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Banking, Commerce and Insurance Committee
January 20, 2015

[LB35 LB115 LB145 LB155]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 20, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB145, LB35, LB115, and LB155. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Joni Craighead; Mike Gloor; Sara Howard; Brett Lindstrom; and Paul Schumacher. Senators absent: None.

SENATOR SCHEER: Good afternoon, and welcome to the Banking, Commerce and Insurance Committee hearings. My name is Jim Scheer. I'm from the Norfolk area and I represent District 19. I'll serve as Chair of the committee this year. The committee will take up bills in the posted order. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. To better facilitate the proceeding, I would ask you to abide by a few procedures. First of all, if you would please turn your phones either off or on silence, whichever you need or prefer. Just make sure that the ringers are shut off. If you are going to testifying, if you could move up to the front chair so that we know we've got some people in the queue, it's easier for us to maintain a quicker turnaround as far as the testifiers are concerned. The order of testimony will be the introducing senator, proponents, opponents, and neutral, and the senator has the option for a closing as well. Testifiers will sign in. You will use the pink sheet, please. And when you come up, if you would please hand this to Jan on the edge over here so that we have your spelling of your name correctly. When you testify, when you sit down, if you would be so kind as the first thing to do is to give us your name and spell both your first and last name for the record so that those that are transcribing are able to do that correctly. I would ask you to be concise. We will be using the lights in the committee this year. You will have a five-minute opportunity. Most of you I'm sure that will be more than enough, if not we will try to make allowances when it's necessary. If you choose not to testify via the microphone and you would like to be part of the process, in the back there are some white forms if you would like to sign in your name and either note your opposition or your support of that topic. Written materials will be distributed to the committee members as exhibits only while testimony is being offered. If you would hand them to the page, the page will make sure that they're distributed to the committee and staff. We would need ten copies in order for that to go around the group of senators as well as staff. I would like to introduce the committee and our staff. To my direct right is Bill Marienau, the committee counsel, and to the far left end of the table is the committee clerk Jan Foster. The committee members I will let introduce themselves. I will start on my far left, Senator Gloor.

SENATOR GLOOR: Thank you. Senator Mike Gloor, District 35, Grand Island.

SENATOR CAMPBELL: Kathy Campbell, District 25, east Lincoln and Lancaster

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County.

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

SENATOR WILLIAMS: Matt Williams, District 36, Dawson County, Custer County, and the north part of Buffalo County.

SENATOR LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

SENATOR HOWARD: Sara Howard, District 9, midtown Omaha.

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

SENATOR SCHEER: Thank you, Senators. Our page today is Jake Kawamoto from the Omaha area. And, again, the committee will take up the bills in order as are on the agenda. The first bill that we will have a hearing is LB35 (sic: LB145), Senator Watermeier. LB35 (sic: LB145) maybe. I don't know. LB145? I guess it's LB145. I thought they were in order, but they're in numerical order for me, so. [LB145]

SENATOR WATERMEIER: Well, congratulations, Mr. Chairman. I appreciate being the first person to introduce a bill here in front of your prestigious committee, and as I look around the room here I think, wow, there's a lot of talent in this room, so congratulations. Chairman Scheer and members of the Banking, Commerce and Insurance Committee, I'm Senator Dan Watermeier, spelled W-a-t-e-r-m-e-i-e-r, representing District 1 in the southeast corner of the state. I am here today to introduce LB145. This bill amends section 8-139 to eliminate the executive officer licensing requirement while retaining the ability of the Department of Banking and Finance to suspend the authority of the executive officer or impose fines upon the executive officer for violations of the law. Currently, the law prohibits a person from acting as an active executive officer of a bank until the bank obtains a license from the Department of Banking and Finance. The executive officer license application, created by the department pursuant to law, is eight pages long. The bank president, the CEO, or a board member must check references for persons hired within the last six months. They must review the mandatory department personnel financing statement, a criminal history report for each state where the applicant has resided in the last ten years, and a credit report that is less than one month old. The fee for obtaining a department approval of a licensing executive officer is \$50. While I believe that every state has provisions regarding the regulation of executive officers, it appears that only Nebraska has a formal licensing requirement. For years, bankers have viewed this as an unnecessary regulatory burden that provides very limited benefits to the banking industry and their customers. Previously, efforts have been made to repeal this section of the law, however, the department has opposed such efforts. LB145 represents a

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different approach of eliminating the formal licensing requirement while retaining enforcement authority for the department which is more in line with the system used in other states. Although the formal licensing requirement would be eliminated, the department would still retain existing authority under law or regulations to sanction an executive officer who conducts the business of the bank in an unsafe or unauthorized manner or an executive officer who is endangering the interest of the stockholders or the depositors of the bank. Under such circumstances, the department may suspend the ability of the executive officer to continue to act in this capacity and may levy a civil penalty against the executive officer personally in the amount not to exceed \$10,000. Such a fine could not be paid out of the assets of the bank. If an executive officer is suspended, they are ineligible to act as an executive officer at any other bank unless given authorization by the department. This language is taken from the regulation as is the definition of executive officer on page 3 of the bill. Furthermore, the licensing requirements under the current law are often duplicative as banks were using the same type of actions when considering applicants for employment whom may then later serve as an executive officer. For example, banks are prohibited from hiring persons convicted of certain crimes without prior consent from the FDIC. Additionally, it is common practice for financial institutions to pull credit reports and conduct thorough review of prospective employee's current financial conditions prior to making hiring decisions. Executive officers license are nontransferable, thereby, requiring longtime executive officers to apply again whenever they change employment. If a financial institution is acquired by another financial institution, the law requires new applicants for all existing licensed executive officers as well. The Office of the Comptroller of Currency, which supervises national banks, does not require executive officers of national banks to be licensed. The existence of the licensing requirement in Nebraska places an additional burden on state-chartered banks. In summary, LB145 simply removes the formal application and licensing requirements and eliminates the existing licensing fee. It does not alter the ability of the department to sanction or suspend the authority of an active executive officer. The department retains its ability, but under LB145 it is based on suspending the executive officer's authority to act rather than revoking simply a license. If you have any questions I'd be glad to answer them, however, as I look behind me I think there's a lot more qualified people to talk about it. I think I have learned a lot about this issue as I've studied it and become aware of it, and it's a thing...for me it's a description of unnecessary regulations. So I appreciate your time and if there are any questions I could try to answer them. [LB145]

SENATOR SCHEER: Thank you, Senator Watermeier. Questions for Senator Watermeier from the committee? Seeing none, thank you. [LB145]

SENATOR WATERMEIER: I'm going to stick around for just a little while, but I really would like to get back to my committee. So I may not close if that's all right. [LB145]

SENATOR SCHEER: Okay, okay. Thank you. It is now open to proponents of the bill.

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[LB145]

DARYL WILTON: Good afternoon, Mr. Chairman. My name is Daryl Wilton and I represent Cornerstone Bank, a bank in east-central Nebraska with 32 locations in... [LB145]

SENATOR SCHEER: Could you spell your name for us, please? [LB145]

DARYL WILTON: D-a-r-y-l W-i-l-t-o-n. [LB145]

SENATOR SCHEER: Thank you. [LB145]

DARYL WILTON: Our bank is a bank with 32 locations in east-central Nebraska and I am here as a proponent of the bill. And the reason that our bank is in support of this bill is that we are already going through the process before we hire someone and we are spending \$38 to pull all the same things in a different form that is required to be pulled again if we are requesting an executive officer license. Right now we certainly have a redundant amount of application for doing something one time as we hire them, doing something another time as we send in an application. We currently have 81 officers within our bank, so we have ongoing costs of the annual renewal of the fees. It doesn't amount to much. It's only \$15 for annual renewals, but it's another \$15 and another request that requires time within our bank. The one thing that we are requesting is that you support this bill and it is because what we are doing right now follows the directive that has been established by the banking department in a different form. We certainly would not want to hire anyone who has a felony, who has...in fact, we pull up more stuff on our employees and spend \$38 for every employee that we are considering hiring to see that the credit is good, to see that there's no blotches in their background. And certainly as a bank in Nebraska, we would not want to have those people working for us. So, consequently, what we are requesting is your support of this bill and we think that it takes a big step towards relief from our end of it as far as submitting things that are already...we've already done for our own records. I welcome answering any questions if you have any, otherwise that completes my testimony. [LB145]

SENATOR SCHEER: Okay. Thank you. Questions? Yes, Senator Williams. [LB145]

SENATOR WILLIAMS: Mr. Wilton, your bank converted from being a national bank to a state-chartered bank. [LB145]

DARYL WILTON: Yes, we did. [LB145]

SENATOR WILLIAMS: So many of the initial applications that you were required to send in for an executive officer's license were officers that had been with your bank for some time. [LB145]

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DARYL WILTON: Yes. [LB145]

SENATOR WILLIAMS: As a national bank, were you required to have any form of application on file with them? [LB145]

DARYL WILTON: We were not. We were not required to have any application whatsoever on the file. [LB145]

SENATOR WILLIAMS: So we have the difference in our state of those banks that are national banks not having to have an executive officer's license and those that are state-chartered banks having to have. Is that correct? [LB145]

DARYL WILTON: That is correct. [LB145]

SENATOR WILLIAMS: No further questions. [LB145]

SENATOR SCHEER: Thank you. Other questions? Thank you very much. [LB145]

DARYL WILTON: Thank you. [LB145]

ROBERT HALLSTROM: (Exhibit 1) Chairman Scheer, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB145. I think to begin with it's probably good to take a little look at the historical perspective on this issue. It's one that's new to this committee and to the Legislature, but it's not a new topic of discussion with respect to the banking industry and the Department of Banking. For many years, bankers have expressed some frustration with having to have a formal licensing requirement for executive officers, and we have met and dialogued with the department on a number of occasions to determine whether or not the department would be interested in supporting legislation to remove the requirement. In years past when we've approached the department, we've suggested that we just outright repeal the statutory section 8-139, and they weren't real keen on that idea. Fast-forward to the past year when we started looking at this issue, again, obviously the Governor, candidates for office are talking about regulatory burden relief not only for the banking industry, but for businesses and I think our bankers felt that now was maybe an appropriate time to bring this issue before the Legislature and determine as a matter of policy whether or not there's justification to either continue or discontinue the formal licensing requirement. The different approach that we've taken, as Senator Watermeier already identified in LB145, is that the legislation does not outright repeal the requirements of (section) 8-139, but rather it just strips out in essence the application licensing requirement and the fees that go along with issuing the license and renewing the license. All of the sanction authority, the enforcement authority would continue to

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rest with the department, which is appropriate. Every other state has laws no doubt that provide for some level of examination, supervision, and enforcement over active executive officers, and we certainly would not want that element to leave Nebraska law. So when Mr. Wilton testified, he talked about the duplication of effort, and my testimony goes through specifically banks are required under FDIC section 19 to do due diligence and to have a criminal background search at the time of hiring individuals to ensure that they don't hire someone that has a violation involving breach of trust, dishonesty, moral turpitude, and the like, or have been in a diversion program for any of those types of activities. And, in addition, banks routinely pull credit reports and do a financial review of their condition, certainly being concerned about hiring an employee who may have gambling debts or indebtedness problems that might cause problems being in the bank and dealing with customers and the like for loans and investments. So we think there's a duplication of effort that could be removed while still maintaining the safeguard for the depositors and the banks and their shareholders. We talked a little bit about the issue of transferability. We have situations, in fact, Mr. Wilton's bank has been involved in a couple of situations that probably don't work the best in terms of the bank and their operations. There was a former NBA president that was hired after being in the banking industry for 30 years, certainly had an executive officer's license, had had no issues or problems, but yet when he was hired by the new bank he had to go through the process again. That same bank may acquire another bank. All of the executive officers of the state-chartered bank that's being acquired all have their licenses. There's been no problems with them, but yet the act of acquisition requires them to apply anew and go through that entire process and pay the fees. And, finally, as Senator Williams noted, when you have a conversion from a national bank to a state-chartered bank, at one instant you're a active executive officer of a national bank and there's absolutely no licensing requirement and presumably those officers are acting properly and there's no problems, and in the next breath you convert to a state-chartered bank and now you have to go through the application process, pay the fees, do the renewals, etcetera, etcetera. So on that basis we think it is justifiable for this committee and the Legislature to take a look at the continued viability of having the licensing requirement. There's the distinction between state and national banks, obviously, that has been noted. And I don't think I'd come up here and suggest that just because Nebraska is the only state that has this requirement doesn't make it bad or wrong, it just makes it different, but nonetheless it's an action that we ought to take a look at and see if it's justifiable or if there is a less intrusive way, perhaps, to do it, which we believe LB145 provides us an opportunity to do. I'd be happy to address any questions that you might have. [LB145]

SENATOR SCHEER: Thank you, Mr. Hallstrom. Any questions? Senator Schumacher. [LB145]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Thank you for your testimony, Mr. Hallstrom. A couple of different questions kind of come to mind. Are there standards that the department uses to determine who is conducting business in a bank in an

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unsafe or unauthorized manner? [LB145]

ROBERT HALLSTROM: I assume there are and those standards are not designed or intended to change one iota with the legislation. Those standards are in statute and would continue to apply on an equal basis by my understanding. [LB145]

