was technologically impossible, basically. [LB991]

JIM OTTO: Senator Harr's bill would have...would require a daily remittance of sales tax to the state. Presently, it's remitted monthly. Senator Harr's bill would require daily remittance. So we are not in favor of that. Now there was testimony that that would be very difficult to do. And perhaps that testimony will be repeated today. But Senator Harr's bill did not solve the...well, I take that back. Senator Harr's bill did have a clause in it to reinstate the collection allowance to the way it was prior to 2002. But it also had a huge...what we consider a significant burden to actually remit sales tax daily on every credit card sale. [LB991]

SENATOR SCHUMACHER: And how does this bill work? I mean, how does this bill manage to sort out how much is due to the state for collecting its sales tax? [LB991]

JIM OTTO: Well, there's two ways. If the credit...if the payment card industry can program the point of sale machine to do it all at the same time the card is swiped, then

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that is one way that it can be done. But the other way is simply for the retailer to keep track of how many sales they had on credit cards and determine what the swipe fee was totally, document that, send that to the payment card network, and get reimbursed on a monthly basis. So perhaps the technology is there, perhaps it isn't. You're going to hear testimony that it isn't. I think maybe it is, but I'm not an expert in that. But even if the technology isn't there, this would allow it on a monthly basis. But the point is, the burden of paying the fee would be on the payment card industry and not on the retailer. [LB991]

SENATOR SCHUMACHER: Thank you. [LB991]

SENATOR GLOOR: Is the swipe fee different from credit card to credit card? [LB991]

JIM OTTO: Every merchant has a different contract with...I'm sure a very high volume retailer does not pay the same percentage as a low volume retailer. So every merchant has a different contract. They're constantly shopping for better deals, kind of like cell phones. [LB991]

SENATOR GLOOR: And that carries over to debit cards as well as credit cards? [LB991]

JIM OTTO: Debit cards are more restrictive in that the federal government has come out with limits on debit cards. So debit cards do not have the same...it's cheaper for a retailer, in most cases, to process a debit card than a credit card. [LB991]

SENATOR GLOOR: But there still is a transaction fee? [LB991]

JIM OTTO: Yes. [LB991]

SENATOR GLOOR: Okay. Other questions? Senator Carlson. [LB991]

SENATOR CARLSON: Thank you, Senator Gloor. You mentioned that the retailer could submit for the refund and verify what the sales had been. Is that something that can be abused? How would the state know that that's a verifiable figure? [LB991]

JIM OTTO: Well, this would be a submit to...when they submitted to that refund, they did not submit to the state. They would submit to the credit card company that they operate through. And that credit card company would have a record of all the charges made through that retailer so it could easily be verified. If a retailer created a false report or a false request, the credit card company should be able to verify it because there would be a record of every charge that went through that retailer. [LB991]

SENATOR CARLSON: If the credit card company can verify every charge that went through, why should there be need for a request? Why doesn't the credit card company

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just reimburse? [LB991]

JIM OTTO: In my opinion, the way to...the reason it was written that way was to take that burden off the credit card company because that would be a big obstacle or a point of contention. [LB991]

SENATOR CARLSON: It's probably a point of contention anyway because they have to deal with all these requests. And with technology, I guess I don't see what a burden this is? It's a burden on the retailer... [LB991]

JIM OTTO: Yes, it is. [LB991]

SENATOR CARLSON: ...to have to ask for it every month. [LB991]

JIM OTTO: It would be better, in our opinion, that it just happened and that it not have to be requested. [LB991]

SENATOR CARLSON: Okay. Thank you. [LB991]

JIM OTTO: Thank you. [LB991]

SENATOR GLOOR: Senator Schumacher. [LB991]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Just one follow-up. But in that particular case where you have a retailer who is selling some taxable items and some not taxable items and the credit card company gets this message saying "Joe Blow" is charging \$10 to his credit card and \$5 was on taxable stuff and \$5 on not taxable stuff, the credit card company knows...does not have any way of knowing how to apportion that fee. Is that part of the issue here? [LB991]

JIM OTTO: Yeah, that is part of the issue. I'm assuming on a monthly basis, it would have to be determined exactly how you request it. But it would have to be your actual report to the state of how many...how much sales tax you are reporting to the state. It would have to jive some way with what you request from the credit card company. I don't know the exact details on how that would be done. [LB991]

SENATOR SCHUMACHER: And then to the extent that the merchant has got to put any new gizmo in, in order to...or computer program or accounting software, that would be an additional burden that the merchant would have, wouldn't it? [LB991]

JIM OTTO: It would be an additional burden but, that's another reason why the monthly option was put in the bill so they would not have to do that. And if, for example, they were only going to recoup \$20 at the end of the month, they would probably not request

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it. But if they were going to recoup \$200, they might request it. [LB991]

SENATOR SCHUMACHER: Thank you. [LB991]

SENATOR GLOOR: Seeing no further questions, thank you, Mr. Otto. Continuing with proponents. Good afternoon. [LB991]

DEB EVANS-OLSON: Hi. Chairman Gloor and members of the Banking Committee, my name is Deb Evans-Olson. It's spelled D-e-b E-v-a-n-s hyphen O-l-s-o-n. I'm here today to express my support for LB991. My husband and I own and operate a small business here in Lincoln. We started Lincoln Coin and Bullion in 2006 after leaving successful careers in accounting and banking. Our company specializes in the sale of precious metals for investment. We love living in Nebraska. The quality of life here is second to none. However, we'd like to point out two issues we face in our business that we consider challenging. The first issue is the fact that, unlike nearly all other retailers, most of our customers come to us to invest, not to spend. Many people invest in real estate or stocks or bonds with the thought of their investments increasing in value over time. Our customers invest in gold and silver bullion for the same reason. The difference is that real estate stocks and bonds aren't subject to sales tax. Gold and silver bullion is the only IRA-approved investment that's subject to sales tax in Nebraska, unlike nearly all of our neighboring states. I realize that LB991 does not address this issue, but it's a significant barrier of growth for our business because we're located in Nebraska. The second issue of concern to us is addressed by LB991. That is the fact that businesses collecting sales tax for the state are forced to remit more than they collect on a net basis as a result of the credit card fee on the sales tax amount. I won't repeat what's already been stated in previous testimony. I'll simply add that I don't know of any other tax that businesses are required to collect and remit that results in a net loss for the business. LB991 addresses this by not allowing credit card companies to charge their fees on the sales tax portion. And rather than having the business community pay for this expense in the collection of the sales tax, I suggest the burden be shifted to the credit card companies. I urge you to give favorable consideration to LB991 and I thank you for the opportunity to testify. [LB991]

SENATOR GLOOR: Thank you, Ms. Evans-Olson. Questions? Seeing none, thank you. [LB991]

DEB EVANS-OLSON: Thank you. [LB991]

SENATOR GLOOR: Other proponents? We now move to those in opposition to this bill. [LB991]

JERRY STILMOCK: (Exhibit 1) Mr. Chairman and members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients,

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the Nebraska Bankers Association and NetWorks, Inc., in opposition to LB991. I'll break my testimony into a couple of different components. The first, that I'm not aware of technology that exists to separate the vinegar and oil. As the information that I'm submitting to the committee in written text, it's a fee, an interchange fee, based upon the \$1 amount. I'm not aware of any provisions, Senator Carlson, to split that out. Secondly, that portion of the bill in section 4 that talks about submitting accepted proof of tax or fee from the seller or the retailer. Some concerns: First of all, it's my understanding, these items are batched out on a daily basis, these items. The interchange fees are batched out and they're settled up on a daily basis. So I don't know the impact of how it would work to undo what was already done. In other words, how to readdress or how to go back in time and try to reallocate what that portion of the interchange fee was on the sales tax. Secondly, in relation to that, we're talking about a closed-loop, secure system with the merchant...customer, the merchant, and the two different banks involved. And those interchange fees are all happening within that closed-loop system. The portion of LB991, brought to you by Senator Nordquist, that talks about that the network shall accept as proof, would be information coming from outside the system. Would it be reliable? Would it be averred to? Would it be sworn to? Senator Carlson asked a question in line with this. Does that gravitate to the level of a judgment in a court of law that...who says that, other than the legislation, that it shall be accepted as proof that the amounts submitted by the seller/retailer, in the language of LB991, are correct? I think Mr. Otto made a relevant point. He said, well, maybe if it's \$20 a month, maybe it's not worth it. Maybe if it was \$200 a month, it would be worth it, which brings me to the issue of could it be cumulative? Unless I missed it, I didn't see in the bill that it talked about a monthly type of accounting, if you will. But what happens if one month it was \$20 and so they didn't submit it. The next month was \$200 so they did submit it. Again, I'm jumping over the hoops that I, as a network operator, that I have to accept that in the language of the...in the bill. So now I want to put two months together and submit a bill for \$220, all realizing that the exchange has already happened on a daily basis. And I don't know how you would undo what is already done, going back to my first point. And secondly, it evolves into a matter of proof. You're in a closed-loop system and now there's going to be outside information that thou shalt accept as proof. If you jump over that issue of thou shalt accept as proof, the network is already dissipated. They've already distributed the funds. It doesn't have those funds to go back and readdress. It puts the network out in a situation where it has to be on the risk, I guess, if you will, that it's going to be able to repay those funds. I'm not aware that there's any way to separate it at the point of sale right now. And in addition to those reasons, that's why we're opposed to the legislation, Senators. Thank you. [LB991]

SENATOR GLOOR: Thank you, Mr. Stilmock. So if the networks are not...how do I say this? The network is at risk for how it gets its dollars back. It's not at risk for the dollars, per se, whether there's enough loss over a period of time to have to increase the fee charged to replace that, but it isn't gone forever. [LB991]

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JERRY STILMOCK: It's gone. And as I understood, Senator, it's batched out and reconciled on a daily basis. Yes, sir. [LB991]

SENATOR GLOOR: Okay. Yes, Senator Schumacher. [LB991]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Mr. Stilmock, for your testimony. Right now, the merchant is the one left holding the bag for the cost of collecting the state taxes. If we were to roll back the clock at 2000-something and reinstate the law before we told them that they would have to bear the burden, it would cost roughly \$8 million to \$10 million. Couldn't we avoid the whole problem if the decision was to shift the cost from the merchant to the banks simply by putting a swipe tax on the networks that would generate \$8 million and just reinstate the old law? [LB991]

JERRY STILMOCK: Whoa. Yeah, that's one I hadn't anticipated nor do I think I could adequately comment, Senator. [LB991]

SENATOR SCHUMACHER: Well, I mean, it would work. We'd get \$8 million, the merchants would be happy, the bankers would be unhappy and we'd just...got somebody else to pay to collect our taxes. That sounds like a great deal. [LB991]

JERRY STILMOCK: (Inaudible) yeah. [LB991]

SENATOR SCHUMACHER: Thank you. [LB991]

SENATOR GLOOR: Other questions or ideas? Seeing none, thank you, Mr. Stilmock. [LB991]

JERRY STILMOCK: Thank you, Senators. [LB991]

SENATOR GLOOR: Other opponents? Seeing no one else in opposition, neutral capacity? [LB991]

KATHY SIEFKEN: Chairman Gloor and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, I am the executive director and lobbyist for the Nebraska Grocery Industry Association. We are testifying today in a neutral capacity and it's very difficult to do that because it's going to be neutral-positive. We like the concept. We think it would be fair. The credit or the interchange fees that we are paying now are the second highest expense we have, other than labor, and the fees continue to increase. And to get some relief would be appreciated. We do like Senator Schumacher's bill that would return the collection fees back to pre-2002, I believe it was. Right now, we actually lose money on those credit transactions and we would like to see that relief. The problem that we see is that the systems in the grocery stores are not capable of

