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Banking, Commerce and Insurance Committee
February 17, 2015

[LB48 LB213 LB628]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 17, 2015, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB48, LB213, and LB628. Senators present: Jim Scheer, Chairperson; Matt Williams, Vice Chairperson; Kathy Campbell; Mike Gloor; Sara Howard; Brett Lindstrom; and Paul Schumacher. Senators absent: Joni Craighead.

SENATOR SCHEER: Welcome, everyone, to the Banking, Commerce and Insurance Committee hearing. My name is Jim Scheer. I'm from Norfolk. I represent the 19th District. I serve as Chair for this biennium. The committee will take up the bills as they are...in order as they are posted. Our hearing today is your public part of the legislative process. It's your opportunity to express your position on the proposed legislation before us today. The committee members will be coming and going during the hearing. We have to introduce bills in other committees and are called away. It is not an indication we're not interested in the bill being heard at that time, it's just part of our legislative process. To better facilitate today's proceedings, I would ask you abide by a few of the following procedures. Please silence your phones or turn them off, whichever you would choose if you don't want to be bothered. Order of testimony today is the introducer, proponents, opponents, those in a neutral capacity, and then closing. Testifiers need to sign in on the pink sheets that are by both doors. Please fill it out in its...completely and either give it to Jan or the page will pick it up on the table from you. When you testify, if you could introduce yourself and your name and spell your name for the transcribers so that they know exactly how to spell your name for the public record. If you are here, but you would like to be not necessarily testify, but show your opposition or support for any of the bills that we're talking about, there's a white sheet in the back. Please put your name and the bill number and if you are in support or opposition. I would ask everyone to be somewhat concise. We will be using the lights today, so the green light starts, you have a total of five minutes. At four minutes, the yellow light will come up signalling you that you have one minute left. The red light means you should be winding down in the next 10 to 15 seconds. So that's out of courtesy to everybody. Written materials, if you have any handouts that you wanted to provide to the committee, you will need at least 12 copies of that, 10 or 12 copies. If you don't have that, Jake, the page, will make sure that you get those, but please try to grab him before you testify. It makes sense to have the material in front of us when you're talking rather than afterwards and not being able to ask you a question if there is one that arises from material. A couple introductions. To my right and your left is Bill Marienau. He's the committee counsel. To my left and your right at the far edge is Jan Fisher or Foster, excuse me, the committee clerk. She's not been around for a couple of days, so, you know, you forget. And I would have the rest of the committee introduce themselves that are here and I would start with Senator Schumacher.

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SENATOR SCHUMACHER: My name is Paul Schumacher, representing District 22, which is Platte and parts of Colfax and Stanton County.

SENATOR HOWARD: Sara Howard. I represent District 9 in midtown Omaha.

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

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

SENATOR SCHEER: Thank you. We have Senator Craighead, Campbell, and Gloor, and I think those will be here later. They may be introducing a bill or stuck in some other committee, but they will be here. Our page this afternoon is Jake Kawamoto over here. He does an excellent job for us. And we will take up the bills as they are in order today, so I will...I have the first bill, so I will turn over the chair to Senator Williams.

SENATOR WILLIAMS: Thank you, Chairman Scheer. We will open the public hearing on LB48 and invite Senator Scheer to make his opening remarks. [LB48]

SENATOR SCHEER: Thank you, Senator Williams and colleagues on the Business (sic: Banking), Commerce and Insurance Committee. My name is Jim Scheer, S-c-h-e-e-r, representing Legislative District 19 here to introduce LB48 this morning. It is similar to one that I had introduced a year or so ago, but has made some changes. The first time that it was introduced it was all property and, fair enough, the insurance industry made a comment that that might be too big of a bite of the apple to try to chew off all the time. So this bill now is only exclusively to homeowners policies in the state of Nebraska. And what it does is essentially it says that if a home is damaged by a weather-related loss that insurers would not be able to nonrenew. Now I want to make sure, some people will talk about cancel and some people will say nonrenew. There's a distinct difference. You get canceled midterm. A nonrenewal simply means that the insurance company is no longer going to insure you after the renewal date of your policy. So they aren't canceling these people; they are just nonrenewing essentially saying we don't want to insure you any longer. My problem with that and what has happened, especially up in my neck of the woods, is we've had several hail losses in the last five years, and all...after the second one we started seeing some nonrenewals, and that's why I brought the bill to you a year or two ago. And I'm bringing it back this year because we did have another hailstorm last year and now a substantial number of people are getting nonrenewals. From my perspective, and I may be naive, but I am in the insurance business, I am a P&C agent, things are underwritten based on the quality of the insured's risk. So if you lived in Norfolk last year and you lived in a home, you owned a home that had 8-year-old roof on it and 12-year-old siding on it and you're of