SENATOR SCHUMACHER: But now we're involving the criminal law and we're putting in a Class III felony, 1 to 20 years in the penitentiary that flows as a consequence of operating in an unsafe manner. So which... [LB145]

ROBERT HALLSTROM: Senator, I don't believe...unless we drug something that exists in the regulation I'm not sure that we've put new penalties in the bill or weren't intending to. We've intended to either take the existing statute or draw from regulation. For example, the suspension authority has been changed. It used to be suspend the license. Now it's suspend the authority of the executive officer. There were provisions in the regulation, I believe, that's new language in the bill that relates to the ability to fine the active executive officer personally without the bank being able to pay that fine on behalf of the executive officer. But any new language was presumably drawn directly from the existing regulation or at least that was our design and intent. [LB145]

SENATOR SCHUMACHER: Then the statute line 17 talks about who authority has been suspended. In line 27, it talks about suspended with prejudice. What's the difference between just plain old suspended and suspended with prejudice? Is there a different reason for the difference in language? [LB145]

ROBERT HALLSTROM: I'm not aware of that. Perhaps the department can speak to how that's been applied in the past. [LB145]

SENATOR SCHUMACHER: Okay. So as far as your knowledge, there's no distinction between those two? [LB145]

ROBERT HALLSTROM: Not that I'm aware of. There may be in its application, but again, I would think the department could speak to whether or not they've made that distinction in dealing with license revocations. In that regard, Senator, I might also note and my caveat would be if the department is aware of any other cases I'm sure they can let you know, but I spent some time on the Department of Banking Web site and they have a list of all of the orders that have been formally entered or at least the ones that are on Web site that I reviewed covering the period from 2002 to 2014 and it covers the run of the mill, mortgage banker licensing, de novo branching applications, relocations, and license issues involving executive officers. And in that entire time period while my eyes were getting weary by the time I got done looking through 12 years of it, I found six or seven instances that were on the Web site. And, again, if there's another source I can't speak to that, but six or seven instances where a license had been denied or at

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least modified. One instance was a \$500 penalty and when the penalty or the fine was paid, the license was issued. A second one involved someone that got restricted to \$25,000 loan authority for a period of five years. After the five years, they're a full-fledged licensed executive officer. And there were four or five others where I think they outright denied the application. But that seems to be a relatively small population of problems identified and resolved over a 12-year period in the whole scheme of things. [LB145]

SENATOR SCHUMACHER: The penalty is basically up to \$10,000. Any reason for no minimum penalty or no penalty against the financial institution who might have dropped the ball in reviewing the credentials of the person? [LB145]

ROBERT HALLSTROM: Historically it's not been there, Senator. And what we were trying to do, I think those are all issues that we would be more than happy to review and address if the committee is interested in looking down that path, but we were trying to say all we'd like to do is have this bill strip out the paper license requirement and everything that goes along with it without adversely impacting or changing the sanctions, the enforcement, and the authority of the department to act where necessary and appropriate. [LB145]

SENATOR SCHUMACHER: Thank you, Mr. Hallstrom. [LB145]

SENATOR SCHEER: Thank you, Senator Schumacher. Any other questions? If not, thank you, Mr. Hallstrom. [LB145]

ROBERT HALLSTROM: Thank you, Senators. [LB145]

SENATOR SCHEER: Any other proponents to LB145? Seeing none, are there opponents to LB145? [LB145]

MARK QUANDAHL: (Exhibit 2) Chairman Scheer, members of the committee, my name is Mark Quandahl, it's Q-u-a-n-d-a-h-l, and I'm Director of the Nebraska Department of Banking and Finance. And this is where I'm going to deviate from the script just a little bit. But I will tell you that I've been on the job all of about a week and a half now, so a lot of the experience from the department sits behind me. I'm here appearing today here to oppose LB145. Section 8-139 of the Nebraska Banking Act currently provides that no person shall make loans or investments for a state-chartered bank unless he or she has been licensed by the department as an executive officer for the bank. The statute also provides the department with the authority to revoke an executive officer license for acts detrimental to the bank. The law has been in place and virtually unchanged since the 1920s because it has proven to be one of the most important and effective tools available to the department as it carries out its statutory mandates of promoting the safety and soundness of our depository financial institutions and protecting the interests

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of the depositors of those institutions. LB145 would completely repeal the licensing process and permit banks to unilaterally determine whether their new hires meet the statutory tests of good moral character, known integrity, business experience, and responsibility, and capable of conducting the affairs of a bank on sound banking principles. We do not believe this is sound public policy. The department, as a financial institution regulator, has access to sources not available to banks which provide information that is essential to determining whether a person is statutorily qualified. The department also has subpoena power that allows us to obtain records from prior employers. Financial institutions do not have that power. Our records show that executive officer license applications have been submitted for persons who appeared to have fraudulently signed loan documents for borrowers, violated federal currency transaction reporting laws, notarized a signature for an absent person, engaged in check kiting, falsified loan records, converted funds that have been mistakenly deposited into the applicant's personal account, copied customer records to use at a new job, and misappropriated insurance commissions and other funds. In many of these cases, the bank submitting the application was unaware of the negative information until it was provided by the department. Unfortunately, the department's experience also shows that some banks do not check references and others do not verify employment history; some ignore a criminal history, and others disregard a poor financial statement. This is behavior we see more frequently when the pool of available applicants diminishes. In the last month, a bank submitted an application which on its face showed an active bankruptcy, garnishments, a discharge for financial-related misconduct, and a conviction for a drug offense. The bank certified that the applicant met the statutory requirements. While rare, this is a good example of what can and will occur if the licensing requirement is removed. We see no reason for this legislation. The licensing process, while thorough, is not onerous. I have attached a copy of our application to my testimony. As you can see, it's very straightforward. The department has streamlined its procedures in the last few years, and has access to databases, allows for rapid retrieval of information. The licensing process is certainly not costly. By law, the initial application requires a \$50 fee, and there's a \$15 annual fee. The license stays in effect through the officer's employment with that bank, unless the department has reason to suspend or revoke it. LB145 would further remove the authority of the department to revoke executive officer licenses. We strongly object to this proposal. Revocation of any license is an extremely serious matter, and the department uses this authority only sparingly. It is, however, absolutely necessary for those occasions when an officer must be removed from the bank. Licensing of bank officers is unique to Nebraska. We are the envy of other financial institution regulators because of this law. It's a far simpler process to deny an application for a license than it is to revoke a license or, as proposed by LB145, to suspend a person's authority to act as an executive officer. More importantly, the current licensing process has proven that it can prevent unqualified persons from having the opportunity to harm our banks. Banks are quasi-public institutions because they are entrusted with the funds of the citizens of this state. Section 8-139 has promoted this public trust for nearly 100 years, and it should remain unchanged. LB145 should not be

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advanced from the committee. I'd be happy to answer any questions that I could. Thank you. [LB145]

SENATOR SCHEER: Any questions from the committee? Senator Schumacher. [LB145]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. How long is the process from which they submit the 50 bucks and the application to the time that they get the license? [LB145]

MARK QUANDAHL: I'm not sure. I mean, I'd have some other folks to... [LB145]

SENATOR SCHUMACHER: Will someone else be testifying? [LB145]

MARK QUANDAHL: Yeah. I think we could probably have somebody else tell you. I can tell you that in the short time that I've been at the department, I've signed probably 10 to 15 executive officer licenses just in the last week. And so there's a fairly quick turnaround on... [LB145]

SENATOR SCHUMACHER: If someone from staff will be available to answer a question and will be testifying, I'll reserve the rest of my questions for them. [LB145]

MARK QUANDAHL: Very good. [LB145]

SENATOR SCHEER: Senator Campbell. [LB145]

SENATOR CAMPBELL: Thank you, Mr. Chairman. Director Quandahl, and you may want to say I'd like somebody else to answer this, but it seems strange to me all the years that you've had this that if Senator Schumacher is at one bank and then he becomes employed at another he has to start all over again. Do you know the rationale for that, why every time you'd have to apply? That seems...his character or his past history wouldn't have changed, we hope, anyway. (Laughter) [LB145]

MARK QUANDAHL: Right. I do not. I do not know. [LB145]

SENATOR CAMPBELL: Okay. [LB145]

MARK QUANDAHL: So hopefully somebody else can help me out with that. [LB145]

SENATOR CAMPBELL: I'll reserve the questions. Thank you. [LB145]

MARK QUANDAHL: Yep. Thanks. [LB145]

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SENATOR SCHEER: Any other questions for the Director? Thank you, Mr. Quandahl. [LB145]

MARK QUANDAHL: Yeah. Thanks for taking it easy on me too. (Laughter) This was my first testimony as director, so, you know. [LB145]

SENATOR SCHEER: You did great. [LB145]

MARK QUANDAHL: Well, I read the English language fairly well, so thank you. (Laughter) [LB145]

SENATOR SCHEER: Next opponent, please. Whenever you're ready. [LB145]

JOHN MUNN: (Exhibit 3) Thank you. Chairman Scheer, my name is John Munn, J-o-h-n M-u-n-n. I served as Director of the Nebraska Department of Banking and Finance from January 2005 through my retirement in May of 2014. I'm appearing personally today, not at the request of the Nebraska Department of Banking and Finance, and not representing FirstBank of Nebraska whose board of directors I recently joined. In my testimony today, I will use the acronym EOL in referencing the Nebraska executive officer license, and also say that I'm going to cut through some of my testimony because I think it would be duplicative of some stuff you've already heard. During my tenure as director, I visited over 160 of the 175 Nebraska state-chartered banks the department supervised, many of them more than once. In these visits, I seldom encountered resistance to the EOL statute or the EOL application process. This was especially true after the department at my direction in early 2007 improved the timeliness and consistency of the application process. Comments on the EOL process from bankers were generally those of appreciation because the mandated process requires many banks to obtain information about candidates that the bank might otherwise be reluctant to request from someone applying to work in a position requiring the EOL. I'm skipping the next full paragraph. The EOL process is efficient. The 2007 changes reduced turnaround time for EOL applications to seven to ten days for applications where no concerns were noted, and the EOL application process can run simultaneously with the bank's hiring process. The EOL process is cost-effective. The fees, as identified in the fiscal note for LB145, are not exorbitant. I'm skipping the next sentence. Based on the assumptions made in the fiscal note for LB145, the total fees that an average bank out of the 175, they would be submitting 1.5 new EOL applications per year and 13 EOL renewals per year. That bank would pay a total of \$275 to the department in that year. If the changes LB145 proposes are adopted, one of the most useful tools in identifying bad actors in the financial industry attempting to work in Nebraska state-chartered banks will be lost. Through an information-sharing agreement, the department has access to reports of the federal Financial Crimes Enforcement Network or FinCEN. Neither banks nor the public are allowed access to that database. The department conducts a FinCEN search for each EOL candidate to determine if any concerns have

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been reported by financial institutions in the United States regarding past conduct of the applicant, of the candidate. The department also gives notice by e-mail to federal and other state banking regulators of an EOL application and solicits any negative experience of those agencies with the EOL candidate. Because of Nebraska's existing EOL statutory language, no other state banking regulator has the ability to move as quickly as the Nebraska Department of Banking and Finance in removing bank executive officers, especially in situations where the conduct of the executive officer is detrimental to the bank, bank staff, or bank customers. Now I want to make note, comments were made about the differential between state-chartered banks and nationally-chartered banks. The EOL statute has been so onerous that 29 nationally-chartered Nebraska banks converted to state charter during my term. When I began, there were 67 nationally-chartered banks in Nebraska; today there are about 25. As I was preparing my testimony, I assumed that a proponent of the LB145 changes would point out that Nebraska is the only state which licenses bank executive officers, and the statute was enacted in the 1920s. My response is that the EOL statute has served Nebraska well, just as the Unicameral Legislature has served Nebraska well, although we are the only state with that concept. Much has changed since the 1920s--technology, regulatory information sharing, and the mobility of people wanting to work in banking. Each of these changes has made the EOL process more efficient and more meaningful. Thank you for this opportunity to appear before you today to outline the downside of gutting the Nebraska executive officer licensing process. I've supplemented my written testimony with additional thoughts for your consideration. I'll be happy to respond to any questions at this time, and I'm providing additional contact information below if I can be of further assistance in any way. Thank you. [LB145]

SENATOR SCHEER: Thank you, Mr. Munn. Senator Schumacher. [LB145]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. Roughly, what was the percentage of applications rejected? [LB145]

JOHN MUNN: Oh, very minor. And I will say that during my tenure if it was apparent that I felt I could not approve an executive officer license application, I would offer the bank the option of withdrawing the application. So there are many what would have resulted in denials that do not show in the records of the department. [LB145]

SENATOR SCHUMACHER: When you say many, I mean, is there a lot of them or just quite a few over the time you'd been there? [LB145]

JOHN MUNN: Over nine years, whoa, this is really a guess but, you know, at least 40 to 50. [LB145]

SENATOR SCHUMACHER: Okay. What's the rationale that Senator Campbell raised that if you move between banks you don't have a carryover license or a...that you've got

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to start over? [LB145]