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separating out those transactions and doing what this bill does, even though we love the idea. One of the things that we have noticed this session is that several bills have been introduced that deal with the point of sale in our stores. And so what I have done, because I'm not a point-of-sale expert, is I have brought one of our people with us. His name is Terry Rehmeier, and he is the general manager of Retail Data Systems. They put the front end systems in our grocery stores throughout the Midwest. And he is here to...he's also going to testify in a neutral position just so that you can ask questions and get answers from the guy that really has the answers. So with that, I would like him to follow me. If you have any questions, I'd be happy to answer. [LB991]

SENATOR GLOOR: Any questions of Ms. Siefken? Seeing none, thank you. [LB991]

KATHY SIEFKEN: Thank you. [LB991]

SENATOR GLOOR: Next person in a neutral capacity. [LB991]

TERRY REHMEIER: (Exhibit 2) Good afternoon. [LB991]

SENATOR GLOOR: Good afternoon. [LB991]

TERRY REHMEIER: My name is Terry Rehmeier, I'm with Retail Data Systems. The spelling of the last name is R-e-h-m-e-i-e-r. And what I'm handing out today is just some educational material, I hope, for you all that you know what reports look like coming out of a grocery store environment, what receipts look like coming out of a grocery store environment, and what is then reported after that. Wait a minute till everything goes around. Kathy made me sound a lot more intelligent than I am, just so you know. And as an industry, we, too, agree that this is a good thing for retailers. There's...I do a lot of business with the small, independent markets, the one, two, three lane grocery stores. And some of the credit card fees are really making them suffer. I think there's a few of them that in hindsight, if they didn't have to, wouldn't take credit cards. But in this day and age, that's not a real situation for any retailer to be in. So on the multiple-page one, if you just refer to the last two pages, I think that's probably the most important to what we're talking about today. But you can see on the next to last page about a third of the way down, it will say a tax rate, taxable sales, and tax collected. So they can find out on a daily, weekly, monthly time frame what sales tax was collected. And if you'll refer to the last page, it will show you by media type--and media, to us, is how a customer pays--is what they did in cash, check, credit card. So they do get that information, but it's not something that they can automatically calculate the interchange fee off of because when they submit that transaction to the payment card industry, it goes as a total number. It doesn't break it down any other way than the total of the transaction. And one thing that nobody thinks about when they start talking about this--and this happens every day in the retail environment--is split transactions. I pay half my bill with cash and half my bill with a credit card. That's really going to require something to

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calculate what part of that transaction is, then, processed by the payment fees as far as the tax part of it. The other things I've handed out to you today is just some sample receipts so you see what the customer is seeing. And this is also what the retailer can look up at the store level. So they do have the ability to go back and recall transactions if there are questions. But once again, you're talking about people that are unloading the truck, stocking the shelves, running the cash registers, cutting the meat and this is just something else that would require time from them. The last sheet I have, which is just a shot of a window--and this is our software that virtually all the grocery stores have that we service in their back office--and if you will just go down and look at the bottom where it says cost, status, miscellaneous, these are all the flags or buckets that we can set by item, by category, by department. And currently, there is not a flag in there for interchange fee so we have no way to capture that amount at the store level automatically. Now can it manually be calculated? Sure, if they want to go back and do some math. But, you know, let's not leave the retailer hanging out there that, you know, if they have to submit paperwork and they have to put in labor, don't make them wait forever to get their money back because there's a lot of these guys, I mean, if they don't get that money back, they may not make payroll that week. It's...that's how tight some of these grocers are. And with that, I think I'd open it to questions. [LB991]

SENATOR GLOOR: Questions? Senator Garrett. [LB991]

SENATOR GARRETT: Thank you, Senator Gloor. Interchange fees are not set by statute, are they? They're competitive, each bank has a different fee? [LB991]

TERRY REHMEIER: Uh-huh. [LB991]

SENATOR GARRETT: If we put this onus on the credit card companies to do this, aren't they just going to pass along the cost and increase the fees? [LB991]

TERRY REHMEIER: That would be my guess. [LB991]

SENATOR GARRETT: Oh, okay. [LB991]

TERRY REHMEIER: Yeah. They're not in the business of not making money. They're for-profit companies. [LB991]

SENATOR GARRETT: Right, exactly, exactly. Okay, thank you. [LB991]

SENATOR GLOOR: Senator Campbell. [LB991]

SENATOR CAMPBELL: Thank you for the illustrations today. Do you do anything other than groceries? [LB991]

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TERRY REHMEIER: We do hospitality, as well, and some general merchandise. Hospitality would be quick-service restaurants, table-serve restaurants. [LB991]

SENATOR CAMPBELL: So some of the small retailers where you go in and they go, I don't take credit cards anymore, part of it is what they're having to pay, don't you think? [LB991]

TERRY REHMEIER: Uh-huh, yeah. It's a cost of doing business. [LB991]

SENATOR CAMPBELL: Thank you. [LB991]

SENATOR GLOOR: Senator Carlson. [LB991]

SENATOR CARLSON: Thank you, Senator Gloor. Now as you're testifying today, and I think in what I'm hearing, that if something like this would pass, it's not causing any extra expense to the retailer other than some time in recordkeeping. Would that be true? [LB991]

TERRY REHMEIER: Assuming they have integrated credit, which means the credit card terminal is physically tied into the POS device so they're monitoring all those totals electronically. If they have what we call stand-beside credit, which is just a little credit card terminal sitting off to the side that's either dialing out or going through the Internet, but not tied into their POS system, the reports would be a lot more difficult to get because I'm not marrying the two databases. [LB991]

SENATOR CARLSON: All right. In a case like that, what do you think the cost is to convert because I know what you're talking about, that little machine that you swipe the card through. [LB991]

TERRY REHMEIER: Yeah, right, right. Okay, so let's...you want me to talk grocery, hospitality? [LB991]

SENATOR CARLSON: I don't know if there's a difference between the two, but I assume there would be an added expense to convert over. [LB991]

TERRY REHMEIER: Okay. Right. A one-lane grocery store, if I were to put in a POS system that they were scanning with and then add the credit card terminal to it, which the majority of grocers are scanning today, one lane of those two combined would cost about \$10,000. [LB991]

SENATOR CARLSON: Okay. [LB991]

TERRY REHMEIER: Okay? In a hospitality industry, single terminal, probably closer to

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\$8,000. Now as you add more terminals, that cost goes down a little bit because we have to put it back off a server in each location to manage the site. But you buy that one time in the store, not for every terminal that you add. [LB991]

SENATOR CARLSON: In a one-lane, if we're talking about \$10,000, why would the retailer want to do it? [LB991]

TERRY REHMEIER: Why would they want to integrate it? [LB991]

SENATOR CARLSON: Yeah, because they'd have to recoup over \$10,000 a year. [LB991]

TERRY REHMEIER: Right. Well, the...what we do when we sell point-of-sale systems is, we say if you can't pay for the system in a three-year investment, you should not be making that investment. But there's other advantages they would get other than the integrated credit. I'm not sure if I'm answering your question. [LB991]

SENATOR CARLSON: Well, you're giving me an idea because... [LB991]

TERRY REHMEIER: Okay. [LB991]

SENATOR CARLSON: ...my oldest son has a...is a doctor and he has a private practice. And this isn't the same thing, but he's facing the possibility of a federal mandate which would require a change in how he codes his various services. And what he was telling me, that this changeover would cost a small practice anywhere from \$50,000 to \$200,000 to do it. He can't stand that, and he doesn't get anything out of it. Now, in this case, we're talking about maybe a return on investment. [LB991]

TERRY REHMEIER: Uh-huh. [LB991]

SENATOR CARLSON: But there's no return on that kind of investment because it's to recordkeeping. So this is not the same, but the other situation I think is really a travesty; a federal mandate with no help. [LB991]

TERRY REHMEIER: I don't disagree with you. [LB991]

SENATOR CARLSON: Okay, thank you. [LB991]

TERRY REHMEIER: Okay. [LB991]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB991]

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TERRY REHMEIER: Okay, thank you. [LB991]

SENATOR GLOOR: Anyone else in a neutral capacity? Seeing none, Senator Nordquist, you are recognized to close. [LB991]

SENATOR NORDQUIST: Thank you, members. I don't know that there's much I can add to the discussion, just that this is, I guess, an issue that as the Legislature, as a whole, between multiple committees, we just need to...we probably need to decide if there is a change in policy we want to make and who would bear the burden of that cost whether we continue to leave it on the retailers. If there's a way to split it or shift it between the companies that are receiving the processing fee, or whether we want to make a state investment and to reimburse retailers for the cost of collecting our sales tax. With that, I'd be happy to take any final questions. [LB991]

SENATOR GLOOR: Are there any final questions? Senator Campbell. [LB991]

SENATOR CAMPBELL: But at this point what we're doing is, we have a state mandate to the retailers and saying you collect the sales tax and it costs you. [LB991]

SENATOR NORDQUIST: Right. Exactly. Give us all of it, but you know, whatever it takes for you to collect that, that's on you. [LB991]

SENATOR CAMPBELL: Coming from a retail business, I understand that. [LB991]

SENATOR NORDQUIST: Right. [LR991]

SENATOR GLOOR: Seeing no further questions, thank you, Senator Nordquist. [LB991]

SENATOR NORDQUIST: Thank you. [LB991]

SENATOR GLOOR: And that will end our hearing on LB991. We'll now move to LB886. Senator Harr, welcome back to the Banking, Commerce and Insurance Committee. [LB886]

SENATOR HARR: Thank you, Chairman Gloor. Chairman Gloor, members of the Banking, Commerce and Insurance Committee, my name is Senator Burke Harr, H-a-r-r, and I represent Legislative District 8. LB886 addresses changes to the Nebraska Condominium Act. LB886 would leave in place the unanimity requirement as it pertains to creating or increasing special declarant rights and sets a 67 percent standard which may be increased by the terms of the declaration for all amendments to the declaration which require votes. It would also leave in place the 80 percent vote requirement for termination and require the consent of the owner of the affected unit for

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any changes of unit boundaries, allocated interests, or uses to which the unit is restricted. Amending a condominium regime may be done for a variety of reasons. Some amendments are anticipated by the developer and allowed to be made unilaterally by the developer through the exercise of special declarant rights reserved to the declarant. Other amendments may be done by the association without a vote, including those required in the event of taking by eminent domain, upon expiration of a lease which decreases the number of units, relocation of boundaries and reallocation of interests between adjoining units upon the owners' request and if permitted by the declarants' subdivision of a unit into two or more units. Certain amendments may be made by unit owners without a vote and without consent of the association, including reallocation of limited common elements between or among units to which they are allocated in the declaration, relocation of boundaries between units upon application of the unit owners. The association shall prepare the amendment. At least three different statutory voting thresholds are required for various other types of amendments. Eighty percent of the votes in the association are required to terminate the condominium. Likewise, 80 percent of the votes in the association, including 80 percent of the votes allocated to the units not owned by the declarant, are required to sell or mortgage any portion of the common elements. Sixty-seven percent of the votes in the association are required to amend the declarant other than the sections set forth above for amendment by the declarant, the association with no vote required, or unit owners with no vote required. Unanimous consent is required to create or increase special declarant rights, increase the number of units, change the boundaries of any units, except as otherwise specified...provided above. Other than the unanimous consent requirement and the 80 percent vote required for termination, the declaration may specify a percentage larger than the statute sets forth. This issue here is, that there is no obvious reason to require the same 80 percent vote for conveyance or encumbrances of common elements as required for complete termination of a condominium. Sixty-seven percent is a high bar to clear when dealing with any matter of association business. There are numerous circumstances in which an association might wish to borrow money for improvements to the common area or common elements or permit modification of units to include a portion of the common elements. An 80 percent threshold for such changes represents a nearly impossible standard to meet, which is the current standard. The unanimous consent requirement clearly exists for the purpose of protecting individual owners' rights against arbitrary actions by the association or unscrupulous actions by declarant who still controls a super majority of the votes. Now that your eyes have glossed over, I would ask that you please support and advance LB886 out of committee. I'll be happy to answer any questions. [LB886]