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good moral character, they would have wrote this policy. Bought the house. You have a claim on June 3rd where you have hail damage. It totals your roof and totals the siding. So on next June 1st because you now...and granted the insurance company paid for this loss, but you have a new roof, you have brand new siding. Your moral character is the same. But now they say because of underwriting they no longer want to insure you. You had no way to stop nature from hailing on the property. And from an underwriting standpoint, if an 8-year-old roof and 15-year-old siding was a good investment for them to underwrite a year ago and you're of good moral character, if nothing has changed why wouldn't that same house with a brand new roof and brand new siding be even a better risk than they had the year before? It defies logic. The other thing that has happened now and there are some companies, not all companies, if you happen to live in Norfolk and your home was hailed on and so you needed a new roof, maybe partial siding, maybe a new deck, whatever the case might be, you got transferred. So you move from Norfolk to Plattsmouth. Guess what? When you buy your home in Plattsmouth, 200-and-some, 150 miles away from Norfolk, you're going to be surcharged for the loss you had at the house in Norfolk. Insurance company didn't even insure the house in Norfolk. It's not the house in Norfolk. So why are we penalizing insureds for a loss that they had absolutely no control over, they've moved so the house isn't even the same house, it's not in the same geographic area, and yet they're surcharging, and they didn't even insure the first house to begin with. It doesn't seem quite right. There are some caveats in this bill that in listening to the objections last year from the insurance industry, they said, well, gosh, you know, what if somebody doesn't fix the roof, doesn't fix the siding. Well, this bill only gives them I believe about an 18-month window. Now in Norfolk, we had a lot of hail losses this last year and not everyone was able to get the roof repaired before it got cold enough that the shingles aren't going to stick. So I'd venture to say maybe a third, up to half of those homes haven't had the work done. Now they may renew in March 1st or April 1st. Well, it's impossible to do that kind of work during the winter. So this gives the insured an adequate amount of time to get their home repaired back to its original condition. If they don't, fair enough. Then the insurance gets to nonrenew or cancel because they haven't taken care of the problem. It only, again, has to do with the residential. And I am aware that the insurance industry is not supportive, again. I can't say that I blame them. I can see both sides to this. You know, they paid a loss, but the contract should have assumed that there was the possibility of a loss. The premiums should have taken into consideration that there's the potential of a loss. So they can regenerate additional premium. It's not in this bill, but any company can surcharge policyholders for losses regardless of what they are. So after they put the new roof and the new siding on, these companies can charge additional dollars based on your loss history. I'm not impeding that. They still get to charge more money than they did the year before. And I would tell you that almost all the insureds that I've talked to get it that if they've had a loss they expect to pay more money because they have had a claim. But they don't expect to be nonrenewed and have to go find another carrier. Now they can come up and say, well, there's lots of carriers around. It shouldn't be a problem. Well, it is because the first question on almost every homeowners policy is have you ever been canceled or nonrenewed. And a lot of times it'll say