JOHN MUNN: Sure, and the same is true when one bank purchases another state-chartered bank. The annual renewal process requires no submission of new information, new credit report, new personal financial statement. What the department has on file is whatever was filed in that individual's executive officer license application 25 years ago. We think, during my term, I felt that it was necessary to obtain new information to see are there people who are licensed to have an executive officer at the bank who are under financial duress, have an extremely high payment-to-income ratio, and in few cases but there were a few cases where we did visit with the incoming management of the bank to point out because of course they had to see the financial statement, too. And generally the FDIC shows a triangle about where bank fraud originates, you know. One was the opportunity to do it. One is the financial pressure behind it. And the third is the rationale. And the financial pressure has caused a lot of the defalcations we've seen in...that I saw during my term as director. [LB145]

SENATOR SCHUMACHER: Some agencies in a licensing process similar to this will have a procedure that you submit an application and either by fax or e-mail or however and there is a provisional license immediately issued, and the department then has 30 or 60 days to review and either not respond, at which time the provisional license becomes permanent or withdraw the provisional license. Is there...that strikes me as maybe being the kind of thing that would be applicable here if this process for some reason is cumbersome, and it must be otherwise somebody wouldn't have wasted the green paper to bring a bill. So is it...what would be the difficulties that you would foresee with such a process? [LB145]

JOHN MUNN: So as not to place especially loan customers of a bank at a disadvantage, an individual would be able to work with that customer under the supervision of a licensed officer for that institution. There's no provisional license for the individual, but the department does accept oversight by a licensed individual while that application is in process. [LB145]

SENATOR SCHUMACHER: If we would later hear testimony or come to our attention that such a provisional license would be desirable, would that fix the problem? I mean, if you submit...you fax in the app, you're licensed unless you hear otherwise from the department basically. And since there's very, very few of these that are problematic, for the most part it's a streamline procedure. [LB145]

JOHN MUNN: I'd be uncomfortable answering that since I no longer head of the agency. [LB145]

SENATOR SCHUMACHER: Okay. Thank you. [LB145]

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SENATOR SCHEER: Thank you, Senator Schumacher. Any other? Senator Williams. [LB145]

SENATOR WILLIAMS: I just have one question, former-Director Munn. Can you help those that aren't bankers sitting around this table understand the philosophical difference of requiring a license like this of an employee at a state-chartered bank and yet there is not a similar license requirement for a officer at a national bank? [LB145]

JOHN MUNN: I really can't. When I was appointed director by Governor Johanns in late 2004, my 29 years of banking experience were in nationally-chartered banks so the executive officer licensing process was completely new to me. After nine years and four months of administering the process, I think it's absolutely the type of due diligence that should be conducted. You know, why not get these individuals at the front door at the time of application rather than waiting until problems have been created? And this process of getting the executive officer out of the bank I think by striking the process that exists, if I'm a bank employee and I'm concerned about Senator Williams conduct in managing the bank, I would be very reluctant to come forward with a regulator or law enforcement if I knew that that individual was still in a position of authority over me. But as to the difference between the two, Senator Williams, I cannot. [LB145]

SENATOR WILLIAMS: Thank you. [LB145]

SENATOR SCHEER: Senator Gloor. [LB145]

SENATOR GLOOR: Thank you, Mr. Chairman. Thanks for your testimony, Mr. Munn. Can you explain to me what the difference would be between suspension of the license or the ability to continue...the ability that this speaks to, to suspend that officer's ability to act or suspend their authorization to act as the executive officer? I mean, I'm trying to decide whether yanking a license is any more significant than what's built into this change in statute, which is, okay, you can't act as the executive officer. I'm assuming that has to do with signing off on appropriate documentation, loan papers, and so on and so forth. [LB145]

JOHN MUNN: Well, a couple of things, Senator Gloor. As I said before, one of the important features of the current process is you deal with it at the front door, generally. But, currently, if problems do develop with someone who holds an executive officer license, and at times it's been the president of the bank, I can request when they come in to meet with me that they bring that executive officer license along with them, so they kind of have an idea of what's going on. We don't have to get a battery of attorneys going, you know. Will we investigate it? Sure. Is there a chance that it may be reinstated? But I'm going to take possession of that executive officer's license if the condition appears to warrant it. [LB145]

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SENATOR GLOOR: I mean, in your experience as Director, was it more helpful, did it come into play more often as a screening for people who were in fact applying to become the executive officer versus people who had acted inappropriately and you had to suspend their license? [LB145]

JOHN MUNN: It was very important in the screening process, and as I mentioned in my testimony, the Nebraska Department of Banking and Finance has access to the FinCEN database; banks don't; the public doesn't, as far as if that individual who maybe worked in Arizona for a while caused a major problem in a financial institution. That would come through to the department. Now that's a suggestion and not a conviction. You know, the department would have to follow up on that, what's called a suspicious activity report and follow up with the institution, financial institution, which filed the suspicious activity report to determine more about the situation and may even call a hearing and call witnesses. [LB145]

SENATOR GLOOR: Thank you. [LB145]

SENATOR SCHEER: Senator Schumacher. [LB145]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. The draft talks about suspension and suspension with prejudice. Does that have any special meaning in the banking world or from the regulatory world? [LB145]

JOHN MUNN: Just my luck I'm not an attorney and just my lay knowledge would say that with prejudice would mean probably not going to go back. I don't think you are, but I don't know that. [LB145]

SENATOR SCHUMACHER: Would you envision that if this bill were adopted where it says it may suspend the authority of the act of executive officer to continue to act as an officer that that would require any type of hearing, delay, how much are we talking about there just from your experience? [LB145]

JOHN MUNN: I have to believe it would, and there is the crux of, you know, what's the situation at the bank? I mean, we had a situation where we posted guards at the bank. I assume you couldn't get there in any short period of time through a process of hearings. I mean, sometimes there's some immediacy to it. [LB145]

SENATOR SCHUMACHER: In the event that immediacy involved one of the executive authority, the president, say, of the bank, couldn't you just close the bank? And what would be the downside approaching it that way? [LB145]

JOHN MUNN: Customer service and there's depositors at that bank that I think the FDIC would have a problem with that if people had insured deposits in the bank. You

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know, unless the capital of the bank was deemed insufficient, I had to close two banks in my nine years and four months and those were both major capital problems. But I think closing the institution would be a very last, last resort. [LB145]

SENATOR SCHUMACHER: Thank you. [LB145]

SENATOR SCHEER: Senator Campbell. [LB145]

SENATOR CAMPBELL: Thank you, Mr. Chairman. Mr. Munn, would you repeat once again what information is available to you? I mean, specifically what do you gain from that one site that no one else gets to see? Can you kind of give us some examples? [LB145]

JOHN MUNN: If a financial institution encounters suspicious activity either on the part of a customer or the part of a bank employee, they are required by federal law to report that in a timely manner to the financial...well to FinCEN, the acronym. [LB145]

SENATOR CAMPBELL: Okay. [LB145]

JOHN MUNN: FinCEN is made available to law enforcement and to financial regulators, and law enforcement especially I think in the eastern Nebraska area they have at least a quarterly meeting of law enforcement officers to review recent FinCEN reports, for suspicious activity reports coming out of the region. The public doesn't have access to that and banks don't have access to that. You'd kind of have to get lucky as far as finding if the individual had had a problem at some institution some distance away from Nebraska. [LB145]

SENATOR CAMPBELL: Thank you. [LB145]

JOHN MUNN: You're welcome. [LB145]

SENATOR SCHEER: Any other questions? If not, thank you, Mr. Munn. [LB145]

JOHN MUNN: Thank you. [LB145]

SENATOR SCHEER: Any additional opponents? [LB145]

PATRICIA HERSTEIN: (Exhibit 4) My name is Patricia Humlicek Herstein, H-u-m-l-i-c-e-k H-e-r-s-t-e-i-n. I'm general counsel for the Department of Banking and Finance, and if you have some questions you'd like to follow up on perhaps I can assist the committee with that. If I could just go ahead and answer Senator Schumacher's question with respect to revocation with prejudice. The department has a rule which was referenced I think in Mr. Hallstrom's testimony, and what it provides is that if a license is

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suspended with prejudice, then that would affect every other license that the person has. We have a number of persons who are licensed with two, three, or four, or more banks, and if their license is revoked with prejudice then it puts the other ones in jeopardy also. [LB145]

SENATOR SCHUMACHER: Does it automatically revoke the other ones? [LB145]

PATRICIA HERSTEIN: Yeah, it would. The rule provides that they would have to surrender those licenses. [LB145]

SENATOR SCHUMACHER: And is that discretionary then with the department as to whether to jerk somebody's license without prejudice or with prejudice? [LB145]

PATRICIA HERSTEIN: It is. [LB145]

SENATOR SCHUMACHER: Okay. Thank you. [LB145]

PATRICIA HERSTEIN: And if you'd like I can have a copy of the rule put into the record. And, Senator Campbell, you had a question, like one person, you know, is longstanding with one bank and goes to another bank. I think the references that have been made to the FinCEN Web site, the Financial Crimes (Enforcement) Network Web site, in most cases provides a lot of information that is not revealed to the hiring bank. We will generally, banks usually or other financial institutions, have to file their suspicious activity reports within a certain period of time after the suspicious activity occurs. And so we see a lot of things that are alleged to have happened right around the time of termination or the actual reason for termination. So you may have someone who has been with a bank 25 years and then, you know, is hired by the bank in the next county. And then the reports that we read, we've had people who were...it was alleged that they downloaded all their loan customers' files onto CDs and walked out the door with them, you know, the morning before they gave their termination. In other cases it was like termination due to a mutual difference of opinion or, you know, one of those vague answers, and it turns out that the person had been accused by their supervisor of violating currency transaction reporting laws when dealing with customers. So, you know, in most cases I would say, you know, a great number of the cases there certainly is not going to be a problem when, you know, a banker moves from one institution to the other. But there are others that because of the access to the information that we have, you know, we can stop them from, you know, creating a problem at the second one. You know, there may also be situations where a regulator has taken a specific look at a person and they leave the bank and we find out information from our co-regulators that there could be a problem with that person. So that's why it's not automatic to move from one bank to the next. [LB145]

SENATOR CAMPBELL: Thank you. [LB145]

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PATRICIA HERSTEIN: And the only other question I wanted to address, the length of time, the process. We do have it down to four to five days at this point in time. We also send e-mail notification as soon as the decision is made so that the person can go ahead and start acting as an executive officer license. We do send out the hard copy license so that they have it for their file and if any of their customers or anyone would ask, but it is...unless there is a problem, something turns up in one of our e-mails to our regulators or databases, it is a very rapid process. Other questions? [LB145]

SENATOR SCHEER: Any questions? Thank you very much. [LB145]

PATRICIA HERSTEIN: Thank you, Senator. [LB145]

SENATOR SCHEER: (Exhibit 5) Any other opponents for (LB)145? Seeing none, are there any that would like to speak in a neutral position on LB145? Seeing none, and, Jan, were there...Jan, were there any written communiques in relation to LB145? (See also Exhibit 5) Okay. No other communiques, so this will end...oh, were you going to close or is he waiting for closing? Okay. With that, then we will close the hearing on LB145. Next bill that we will look at is LB35, Senator Howard. [LB145]

SENATOR HOWARD: (Exhibit 1) Okay. Good afternoon, Senator Scheer and members of the Banking, Commerce and Insurance Committee. I am Senator Sara Howard, spelled S-a-r-a H-o-w-a-r-d, and I represent District 9 in midtown Omaha. This bill was brought to me by Bill Marienau, legal counsel for the Banking, Commerce and Insurance Committee, and this legislation is considered cleanup legislation or, as committee counsel would call it, a Revisor bill on steroids. (Laughter) LB35 would amend various sections of statute to update internal references to Nebraska's business corporation statutes. The passage of LB749 last year resulted in the enactment of the Nebraska Model Business Corporation Act, the new Business Corporation Act, which will completely replace the Business Corporation Act or the old Business Corporation Act. The Nebraska Model Business Corporation Act is the comprehensive body of statute that deals with both domestic and foreign or out-of-state business corporations. These statutes deal with all matters of governance of corporations doing business in Nebraska. And the reason for LB749 last year was that these statutes hadn't been comprehensively updated in over 20 years. These statutes are also affected by the Nebraska Benefit Corporation Act which was passed last year as well. This legislation was passed to allow business corporations to elect to become benefit corporations. It also places duties on directors and officers to consider the efforts of any action or inaction to impact society upon certain criteria. A social benefit corporation is essentially...a normal corporation has a fiduciary duty to produce profits for its shareholders. A social benefit corporation may decide to not only produce profits, but also produce a social benefit. A good example would be, like, Newman's Own pretzels TOMS shoes where they use a portion of their profit for a social benefit. That was also