SENATOR CHRISTENSEN: Thank you, Senator Harr. Is there any questions for the Senator? [LB886]

SENATOR HARR: I did write it. [LB886]

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SENATOR CHRISTENSEN: Senator Carlson. [LB886]

SENATOR CARLSON: Thank you, Senator Christensen. Help me out here as a condominium owner. In section 1, I think I understand increasing the number of units so if you're in a condominium complex that has 50 units, you can't increase to 60 without consent. Is that as simple as that? [LB886]

SENATOR HARR: Yeah. [LB886]

SENATOR CARLSON: Change the boundaries of any unit. Give them...what does that mean? [LB886]

SENATOR HARR: Well, there are a number of ways the boundaries can change which I talked about is, it can be through eminent domain. It can be through selling of a portion of the property. It can be purchasing adjoining property. In addition, I would also add that there is a individual, Derek Zimmerman, coming up after me who can explain some of this better than I can, too. Okay? [LB886]

SENATOR CARLSON: Okay, thank you. [LB886]

SENATOR CHRISTENSEN: Are there any other questions? Seeing none, thank you. We'll take the first proponent. [LB886]

SENATOR HARR: Thank you. [LB886]

SENATOR GLOOR: Good afternoon. [LB886]

DEREK ZIMMERMAN: Good afternoon. Mr. Chair and members of the committee, my name is Derek Zimmerman, D-e-r-e-k Z-i-m-m-e-r-m-a-n. I'm with the law firm of Baylor, Evnen, Curtiss, Gruit and Witt, which is at 1248 O Street, Suite 600, Lincoln, Nebraska, 68508. I'm a partner with Mark Hunzeker who worked with Senator Harr on this proposed bill. But unfortunately, he is out of town today so he asked me to convey his thanks to Senator Harr for introducing the bill and to express his regret to the committee for being unable to testify in support of the bill today. And so you get me. And to...I think Senator Harr did a good job of kind of laying out the reasons for the change and the background. I'd just like to emphasize a few points. And that is, is that the amendment requirement by statute as it currently exists is the same as if you were going to terminate. And a lot of what we're dealing with does have to do with common areas or those who are impacted, their unit, specifically. And I think, Senator Carlson, I'll address your question about in what circumstances would a unit change or alter? There could be a sale, easements, there's also situations where, let's say that somebody wants to make an addition to their particular unit and the association is willing to allow a certain portion of a common area to be conveyed to that individual, obviously, for a

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price. Those are circumstances where it's allowed. The...getting more into special declarant rights, the special declarant--a lot of times the developer--does have the ability to add units as the case may be. And they may be able to also combine them, as well. And pretty much the issue is, is that the current 80 percent requirement is burdensome. And the association should have the flexibility to convey or encumber, mortgage, grant easements in common areas. Those are the types of circumstances we're dealing with here. And 80 percent is just a very high number and it's very difficult to meet. And so we're...there's a number of different ways that you can...well, statutorily speaking, that you are going to amend covenants. And there's certain amendments that are dealt to protect the individual unit owners, themselves. That's where you find the requirements of unanimous support because if the unit owner, themselves, is going to be affected, they should be in support of that. And there are certain circumstances where two-thirds is allowed today and the 80 percent requirement currently exists to terminate as well as encumber any common areas. And one final note before I'll open it up for any questions is, that this is simply the statutory requirement. And an association or a declaration can be higher than the 67 percent we're proposing. But the statute, as currently drafted, does not allow for any less than 80 percent. And so we're looking for a little bit more leeway. But the individual associations and the declaration can still provide for an increased bar to an amendment if that is what the association desires. So with that, I'll open...I'll be happy to answer any questions. [LB886]

SENATOR GLOOR: Questions for Mr. Zimmerman? Senator Carlson. [LB886]

SENATOR CARLSON: Thank you, Senator Gloor. So going back in here, I think I understand. You can't increase the number of units without 67 percent vote of the owners of all the units. Is that correct? The number of units. [LB886]

DEREK ZIMMERMAN: The...which portion are you referencing? Are you... [LB886]

SENATOR CARLSON: Well, I'm looking at the bill summary, the white sheet here. I'm not looking at the bill, itself. [LB886]

DEREK ZIMMERMAN: Oh, okay. I'm sorry. Yes, there are...currently, it's two-thirds to amend sections other than what the statute specifically identifies. [LB886]

SENATOR CARLSON: Well, it's taking it from 80 percent to 67 percent. [LB886]

DEREK ZIMMERMAN: The 67 percent requirements were...I think mainly had to do with the common areas. Which portion of the summary are you referencing to? I'll make sure I get to the right portion. [LB886]

SENATOR CARLSON: Maybe you don't have it. I'm looking at... [LB886]

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SENATOR GLOOR: Yeah, he doesn't have it. [LB886]

DEREK ZIMMERMAN: Which paragraph are you referencing, Senator? [LB886]

SENATOR CARLSON: Well, it starts out with section 1, would amend section 76-854. Okay? See that? [LB886]

DEREK ZIMMERMAN: Uh-huh. [LB886]

SENATOR CARLSON: And in that, that no amendment to the declaration may increase the number of units--I understand that, I think--or change the boundaries of any unit. Now would that mean, if I wanted to change the boundaries of my unit, which I'm going to build onto the back, if I have room on the side maybe I'd try and do that. But I can't do it without 67 percent of the approval of the other owners? Is that what that means? [LB886]

DEREK ZIMMERMAN: I'm looking at the proposed language of the section you're referencing. And actually, I don't think that portion, specifically, has to do with the two-thirds requirement. What...that changes it from striking out language that says, "no amendment may create or increase special declarant rights." And then it strikes out, "increase the number of units, or change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted". Strike that out and then add in...because then, it says, "in the absence of the unanimous consent of the unit owners." And what we would change that to is, "no amendment may change the boundaries of any unit, the allocated interests of any units, or the uses to which any unit is restricted without the consent of the owner of the unit." So I think that's being changed so that it's no longer requiring a unanimous consent if you're going to change certain...change around certain units. What you're doing is, is you are instead, putting it in the hands of the people who would be affected by the change. And if they consent, then that is allowed. I believe that was the point of that change. [LB886]

SENATOR CARLSON: What are the allocated interests of a unit? [LB886]

DEREK ZIMMERMAN: Allocated interests deal with, essentially, the voting that you have. And either ways that you can handle allocated interests, the norm that I see is, allocated interest is determined by square footage. So, for example, if somebody has a 1,000 square foot unit and somebody else has a 5,000 square foot unit, the person with the 5,000 square foot unit has 5,000 votes where the 1,000 square foot person has 1,000. That's a common situation where you're allocating interest. You're dealing with voting rights per unit. It's not necessarily just if you have 100 people living in a condominium that each person gets an identical vote. You can do it that way, but there are times where it's not that way. [LB886]

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SENATOR CARLSON: Okay. Another thing that I had in mind was the...if you've got a condominium complex and kind of in the center of it...they're kind of built around and the center of it's a grassy area and you can even drive around that. And if the owner/builder decided let's put some more condominiums in this grassy area, can the owner do that? [LB886]

DEREK ZIMMERMAN: The owner, unless it is specifically identified as a special declarant right to alter common areas, the answer should be "no" because if you convey those areas as common areas, then the developer can't come in later and take that away. Now, there are certain circumstances, I suppose, where a developer or a declarant hasn't sold many of their units yet and they want to add. And if the declaration allows it then, yes, they can do so. But the proposed amendments, I don't think, is meant to change that from the status quo, the way it is today. [LB886]

SENATOR CARLSON: And this common area, is that where the 65 percent vote of the various owners would apply, if the desire is to put more condominiums in that common area? [LB886]

DEREK ZIMMERMAN: The...I don't think...the proposed amendment is not designed to allow a way to...for the developer to be able to increase their units. Those are usually addressed through special declarant rights that are actually specified separately in the condominium. The purpose of the amendment is, if the association, itself, wants to have an easement, a utility easement or if they want to improve the common area and to do that they want to do it by way of mortgage or if they see a common area that's not being used in the way that they hoped it would be and somebody is interested in adding onto their unit by purchasing a portion of the common area, the idea is to make it so that only two-thirds of the votes are required as opposed to the 80 percent which is the same as if you just want to completely eliminate the condominium regime all together. [LB886]

SENATOR CARLSON: Okay. All right, thank you. [LB886]

SENATOR GLOOR: Other questions? Senator Schumacher. [LB886]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony. Earlier you said, we are looking for leeway. Who is "we"? [LB886]

DEREK ZIMMERMAN: I'm here on behalf of myself and my law firm today. I practice almost 100 percent in real estate. And when we have people, clients come in and want help, we have encountered some situations where it has become more difficult than we think it should be. So I'm not here on behalf of anyone else today. I'm here on behalf of myself and the law firm. And that's why Mr. Hunzeker introduced the bill. So, I mean, associations have experienced these difficulties though. [LB886]

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SENATOR SCHUMACHER: So you're just kind of a proxy for associations who are your clients? I mean, law firms just hire guns, so, I mean. So who are the people saying, gee, what we have now really, really, we want changed? [LB886]

DEREK ZIMMERMAN: There...what...I mean, what you find with any association is there are certain people who may be involved who want to make a change, who want to make an amendment. They want to change their covenants, they want to change the declaration. And they think it's practical and makes sense and they run into some interference. And it's, frankly, very easy, at this point, to defeat any proposed change. [LB886]

SENATOR SCHUMACHER: Now just conceptually, a condominium is a blocking off of a geographical set of coordinates, sometimes in the air, sometimes on the ground. Is that...am I right so far? [LB886]

DEREK ZIMMERMAN: Yes. [LB886]

SENATOR SCHUMACHER: And selling that to somebody. And then also, with that sale, comes a series of rights as to the management of the property or to its access to common areas that everybody can run around in. Am I still pretty well on course? [LB886]

DEREK ZIMMERMAN: Yes. [LB886]

SENATOR SCHUMACHER: Okay. Now what this thing does is, it changes from 80 percent or, in one case, unanimous consent to simply consent of the affected units, things that would change the boundaries of the property. So I buy into one of these deals and I know that all the things are 1,500 square feet. That's what it's going to be. And I know that to divide 1,500 square feet of a piece of property, you're going to have to have, basically, so much net worth and ability to pay for the maintenance fees and everything else. And right now, if the character of that property is going to be changed, I have to agree because it requires unanimous consent. Okay, now if we pass this and somebody says, you know, I can make a lot of money on this. What I can do is, I can buy half of these condos and I'll subdivide them into 750 square foot condos. That...and I can make money because I now got half. And all the consent I need is the consent of the owners of the condos and I own all half of them. And I'm going to double my number of condos and make some money here. The other folks were the 1,500 ones who bought into the system knowing that...thinking that, hey, this is the kind of clientele that's going to be in this building. They're going to have to have the ability to own 1,500 instead of just 750 square feet. They're the ones that are becoming slighted because they don't even have to be asked because they are not the condo that's being split up. Is that accurate? [LB886]

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DEREK ZIMMERMAN: I think that's accurate, yes. [LB886]