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maybe in the last 12 months, sometimes is says ever. That's...you know, that's not a little red flag for an insurance company; that's a big red flag. And if you've had that loss, there's other companies that won't accept it because it's had the loss. In fact, very few of them will accept a new risk with that high of a loss ratio. So, yeah, we're nonrenewing them. We're just cutting our ties and there's other companies out there, but there's not. There's companies that I'll call a high risk homeowners policy, just like some of you that maybe when you're driving in younger years because you maybe were not as good of driver or whatever the case might be ended up with what I'll call a high risk auto insurer. Well, premium on those are usually double to triple for your car insurance. Same is true on a homeowners policy. Can I get a homeowners policy? Can I get a...friend of yours say, well, they can't get a policy? No. I could send this to Lloyd's if I wanted to in London. Now the premium would probably be a minimum of \$25,000 or \$50,000 for a \$150,000 house. But can I get insurance? You bet. But is it going to be affordable? No. And this isn't a small number of people, especially in the Norfolk area. And from my perspective, part of the problem has become from a technological standpoint they're looking at loss ratios. You have X amount of premium over five years. You've got X amount of losses. If it goes above a certain percentage, the computer says, nope, get rid of. Well, we've got to have some personal logic involved in here. If we were a good risk a year ago with an older roof and an older siding and we've had a brand new roof and brand new siding a year later, at the minimum shouldn't we be as good a risk as we were a year before? I would think so. And would I assume my premium might go up because I've had a claim? Yep. Every one of them do. But they aren't given the opportunity. Now I'll tell you, it's not a small amount of people. I had an 89-year-old...I'll close with this, I mean, we talk about it's not a big percentage. Well, by golly, in Norfolk and the surrounding area it sure as the world was. I had an 89-year-old woman call me. I didn't insure her. She called me because her insurance agent told her to call me. She says, you know, I'd been with this same company for over 60 years. My husband Harvey took care of the insurance. I've never bought an insurance policy in my life. The only claim we had were two hail losses in the last four years. Harvey is gone. I don't know the first thing about buying home insurance, but I live in my home. What am I supposed to do? And I can try to guide her down the path, but we shouldn't be putting people in that type of position. You know, they paid their premium. Their insurance company charged the premium based on the risk that they assumed was there. Now they can't assume that a hail loss is going to hit, but they've got to assume at some point in time one of those is going to hit somewhere, and on a statewide basis they should have the reserves to take care of that, and they have the ability to increase those rates for the consumer. Consumers aren't concerned about that truly. They just want to keep their insurance. That's what this bill does. It says unless you don't fix your house and you take the money, then you get to be canceled or nonrenewed. But if you take the money and you fix your house, by golly, the contract stays good. May charge you more, but at least you've got a homeowners policy. That's all this is about. We took away the commercial. We took away the ag and the ranchers and the farmer's policies. It's just residential homeowners. That's it. With that, I'll answer any questions. [LB48]

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SENATOR WILLIAMS: Thank you, Chairman Scheer. Questions for the senator? Senator Schumacher. [LB48]

SENATOR SCHUMACHER: Thank you, Senator Williams. Thank you for bringing this. It's as thought provoking as it was last year. Is it designed to just be on an individual basis? I mean, in reading through the language here you could almost read it to say, okay, Norfolk has had bad hailstorms for nine of the ten last years, we're out of Norfolk because it's just bad luck. Would this be...could this be read to mean, no, you have to continue to write in Norfolk? [LB48]

SENATOR SCHEER: If a company is pulling out of a region, it would not necessarily apply. But if you're going to continue to write business in Norfolk or Columbus or whatever the community is that you've had these losses, certainly, yeah, it would mean that you need to stay on that risk. [LB48]

SENATOR SCHUMACHER: So your intent here is more of an individual basis that you just... [LB48]

SENATOR SCHEER: It's strictly a homeowners policy. That's it. Individuals. It's not apartments. It's not ABC Flooring, a commercial business, or any commercial entity, or rural coverage. It is a homeowners policy, commonly known either as an HO-3 or and HO-5. And I suppose some companies may have different terminology, but from an ISO standpoint it'd be a 3 or a 5. [LB48]

SENATOR SCHUMACHER: And it's been your experience that the idea that, hey, there's a free marketplace for one guy says he won't write, people are lined up to write insurance for that person that that's not the case. The other insurance companies will avoid you. [LB48]