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passed last year. So on January 1, 2016, the new Business Corporation Act will become operative and the old Business Corporation Act will be outright repealed. During last session, the two other bills, LB402 and (LB)751, contained internal references to the old Business Corporation Act, and they were passed on Final Reading without there having been any practical opportunity to amend them to reflect the forthcoming transition to the new Business Corporation Act. As a result, the Rural Community-Based Energy Development Act and the Nebraska Benefit Corporation Act currently contain internal references to only the old Business Corporation Act. LB35 would change those internal references. I've also brought an amendment, if Jacob is here, if not, maybe Timoree, that makes a technical correction in the bill. They would provide that the changes made by this bill will be operative on January 1, 2016, instead of January 1, 2017. This date is key because that's when the old business corporation statutes are completely repealed and new business corporation statutes become operative. Another bill will be coming to the committee on a later date from Senator McCollister that discusses that date a little bit more and at that time we'll have a more full conversation about that topic. I would happily urge the committee to adopt this amendment and advance the bill. I'm happy to try and answer any questions, although I am not the expert on this. [LB35]

SENATOR SCHEER: Senator Gloor. [LB35]

SENATOR GLOOR: Thank you, Chairman Scheer and Senator Howard and counsel. So was this part of the study resolution that we had carried over this past interim? Not really. [LB35]

BILL MARIENAU: Not directly. [LB35]

SENATOR GLOOR: Okay, okay. And, Senator Howard, you're carrying this in consultation with counsel for this committee? [LB35]

SENATOR HOWARD: Yes, sir, I am. [LB35]

SENATOR GLOOR: Were you treated politely or in a heavyhanded manner by counsel? (Laughter) [LB35]

SENATOR HOWARD: You know, he did that whole mafia thing, but I was going to do it anyway. So it was great. [LB35]

SENATOR GLOOR: I just wanted to make sure we didn't have a personality change in the counsel over the past couple of weeks. Glad to hear that. [LB35]

SENATOR HOWARD: Thank you. [LB35]

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SENATOR GLOOR: Thank you. [LB35]

SENATOR HOWARD: Any other questions? [LB35]

SENATOR SCHEER: Other questions? Apparently not. Thank you, Senator Howard. [LB35]

SENATOR HOWARD: Thank you. It's a great consent calendar bill. [LB35]

SENATOR SCHEER: We will now hear testimony supportive of LB35. Not seeing a mad rush, I would now entertain testimony in opposition to LB35. Seeing the same number coming forward, I would now allow those in a neutral capacity to speak to LB35. Again, seeing no one, would you like to close, Senator Howard? Senator Howard waives closing, and there are no communications in regards to LB35, so this ends the hearing on LB35. We will now take a short five-minute break and we'll reconvene at 2:35. [LB35]

BREAK

SENATOR SCHEER: Go ahead, Senator. [LB115]

SENATOR WILLIAMS: All right. We will call to order the committee and begin the hearing on LB115. We'll be doing...following Senator Scheer's example of having Senator Scheer introduce the bill, then asking for the opponents, the proponents, and the neutral testimony. Turn it over to Senator Scheer. [LB115]

SENATOR SCHEER: Thank you, Vice Chair Williams and my esteemed colleagues on the committee. My name is Jim Scheer, S-c-h-e-e-r. I represent District 19 in the Legislature. I bring you this bill, LB115, in an effort to crack down on one of the most obvious ways our citizens can suffer from the impact of identity theft, that is the illegal use of a Social Security number. Everywhere we turn somebody wants our Social Security number. It's required in almost a daily cause of life. The bill takes a couple of approaches. First, it says an individual shall not be required to disclose or furnish his or her Social Security number. And, secondly, it says that the individual shall not be refused any service, privilege, or right because he or she refuses to disclose or furnish his or her Social Security number. There are exceptions built into the bill. The bill would not apply if a Social Security number is required by law or if it's used for a criminal background history check of the individual by an employer or a volunteer service organization. Of course, the individual can choose to allow the use of his or her Social Security number if she so desires. It's a fairly short opening. I suspect there might be some that do not share my enthusiasm of this bill, and so I will try to do recovery work at the end during my closing. If there's any questions to this extent I would feel free to answer those at this time. [LB115]

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SENATOR WILLIAMS: Questions for Senator Scheer? Senator Gloor. [LB115]

SENATOR GLOOR: Thank you, Senator Williams. Senator Scheer, was this an issue that came to you by upset constituents or is this just something that's been a personal problem or challenge that you've absorbed over the years? [LB115]

SENATOR SCHEER: Actually both, Senator. I have probably had no less than 30 to 40 contacts by constituents in and around my district in regards to this. And, secondly, I have been a product of identity theft. I was one of those lucky ones that were part of the institutional hack of the Target Corporation. And so it is a personal issue as well as a constituent's issue. [LB115]

SENATOR GLOOR: Do you think your Social Security number was the reason that it was compromised or is it just one of the contributing factors you're concerned about? [LB115]

SENATOR SCHEER: Certainly from my understanding it is the gold standard that those hackers would be trying to provide themselves with is your Social Security number. That seems to be the ultimate goal of hacking is not necessarily your birth dates, but more along the line of the Social Security number. [LB115]

SENATOR GLOOR: Okay. Thank you. [LB115]

SENATOR WILLIAMS: Senator Schumacher. [LB115]

SENATOR SCHUMACHER: Thank you, Senator Williams. How did Target Corporation get your Social Security number? [LB115]

SENATOR SCHEER: It was on I'm assuming my application at some place in time. [LB115]

SENATOR SCHUMACHER: For credit or something like that? [LB115]

SENATOR SCHEER: I'm assuming like a credit card of some type. [LB115]

SENATOR SCHUMACHER: I mean, what evidence do you have that they actually got it? [LB115]

SENATOR SCHEER: Target sent me a letter saying that it had been stolen from their database that I was one of the affected clients and that they had lost information to an intrusion by. [LB115]

SENATOR SCHUMACHER: Did they specifically say it was your Social Security

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number that the thieves got? [LB115]

SENATOR SCHEER: They noted the items taken were your name, address, and one of the items was Social Security number. [LB115]

SENATOR SCHUMACHER: It might have been one or another of the different things. I mean, I just find it exceptional that you would have had to have given your Social Security number and that number would have gotten to Target's records. [LB115]

SENATOR SCHEER: I'm sure at some point in time my illustrious spouse had probably determined it was a great deal to get an extra 10 percent off that daily purchases or something that she applied for a credit card at Target so she was able to conserve financial position. But I'm not trying to imply that they obtained my Social Security number under a false or devious situation. We certainly gave it to them freely. But what we didn't give was the assumption that it would be...have availability for others that were not authorized to have that information to have utilization somewhere, anywhere, within the world. [LB115]

SENATOR SCHUMACHER: Now as you use it here when you talk in terms of Social Security number, if for example a business or procedure asks for like the last four digits of your Social Security, that would not be covered by this bill? [LB115]

SENATOR SCHEER: Technically I believe it does right now, but I wouldn't necessarily be opposed to allowing that the last four digits of a Social Security number by amendment. [LB115]

SENATOR SCHUMACHER: Thank you. Senator. [LB115]

SENATOR WILLIAMS: Senator Craighead. [LB115]

SENATOR CRAIGHEAD: Senator Scheer, if Social Security number is required there's no other documentation available and if the person refuses to give that, what is then used in place of that if that's the only documentation that can be used? [LB115]

SENATOR SCHEER: I'm not...if it is something...if the Social Security number is required by federal or state law... [LB115]

SENATOR CRAIGHEAD: And is refused. [LB115]

SENATOR SCHEER: If you refuse, then you do not get the service or the product that you are trying to get. I mean, this does not circumvent that ability. If it is required, you must provide that or you would not receive the service or the product that you are trying to receive. [LB115]

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SENATOR WILLIAMS: Other questions for Senator Scheer? If not, thank you, Senator Scheer. We would ask those who are proponents of this legislation to please come forward. We would then ask those that would be opponents of this legislation to please come forward and testify. [LB115]

GALEN ULLSTROM: Vice Chair Williams, members of the Banking, Commerce and Insurance Committee, for the record, my name is Galen Ullstrom, and that's G-a-l-e-n U-l-l-s-t-r-o-m. I'm senior vice president of Mutual of Omaha Insurance Company appearing today in opposition to LB115. I'm appearing in opposition based on the language, the current language, of the bill. Conceptually, we support efforts to stop identity theft. We think frankly the use of Social Security numbers in a valid context prevents identity theft in certain circumstances. So it's not a conceptual issue; it's the way that this is being approached. As Senator Scheer explained, the bill basically would prohibit any person from requiring a Social Security number or refusing service to that person for failure to provide that Social Security number except in limited circumstances: (1), consent of the individual; (2), expressly required by law or reg; and, (3), criminal background checks. We have supported what I consider reasonable Social Security prohibitions in this Legislature. In 2007, we worked with Senator Lathrop and the Judiciary Committee to enact LB674 which provides limitations on the use of Social Security numbers by employers. It's codified as section 48-237 of the Nebraska statutes now, and basically approaches it differently because it has a list of things that you cannot use Social Security numbers for, such as you can't publicly post or display the Social Security number without it being encrypted in some way. You can't require the transmission of a Social Security number over the Internet without it being encrypted and those things. But it also allows, has a broad exception, for administrative purposes within the employer's context. Insurance companies use Social Security numbers in a number of ways, some of which is to comply with federal law. It may not be expressly required by federal law, but it's used to comply with it. A couple of those are the PATRIOT Act which was passed after 9/11 which requires us to know our customers, to identify them, and try to prevent money laundering. Another one is the Office of Foreign Asset Control which says before we make payment on an applicant we must check their list, their OFAC list, to make sure this person is not an undesirable that we're making a payment to. Beyond certain federal laws, we use it in the underwriting process, beginning with the underwriting process and probably through the claims process. In underwriting, we use it to verify financial information and medical information that is proposed on the application to see if we've got the correct individual and the correct information. We also use it to validate service requests from a policyholder. If someone calls in and they don't have identifiable information or don't have a policy number, we can request a Social Security number which will identify them in our system. In the administration of employee retirement plans to make sure that the contributions we receive are credited to the correct accounts, we can't go solely by name so we use a Social Security number to make sure that happens. The same way when we transfer

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assets in qualified plans. If we are requested...we have an IRA on an individual, we're requested to cancel that IRA, transfer it directly to another financial institution. We have our policy number. The other institution has their account number. They don't necessarily track. The common identifier is Social Security number to make sure that money gets to the right place. We also use it as a policy locator. If someone calls up and said my father died, I'm not sure he's got a policy. I saw something in here from United of Omaha. Will you verify that? They may not have...they may not be able to find the policy, but we can track it under Social Security number if we have one. In addition to that, we've also used it to comply with certain state laws. Well, 1099 reporting, for example, if we have to make distributions, we report those funds. I doubt if there's anything in the specific requirements that says we explicitly require the Social Security number. It's just a way that is easy to make sure we're reporting the right amount on the right person. There are certain state laws. They're called, you know, deadbeat parent laws where people are not paying child support. So before we can make a payment out, we're required to check those. We do the same thing in some cases on Medicaid eligibility where we...someone did not disclose they had other medical insurance, we do a crosscheck and that reference is often used by Social Security number. So I guess another one more recently in the news, unclaimed property laws where we cannot find a beneficiary, we cannot find...we don't know if someone is deceased, we're now being required by certain states to use the Social Security database, the death master file, to go in and determine whether or not we have a match. One of the ways we can identify a John Smith from our John Smith is by the use of Social Security number. So we use that also. Again, we're very concerned about the confidentiality of this information and identity theft. We are subject as a financial institution to the Gramm-Leach-Bliley federal law. We're also subject to state privacy laws here in Nebraska of certain things we can and cannot do with that information. We report this information. It is considered protected private information. We don't disclose it except in these unique circumstances. And if there is a breach, we're required to go through the breach procedure and notify the individual that there has been a security breach. So we think we treat it confidential, but we don't want to put Nebraska and Nebraska citizens at a disadvantage because if we can't use that information, they may not be able to get some of the services that we think we should provide. There are approximately...after Nebraska enacted their law in '07 which was based on California law, there are approximately 40 states that have similar laws, and they've all approached it the same. They've enumerated what you can't do, but they haven't been as broad to say you can't do anything except for certain enumerated things. And that's the concern that we have is the unintended consequences of it, not the intent in any way, shape, or form. We certainly don't like the breaches that are going on, but right now there is not a substitute for a Social Security number. It is the only exclusive identifier that is recognized and that other institutions use, and there is not a substitute nor do we anticipate a substitute in the future. Congress has looked at this since probably 2003 or 2004 and has not been able to come up with anything that would be a substitute and has recognized that even though states who have passed laws, Congress has not enacted anything that would

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prevent the uses that we're doing and we feel we need to do in order to conduct our business. So thank you. And be glad to answer any questions if I can. [LB115]

SENATOR WILLIAMS: Questions for Mr. Ullstrom? Thank you. [LB115]

GALEN ULLSTROM: Great. Thank you. [LB115]