SENATOR SCHUMACHER: So there are gainers and losers in this. The losers are the people who figure, look, this is the kind of place I want to live in with big enough thing, just like requiring in a subdivision that all the houses have bricks on the front. And now we're saying, well, some of the houses can take their bricks off if they want to. [LB886]

DEREK ZIMMERMAN: Well, in response to that, I would say that the association, itself, still has the power to require the 80 percent. It's just not statutorily mandated by Nebraska law. So you can still increase the percentage to amend. But the difference is, is that...but right now, if we have an association that wants to do that, the...by two-thirds, we...but not quite 80 percent, we can't do it. But if the association wanted to have that bar be higher, they could do so. [LB886]

SENATOR SCHUMACHER: But the association, when it was formed, filled in all...you know, set up the parameters. It was relying upon the statute as it was and may not have put in there the protections if the statute went away. [LB886]

DEREK ZIMMERMAN: I can't speak as to all condominium declarations. Usually the ones we establish do set forth the percentage. But that is mandated today. But, yes, that is a potential issue that...but an association can amend it to make it higher if they see that's an issue. [LB886]

SENATOR SCHUMACHER: But that would take an affirmative vote to amend because we're changing the status quo. It's kind of like whether we pass a law and then have to repeal it or vice versa. It makes a big difference who has to come up with the votes. So in this particular case, what we're doing here is basically changing somebody's rights that they might have relied on in buying into a piece of property. [LB886]

DEREK ZIMMERMAN: I think it would depend on how the condominium documents are drafted because there are certain condominium documents that could be drafted in a way that would parrot the language that is existing. And so an affirmative act would have to be taken to change it to the new statutory requirement that we are requesting. [LB886]

SENATOR SCHUMACHER: Would you have any problem with us saying that these rules apply only going forward to new condominiums so nobody would have been relying on the old rules? [LB886]

DEREK ZIMMERMAN: We would propose that it not just include new condominiums because we want to allow more flexibility for condominiums and that includes existing ones. And frankly, many of the ones we do face issues with are in the existing ones rather than the new ones. [LB886]

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SENATOR SCHUMACHER: We're messing with people's retirement homes, with their homes here and what they have invested and, in some cases, probably a fair amount of their personal savings in. So how is it fair that we change the rules? [LB886]

DEREK ZIMMERMAN: We're trying to change it in a way that would allow the flexibility to amend and not have it so that the bar of 80 percent, which is the same to terminate, remain to allow more options to...for the association to do things that, many times, they want to do, but you can't change it because of the way that it is...because of the 80 percent requirement. [LB886]

SENATOR SCHUMACHER: Thank you. [LB886]

SENATOR GLOOR: Senator Campbell. [LB886]

SENATOR CAMPBELL: Mr. Zimmerman, in some cases this would be that the developer who put this area together is still a part of the association. Would that not be correct if they own part of it? [LB886]

DEREK ZIMMERMAN: Yes. That happens, yes. [LB886]

SENATOR CAMPBELL: So the developer could say, hmm, you know, if the threshold were lower, then it would be easier for the developer to change, in terms of what Senator Schumacher is saying, the future of what this whole area might look like. [LB886]

DEREK ZIMMERMAN: That is true. It lowers the bar, makes it easier to change. But I would offer a corollary. Homeowners associations, I know we're here talking about condominiums today, homeowners associations don't require the 80 percent. And the same could hold true. You can have 67 percent, the developer owns the majority, and, in fact, until they transfer a certain percentage of their property, they essentially have control over an association. And that can hold true, as well, for certain condominium regimes where they say until the developer has sold a certain percentage of units, then they have the ability to change the declaration and the covenants. [LB886]

SENATOR CAMPBELL: And the covenants. But they would be under the new law, at this point, would they not also? I mean, the developers would be? [LB886]

DEREK ZIMMERMAN: Yes. [LB886]

SENATOR CAMPBELL: Okay, thank you. [LB886]

DEREK ZIMMERMAN: And we're still keeping the parameters in place to protect the

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individual unit owners by...the portions that require unanimous consent are not changing. [LB886]

SENATOR GLOOR: Senator Carlson. [LB886]

SENATOR CARLSON: Thank you, Senator Gloor. In your discussion, now so far, does your firm normally represent the developer or the association? [LB886]

DEREK ZIMMERMAN: We've done both. We do both. We obviously do a lot of land use. We represent developers, but I represent associations on a regular basis. [LB886]

SENATOR CARLSON: All right. If you have a plan that is put into effect and the idea is, when it's all done, there's going to be 200 units. The developer is going to develop all 200 units. When there are 50 units developed, does the developer at that point--because the object is to get to 200, but when there are 50 developed--does he have 150 votes and the owners of the 50 units each have a vote? Is that kind of the way it works? [LB886]

DEREK ZIMMERMAN: Essentially, yes. There's control mechanisms and it can vary by the declaration. And I don't know off the top of my head, but there's a certain percentage upon which a declarant must convey the power, essentially, to an association. But prior to that, yes, there is a percentage of units that they own and they essentially maintain control as long as they want to or are statutorily allowed. [LB886]

SENATOR CARLSON: Well, my question is kind of simplified because that would assume that all 50 units that are constructed are of the same size, I guess, same square footage. But if you've got 75 at 1,500 square feet and 75 at 1,000 square feet, then you've got different voting powers in those that are already constructed. Would that be true? [LB886]

DEREK ZIMMERMAN: Correct. [LB886]

SENATOR CARLSON: Okay. [LB886]

DEREK ZIMMERMAN: And usually it's done to...basically, the people who have more square footage, generally speaking, have a greater investment. And so you want to give them a greater say in any changes. [LB886]

SENATOR CARLSON: Okay. Thank you. [LB886]

SENATOR GLOOR: Senator Schumacher. [LB886]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Just one follow-up question

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now. If I were to buy a lot in a subdivision that had restrictive covenants that said everything had to be at least 2,000 square feet and a bricked front, and once that first piece of property is sold then, in that case, it would take unanimous consent of the subdivision owners in order to change that rule and make it say, okay, well, you don't have to have bricks on the front and you can build a smaller one, wouldn't it? [LB886]

DEREK ZIMMERMAN: Well, if the covenants...it depends on what the covenants provide for. [LB886]

SENATOR SCHUMACHER: That's what the covenant said. It's going to be 1,500 square foot or 2,000 square foot, rather, bricks on front. [LB886]

DEREK ZIMMERMAN: Well, but usually, restrictive covenants provide for an amendment process and how many votes it takes to amend. And in my experience, that is usually not 100 percent. It's usually lower than that. And I have, actually, handled covenant amendments where the square footage requirements or facade requirements have changed. [LB886]

SENATOR SCHUMACHER: But that's only if it...that option is held in the original document. [LB886]

DEREK ZIMMERMAN: An option to amend? [LB886]

SENATOR SCHUMACHER: Right. [LB886]

DEREK ZIMMERMAN: Yeah, it would be an option to amend the covenants, generally, not an option to amend that specific design requirement. [LB886]

SENATOR SCHUMACHER: And back to what Senator Carlson's question was. You've got 200 equal--for simplicity--equal size, equal voting right spaces. The developer comes in and he's got them all lined up and he sells the first 25. And he's having a hard time selling them and he over guessed. And he could sell a whole lot easier if he turned the last 175 into 350 half-size ones. The people that bought the first condos, the first 25, they're just "lump it." They thought they were going to have neighbors that all had big, nice condos and now their developer is bailing on them and they're going to have neighbors that don't make as much money and have half the size condos, twice the parking problem, and twice the number of kids running around screaming at 1:00 in the morning. [LB886]

DEREK ZIMMERMAN: If it is permitted by the declaration and if it provides for special declarant rights to do so, then the answer is, yes. And I will tell you that, in my experience, that is usually an option that a developer is going to want because they want that flexibility. [LB886]

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SENATOR SCHUMACHER: Sure. So who we're putting at risk is those first buyers or those established people. [LB886]

DEREK ZIMMERMAN: I believe the first buyers are at risk regardless of these proposed changes. [LB886]

SENATOR SCHUMACHER: Thank you. [LB886]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Zimmerman. [LB886]

DEREK ZIMMERMAN: Thank you. [LB886]

SENATOR GLOOR: Other proponents for this bill? Anyone who would like to speak in opposition? Anyone who would like to speak in a neutral capacity? Senator Harr waives closing. And that ends the hearing on LB886. Thank you. We will now move to LB880. Senator Harms, pleasure to have you here. This would be the last bill being heard by this committee and, I think, your distinguished career. [LB886]

SENATOR HARMS: (Exhibits 1 and 2) Are you trying to tell me to be quick? [LB880]

SENATOR GLOOR: I'm not sure you're in control of that, sir. [LB880]

SENATOR HARMS: Okay, thank you. [LB880]

SENATOR GLOOR: Whenever you're ready. [LB880]

SENATOR HARMS: Okay. Senator Gloor and members, my name is John N. Harms, H-a-r-m-s. I represent the 48th Legislative District. Today I'm here to introduce LB880. Senator Gloor, before I actually start into my formal testimony, I'd like to kind of outline this bill quickly for you and the way my testimony is going to go today. I want to define for you today the preauthorization hold practices. A lot of people don't understand that. We're talking only about the debit/credit cards, talking about credit, who authorizes the holds, who defines the...and then I want to define the communication options for the public--because it lacks it completely--and the consumer awareness issue, and the penalties attached to this, and then I want to give you some examples of some hardships this has created for people. So with that, Senator Gloor, I'd start my formal comments. LB880 is a bill that requires notification to consumers in the fuel, rental lodging, retail, and restaurant companies on the maximum amount and duration of a preauthorization hold practice that goes on your debit card. However, this legislation is not industry specific and you would apply it as it is necessary. LB880 is the result of a compromise regarding the credit and the debit card holds that are taking place across

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this country today. In a lagging economy, it should be no surprise that the recession has really hit low-income families, middle-class families. And many of these families simply can't afford to have \$50 or \$75 placed on their debit card, an amount which is held above the price, purchase price, of the item they just bought. If it were up to me, I would introduce legislation to strictly disallow this because...as many states have already done. And I support this concept. I'm offended, to a certain degree, by the fact that we don't bother to notify the public: If you use your debit card and we swipe it, I'm going to put a hold on your card for an additional \$50 or \$75. In many cases, it could even be more, particularly if you're traveling and you're in a hotel. However, we are attempting to educate the public through the introduction of this legislation because a lot of people don't know it's happening to them, as well as promote the adherence to the proposed law. I believe that if more people were aware of preauthorization today, this room would be full because we don't know this is happening to us. We don't know what's taking place with us. This room would be full. And my concern is that...we are policymakers. My concern is that, in the process of using of our debit card, credit companies have the right to hold my dollars, have the right to freeze my dollars of \$50 or \$75 above and beyond what I purchased. My argument is, that's not what I think we should be doing in this country. Nor do I think we should do this in this great state. I think it's wrong and I don't think it's appropriate. Now if you notify me and you tell me that's exactly what you're going to do, then I could understand that. I may not like it, but I can understand it. We don't notify them of anything. And it's harming people. It's hurting low-income families. It's hurting college students. It's hurting part of the middle-class. And I can give you a study that shows where they've made some adjustments in this and how that's turned parts of that economy around and the number of jobs that are involved in all this sort of thing. I think, on the other hand, what I've done, I've done as much as I can do to satisfy some of the industries' concerns. What LB880 permits notification through either an oral, through electronic communication, or a post in 14 point type in capital letters at the point of sale. Now you're going to hear today that they'll want to make it someplace where it's convenient. Convenience is not identified for me. The point-of-sale is the only place you can let people know what's going to happen to them. You're going to let them know that: one, I'm going to hold back your dollars, at least \$50 to \$75, and the length and the duration of that time it's going to be held. Today, no one knows that. Today, we have no idea what's taking place with us and I think that's wrong. I don't think that's the American way. I don't think we should tolerate that in this great state or any states. And that's what the issue is for me. This legislation does not apply to credit cards, it's only a debit card. I am going to talk a little bit about credit cards at the end of my conversation with you today and tell you that's probably where the largest issue lies in this country. But debit cards are more time sensitive and that's why I'm taking on this issue. It's more time sensitive for families. And for low-income families and middle-class families, it's more connected to a person's direct income and ability to pay for that item that they just purchased. If a preauthorization hold above the purchase price is facilitated through a business entity and under this legislation, every customer, everyone who purchases and uses that card is notified of: one, the maximum amount they're going to take out; and