SENATOR SCHEER: Oh, absolutely. I will tell you right now my office is not huge in the residential market, but I would say in my office, and I feel pretty good, at least 10 percent of those of the clients I have I'm going to rewrite into another carrier, and it is difficult. I'm not trying to use company names so I'm not going to, but most of those that I finally did find a home for, and it was tough and you have to do a lot of work and you do a lot of talking and, yeah, I get paid for it. But the fact of the matter is all that took place and those folks ended up probably paying three or four times the cost of insurance. Now I want...and thank you for asking this because part of that means if I'm a young married couple that we've been saving and we now are able to buy a house, you know, we go through all the paperwork and, by golly, you know, with both of us working we can buy the house. We know how much our taxes should be. We know how much insurance is going to be and, golly gee, we still end up with, you know, \$150 or \$200 a month that we get to put in savings. Life is grand. Eight months later we have a hailstorm when their policy is nonrenewed, and homeowners policy say somewhere between \$800 and \$1,000

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probably. So now all of a sudden their monthly allotment for a homeowners policy is \$75 and it goes up to \$2,500. That took all the savings away. They're going in the hole. They'll get upsidedown in a big hurry. Now that's not to say that insurance company at that \$1,000 barrier, they may surcharge you 25-35 percent, maybe 50 percent, but even at that they're still alive. It's when you go to what's considered the excess market that those premiums get fairly substantial. And, you know, it's not a moral issue. It's not something that any of these insureds had any ability to minimize the loss they had. They don't make a big screen of bubble wrap that, uh-oh, there's hail by Madison, let's divert and you push a button and the bubble wrap goes over your house. You're at nature's mercy. There's nothing absolutely anyone can do to stop a weather-related claim if that's what's going to happen. An insured can't. The company can't. They're both in this together. It's a contract. I just want them to stay in the same contract together as time goes. [LB48]

SENATOR SCHUMACHER: Thank you, Senator. [LB48]

SENATOR WILLIAMS: Senator Scheer, I've got a couple of questions. One is a follow up to Senator Schumacher's. I want to be sure I understand this, that there would be nothing in LB48 to preclude an insurance company from deciding we're not going to be in the market at all in this geographical area... [LB48]

SENATOR SCHEER: No. [LB48]

SENATOR WILLIAMS: ...even though wouldn't that be nonrenewing of customers? [LB48]

SENATOR SCHEER: This is specific for weather-related purposes. That's what the statute reads to. So if they were discontinuing providing policies either in the state or in one of their geographic areas, they would be nonrenewing because they're no longer doing business in that area. And in that point, they're going to nonrenew everybody, not just the ones that had a loss. That's still within the purview. [LB48]

SENATOR WILLIAMS: Do we have an issue though if their decision to do that was based upon a continuation of weather-related claims? [LB48]

SENATOR SCHEER: Maybe. You don't have a problem to the extent that the company certainly will be paying for losses, but bear again that the insureds are going to be paying higher premiums as well. You know, can lightning strike twice? Yeah, sure it can. [LB48]

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SENATOR WILLIAMS: Yeah, I understand you're not restricting the ability to raise rates. [LB48]

SENATOR SCHEER: No. [LB48]

SENATOR WILLIAMS: Could you...I think in your opening you mentioned that this was only for nonrenewals, not cancels. [LB48]

SENATOR SCHEER: Correct. Well, I should say it may be cancel or nonrenewal based on a weather-related loss. [LB48]

SENATOR WILLIAMS: Okay. I may be misreading this, but in page 7, line 8 on number 13 there, I think canceling is in there. [LB48]

SENATOR SCHEER: Absolutely. Yeah, then you're correct. Yeah. [LB48]

SENATOR WILLIAMS: Okay. Can you describe to me because I don't understand some of the terminology what surcharging is, how that works? [LB48]

SENATOR SCHEER: Surcharge is just an additional premium, usually a percentage that you're charged for certain events. So in this case if you have a weather-related loss and maybe some companies may put in their contract that if it's below \$1,000 or \$1,500 they're not going to surcharge you. And maybe if it's from \$1,500 to \$5,000 or \$10,000 it's 15 or 20 percent. And if it's above \$10,000 over, maybe it's 25 or 35 percent. But they can delegate the percentage via their policy. [LB48]

SENATOR WILLIAMS: So evidently we have... [LB48]

SENATOR SCHEER: And I don't mean to interrupt, but that would have to be approved by the Department of Insurance. But the Department of Insurance has already approved surcharging. [LB48]