JIM DOBLER: Senator Williams, members of the committee, my name is Jim Dobler, that's D-o-b-l-e-r, and I'm a registered lobbyist and I appear today on behalf of Nebraska Insurance Information Service. This is a trade organization organized here in Nebraska, and it consists of property and casualty insurance companies. The member companies as a group write the majority of the auto, homeowners, and farm owners business here in the state of Nebraska. For the new members of the committee, just take a moment about me. I spent most of my legal career in the property and casualty insurance industry. A couple of years with the Nebraska Department of Insurance, and then about roughly 33 years with Farmers Mutual Insurance company of Nebraska which is located here in Lincoln. I retired from Farmers Mutual as executive vice president, secretary, and general counsel. My comments are just focused on Farmers Mutual's practice. That's what I know. Farmers Mutual does use a Social Security number for automobile insurance and homeowners insurance. The number is used to collect credit information, and credit information has been shown to be a very good predictor of loss. So folks with good credit information tend to be a better risk; folks with bad credit information are not as good a risk. And so this information, the credit information is built into the rate system that the company uses for homeowners and automobile insurance. The impact of LB115 would be that if an applicant did not want to give us the Social Security number, we would still be required to accept that risk, but there would be nothing there about credit information and they would be rated neutral in terms of their credit standing. That would mean that if they happened to actually have poor credit, their rate and the premium they pay will be lower and better than what it otherwise would be if we had the actual credit information. Ultimately what that does is those with good credit will subsidize those with poor credit for which we have no credit information. That's the issue as we see it for the product we write. Currently, if someone will not give us a Social Security number, we would decline the application. Say, too, our experience has been generally people do. It isn't something that comes up a lot. But credit information and the use of a Social Security number is part of our business process. And so with that, I'd be happy to answer any questions. [LB115]

SENATOR WILLIAMS: Questions for Mr. Dobler? Senator Schumacher. [LB115]

SENATOR SCHUMACHER: Thank you, Senator Williams. Do the insurance companies that you represent write up, like, liability insurance for various businesses? [LB115]

JIM DOBLER: Yes, there are a lot of the members companies that would write

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commercial coverage. [LB115]

SENATOR SCHUMACHER: And if one of those companies that they wrote a policy for backed up their business files to the cloud and the cloud rained them out and would your policies cover that? [LB115]

JIM DOBLER: Senator, offhand I don't know. Farmers Mutual was a personal lines company. It writes farm owners, auto, and homeowners, so it does not write that kind of exposure. I can tell you generally that the basic commercial policy is a commercial general liability policy. And what kind of protection it provides for forms of identity theft offhand I don't know. I can't say. [LB115]

SENATOR SCHUMACHER: Because Senator Scheer's bill does raise some interesting facets with the current craze of not having your information locally stored, sent out to the cloud. Assume your employee information is sent out to the cloud and that certainly requires Social Security numbers as to how we're dealing with that exposure at an insurance level and at a privacy level seeing how nobody can find the cloud. [LB115]

JIM DOBLER: Senator, you raise a very good point. And as Mr. Ullstrom said, too, and the property and casualty side feels the same way. We're very concerned about the issue. I think it's critical we try to do everything we can to prevent identity theft and those kinds of things. And no doubt there is an exposure out there that in some form or another I would assume is covered by some kind of insurance product. And in that sense, yes, it's a very difficult thing and a great concern to all of us, and from the perspective of a company that would insure that exposure I'm sure they can very much appreciate the concerns and things that Senator Scheer's bill raises. [LB115]

SENATOR SCHUMACHER: Thank you. [LB115]

SENATOR WILLIAMS: Additional questions? If not, thank you, Mr. Dobler. [LB115]

JIM DOBLER: Okay. Thank you. [LB115]

KIM ROBAK: (Exhibit 1) Senator Williams and members of the committee, my name Kim Robak, R-o-b-a-k. I come to you today on behalf of First Data Resources, a company with an office in Omaha, and also eBay, which some of you may have heard of and has an office, a PayPal office, in Omaha as well. As you've already heard, Social Security numbers shouldn't be used everywhere, but there are some places where Social Security numbers are very important. And so I've passed out to you a proposed amendment to the bill that would address the concerns from First Data and eBay's perspective. You see that section (2) states specifically that Social Security numbers can only be used when they're expressly required by federal, state, or local law. And amazingly I found out that most federal and state and local laws don't expressly require

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the use of Social Security numbers, but they do allow it. And they allow it for a number of reasons. And then sections (d) and (e) are taken directly from the federal privacy act, the Gramm-Leach-Bliley Act. And so that language mirrors exactly what's in federal law. So let me give you why these provisions are important specifically to First Data and eBay. What First Data does as a company that deals with fraud protection and as a company that deals with credit cards is what they do is they use Social Security numbers for two main reasons, number one, to identify who you are, and also to determine are you the person you say you are and then also are you the person who's authorized to transact this particular transaction. So, for example, First Data might be contracted, a bank may contract with First Data to provide fraud prevention services or to open accounts in particular. So ABC Bank says, we want you to run our credit card services and so part of opening a credit card, as many of you have found out, as I found out, you have to give your Social Security number. I have often not opened credit cards because of that very reason. I don't want to give my Social Security number any more than I have to. So what happens is that Social Security number comes to First Data when they open that account, and in Omaha someone will look at it and I just discovered that the first three numbers corresponds to the date when you were born. But evidently there are other things that are in that Social Security code that were not disclosed to me because they're proprietary, but they can tell when they look at that Social Security number if you are in theory who you say you are. So if somebody has stolen a Social Security number, they have methods or algorithms of determining who you are. Social security numbers are the only piece of identity so far that always stays with you, it doesn't change. Account numbers change. Surprisingly, driver's license numbers can change--it's rare but they can change. But Social Security numbers do not change. So if you provide your application and you don't give me a Social Security number because you're not required to under federal law, First Data would refuse to give you that credit card because they wouldn't be able to determine if you are who you say you are. Also, under the federal Bank Secrecy Act, when you're verifying an account the federal law requires that you verify the identity of someone before you open this new service, but it doesn't require that you use a Social Security number. Amazingly, however, bank regulators will tell you that a Social Security number is the best way to do it, but it's not expressly required. So this bill would prevent you from using a Social Security number when opening a bank account as well. Finally, when you've lost your credit card or your card has been stolen and you're going to report it to somebody, the number on the back of your credit card if it's a First Data credit card will go to Omaha. And someone in Omaha will answer the phone and they're going to ask you for your Social Security number. And the reason they're going to do that is they're going to ask you for a whole bunch of other things as well because they want to again know that you didn't just find a card someplace and you're pretending that somebody has stolen it so that you can get access to financial information. But they will ask you a whole bunch of other information, but that Social Security number is the one method by which they can help determine if you are who you say you are. So this language I think would go a long way in helping to meet the needs that Senator Scheer has identified,

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but also protecting those individuals who are actually trying to protect the consumer and using the Social Security number to do that as well. So with that, I'd be happy to answer any questions. [LB115]

SENATOR WILLIAMS: Questions? Senator Gloor. [LB115]

SENATOR GLOOR: Thank you, Senator Williams and Ms. Robak. Senator Scheer has introduced the bill to attempt to limit some of the fraud and abuse that goes on and you're saying that to a certain extent Social Security number is imprinted within our society within business dealings and whatnot for that very reason, and your amendment would try and moderate that to a certain extent so that we can still keep the use of Social Security number to limit fraud and abuse? [LB115]

KIM ROBAK: It would for those companies like a First Data that tries to both identify you on the front end and also identify you on the back end and protect you from fraud. Exactly. [LB115]

SENATOR GLOOR: Okay. [LB115]

SENATOR WILLIAMS: Other questions? Senator Schumacher. [LB115]

SENATOR SCHUMACHER: Thank you, Senator Williams. I assume First Data has customers, inaugurations under common management in other states besides Nebraska. [LB115]

KIM ROBAK: That's correct. [LB115]

SENATOR SCHUMACHER: Okay. How would one state adopting one set of rules and another state adopting another set of rules or maybe no rules and all these nonuniform rules affect the flow of business operations? [LB115]

KIM ROBAK: I would guess, Senator, that it would make it very difficult for them to do. What they would have to determine is if an individual were calling from a place in Nebraska or were operating with a Nebraska bank that we would have to apply Nebraska law to that. But they were hopeful that they wouldn't have to address that issue because this language would comply with federal law. And so...but I do know that other states have attempted it and they've fought it in other states as well because it makes it difficult to transact business and interstate commerce. [LB115]

SENATOR SCHUMACHER: So this basically is federal law, what you've handed out here? [LB115]

KIM ROBAK: It mirrors federal law. It mirrors the Gramm-Leach-Bliley Act which is a

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federal privacy act. [LB115]

SENATOR SCHUMACHER: How much would we gain or lose by doubling up and putting it into state law? [LB115]

KIM ROBAK: I'm not sure that you gain anything from the state law perspective, but it would protect companies like First Data from having to deal with a myriad of different types of laws and being unable to transact business here and prevent fraud in a place like Nebraska. [LB115]

SENATOR SCHUMACHER: But if this is already the federal law, do we gain anything by dittoing it? [LB115]

KIM ROBAK: Probably not, Senator. Probably not. [LB115]

SENATOR SCHUMACHER: Thank you. [LB115]

KIM ROBAK: It just ensures that we continue to operate. [LB115]

SENATOR WILLIAMS: Additional questions? Thank you, Ms. Robak. Mr. Rieker. [LB115]

BRUCE RIEKER: Good afternoon. My name is Bruce Rieker. It's B-r-u-c-e R-i-e-k-e-r. I'm vice president of advocacy for the Nebraska Hospital Association, appearing in opposition to LB115. To echo, but not to reiterate many of the comments that have already been made, this is a valid issue, identity theft. We recognize that and appreciate the intent of the legislation. However, as drafted, it's problematic to the healthcare industry as well. Many of the issues have already been outlined by previous testifiers, especially from the insurance industry as to how several of those things would play in the healthcare world. There are already some protections for information such as this, private information such as Social Security number, that are embedded in the HIPAA--the Health Information (sic--Insurance) Portability and Accountability Act--but also there are measures with electronic medical records requiring encryption. Mostly, those things are at the federal level to put in place some protections. There are several components that...just as one of the previous testifiers talked about credit risk, one of the things that's going on in the healthcare industry, especially in the hospital field, is that from 2008 to 2012 our bad debt incurred by Nebraska's hospitals went up from \$175 million to \$247 million, so well over a 40 percent increase. And one of the measures that would help us avoid/reduce the cost shifts that are moved to those that pay their bills is the ability to contract with third-party contractors to recover some of those monies that are owed to healthcare so that we can do our best efforts to control the costs. Another thing with regard to our concern about the language of the bill is that for preadmission for elective procedures done at the hospital, for a credit check of those

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individuals to see if they have the ability to pay, similar to the credit ratings that the insurance folks have already talked about. If, for some reason, they're not going...the individual is not going to provide us the Social Security number, then there is no way for us to verify that credit risk. But the bill as written would put in place...would restrict us from being able to refuse service. So we would have to take everyone, regardless of their ability to pay, not only because of...through the emergency room, but also for elective surgeries and other procedures in the hospital. As Kim Robak also testified, there is a component to...I mean, just as it protects some against fraud, there is also an issue of patient safety in the healthcare world. Many of our hospitals, they're not required to collect a Social Security number; but, however, they use that as one of the many identifiers to make sure that that patient is, in fact, who they are and that they receive the proper procedure that they came to the hospital for. So with those particular concerns, we would...we do oppose the bill and...but would work with the committee and Senator Scheer if this is something that you intend to move forward. [LB115]

SENATOR WILLIAMS: Questions for Mr. Rieker? Very good. Thank you. Mr. Sedlacek. [LB115]

RON SEDLACEK: Thank you, and good afternoon, Vice Chairman Senator Williams and members of the Banking, Commerce and Insurance Committee. For the record, my name is Ron Sedlacek, S-e-d-l-a-c-e-k. I'm here today and would testify on behalf of the Nebraska Chamber of Commerce and Industry. Certainly--I have to echo others before me--it's sensible to be concerned about identity theft and privacy issues, especially when handing out something as valuable as your Social Security information. However, when we look at the particular bill before us today, we've had just a lot of members communicate with us toward the latter part of last week, and particularly this morning, as well as association members who have expressed particular concerns. And in writing down the notes of these e-mails or telephone conversations, I can put it in about five areas and I'll be as brief as possible and not be redundant. While there are some federal contractors that are required to use E-Verify, from the state level there is a required use of E-Verify in some situations, such as you wish to take advantage of economic development incentive benefits. Not all employers are using or are required to use the E-Verify system; however, they're encouraged, as you know, more and more, that this is a protection, an outlet that can be utilized. This bill does not address that. There are a number of employers who do voluntarily use E-Verify in the course of employment issues, and so that is something that has not been carved out. Secondly, there are a number of employers who require credit reports, not just criminal background checks or general background checks. Credit reports may be in areas where there is sensitivity as far as client information, business protection for accounts and assets and so on, and that is not addressed in the legislation as well. Aside from the employer, of course, there are many businesses that require credit reports as well. A landlord may require one of the tenant in an application. Certainly, you're not going to be making an offer and then find out later that the...you should have had the credit