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two, the duration and the length of this card. I think we owe that, just professionally. And as senators who create the public policy, we need to make sure that we are fair and honest with the public over these kinds of issues. We're not. And I think that's wrong. I have a lot of examples. I'm going to give you one that kind of stole my heart. It was in my own community. It caught my attention about three years ago and that's when I started working on this and having discussions with people. A low-income family driving in our rural Nebraska stops at the gas station, fills up their tank, \$50. Now the couple is not aware of it, but after using the debit card, their \$50 hold is placed on the card in addition to the \$50 that filled their tank of gas. The family then drive down to the highway and stops at Walmart. While in Walmart, they went in there for two things. They wanted to purchase diapers and they wanted to purchase baby formula. And their card was declined. It was kicked out at the cash register. Now think about this just for a moment. Can you imagine how embarrassing that young family had to be standing in line at Walmart, or any store, and it's rejected and they know they had \$100 in that when they left. There's something wrong with this. It's not appropriate. The couple does not understand the reason for the decline considering the couple was certain when they left and they checked their account, they had \$100 there. What the couple has not discovered yet is the second blow that's going to come to them and that they can't purchase their baby formula and they're not going to be able to purchase their diapers for at least 72 hours, period. Seventy-two hours they're not going to be able to use that. Colleagues, that's three days. That's three days that that family cannot purchase the baby formula and the diapers. Do you think that's right? No, I don't think it's right at all. I think it's inappropriate. As policymakers, we should make sure that that doesn't happen to hardworking families who don't have the extra cash or don't have the extra money to get through this. I want to look at it another way. That could be three days without food, medicine, or just some basic necessities of life for that family. My point is this. That if a couple knew what the maximum hold would be, then perhaps, just perhaps, they would choose another gas station or if they had another credit card, they might use the credit card or choose not to purchase the gas at this particular time at all. What this notification does is, that it lets the family figure out what their priority is going to have to be. I don't think we're asking too much here to be told so they can decide what their priority should be and make more informed choices about their lives and how they're going to take care of their family rather than being subjected to the element of surprise at the expense of their pocketbook plus the embarrassment that they just went through. I think that's wrong. I don't care what the people will say who follow me, I don't think it's right. Now if you notify them, I think that's fair. You tell them how long it's going to be, you tell them how much it's going to be, I can understand that and I could accept that. So in order to protect the consumer and the businesses, this legislation requires the Department of Banking and Finance to work with interested parties to create a consumer awareness brochure that will be available to financial institution and business entities. Start to educate them. If they wanted to, they could hand it out even to the public. In the event there's a consumer complaint, which there will be when the public finally begins to understand what's happening to them, the Attorney General's Office will

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require a report that will come to this committee on the number of complaints regarding preauthorization holds by January 31 of 2016. And what that does for this committee, if you choose to take this out and it was passed, it gives an idea to find out just whether or not this practice is being abused and whether other legislation should be introduced that would simply disallow this practice in the future. You know, I believe with this legislation we would be setting a precedent and I think that's really important. But as a state senator, I just, to be frank with you, I just can't, I simply cannot fathom why any merchant or any business entity should hold any dollar amount above the purchase price for the product or the item without first telling the public--the professional courtesy--I'm going to do this to. I'm going to take this dollar and I'm going to freeze it for 48 or 72 hours; 72 would be 3 hours (sic: days). I don't think that's asking too much. I have worked with representatives from the industry for two years, including the banking industry, the fuel, the retailer, the restaurant industries. This legislation is lenient, colleagues. I'm going to hand out some information that will support what I'm about to tell you. It's lenient compared to other states who have attempted to disallow this completely, with a fine up to \$10,000 in some instances. Other states are getting after this and saying enough is enough with your credit cards and your banking practices. That's what it boils down to. The penalty we have established is through a civil action only up to \$2,000 under the Uniform Deceptive Trade Practices Act, so it's pretty reasonable. We're not telling them they have to stop. What we're telling them is, you have to notify the public. You have to tell them how much you're going to take out, how long that will be. The assessment of the risk typically requires 72 hours for the duration of the hold. But I will tell you from my own personal thing, since my wife and I now understand this and everything we have is computerized, that's not always true. Don't kid yourself, it's not. In some instances, I've been told by the public that their accounts have been held for as long as 5 days to a week. Now that could be a computer foul up, it could be a lot of things, but 72 hours, colleagues, doesn't always happen. And this happened to my wife and I because we can track it. Whatever that amount is, a week is just too long. Seventy-two hours is, I mean, it's too long, but I think that's where we need to probably be. The credit card companies have penalties for businesses that do not enforce the correct duration. However, they are not able to monitor each business that might very well be in question. It's huge. Just look at Nebraska and the people who use their cards. As I've learned from various industry groups, the bank actually...the credit card company sets the rate, gives it to the bank, the banks have to do the Visa or "master charge", whatever that is. They must agree with that because they pass it on to the merchant. The merchant has the right to choose, as I understand it, whether or not they want to do this or not for this amount. Now the merchant accepts the recommendations based on the demographics and the prediction of risk in the surrounding area of the clientele that they have. So there might be certain areas that they have really concerns about and they would like to make sure they put a hold on some of these dollars. This recommendation includes, as I said, it would include the amount of the hold and the duration. Now after consulting with the credit card industry, we have learned that businesses should have the knowledge about this hold they can

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place since the credit card company, then, is the one who actually informs them. I find that rather interesting because in my community, I go around in the fall and the spring and have open forum meetings, probably like most of us do. And while I was in one of my smaller communities, this issue came up from a person who owned the gas company there or managed the gas company. And there were people there that were quite upset about the fact that money was being held out of their account. And the owner of the filling station couldn't understand it, didn't know it, didn't realize it was happening. So I don't know if there's a breakdown in this process or what is happening and whether or not he got the notice or didn't get the notice. But I had some really unhappy people there. They were talking about this particular issue. Now I've taken time to speak to some of my colleagues about, do you know this is happening to you? I found only one that had some idea that was happening. I talked to staff members in this building. I'm here to tell you, no one knew that was happening at all, did not realize there was being a hold on their cards. I've heard multiple opinions on whether to place the responsibility on credit companies, the business companies, the banks, and I have sought out the multiple inputs between the industry groups for the last two years. Some sources, I think, might have been in conflict. I can understand why. But regardless, we have tried to accommodate the people on businesses as much as possible. So I'm here today to say that I have a main concern, and that main concern is for the people of this great state. The people that this is affecting, my intent is to protect the low-income families who cannot afford, just can't afford debit holds above the purchase price for any duration. It also affects a lot of middle-class people, families. My intent is to ensure that the individual consumer is protected and informed on the hold practices that are facilitated through the business end and to prevent unnecessary hardships for hardworking, low-income families who struggle from pay check to pay check. As a state senator, I'd have to say I'm adamantly opposed to the holds. But at the very least, but at the very least, colleagues, I believe the consumer has a right to know if additional dollars are being taken out of their account above the purchase price for any length of time, especially for low-income families who do not have as many variable options that you and I have or the companies have. They don't have these options. They live from check to check. And here we are holding money from them and we're not even bothering to tell them that we're going to do this for 72 hours, if we're lucky. So my primary concern here today is the plight of hardworking, low-income families in Nebraska. And I hope through this public hearing we can contribute further to educating and informing the public of these hold practices as well as pass a law that's worthy of our respect, worthy of our respect for the people in this great state that we represent. They've chosen us to represent them. They've chosen us to address public policy in a fair, equitable manner. And I don't think what we're doing today does that. I think people are hurt. So with that, Mr. Chairman, I'll close my formal comments. [LB880]

SENATOR GLOOR: Thank you. [LB880]

SENATOR HARMS: I will have...I do have...if you have some questions, I'd be happy to

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try to take them. I am going to give you, a little bit later, some information you can look at that will tell you what's happening in other states from the year 2003 to 2013. This comes from the National Conference of State Legislatures that I always go to because they're pretty...you can pretty trust what they tell you. And our language here in this bill, pretty much is right along the lines that was passed...a resolution was passed in Maine. Other states a long ways ahead of us are addressing the issue. I'm also going to be giving you an amendment to this particular bill. This will terminate. This will terminate, there will be a sunset on this law to January 1, 2021. The reason I do want to do that, if it even comes out of committee, I think it would be important for us to go back and reevaluate this process to see if it is working, to see if there are other issues here because, you see, I don't think the real issue is going...it really centers so much around the debit cards. But I think a lot of the really large issues will...are on credit cards itself. That's a mammoth issue and I chose not to take that issue on. I chose to take this one on. Now I just want to share with you an article. It's called The Voice, that comes from the Nebraska grocery industry and it's written by Peter Larkin who is the president and the CEO of the National Grocers Association. What he brought out in this article was that a recent economic report conducted by Robert Shapiro of Sonecon which is an LLC, an economic analysis firm, found recent reforms to debit card sweeps fees put nearly \$6 billion, \$6 billion back into the hands of consumers and created more than 37,000 new jobs in 2012. I believe that this single item is hampering our economy to a certain degree. And I don't know if you realize this or not, but on the credit card side, Visa and "master charge" have 80 percent of the swipe fees under control. They own...they have 80 percent of that. And what we found when we were looking at that, what we found was that Europe has been battling this for years. And they finally said, enough is enough, we're not going to allow this to go on. These two companies made \$50 billion last year on swipe fees. A phenomenal amount of money. And what they're doing is they're giving it to...taking it away from the consumers and the people who purchase and the people who have the businesses. That's just a...that's another issue that confronts all of this when it comes to credit cards. But the thing...what I'm doing for you today, is to tell you this is a much larger issue. We're just going to have to take a piece at a time with this issue. And the piece that I'm looking at right now because it's time sensitive, is the hold that you put on your debit cards. With that I'd be happy to answer any questions. [LB880]

SENATOR GLOOR: Thank you, Senator Harms. [LB880]

SENATOR HARMS: Uh-huh. [LB880]

SENATOR GLOOR: Senator Harms, there were times you referred to debit cards and times you referred to credit card companies. Was that... [LB880]

SENATOR HARMS: At the end, I'm talking about the credit card... [LB880]

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SENATOR GLOOR: Well, this bill really relates only to debit cards. [LB880]

SENATOR HARMS: Yeah, this deals with the debit card only. I just wanted to show you at the end, Senator Gloor, there's a much larger issue out here than just this debit card. And it's going to take a committee like this to really get onto that issue and start to address that issue because it's there. And it needs to be put under control. It's not now. And so that's a whole other side. I just brought it out because I wanted you to understand that this is much larger. I'm just, you know, on one piece. And that's the piece that I think hurts the families immediately and that's the debit card. Thank you for the clarification of that. [LB880]

SENATOR GLOOR: Okay. Thank you. Questions from the Senators? Senator Christensen. [LB880]

SENATOR CHRISTENSEN: Thank you, Senator Gloor and Senator. It's difficult to me that, on this, because you got two different issues. One is, like, if you're staying in a motel where there could be additional charges, I understand why they need a hold. When they do an immediate transaction like purchase of groceries or gas, it is definite and done. I don't understand that. I knew about it before and have struggled with that part of it. I understand the hold for, like I said, like a motel because you could incur additional charges during your stay. So that's one of the reasons why I use credit cards only. You know, I've got a debit card, but I tend to never use that unless I'm trying to get cash out of the bank. But... [LB880]

SENATOR HARMS: Could I answer your question... [LB880]

SENATOR CHRISTENSEN: Sure. [LB880]

SENATOR HARMS: ...on motels as you're going to go through? If you have a lot of questions we're going to go through, let's just take them a piece at a time. The hotel cards, that's a whole other story in itself because that's one of the things where you can really get hurt when you're traveling. So if you're staying in a hotel and you're in a hotel for three days or four days, they're going to take out...they know what the average use is going to be for incidentals. They're going to charge it against your account plus they may charge some more against that account. So you could be a family, okay, traveling. You've got \$1,500 in your banking account, okay? Stop at this restaurant, they put a hold on. And restaurants are now, just starting to do that. You stop at...you stay at a...you stay over night a couple nights, they put a hold on that. You buy gas, they put a hold on that. And all of a sudden the next time you go out...I mean, you're on your way home, you go to use your credit card and it's kicked out because all of a sudden you have money that should be in your account that's frozen. And that's what I'm after. And I understand, though, the issue with the hotels. The hotels is a lot bigger issue, though, because there's a lot more money involved. [LB880]

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SENATOR CHRISTENSEN: In your research, did you try to find out how long it takes to...with the electronic industry we're in, the moment from when you make the purchase at a store to the moment it clears your account, how long should it be? [LB880]

SENATOR HARMS: Actually, there is some research in this. But I can tell you just from what my wife and I have discovered, if it is live time, it's within an hour. I have a...there's a gas company out there called Maverick and it comes out of Wyoming, and you have two cards. You have one card that you could use or they have what they call a black card which is live time. Every time I run that through, it's a debit card and it gives me 6 cents off of my gas per gallon because it's live time. It goes in and I can go home, in 10 minutes, 20 minutes and it's already out of my account, live time. So when people come before us and say, we can't do it, well, other companies are doing it. Other people have found a way to do this. And so I think it's important that the public understand this. Now other states all across the nation are starting to address the issue. And as I said, I'll give these out to you and you can look at them at your own leisure. But it's happening and the argument that it can't be done really isn't true. [LB880]

SENATOR CHRISTENSEN: Yeah, I guess that's my biggest thing... [LB880]

SENATOR HARMS: Sure, I understand. [LB880]

SENATOR CHRISTENSEN: ...is, I've seen things are getting very fast, you know. I understand when you go get it out of an ATM machine that's from that bank, it's going to be instant. But even when you go use a number of the competing banks, it's instant. And so that's why I wondered if you had looked at that because, I agree, I think the holds are getting too long and I appreciate the bill just to make us think about it. And is there any way that a debit card...let's say, use an example, staying at that hotel. We didn't allow them to put a hold on. Okay, you come in, you pay for the three days you're going to stay and then the incidentals at the end. If they send it through once, is it denied and done and over? Or can they resend it again later when there's money been deposited? Do you know? [LB880]

SENATOR HARMS: No, I don't know how that works for sure. But I can tell you what they recommend you do. When you go in and stay at a hotel, if you're going to use your debit card, you go ahead and use that debit card. But when you check out, okay, I'm going to withdraw my debit card, I'm going to use my credit card. That gets away from that and gets away from you lose the money in your account and you get away from having it frozen. [LB880]

SENATOR CHRISTENSEN: So that would eliminate that hold? [LB880]

SENATOR HARMS: Yes, it would. [LB880]

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SENATOR CHRISTENSEN: Okay. Thank you. [LB880]

SENATOR HARMS: You know, what's really interesting--and I'll just share this with you--when I travel, I kind of embarrass my wife because I will...when I go into...and we're going to stay at a motel, I will ask, are you going to put a hold on my card, now that I'm aware of this. And the answer is, yes, we are. And my reply is then, how long will the hold be? You know, I'm not sure. I'll have to ask our manager. Well, it's usually maybe 72 hours or longer. And then I ask, how did you determine the amount that you're going to hold. And they'll say, I don't know. I'll have to ask the manager. And I ask the manager and sometimes the managers don't even know. So what I'm really saying to you is that this is an issue somehow we have to come to grips with because this is penalizing a lot of families and a lot of people. It just is. And I don't know how you feel, but I don't think anyone should have the right to freeze my account. But if they are going to have that right to do that, they ought to be...they ought to have the professional courtesy to tell me. Tell me how long it's going to be. That's all we're asking for here. [LB880]

SENATOR CHRISTENSEN: I know I appreciated, when they first come out--maybe it was just my perception--but I seen it as the debit card was good for two things. One, those that had bad credit because it was using cash like a check. And the second thing was, it helped them not spend money they didn't have. [LB880]

SENATOR HARMS: Yeah, see that's why I like the debit card because I have an accounting immediately and my wife has the accounting immediately which pretty tells me where I'm going. [LB880]

SENATOR CHRISTENSEN: Thank you. [LB880]

SENATOR HARMS: Yep, you're welcome. [LB880]

SENATOR GLOOR: Senator Carlson. [LB880]

SENATOR CARLSON: Thank you, Senator Gloor. I don't think I've ever used a debit card. But a debit card is supposed to be like a check, isn't it? [LB880]

SENATOR HARMS: It is. It just comes straight out of your account within about an hour. [LB880]

SENATOR CARLSON: All right. Is it your understanding, where a bank has a debit card, do they hire a firm to administer the debit card or is that within that bank? [LB880]

SENATOR HARMS: I don't know. I always assume it's within that bank because it

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comes right out of my account immediately, within an hour's time we know. We pull it up and we can see that that has been taken out. And what the other interesting thing is, we track that, Pat tracks that, so we know within how many days, also, that \$75 just disappears off of our account. But I don't know how they do it. [LB880]

SENATOR CARLSON: But if you...if I have a checking account and I've got \$100 in it and I write a check for \$50, I still have \$50 in there that I can write another check for. [LB880]

SENATOR HARMS: That's correct. [LB880]

SENATOR CARLSON: And until I exceed the next \$50... [LB880]

SENATOR HARMS: That's correct. [LB880]

SENATOR CARLSON: ...the bank will honor it. They won't block that check. [LB880]

SENATOR HARMS: That's correct. [LB880]

SENATOR CARLSON: I understand the need for this. Thank you. [LB880]

SENATOR HARMS: Yep, you're welcome. [LB880]

SENATOR GLOOR: Other questions? Senator Garrett. [LB880]

SENATOR GARRETT: Thank you, Senator Gloor. From an accounting perspective, and I don't know that you'll have the answer for this, if there's a 72-hour hold on whatever X amount, does the credit card company that puts that hold on there, is that counting on their assets? [LB880]

SENATOR HARMS: Well, that's an agreement...as I understand this, Senator Garrett, that's an agreement between the bank and the merchant if they're going to do that. And as I said earlier in my testimony, it depends upon the kind of clientele you're dealing with and the environment that that particular business happens to be in. [LB880]

SENATOR GARRETT: It's truly the time value of money. Even for a few days, there's money to be made there. Interesting. [LB880]

SENATOR GLOOR: Seeing no further questions...Senator Carlson. I'm sorry. [LB880]

SENATOR CARLSON: Thank you, Senator Gloor, because something else comes to mind. I think most of us, when we go to the bank to make a deposit, sometimes there will be a notice up there that this deposit may not be honored for so many hours or if

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you make a deposit late in the day it won't be...it won't show up as a deposit until the next day. I don't even understand that, but I think that's different than what we're talking about here. But it's maybe another testifier can enlighten me a little bit on why the banks do that. [LB880]

SENATOR HARMS: I would want to have the pleasure to close, if I might. [LB880]

SENATOR GLOOR: Certainly. [LB880]

SENATOR HARMS: Or is there any other questions I could answer for you? [LB880]

SENATOR GLOOR: Seeing none. [LB880]

SENATOR HARMS: Thank you. [LB880]

SENATOR GLOOR: Thank you, Senator Harms. We'll move to other proponents of this bill. Good afternoon. [LB880]

DAVID PIESTER: (Exhibit 3) Good afternoon. Senator Gloor and members of the committee, my name is David Piester, P-i-e-s-t-e-r. I appear here today as an individual and also as a volunteer for the Center for People in Need, a nonprofit organization in Lincoln that serves poor and low-income people, mostly in Lancaster County. The center offers food, clothing, educational courses, ESL classes for refugees, computer skills training, job skills training, and direct services to assist people in their day to day struggles to self-sufficiency. In 2013, the center was visited over 23,000 times by clients for services of one kind or another. Over 10,000 of those clients were children. To be eligible for services from the center, a client must be living on less than 150 percent of the federal poverty guideline. About 90 percent of the center's clients live in households where at least one adult is employed in some fashion. The majority of those employed are employed at one full-time job and over a third are employed at one part-time job. Even with employment considered, however, a majority of clients live on household incomes of less than \$1,000 a month. Many of them have to choose between paying bills and buying food. Many have child care expenses which barely make it economically advantageous to work at all. To say that these people live from hand to mouth would be an understatement. Even when employed, the wages they earn don't allow them to save any money. All earnings are spent and usually well before the next paycheck. They are consumers. LB880 would provide notice to consumers of preauthorization holds placed on debit card purchases. The bill stops short of prohibiting the practice or limiting the amount of time of the holds, but it would provide notice to a buyer that his or her debit card would be encumbered, thereby making it more difficult or impossible to use for a period of time following the purchase that consumer is about to make. LB880 would prevent situations like the one that Senator Harms mentioned about driving to get gas on the way to the Walmart to get diapers. Many low-income wage

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earners do not have a cushion in their bank accounts to guarantee a merchant against debit card misuse. And they shouldn't have to. A hold in the amount of the purchase and limit it in time to noon the next business day should be sufficient to address the merchant's need for protection against debit card misuse. Making the consumer the guarantor of the merchant's interest in amounts up to twice the purchase amount and up to 72 hours is simply going too far. While LB880 would not stop the practice, it would at least provide notice to the buyer that a hold may be placed on their account so the buyer can then decide whether to proceed with the purchase. It is the least action the state can take to protect the consumer from this overreaching practice. On behalf of the clients for the Center for People in Need, we urge your favorable consideration of LB880. Thank you. [LB880]

SENATOR GLOOR: Thank you, Mr. Piester. Are there questions? Senator Carlson. [LB880]

SENATOR CARLSON: Thank you, Senator Gloor. On the front page of your testimony, the last sentence, "Many have child care expenses which barely make it economically advantageous to work at all." And we should have a system...and I guess I'm asking if you would believe this. We should have a system that is an incentive for people who want to work to be able to work and not dollar-for-dollar have something subtracted from, like a child care subsidy that they need. Do you see a lot of where that's not occurring? We do have child care subsidy. And I don't blame people for taking it, women with small children, particularly, because we shouldn't have something in force that makes it economically disadvantage to work. [LB880]

DAVID PIESTER: That's often true. There's what they call the cliff effect when people are sometimes turning down small increases in their wages because it would put them over the eligibility limit for child care subsidies. So they keep their income low so as to get the child care subsidy because without the child care subsidy, they couldn't afford to work at all. [LB880]