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report. But it's for the protection of the landlord. Or in many cases it might be utility services or cell phone services or, you know, those types of things where there is a credit risk. We already heard from the insurance industry in that regard, as well as the hospitals. For employers, again, when employed, the employees are often offered a package of benefits--maybe life insurance, certainly health insurance, long-term care, disability, retirement benefits, pension, 401(k)s, and so forth. Often, these are provided by third parties, and the third-party providers are requesting the information. It's the employer that collects, fills out the forms, and begins the enrollment on behalf of the employee, technically, again, under the bill. It's the employer collecting information that is not required by law, but they're doing it because it's required by the provider. The provider, in turn, may or may not be required by federal, state, or local law to collect that information, but they're doing so for whatever purposes. They're requesting the information and, in order to get the benefits, the employer needs the Social Security number. A question we have is in regard to--and this would be the third point--where a business deals with an independent contract or an agency and there is, of course, the threshold in the amount of compensation received by that independent contractor should be a sole proprietorship or an agency where there is required federal reporting for (Form) 1098 purposes. But it's not always required if it's under a certain threshold. Well, it's always easier to get the Social before you've reached that threshold as opposed to after you reach that threshold. And then you need to comply with the IRS but you don't have the number up front. So technically, you would be in jeopardy of violating this law by asking for the number prematurely. A question we have or that has been fielded is: What is consent, if you get the consent of the person? Certainly, we know it would express consent. But is that oral? Or must it be in writing? Or in filling out an application and it's...a Social is voluntarily given, is that implied consent or does there need to be a disclosure, a separate paper? It's just ripe for litigation in that regard, so there's going to have to be some standard that would have to be set, and we're not comfortable with the language. Other than those five points--and we'll probably be fielding more as time goes on--one thing I did learn in just preliminary research on the issue is that the last four digits of the Social Security number are more valuable than you think because, as you may know, the first three digits of your Social usually identify, in most cases, where you were born. Okay? And so all you need, really, is where were you born and if you can find out the birth date because then you can narrow down and, if you're a sophisticated identity thief or identity theft ring, there are algorithms going through both in death certificates, in birth certificates, in getting the timing. They might not get it right the first, second, or third time, but maybe the fourth or fifth, and you can get pretty darn close to someone's number, if not reach that number, just knowing those last four digits and the other information, just to leave that thought with you. The last four doesn't necessarily guarantee identity... [LB115]

SENATOR WILLIAMS: Thanks for helping me sleep tonight. (Laughter) [LB115]

RON SEDLACEK: That's all right. And if you need... [LB115]

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SENATOR WILLIAMS: Questions of Mr. Sedlacek? [LB115]

RON SEDLACEK: And I can always come by later. [LB115]

SENATOR WILLIAMS: Thanks, Ron. [LB115]

RON SEDLACEK: You bet. [LB115]

COLEEN NIELSEN: Good afternoon, Vice Chairman Williams. Members of the Banking, Commerce and Insurance Committee, my name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for State Farm Insurance Companies, testifying in opposition to LB115. I am particularly testifying on behalf of State Farm Life Company. I will not repeat the testimony that you've heard before. But essentially, State Farm Insurance Companies use Social Security numbers for the taxable events, such as payment of interest on dividends, financial reports when they do background checks on people who are purchasing life insurance policies, particularly life insurance policies of larger amounts. And finally, it is used for searching the death master files for claims. And with that, I'd be happy to answer any questions. [LB115]

SENATOR WILLIAMS: Questions for Ms. Nielsen? [LB115]

COLEEN NIELSEN: Thank you. [LB115]

SENATOR WILLIAMS: Thank you. [LB115]

JANIS MCKENZIE: Senator Williams, members of the committee, for the record, my name is Jan McKenzie, spelled J-a-n M-c-K-e-n-z-i-e. I'm executive director and registered lobbyist for the Nebraska Insurance Federation. I had an opportunity to introduce myself to the new members of the committee this morning in the Rotunda and provided them with some information that the rest of you have received before. The Nebraska Insurance Federation is a federation of Nebraska domestic companies. They are the companies who are domiciled here or, in some cases, have significant regional presence here with...for instance, State Farm is a regional presence and we allow them to be members. As you know if you've been on this committee before, my focus and the federation's focus is keeping the strength of this industry the way it is. We continue to grow. We've added two more companies as Nebraska-domiciled companies in the past year. We continue to grow the companies who are here as they employ new people and build new buildings. And I think it is always our number-one priority to make sure that Nebraska stays a good environment for our industry. We are the largest insurance state west of the Missouri. I won't say "Mississippi" because that Iowa is over there always trying to steal our companies away. We're very competitive with each other as states in procuring new companies. The other thing I would remind you, if you're old on the

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committee or a new person, is that the most important thing to companies who do business in multiple states is uniformity. And for Nebraska to ever step out and do something that is so uniquely different in terms of a business practice that that inhibits their ability to do business for Nebraskans or in other states is always of concern. And so I would just add those two additional points. I'd answer any questions. [LB115]

SENATOR WILLIAMS: Questions? [LB115]

JANIS McKENZIE: Thank you. [LB115]

SENATOR WILLIAMS: Thank you. Any other opponents to testify? Anyone here to testify in a neutral capacity? Mr. Hallstrom. [LB115]

ROBERT HALLSTROM: Vice Chairman Williams, members of the committee, my name is Robert J. Hallstrom. I appear here today on behalf of Nebraska Bankers Association in a neutral capacity. I was thinking interchangeably of whether or not I was the Lone Ranger or the Maytag repairman in coming up after all the opposition. But at any rate, I, too, would echo the fact that the banking industry is very sensitive and has federal responsibilities under the Gramm-Leach-Bliley Act and other federal regulations to not only protect their customer information, but to ensure that the vendors that they work with do so as well. So we do not take the introduction of Senator Scheer's legislation or what it's attempted to bring about lightly. I think I would just say that we perhaps can look to section 48-237 as a model to making some changes to carry out the intent of the legislation. The banking industry would suggest that there is a significant requirement between things that are expressly required under federal law, as opposed to those where utilization of the Social Security number may help us comply with federal requirements, and would just pledge to work with Senator Scheer and the committee with regard to those types of issues. Be happy to address any questions that the committee may have. [LB115]

SENATOR WILLIAMS: Questions for Mr. Hallstrom? Thank you. [LB115]

ROBERT HALLSTROM: Thank you. [LB115]

SENATOR WILLIAMS: (Exhibit 2) Any other witnesses to testify in neutral? We do have a letter to pass out from the Department of Health and Human Services, if you would, please. That's a neutral position letter. Would invite Senator Scheer to close. [LB115]

SENATOR SCHEER: I would simply start by saying the sky is not falling. Things would be done differently. Change is always difficult for any industry. But listening to the opponents, there are some things that possibly could be massaged in this bill and there are some things that I think they've perhaps taken out of context or out of perspective. Yes, if somebody wanted to take the time and they got your first three Social Security

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number, three digits, they could mine and they could do something like that. But identity theft people are not going after "a" individual; they're going after thousands. This isn't what we're talking about; we're not talking about mining a field to try to get Bill Marienau's Social Security number or Senator Williams' or mine. They're trying to get thousands at a time. So we're really not talking about the availability of any part of a Social Security number. A concern that was not discussed that is a concern as well as part of this bill, we heard about federal regulation that controls what companies have to do with identity theft. But the problem is, literally, every business in the United States now is computerized. Their client files are all computerized. It doesn't have to be First Data that gets hacked. I've got three employees. If somebody wanted to, they probably could go in and hack and farm a bunch of information out of my computer. And to answer your question, Paul, yes, insurance is available; it's not included; and it's very expensive. So most people from my size or even a little larger probably aren't going to buy that because we're probably limited liability corporations or incorporated as a "sub S" or some other type. If some type of event happened to that company, we'd probably walk away. I wouldn't have the ability financially from...as a company perspective to cover all the identity theft protection that I would be required to do for the two-year period under the federal law. Most small companies wouldn't. And we have to start thinking about the population of the state of Nebraska, who we're trying to protect. I'm not trying to put business out of business in Nebraska. I'm trying to encourage business in Nebraska, but I also think we have an obligation to protect the citizens and their Social Security numbers in the state of Nebraska. There's a lot of talk about the financial institutions--you know, "We have to have the Social Security number." And they're absolutely correct. If you're a bank and you're going to be paying interest, by law, by federal law, you have to have the Social Security number because you have to report it to the federal government. This isn't changing anything. But if you're calling Cable One or Cox Cable or something, they don't have to have your Social Security number. You know, are there other ways to identify an individual? Yes, there are. When I call my credit card company, they don't ask for my Social Security number. There may be other companies out there, but I have two identifying questions that they ask me that I selected the answers for. It is a Social Security number. They ask those questions. If I don't answer them correctly--and one time I didn't because I forgot what my favorite dog's name was (laughter)--I had to literally write them a letter and have them call me so that I could change those questions. So there are protections in the system. We talk about having uniformity within the state, but yet the first individual from Mutual of Omaha got up and talked about the bills were changed in 2007. We were, I think, one of about ten at that point in time and, since then, maybe another 30 have corrected. But at some point in time, we were an odd guy out. There wasn't uniformity; in fact, there's not uniformity right now. All 50 states don't have the same laws in respect to identity theft or the coverages or the availability of Social Security numbers. That's the problem. There is no uniformity. Hospitals say, we've got to have it. Well, I will tell you this: I was with an individual that was in the hospital yesterday. And when we checked in, they did not once ask that individual for their Social Security number. And when we went back to

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have a procedure done, not once did they ask that individual what their Social Security number was. What did they ask? They asked what their name was and what was your birth date. That's how they verify that they have the right person or not. They aren't running around asking if you've got your Social Security number. So we're not causing all these insurmountable problems by simply trying to restrict the use of Social Security numbers. The chamber talked about the availability of having employees--my god, what are we going to do because, you know, we've got employees, we need Social Security numbers. My god, if you're an employer, you already have the Social Security numbers. You have to have them. You have to report their taxes. We're not changing anything from an employer's standpoint. If you go to work for an individual, you have to, by law, give them your Social Security number because they have to report your income in the taxes. Nothing changes from a business standpoint. Will things be different? Certainly. Will things have to be done differently? Certainly. But that doesn't mean that we ought not do them, that we ought not protect the citizens in the state of Nebraska. You know, I'm fortunate. You know, I was notified that I was hacked and I could start watching it. Sometimes that doesn't happen. Sometimes companies don't even know they've been hacked and all of a sudden you start getting charges and you haven't the slightest idea where it happened at. Did it happen at a restaurant or some other store where somebody copied your card or at a gas station where somebody's plugged something into the pump where the next person that uses their credit card, they can come back and pull that information off? There's a lot of ways to scam people. But we shouldn't make it easy or accessible for them to get the Social Security number. It may be somewhat of a universal identifier, but it was not meant to be a universal identifier. It was meant to be your number and exclusively for your Social Security benefits so that your benefits were kept separate from mine and everyone else's. There wasn't supposed to be a common denominator that everybody had so that every place in industry can have some number that they find that they can use. That wasn't the case at all. We can have individual identifiers. Right now, the state of Nebraska, for example, every child, all 250,000 kids, 300,000 kids that are in school in the state of Nebraska all have their own unique identifier. Did it cost the state a little bit to do that? Absolutely. Will it cost businesses a little bit to come up with identifiers? Certainly will. But their identification is not at risk. Every one of those kids have a Social Security number. Why do you suppose we didn't use that? Because we didn't want to put it at risk. We shouldn't put anybody at risk. Is there some language that would maybe make this more palatable? Might be; certainly worth looking at. But is the concept and the proposal to try to protect Nebraska citizens from identity theft, is that important? I think so. I think it's something that this committee should look at and it should be a priority of ours to try to protect citizens. Life is not the same as it was 20 or 30 years ago. Things have changed. We aren't going to go back to the way it was. Thirty years ago, anybody that walked into an office, even if they were closed, how many Social Security numbers could they steal in a given half-hour, hour that they possibly would be in there? Maybe a couple hundred. Now, with the flick of a button, they're going to probably be able to steal millions of Social Security numbers within seconds. Things are different. We do have to

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change. We do have to have some different safeguards in place. We do need to protect one another. Is this the answer? Don't know. I think it's a step in the right direction. Can we make some changes to it that perhaps make it more palatable to others? Possibly, but I think it's something that we should continue to pursue. And with that, I would close. Thank you. [LB115]

SENATOR WILLIAMS: Any final questions of Senator Scheer? Yes, Senator Schumacher. [LB115]

SENATOR SCHUMACHER: Thank you, Senator Williams. Social Security numbers have been so embedded in our way of identifying people and identifying transactions that computer systems have been built around them; business programs have been built around them; and the internal magic that a computer does in order to pump out data or produce reports often uses them as an element in the actual way that the program runs. If we were to say no, any idea what the cost of business might be for having to redo all those programs? [LB115]

SENATOR SCHEER: Well, the answer to that is, no, I don't, Senator Schumacher. However, I will tell you that, if you look at the bill, the bill does not tell anyone they have to vacate the information they have. It doesn't tell them they can't continue to use the software they have now. It just simply says in the future you can no longer require that. And so, yes, they will be updating their software, but every company I know updates their software. So this isn't insurmountable that they can do in the next 12-18 months if we want to put a different date of action in place, but those types of changes in one's software can take place over time. It is mute on anything before that, Senator, so I'm not trying to tell them that they can't continue to do what they're doing right now until...and as those new people are brought on, they no longer have access to that. Now, I might add, I would suspect that if somebody wanted to call a company and say, "You know what, you have my Social Security number, I'm not required to give that to you, I would like it to be removed from your system," I think a business would have an obligation to do that. But it's not required to do that. [LB115]

SENATOR SCHUMACHER: But if your new customers didn't have that information and that computer relied upon that information as part of its processing, all of a sudden, for new customers, the program wouldn't work right because it doesn't need that information anymore. [LB115]

SENATOR SCHEER: Absolutely. Your program would have to be changed to adapt to those changes. [LB115]

SENATOR SCHUMACHER: So if you have a custom program that cost you a small fortune to have, because programmers have figured out they can charge a small fortune, you'd have to spend a small fortune, rather quickly, for it to continue to operate.