SENATOR CARLSON: That's because of the cliff? [LB880]

DAVID PIESTER: Yeah, that's a cliff, yes. [LB880]

SENATOR GLOOR: Mr. Piester, can I ask, in your volunteerism role are you there to help people manage expenses? I mean, do you bring something to your volunteerism that helps in this area of people controlling their finances? [LB880]

DAVID PIESTER: There are life skills training courses, they're not courses, but sessions in that kind of thing. I don't personally participate in that. [LB880]

SENATOR GLOOR: Okay. [LB880]

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DAVID PIESTER: But they are available at the center. [LB880]

SENATOR GLOOR: I'm just curious as to whether there is an encouragement for folks to write more checks. And frankly, it's something that I've started doing more of. Not so much because I'm concerned about the hold, but because for some small merchants, I know they're paying so much in those fees that writing them a check, at least they claim, pays them a little better for the services that they provide to me. And I'm just curious as to whether that's one of the ramifications of or one of the options people might need to pursue more. [LB880]

DAVID PIESTER: It could be. Many of our clients don't have checking accounts. Some of them are paid by debit card deposits so they...and there's a whole issue with fees on that, as well, and the accessibility of that money. But yeah, some...it would seem that if they get this notice, that if they had a checking account, they could write a check. If they're on a debit card they might go to the ATM and get cash and pay with cash which would still not put a hold on their account then. [LB880]

SENATOR GLOOR: Good examples. Thank you. Other questions? Seeing none, thank you for your testimony. [LB880]

DAVID PIESTER: Thank you. [LB880]

SENATOR GLOOR: Other proponents? We'll then move to opposition to this bill, those who wish to speak in opposition. [LB880]

KATHY SIEFKEN: Senator Gloor, members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I'm the executive director of the Nebraska Grocery Industry Association and I'm also their lobbyist. We are here in opposition to LB880 and we don't believe that this bill is a solution to the problem. The problem arises...and I really want to try and clarify these transactions. The problem arises when customers use a debit card for an open ended transaction. So when I go into the grocery store and I use my debit card, that is not an open ended transaction. When that authorization goes to the...through the processor, it knows what the dollar amount is. And it goes in, it takes the money, there is no hold, and it's done. The transactions that Senator Harms is concerned about are transactions that are open ended. And those are the transactions that take place at the gas pump because when that authorization is sent you don't know or when the authorization is sent for the dollars, you don't know what the end purchase price is going to be, so it's open ended. The system goes to the bank and it verifies that there is a legitimate account. And it verifies that there's one of two things, either enough money...let me rephrase that. It verifies two things. It verifies that there is at least the maximum amount of what the transaction will be. In many cases, it's \$50, \$75, \$125, whatever the retailer has established as a maximum. When the transaction hits that

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amount, it automatically stops. So the retailers put the maximum dollar amount of each transaction on the pump. The other thing that it will verify is if there's enough money in there to hit that maximum. So if you have an account that has, say, \$40 in it and the maximum at that gas station is \$75, it will come back and shut off at \$40. What...and now I've gotten out of order on my thing here, but. So the system authorizes the dollar amount, whichever is lower, either the maximum or what's in the account. To protect the retailer from theft, a hold is put on that dollar amount or the maximum amount that is established by the retailer, establishing a lower dollar amount than, say, the \$50. It depends on what the price of gas is. But if you establish a lower dollar amount than that, then people that have big trucks and double, dual tanks, they would have to swipe the card more than once because they'd hit the maximum and the pump would shut off. And customers don't like that. So that's why we have some people or some areas where the maximum is \$125 because in their area, people have the dual tanks and they want to fill up and they don't want to swipe their card twice. It would also result in double fees by the retailer because every time a card is swiped, there's a transaction fee. So we want to really keep those swipes to a minimum. Retailers encourage the use of debit cards over credit cards because the transaction fees are much lower. Those fees, the cost of that, gets passed on to the consumer. So you want to keep your fees as low as possible so that you can stay competitive. On average, a grocer will net around one percent per year while at the same time paying anywhere from 3 to 5 percent to credit card fees. So the banks are making more money than we do when we unload the truck, stock the shelves, ring up the groceries. So when Senator Harms talked about the article that was in The Voice, that was our magazine. And I would encourage each of you to go read that article. It's in your office. It arrived last week. It's our bimonthly magazine. And it's an article that was written by the CEO of the National Grocers Association and it's very enlightening. It sets out a lot of information. So getting back to the transaction, once the transaction is concluded, the retailer forwards the purchase amount and the hold is supposed to be taken off within two hours. And those are Visa/MasterCard rules. And Visa/MasterCard is supposed to enforce those rules. According to one of the programmers that I...well, he was a developer, programmer, software writer that I talked to just last week in Colorado. I have been trying and working with Senator Harms since he first brought this subject up. And the people you talk to all tell you different things. The banks tell us it's not them. The processors say it's not us, it's the retailers, and the retailers don't know. And the retailers are going, it's not mine. So just trying to get through all of those, everybody pointing at everybody else, has really been a challenge because this is a very complicated issue. And according to the programmer that I found in Colorado, he said he resolved the issue in one of his stores by talking to the processor. And apparently, when the account is initially set up, a profile is established. And in that profile is the SIC code for each business. And a grocery store has one type of SIC code and a gas station has another SIC code. And the programming in the processing is based on the SIC codes. So if you put the wrong SIC code in, the system...say you put a SIC code for a grocery store into a gas station. The system doesn't know that it should come back and grab that final purchase dollar amount to get

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rid of the hold. Now this doesn't...we don't know that...if this works for everyone. But in a case that he ran into, it did. It solved the problem. And really, the issue is, let's get rid of the holes. Everybody's happier. The retailers are happier because the customers don't yell at them. The customers are happier because the holds don't happen. But it is a very...it's a challenge to find the right people that know what you're talking about on both ends to correct the issue. And again, the number of transactions, according to the people I talked to, are very, very small. The transactions that we're talking about aren't the hotels. I'm talking about the...in the gas stations, our member gas stations. And to resolve the issue, the people that have the debit cards simply need to go inside to pay and there's no hold because at that point, it's a closed-ended transaction. It's no longer open ended. So there is a solution. It's just how to find it, sometimes, in a timely manner because it's complicated when you get into the software because the software that we have today is not...it has evolved. And when we first started down the road of putting credit cards and debit cards in grocery stores, we had two different kinds of cards. And go back with me a few years, but there used to be just a debit card. And it did not have a Visa/MasterCard logo on it. It was simply debit and it was only to that bank. And when it went directly to that bank, that was one kind of software and the way they talk back and forth to each other. Then the banks came out with...and then the other side of that was that we had credit cards that were Visa/MasterCard, American Express. They were not debit cards. They didn't come out of your account. Now today, we have a hybrid card. And that hybrid card is this, where it's a debit card and it has the Visa logo on here. Okay, so we're already down the road of programming. And then all of a sudden, we get a new card and this card doesn't fit the same rules. So now the people that wrote the programming for the debit card and the credit card, those people are gone because that's been many years ago. And there are a lot...this is the way it was explained to me. There are a lot of people that are now programming for the hybrid card that have no idea the history and why you even need to worry about SIC codes. And therein lies the challenge, identifying those people within all of these processors to figure out where this code is wrong and how to correct it. It sounds like an easy fix, but it's complicated. Getting back to...okay. So retailers don't supply the debit cards, the bank does. We have no control over the debit cards at all. Retailers don't control the processing. We have absolutely no control over the processing. All we do is, we're the people in the middle that are selling the product and our customers want to pay with a debit card. So we think that there is an answer. And we think that the answer is right on the face of this debit card. And it's a little tear-off sticker here. And when you get your card, it says to activate your card, call. And there's a number there. Why can't we just put a sticker on the card. That way you're going to get attention to how to use these cards and know how...that a hold is going to be put on your account if you go to a gas station or it's an open-ended transaction because you'd actually have to peel it off to use the card. When you put a sign at the pump, what you're doing is, you're just adding more visual pollution to islands full of messages already that say "flammable," "hazardous," "no smoking." I think there's a better place for the message. If they don't want to put it on the card that they send out to each one of their cardholders--the debit cards now have expiration

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dates on them so they are updated--put it in the letter. It adds no additional cost. All it is, is another line in the letter or a sticker on the face of the card. We think that that is a good solution to letting people know about the holds and educating people on how to use their debit card. That...when you're using a debit card and you pull up to a gas pump, go inside--you don't have to worry about a hold at that point--rather than making all of the retailers across the state of Nebraska put a little sign up on their pump that no one will see. I talked to one of our members and they said, we've got signs on every one of our pumps. And I said, no, you don't. I've looked. And they said, yes, we do. Go look again. And I did. And they swear up and down that every one of their pumps has a message on it that says there's going to be a debit hold if you use your debit card at the pump. I still can't find it. So we agree that the customer should be educated on how to use proper use of a debit card. We believe that the people that supply the debit cards are the ones that should do that. I'm sure I probably left out some information here, but if you'd like to ask me any questions, I would be happy to try to answer. [LB880]

SENATOR GLOOR: Thank you, Kathy. And I'll go back and use Senator Harms's example. If this family had not bought gas first, if they had gone to wherever they buy diapers and formula and had used their debit card, what you're saying is, they would have had \$50 left in there now. [LB880]

KATHY SIEFKEN: That's correct. [LB880]

SENATOR GLOOR: Now they go to the gas station to get gas. Would it have stopped at the \$25 mark? [LB880]

KATHY SIEFKEN: Yes. [LB880]

SENATOR GLOOR: So they wouldn't have been able to put in \$50 unless they went inside. And if they went inside... [LB880]

KATHY SIEFKEN: If they went inside, they would have swiped it after the transaction was completed and the entire transaction would have been denied because there would not have been enough money in the account to pay for the purchase. You can't buy half a dozen eggs either. [LB880]

SENATOR GLOOR: Well, but if they punched the button that said, pay inside... [LB880]

KATHY SIEFKEN: Yes. [LB880]

SENATOR GLOOR: ...I'm going to pay inside. [LB880]

KATHY SIEFKEN: Yes. [LB880]

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SENATOR GLOOR: And they went inside. [LB880]

KATHY SIEFKEN: Yes. [LB880]

SENATOR GLOOR: Are you...my question really is, did the retailer where they bought the diapers and...I mean, I thought you said that there was a closed transaction most of the time. But with, like the pumps themselves, it's more open ended. Did I mishear you on that? [LB880]

KATHY SIEFKEN: Okay, there are...and that's what I think everyone really needs to be clear on. There are two kinds of transactions with your debit card. And this is only debit that I'm talking about, not credit. There are two kinds of transactions. There is a closed-ended transaction where you go into the grocery store, you buy your groceries, you swipe your card, it's done because you know when the card is swiped... [LB880]

SENATOR GLOOR: Diapers and formula, \$50. [LB880]

KATHY SIEFKEN: ...what the dollar amount is, before you even swipe the card... [LB880]

SENATOR GLOOR: Right, dollars... [LB880]

KATHY SIEFKEN: ...you know what that is. [LB880]

SENATOR GLOOR: So I was correct in that? [LB880]

KATHY SIEFKEN: Yes. [LB880]

SENATOR GLOOR: Fifty dollars is all that would come out of that debit account. [LB880]

KATHY SIEFKEN: Well, if the total bill was \$38.32, \$38.32 would come out and there would be no hold, no additional transactions, that's it. [LB880]

SENATOR GLOOR: Okay. Now you want to get gas. And let's use the numbers that Senator Harms gave us for ease of calculation. [LB880]

KATHY SIEFKEN: Uh-huh. [LB880]