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Or if you had one of these national programs that somehow was syndicated and out there in the world, they're not going to bust their behinds to customize something for the Nebraska market. [LB115]

SENATOR SCHEER: I suspect they will if they want to continue to do business in the state of Nebraska. [LB115]

SENATOR SCHUMACHER: They're not going to do it for free, for sure. [LB115]

SENATOR SCHEER: Absolutely not. And, you know, the safety and welfare of the constituents in the state of Nebraska ought not have a price tag. Now having said that, I'm not naive enough to believe that they ultimately will not pay for this service, as well, Senator, because the changes ultimately that a company will produce will be resurrected in the fees that they collect as an institution. But in every...and I brought that up to every individual I've talked to. I said, you know, if you do this, those services or those things that are provided to you will probably cost a little bit more because there will have to be changes to protect you. They said, I'd rather pay more than have to worry about my credit being evaporated overnight with somebody in a foreign ground that we have no way to go back against. That's the concern that the citizens in the state have. They want their information protected, and we have the ability to do that. It will have a cost, make no mistake about that. I do agree with that, Senator. There will be a cost. [LB115]

SENATOR SCHUMACHER: Thank you. [LB115]

SENATOR WILLIAMS: Final questions? If not, thank you, Senator Scheer, and we'll close the hearing. [LB115]

SENATOR SCHEER: Okay, we will now move to LB155, Senator Williams, and the hearing is yours. [LB155]

SENATOR WILLIAMS: Thank you, Senator Scheer and members of the committee. My name is Senator Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent the 36th Legislative District. And I'm pleased to be here today to introduce my first bill on the first day of hearings, and I hope you will take that into consideration when you grill me, "Professor." LB155 would update Nebraska's banking statutes in four minor areas yet very important ways. Section 1 of the bill would establish a uniform minimum paid-up capital stock requirement for newly chartered banks. Under current law, the paid-up capital stock requirement for a newly chartered bank is set at a minimum of \$70,000 or 70 percent of the bank's capital stock. But it also depends on the population of the community in which the new bank would be located. LB155 would eliminate these population-based requirements. Specifically, LB155 would establish a requirement that a new bank have at least 70 percent of its capital stock paid up or \$70,000, whichever is

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greater. In addition, the minimum capital requirement for banks required by the FDIC would be maintained. It seems reasonable to me to establish a bank's paid-up capital requirements based on the size of the bank rather than based on the size of the community the bank is located in. Next, section 2 of the bill would repeal a requirement that a bank publish in local newspapers its intent to reduce its paid-up capital stock. LB155 would maintain current requirements of a vote of two-thirds of the bank's shareholders to approve changes in capital stock, as well as notice to the Department of Banking and Finance, so that there will continue to be oversight of banks that change their capital stock requirements. Section 3 of the bill would clarify the requirement in law that checks be cashed at par or face value. LB155 would clarify that a requirement for checks to be cashed at par applies only to the settlement of checks between banks. The bill would also clarify that the requirement of checks to be cashed at par does not apply to checks presented for payment by the payee at the bank in person. Personally, and finally, this legislation recognizes the ability of a bank to charge a fee for cashing a check presented for payment in person by a noncustomer without being subject to cashing checks at par requirement. I think, if you think about this for a moment, this would be a case where...our bank in Gothenburg, for instance, had a customer, an account, and you had a check on that customer and you were trying to cash that check and you would come into the bank to cash that check. The bank has several alternatives in a case like that. First of all, we could simply not cash the check, which doesn't help you, the customer. We could cash the check and take all the risk of your identity and being sure that we were giving money to the proper person because if, for any reason, that transaction fails, it's the bank that eats the money. Or we could cash that check and charge a modest fee. Most banks charge in the range of \$2-3 for this. Under these circumstances, those are the options that are there. This would allow a customer to cash their check and the bank to spread its risk of loss over multiple checks presented for payment by noncustomers. And this is the current practice of most banks right now. Finally, LB155 would modify the manner in which banks and other financial institutions are to be reimbursed for the cost of producing documents during discovery in civil actions. Current law requires the entity requesting the records to provide reimbursement pursuant to the rules of discovery. Some lawyers have interpreted these provisions to only require reimbursements for the cost of photocopying the documents. In these cases, the lawyer is only offering to reimburse the entity producing the records on the basis of a per-page amount and ignoring any expense incurred based on employee time expended or other costs incurred in the course of producing the requested records. LB155 would simply clarify that the entity requesting the records pay the actual cost of producing such records, as provided by Nebraska statutes. This is my brief testimony on this at this point. There is a representative from the Nebraska Bankers Association that I'm sure will add to this, and I would be happy to answer your questions. And then I would like to close, Senator Scheer. [LB155]

SENATOR SCHEER: Thank you, Senator. Questions? Senator Campbell. [LB155]

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SENATOR CAMPBELL: Thank you. Thank you, Mr. Chairman. Senator Williams, I just want to be clear. When you say that you collect a fee if I walk into your bank and I have a check from Senator Howard and Senator Howard has an account, but if I go through the drive-through and deposit it, I wouldn't have a fee, would I? [LB155]

SENATOR WILLIAMS: If you have an account with us to deposit it into, you're correct, there's no charge for making that deposit. [LB155]

SENATOR CAMPBELL: Okay. Okay. So it's only a charge if I don't have an account in your bank, but Senator Howard does. [LB155]

SENATOR WILLIAMS: And you're cashing the check. [LB155]

SENATOR CAMPBELL: Per check. [LB155]

SENATOR WILLIAMS: Yes. [LB155]

SENATOR CAMPBELL: Thank you. [LB155]

SENATOR WILLIAMS: We're just trying to clarify right now the statute as it is, that the...the assumption in the statute is the...at par is for banks transacting the accounts, not individuals. [LB155]

SENATOR CAMPBELL: Got it. Thank you. [LB155]

SENATOR SCHEER: Other questions? Thank you, Senator Williams. And now entertain those proponents of LB155. [LB155]

ROBERT HALLSTROM: (Exhibit 1) Chairman Scheer, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB155. Senator Williams has done a nice job of addressing each of the component parts of the legislation, so I'll submit my written testimony and just try to touch on some of the background on these issues. We had had a banker that contacted us suggesting with regard to the paid-up capital stock requirements that, while we haven't had a lot of newly chartered banks in recent years, his bank had been started up a few years ago and he encountered some frustration in terms of the requirements for paid-up capital stock based on the location where his bank happened to be. And so we approached the Department of Banking and, although I obviously do not speak for them or on behalf of them, I think it's...our understanding was that the department did not have any problems with the approach of removing the population-based requirements from the paid-up capital stock provisions of the statute. The statute now will provide that it's within the discretion of the department what the paid-up capital stock minimums will be, and there's another companion statute that

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requires all banks in Nebraska to qualify for FDIC insurance before they can be approved by the department, which means that the FDIC minimum capital requirements will indirectly apply in those types of situations for the protection of both the bank, the depositors, and the shareholders. With regard to the elimination of the publication requirement, we also asked the department if there would be any heartburn over removing what appears to be a publication requirement from way back when. The bank is currently required to notify the department. The department must approve any reduction or increase in paid-up capital stock, and we think that is adequate protection and we're not completely sure what meaningful purpose the publication ever might have served, although it may have come around from old times when the press required most everything to be published in order to have it taken care of. With regard to the cash par requirement, just a little bit of extra background. And I go into this in more detail in my testimony with respect to the fact that there are cashing checks at par (value) statutes almost uniformly across the country, and those have traditionally been interpreted to apply, as Senator Williams suggested, only to the collection letters exchanged between banks rather than to a noncustomer coming to cash a check over the counter. And because of the risk of fraudulent identification documents and so forth, the banks have imposed a modest fee for those types of situations. But what's happened in other states are trial lawyers have brought class action lawsuits suggesting that the cashing at par does, in fact, apply to this type of situation. Most of those suits, fortunately for the banking industry, have either said that, no, they do not apply to the individual check-cashing scenario. Secondly, they've also held uniformly that they do not apply when national banks are sued because national banks have a federal preemption with regard to charges and fees under the National Banking Act. But there was a recent Florida case in which they didn't decide that the statute was inapplicable to the individual check-cashing situation, leaving state-chartered banks only potentially at risk to this type of action. And Florida moved quickly to put into law provisions similar to what we're proposing here in Nebraska kind of as a protective or preemptive strike to ensure that banks won't be subject to those same types of lawsuits. And finally, with regard to the disclosure of confidential information, the general rule is that banks and other corporations are required to not disclose otherwise confidential customer information unless the statute specifically says you can do so, a consent-of-the-customer situation where the Department of Banking is coming in on a regulatory basis, a court order, a subpoena pursuant to civil litigation, and the like. Then you can disclose those records and, in most cases, section 8-1402(2) of the statutes of Nebraska provide that the bank is entitled to actual expenses to be reimbursed. We made a change a number of years ago with respect to discovery requests in civil litigation because the discovery rules have a built-in procedure or mechanism for reimbursement which essentially says that the bank can receive the actual cost--I've got it in my testimony--the actual cost of copying the records. And as Senator Williams pointed out, we've had that interpreted on occasions by attorneys to say, we don't have to pay you for your employee expense or your labor expense, but merely for the 20 cents per copy times 50 pages, or whatever the applicable rate might be that's

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determined. So in order to address that issue, the provisions with regard to disclosure of confidential information would relate back to the actual expense methodology for reimbursement of banks, rather than pursuant to the rules for discovery. And with that, I'd be happy to address any questions that you may have. [LB155]

SENATOR SCHEER: Any questions? Senator Campbell. [LB155]

SENATOR CAMPBELL: Thank you, Mr. Chairman. Mr. Hallstrom, and this may not apply at all, but I'm sitting here thinking, we've debated in the last couple of years, and maybe my colleagues remember, in terms of what would have to be paid on the...in terms of public documents. I see a few nods here. So the...is this trying to say the same thing? I mean, do you remember the bills, Senator? I'm looking at Senator Schumacher. [LB155]

SENATOR SCHEER: Yeah, it came out of Government for... [LB155]

SENATOR CAMPBELL: And whether this is... [LB155]

SENATOR SCHUMACHER: It was Senator Avery's bill, I think. [LB155]

SENATOR CAMPBELL: Is it...was it...is this somewhat similar, that they wouldn't have to pay the extra cost of the employee, because that's really what you're getting at, isn't it, Mr. Hallstrom? [LB155]

ROBERT HALLSTROM: Well,... [LB155]

SENATOR CAMPBELL: You want the actual cost of the... [LB155]

ROBERT HALLSTROM: ...that's what the current law says in most cases. We've all...we've had a longstanding statute that says in most every case that the actual...and actually, the statute says, because it's an old statute, it says, \$5 per hour for employee time or if the actual expenses are greater, which inevitably they will be because we obviously don't pay our employees \$5 per hour anymore, that then we go to actual expenses. And so the bank will document: It took us an hour and a half of employee time at \$12 an hour, and so forth. So that's the way, plus the photocopy expense and direct expenses of that nature. So that's what the statute already requires in most cases. But since we tied it to the rules for discovery and they've got this language that has been interpreted differently by attorneys--and I don't think it's widespread--but we had asked the bar association if they had a way of determining whether or not that interpretation was an aberration, and I think they basically said it's probably difficult to determine, but different lawyers do it differently. [LB155]

SENATOR CAMPBELL: Okay. I understand. Thank you. [LB155]

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SENATOR SCHEER: Senator Campbell, to answer your question, that came out of Government. It was Senator Avery's bill and it had to do with governmental entities where people would come and ask for copies of public records... [LB155]

SENATOR CAMPBELL: Right. [LB155]

SENATOR SCHEER: ...and the entities thought they were being abused because they'd come and ask for thousands of copies and then only pay perhaps 6 cents a copy and they weren't able to get the expense of the person making the copies and so forth. So it gave each individual so many, I think, free copies or at the dime or whatever and then, after so many, they got to charge for labor to provide those, I think, is what you're recalling. [LB155]

SENATOR CAMPBELL: Thank you, Mr. Chairman. But this is a different situation on a discovery (inaudible)... [LB155]

ROBERT HALLSTROM: It is, and there are some other statutes that I would presume that the bar association, if they testify today, are going to come out and tell you there's different ways to skin the cat. This one has worked relatively well for us. We can certainly talk to them about some of those others, but I think it's just a matter of making consistently the actual expense notion that applies in most other cases. [LB155]

SENATOR CAMPBELL: Thank you. [LB155]