SENATOR GLOOR: You now should still have \$50 in your debit account. [LB880]

KATHY SIEFKEN: Correct. [LB880]

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SENATOR GLOOR: And you want to buy gas. Can you buy gas? [LB880]

KATHY SIEFKEN: Yes, you can. [LB880]

SENATOR GLOOR: Can you buy \$50 worth of gas? [LB880]

KATHY SIEFKEN: You can buy \$50 and the pump will shut off at \$50 because that is the dollar amount that was identified in the account, yes, uh-huh. [LB880]

SENATOR GLOOR: Okay. So this family would have been able to buy their \$50. [LB880]

KATHY SIEFKEN: Yes. [LB880]

SENATOR GLOOR: They would have been able to buy everything had they done it in reverse order. [LB880]

KATHY SIEFKEN: Yes. [LB880]

SENATOR GLOOR: Unfortunately, they didn't because the merchant had put \$100... [LB880]

KATHY SIEFKEN: Yes. [LB880]

SENATOR GLOOR: ...open whatever the terminology is. And that \$100 had been captured rather than the \$50 the actual purchase was going to be for. [LB880]

KATHY SIEFKEN: Correct. [LB880]

SENATOR GLOOR: Okay. I do understand it, then. Other questions from senators? Seeing none, thank you. [LB880]

KATHY SIEFKEN: Thank you. [LB880]

SENATOR GLOOR: (Exhibits 4, 5, and 6) Other opponents to this legislation? Those who wish to speak in a neutral capacity? And by the way, while Mr. Keigher comes up here, I'll ask the pages to circulate...we have letters of support here from Appleseed. And then we have letters of opposition from the Nebraska Retail Federation and the Nebraska Restaurant Association. [LB880]

TIM KEIGHER: (Exhibit 7) Good afternoon, Senator Gloor and members of the committee. My name is Tim Keigher, that's K-e-i-g-h-e-r, I appear before you today in a neutral capacity on LB880 as the executive director and registered lobbyist for the

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Nebraska Petroleum Marketers and Convenience Store Association. I also realize one other thing. I'm the only thing standing between you and your last hearing, too. So I will keep this brief. First of all, I'd like to thank Senator Harms and his staff for their willingness to converse with me on this bill and help understand some of our concerns. I'm handing out some photos to just kind of make a point, I guess, that Kathy brought up is, there's a lot of mandated warnings and decals already on dispensers. You have octane stickers, you have ethanol content stickers which I'm sure a couple of you on this committee would help me remove, if I would like, to make room for this. You have stop engine, no smoking, static electricity, which are safety concerns, and, you know, don't use your cell phone while you're pumping gas from a static electricity concern as well. I guess one example I can give of the number of stickers that are on the pump is, out in Scottsbluff there was an incident where a gentleman came in in his pickup truck with a red plastic, UL-approved can to dispense gasoline in. Now if you read the sticker that says, "stop engine" and all this, "static electricity, remove the can from the pickup truck, put it on the ground so it's grounded," he decided to fill the can in the back of his pickup truck. So he opened the tailgate, pulled the can to the end of the tailgate, filled it with gas. And as he was completing filling the can, it caught on fire. Now it was a very small flame that came out of the edge of the can because the can was full and there was no oxygen to propel the fire. He went inside and paid for his gasoline, came back out, and when he pushed that can into the back of the pickup truck, it inhaled a bunch of oxygen, caught on fire, burned him. And in the determination of who was liable, his attorney went around to all the stations in Scottsbluff to see who had the static electricity sticker on the pump. I don't remember the percentages, but that's how liability was determined. I guess I understand Senator Harms's concern of folks who are running on the bottom of their checking account who are going to facilities that are authorizing an amount. And I guess the question I would have for the banking industry is, on a debit card, if you pay at the pump we're authorizing it for some amount. But if you go inside and pay, that hasn't been authorized for some amount. I don't quite understand that. But I guess, you know, I asked Senator Harms and his staff to provide me the verbiage that they were looking at for this bill, in the font size that was available. And I didn't hand everybody in the committee this, but I mean, it's not a very large sticker. I think that at the end of the day, my members probably could find a place to put it. I know some of them have put it up because customers are complaining to the clerks of why there is a hold on their card and those types of things. So I guess those are my only concerns of, you know, how many more decals can we put on there? How many people are going to pay attention to things that are on there now? And with that, I'd be happy to answer any questions. [LB880]

SENATOR GLOOR: Are there any questions from committee members? Senator Schumacher. [LB880]

SENATOR SCHUMACHER: I know that you're between us and the door, but one question. [LB880]

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TIM KEIGHER: Now you are. [LB880]

SENATOR SCHUMACHER: Now I am, and so I'm going to make this short. Do you know if it would be hard to program it into the little screen where you put your credit card and it says...or debit card, credit or debit, and if you hit debit, it would flash it up there for a moment? [LB880]

TIM KEIGHER: You know, I don't know how hard that would be. My assumption is that in today's technology world, it probably could be done. Just as, you know, the transaction is taking place, the hold is being placed on the card for \$50 and the transaction is being completed within the next three minutes, why does it take two hours to make those transactions work, offset each other, too? [LB880]

SENATOR GLOOR: Any other questions? Seeing none, thank you for your testimony. [LB880]

TIM KEIGHER: Thank you. [LB880]

SENATOR GLOOR: Anyone else in a neutral capacity? [LB880]

MATT SCHAEFER: (Exhibit 8) Chairman Gloor and members of the committee, my name is Matt Schaefer, M-a-t-t S-c-h-a-e-f-e-r, testifying today in a neutral capacity on behalf of First Data. First Data is a payments processor with a large presence in Omaha. The page is handing out some background on debit card holds that First Data has put together. I think there were a couple of points that haven't been flushed out yet today and might add another layer of complexity, unfortunately. There are two types of debit cards that could change the time frame that a hold could be...or how long a hold is placed on an account. And the difference is, there are debit cards that you use a PIN number for, so your four-digit code, and there are also debit cards that you use your signature to complete the transaction. In signature debit transactions, preauthorized holds are not supposed to exceed \$1 under the signature debit network rules. With the PIN code debit cards, those holds do have varying amounts and it's set closer to the approximation of what the retailer believes the charge might be. I think I would just conclude, on the back page, with our data, we believe that 95 percent of financial institution-placed holds on PIN debit accounts are released within five minutes. And the remainder of the PIN debit holds are generally released within two hours. Back to the signature debit cards, the \$1 holds, those are generally released the next day. I'd be happy to try to answer any questions. [LB880]

SENATOR GLOOR: Are there any questions for Mr. Schaefer? Senator Carlson. [LB880]

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SENATOR CARLSON: Thank you, Senator Gloor. A quick one. So in all of this that we're talking about it, the initial example that Senator Harms gave that somebody pumped gas...they got \$100 in their account, they pumped \$50 worth of gas, and they drive off and drive over to Walmart to pick up those other. That's...it might even be less than five minutes and probably within the two hours. So they're still not going to...this is why it happens to them. [LB880]

MATT SCHAEFER: According to our data, it would be a little bit unusual that it hadn't been released within a few minutes, but certainly within two hours, would be unusual. [LB880]

SENATOR CARLSON: And two hours would catch them. [LB880]

MATT SCHAEFER: Thank you. [LB880]

SENATOR CARLSON: Thank you. [LB880]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB880]

MATT SCHAEFER: Thank you. [LB880]

SENATOR GLOOR: Anyone else in a neutral capacity? Senator Harms, you're recognized to close. [LB880]

SENATOR HARMS: Well, I appreciate your patience and your hearing. I find it kind of interesting, and I hope that you have your accounts computerized. Take some time to watch what happens. If you swipe your card at a gas station, it's not live time. It's not going to be live time. They batch those, in many cases, and they send them out, maybe, the next day if they get it done, you know, in time. I have had restaurants here with my card put a hold on my card. So what you're hearing today, I don't know. All I know is what I have experienced myself. And I think it's worth looking at. And the whole issue here is to notify the public. Let the public honestly know what's happening to them. If you're going to take money out and you're going to freeze the account then we need to deal with the issue. Other states are really starting to wrestle with this. And I think you'll see through the information I gave you, there's a lot of states there. There will be more in the next year and two years because this is going to be...it is a major issue for us. And I just don't want to see poor income families or middle class families caught in this whole issue because a lot of people are going to use more and more the debit card because it's like writing a check, it comes out instantly. Or actually, the checks a little longer, you've got a little bit of leeway there. And so my thoughts are that, and I continue to say that, I don't think everything works the way that we say that it does. And it's worthy of consideration. It's worthy of letting our citizens of Nebraska know exactly

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what the potential is that's going to happen to their accounts. And that's really what this is about for me. So I'd be happy to answer any questions. [LB880]

SENATOR GLOOR: Senator Harms, I'd be curious as to, as you've explored this issue, is the solution to this in the not too distant future when, from an electronic banking standpoint, everything moves to real time where the amount of time between...let's use the example of the gas station where the gas station owner says, I want to pick \$100 because I've got some people with big fuel tanks here. [LB880]

SENATOR HARMS: Uh-huh. [LB880]

SENATOR GLOOR: But they'll clearly know after the transaction has been completed, the pump has been turned off, that transaction is now closed, that within seconds, not minutes, not hours, certainly not days, there will be an understanding that this transaction, now, is completed. I mean, it appears to me that we're dealing with a technology issue here of...if we're not, we need to be. [LB880]

SENATOR HARMS: I think we probably are to a certain degree because with, for example...if you look at Visa, for example, they have 60 swipe categories. That's going to be an electronic problem for someone because if you're in a small grocery store, you don't know which one of those to hit. And that's not the thing that we talked about here. You have all of these different categories. You hit the wrong category, you could get hung up with the dollars that you have. MasterCard has 240 different categories and small businesses are having to deal with and address to make sure they put those in the right category. And a lot of them just don't have the people to do this, don't have the understanding to do this. And that's what happens, then, they'll hold that card up. And it will be frozen for a period of time until they can, you know, get through that particular issue. So the card that I use at home is live time on our gas company, as I told you. And it works very well. It comes right out of my account. I know instantly, probably within 30 minutes to an hour that that's been withdrawn. So I don't think it all works the way we've heard today. And to be honest with you, I've talked to too many people and I've expressed myself, that it's not very accurate. And so what I would say to you is that if you have it computerized and you use your debit card, you track it. See what happens to you and see what's taking place. It's all about telling the public, quite frankly, what we're going to do. [LB880]

SENATOR GLOOR: Okay. Senator Pirsch. [LB880]

SENATOR PIRSCH: Thank you. Just a quick question. I've got a bit of a cold today so I'm four octaves lower than normal. But with respect to your bill language, on page 2, line 18, it essentially defines "preauthorization hold" to mean "approval for a debit card transaction in an amount greater than the amount of the actual purchase in order to provide additional funds for possible future purchases". Is that taken from some other

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law? [LB880]

SENATOR HARMS: Yes, I think we took that from Maine. Maine does that now and they've run into the same issues. And in the material that I handed out, if you take any time to go through it, you'll find there's an awful lot of things going on in regard to those issues. It's a bigger issue than what we've heard. And the people who were against this particular legislation...there's more to that than what we see here, so. [LB880]

SENATOR PIRSCH: Okay. Thank you very much. [LB880]

SENATOR HARMS: Uh-huh. [LB880]

SENATOR GLOOR: Other questions? Seeing none, thank you Senator Harms. We appreciate it. [LB880]

SENATOR HARMS: Well, you can go home. Thank you very much. Appreciate it. [LB880]

SENATOR GLOOR: Well, we have an Executive Session. Yeah, we'll take a short break. [LB880]