SENATOR SCHEER: Other questions? Senator Schumacher. [LB155]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. As I read the bill in its...what would be its new version, it says the department shall have the authority to determine the minimum amount of paid-up capital stock and surplus required for any corporation applying for a bank charter and that that amount shall not be less than what's in the stricken language of section 1. Has the department ever required more than the section 1 amount from a bank? [LB155]

ROBERT HALLSTROM: I do not have that information, Senator. I probably would look to the department, either separately or if they're still in the room, to perhaps address that. [LB155]

SENATOR SCHUMACHER: I'm trying to get a feel for what the old statutory scheme was, and it appears that what it was is banks are generally corporations. Right? General corporate rules would generally apply. So the authorized shares of a bank would be a certain number of shares times a certain par value. [LB155]

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ROBERT HALLSTROM: I believe that's correct. [LB155]

SENATOR SCHUMACHER: Right. So if we authorize 500 shares for our new, little bank and we charge \$1,000 a share to buy in, that gets me the \$500,000 of paid-in capital stock, assuming that I sell them all, or I...and it has to be that amount, the \$500,000--let's pretend we're only talking about Omaha here, or big towns--so I need \$500,000 for my capital stock. And then this language says I need another 70 percent of that or another \$350,000 in my kitty for a total of \$850,000 to get my charter to open up shop in Omaha. That's under the old way--or more, if the department says so. [LB155]

ROBERT HALLSTROM: I think it says one or the other, whichever is greater, but I don't have the bill right in front of me. [LB155]

SENATOR SCHUMACHER: Right. Right. But that's what it basically says. For Omaha, you need \$500,000; you need another 70 percent, which is \$350,000, or if the department wants more, the more. And then I meet this requirement for a charter. Now, if we take out what we...the bill does, the require...the definition of what "paid-up capital stock" is--so much in villages, so much in bigger towns, so much in biggest towns--then all we're left with is the language that says the department has the authority to come up with some number for paid-up capital stock and surplus, and that surplus has to be at least \$70,000 or 70 percent of its capital stock, which we no longer define a minimum for and could conceivably be \$100. So we basically are giving the department, by these changes, complete discretion to set how much cash has got to be in the kitty to open up shop and issue a charter. Is that what we're doing? [LB155]

ROBERT HALLSTROM: Subject to the fact that I think the way I understand it--and I raised some of those same questions with the department early on as to whether or not we had to put in a specific benchmark since we're removing the population--and I believe the department's position is that they are going to be required, subject to the FDIC minimum requirements for obtaining deposit insurance. [LB155]

SENATOR SCHUMACHER: But we're removing more than the population standard. We're removing any standard other than what it is in the discretion of the department to impose, any standard whatsoever for minimum capital stock. I don't see anywhere in the language where there's a minimum capital stock required after the stricken language takes effect other than what the department shall have authority to determine in...at line 16, page 2. [LB155]

ROBERT HALLSTROM: And, Senator, I raised the question when I visited with the Department of Banking and they suggested that that minimum would be set by the requirements of federal law for obtaining FDIC insurance coverage. I had asked whether or not we needed to put that specific reference into this statute, but I think the department has suggested that there's another existing statute that clearly makes the

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issuance or approval of the bank charter conditional upon obtaining FDIC insurance coverage, which means indirectly that minimum FDIC capital requirement will apply to the department. [LB155]

SENATOR SCHUMACHER: Do we know what that capital requirement is? [LB155]

ROBERT HALLSTROM: My understanding is that the minimum capital leverage requirement is a Tier 1...a ratio of Tier 1 capital to total assets of at least 3 percent. [LB155]

SENATOR SCHUMACHER: And in English that means... [LB155]

ROBERT HALLSTROM: And I would suspect the FDIC requires more than that for a beginning charter. [LB155]

SENATOR SCHUMACHER: And in English that means...? How much money do I need in the kitty to open up in Omaha? [LB155]

ROBERT HALLSTROM: I couldn't tell you that. [LB155]

SENATOR SCHUMACHER: More or less than what we have here? [LB155]

ROBERT HALLSTROM: I would suspect it may be more, but I don't know that to be the case. [LB155]

SENATOR SCHUMACHER: All right. I mean, I think if we're going to do this, we're going to need to have an idea of the finances of it. Now in the old scheme, you had to have \$850,000 in the kitty, or more if the department wanted you to have more or if the FDIC wanted you to have more. But whatever, you had to have it in there, and our statute was \$850,000. And then--because that's kind of the guts of the initial money and strength of the bank--it provided, and maybe this is terribly old language and long been superseded by federal regulation or whatnot, but that the bank's customers had to have a chance to know if the capital stock was going to be fiddled with and reduced or increased and, presumably, come down and scream at the department when the department got this application to make a change in capital stock. And we're taking that out now. Maybe depositors don't care, but that protection, for whatever it was worth, is coming out because now the chances are the banking customer will not know and maybe doesn't care about the amount, unless they have more than the FDIC limit in the bank. Then you care. Is that notice such a terrible thing to have? [LB155]

ROBERT HALLSTROM: No, Senator. I just...I guess it just seemed to be surplusage. I don't know that...and I've visited on a couple of occasions with the department and I'm not sure that between us we came up with any particular reason why. And probably, as

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a practical matter, you're probably correct in that the depositor doesn't know and doesn't care and you...the backstop that you ultimately have is that the banking department has to approve any proposed reduction in paid-up capital stock, and I would suspect that the potential for individuals to have in excess of the FDIC-insured amounts and deposits would and should be taken into consideration by the department in determining whether the bank's request to reduce its paid-up capital stock should be approved. [LB155]

SENATOR SCHUMACHER: Well, I mean, if you're a business or you're a person that happens to have more than \$250,000 in the bank, you probably care a little bit. And that notice may be a deterrent to a bank trying to lower its capital for whatever reasons it might have or at least an opportunity to alert you that maybe when that account crept over \$250,000 to \$500,000 you'd better move some money around. I can see what function that notice might serve. [LB155]

ROBERT HALLSTROM: Well, and I will visit with the department in greater detail and perhaps they and we can get together and explore that issue in more detail. [LB155]

SENATOR SCHUMACHER: Thank you. [LB155]

SENATOR SCHEER: Other questions? Senator Campbell. [LB155]

SENATOR CAMPBELL: Senator Schumacher's issue also raises whether we should reference the federal law, I think, or the FDIC in the statute so that it's clear that there is maybe another threshold or whatever. Could...I think in the discussion with the department that question should also be asked. [LB155]

ROBERT HALLSTROM: Okay, certainly will. [LB155]

SENATOR SCHEER: Other questions? [LB155]

ROBERT HALLSTROM: Thank you. [LB155]

SENATOR SCHEER: Thank you, Mr. Hallstrom. Any other proponents for LB155? Any opponents to LB155? [LB155]

KATIE ZULKOSKI: (Exhibits 2 and 3) Good afternoon, Senator Scheer. Members of the Banking Committee, my name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying on behalf of the Nebraska State Bar Association. And as Bob sort of previewed my testimony, I am here to talk about the other ways to skin the cat. And so this opposition testimony, I want to be really clear, relates only to section 4. The first three sections of the bill are...that is not what this is about. This is solely about section 4, which has to do with documents and after discovery. And as Bob mentioned, this is on the bottom of page 3 of the bill. It's striking the language that talks about any requests for documents under

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the rules of discovery; and then, if you make a request for these documents under the rules of discovery, paying for these documents is also under the rules of discovery, which the bar association thinks is the appropriate place for these provisions to be contained. If we're requesting the information under the rules of discovery, that's where we should say how to pay for them. The second point of that, and I just want to bring this up, we are passing around a couple of statutes. The second one...well, I guess I don't know which order you got them in. But the statute that is section 84-712, Senator Scheer did a great job of answering your question, Senator Campbell, but that is the statute I think you all are referring to. It would be subsection (2)(b) that talks about the actual added cost of making the copies. In both of these statutes, 71-8404 and 84-712, they both specify what the actual costs can contain, the labor and the costs of making copies. And that's one thing I think is important and I just want to point out to the committee. In 8-1402, in section 4 of the bill, if we strike (b), then that takes us back to the costs of providing such records. Or if we leave it in the rules of discovery, the way it's referenced in the rules of discovery is the reasonable cost of making the copies. And either way that doesn't really, clearly specify. To Bob's point, if someone is going to be a jerk about it and say, well, that was 10 cents, then either way we haven't really solved that problem but...so I wanted to hand you both of those sections of statute to show other ways that statutes are starting to clarify what those actual costs are. If you want to reference it in statute, perhaps one way to ensure that we're answering the question we want to answer is to lay out what those actual costs would relate to. And with that, I'm happy to answer any questions. [LB155]

SENATOR SCHEER: Thank you. Any questions? Did such a nice job there are no questions. [LB155]

KATIE ZULKOSKI: Thanks. [LB155]

SENATOR SCHEER: Any other speaking in opposition to LB155? Seeing none, are there any that would wish to speak in a neutral position to LB155? Seeing none, Senator Williams to close. [LB155]

SENATOR WILLIAMS: Thank you, Senator Scheer and committee. I feel blessed today, Senator Scheer, that I did not have the bankers, the insurance lobby, the chamber of commerce, and others here to oppose my bill. All I have is the bar association... [LB155]

SENATOR SCHEER: Give yourself time. [LB155]

SENATOR WILLIAMS: ...of which I am also a member of. And I suggested to the bar association this morning that we could, just as bankers, be paid by just taking half the fee that they were charging to their client for the request, but I don't think that was included. In conclusion, I would first of all like to add some additional light, I believe, Senator Schumacher, on your questions. The idea of removing the population

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requirement is to recognize that we have communities--and you mentioned Omaha as an example--we have communities in our state where someone might want to charter a bank, that have large populations. And we have very large banks in Omaha and in Lincoln: Wells Fargo, U.S. Bank. We have medium-sized banks like Pinnacle, Union, Cornhusker; and we have small banks like First State Bank and...of Lincoln and others. And having the capital that they are required to hold to build their banking operation on just does not make sense that it's based on population of where they choose to locate. You know, making that...that's the way this originally started. So I agree with your concerns about the amount of capital. But the fact that capital should be larger just based on where you choose to do business doesn't make sense. What does make sense is the capital that is in line with the size of the particular bank. The other thing I would mention as we're talking about the publication issue, first of all, it is an extremely rare case that a bank ever asks to reduce their capital. That's rare. The component that a depositor should be concerned about and is concerned about is not just what we are defining here as capital stock. Banks in an accounting method have capital stock, undivided profits, and capital. And those are the reserves that are there and those are the amounts that grow significantly and offer the protection that a depositor should have in our country. And the ultimate respect for the depositor is that in our country, since the establishment of the FDIC, no depositor has ever lost one dime in an FDIC-insured institution, and that's fact. And so I think watching that population number is what we're really after there. The thing we are asking here is a reasonableness issue: removing the population base; recognizing that cashing checks at par, that banks should be rewarded for the risk that they are taking in modest amounts with that; and also recognizing, hopefully, that they could recover actual costs when they are asked to produce these types of documents. And I think we can work out something with the bar association to arrive at a level there that would make sense and work out for everybody. So I hope you will strongly consider this move. I think it's an improvement and an update of our banking laws. And with that, I would close. Thank you, Senator Scheer. [LB155]

SENATOR SCHEER: Any final questions? Senator Schumacher. [LB155]

SENATOR SCHUMACHER: Thank you, Senator Scheer. You mentioned that nobody has ever lost a dime in an FDIC-insured institution. That's if their deposit was below the insurance level. [LB155]

SENATOR WILLIAMS: Yes. [LB155]

SENATOR SCHUMACHER: If they had more than that, they got a discount in the amount on liquid insurance. [LB155]

SENATOR WILLIAMS: That could have happened, yes, and that would have happened irregardless of the amount of capital. [LB155]

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SENATOR SCHUMACHER: Right. So without any capital stock requirements, how does a depositor who might have more than the FDIC-insured amount know any better, to have some money out of a bank, because the bank is soft? [LB155]

SENATOR WILLIAMS: Well, I would hope in today's highly regulated world...I believe our regulators do a great job of determining the safety and soundness of the particular banks. There are also Web sites that you can go to, to determine, if you want to go further than that, what the ratings are of a bank. So you can see some of that if you were interested in it. We always encourage our depositors to take strong note of the FDIC insurance and to use that as a guide so that they aren't...do not have deposits in a bank that are above that insured amount. [LB155]

SENATOR SCHUMACHER: So, basically, don't have more than \$250,000 in a bank. [LB155]

SENATOR WILLIAMS: There are ways to have more than that by spreading accounts, but... [LB155]

SENATOR SCHUMACHER: And just one final thing. It seems to me that what we are removing from this statute is any capital stock requirement, not just the one that's here, which is indexed on population, except for what the authority uses...the department uses its authority to determine, and that might be hinged on an FDIC requirement. [LB155]

SENATOR WILLIAMS: Right. [LB155]

SENATOR SCHUMACHER: Thank you. [LB155]

SENATOR SCHEER: Any final questions? If not, thank you, Senator Williams. [LB155]

SENATOR WILLIAMS: Thank you. [LB155]

SENATOR SCHEER: (Exhibit 4) And that will conclude the hearing on LB155. [LB155]