SENATOR WILLIAMS: But if I'm reading this right, what you're protecting against is surcharging in two cases here, but in the first one of those surcharging on a policy where there was not a claim. [LB48]

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SENATOR SCHEER: Absolutely. And what I'm talking about, what the bill would be referring to is...which has happened, you buy my house. I move away. I had a hail loss. You're buying the house, but now all of a sudden you're being surcharged because my house had a claim. And your insurance company...and maybe the company you're buying it from also insured me, but it really doesn't make any difference. You weren't responsible for that time frame. And more importantly if you're insuring it with another company, why would the other company get to surcharge you when they didn't even pay for the loss to begin with. I mean, if I had my druthers I could sort of see if you're really on a tip of a needle that if a company paid for loss for that home, well then maybe whoever buys it I should be able to get some of my money back. Well, I don't agree with that, but that would make more sense than just simply saying, well, that house had a loss because I pulled it up under C.L.U.E. and it had a hail loss, so I'm going to start surcharging you 20 percent because it was a \$10,000 loss. That doesn't make sense. That defies logic. [LB48]

SENATOR WILLIAMS: Does surcharging go away at some point in time? [LB48]

SENATOR SCHEER: Normally it would be on a time frame based on the policy language somewhere between three to five, maybe seven years, whatever they...that would be up to the insurance company to determine each policy. They all would be able to do that individually as a company. [LB48]

SENATOR WILLIAMS: Other questions for Senator Scheer? Seeing none, and I'm assuming you will stay to close? [LB48]

SENATOR SCHEER: Okay. I'll stick around. [LB48]

SENATOR WILLIAMS: Okay. We would invite anyone who is testifying in favor of LB48 to move to the front row, please, and then whoever is first to step up. It's a race. And the winner is. Are there opponents? And if there are, would you please locate yourself in the front row and the first opponent please come up and introduce yourself. [LB48]

SCOTT GUSTAFSON: (Exhibit 1) Good afternoon, Senators. My name is Scott Gustafson, spelled S-c-o-t-t G-u-s-t-a-f-s-o-n. So Chairman Scheer, members of the Banking, Insurance and Commerce (sic: Commerce and Insurance) Committee, my name is Scott Gustafson. I'm an underwriting operation section manager for State Farm Insurance and I'm based here in Lincoln, Nebraska. State Farm insures more homes in Nebraska than any other insurance company with about 152,000-plus homes. We have 174 of our agents across the state located in many places and we employ over 1,500 people in the state of Nebraska. State Farm is also the leading insurer of automobiles with over 387,000 automobiles insured. I'm here today to testify in opposition to LB48. State Farm is opposed to LB48 because this bill will adversely impact homeowners

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insurance customers in Nebraska. The unintended consequences should this bill advance could reduce the availability of property insurance, along with potentially affecting the affordability of property for homeowners. There is currently a very healthy marketplace in Nebraska. There are over 113 insurance companies doing business with homeowners. And LB48 has the potential to disrupt this market. It would place restrictions on a company's underwriting. Senator Scheer testified there's three restrictions. The first is LB48 would not allow an underwriter to consider weather-related claim when making a decision to issue a new policy or renew a current policy. The ability to underwrite that risk is very core of an insurance marketplace to be healthy. At the same time, that process is very highly regulated. Companies are required to file their rates and forms with the Department of Insurance for review. Each company develops their own underwriting guidelines, and it is through this and within these guidelines that a company determines the eligibility and acceptability of risk. There are many factors that a company considers in developing their rate plan and guidelines. Evaluating losses and claims of all types is essential in developing a rate and underwriting plan for that company. If companies are not allowed to consider all the potential losses and claims, the market can be disrupted as in companies may choose not to enter our market, they may exit the market, or they may simply choose to write fewer homes. Any one of these can drive up the cost for homeowners. The second restriction would disallow companies from surcharging for a claim when there was no payment made. The filing of claims is another factor that is used by insurers and rating organizations because claiming behavior has been shown to predict future loss potential. However, that's only one of many factors. If a company is not allowed to use this, the company's ability to match the price to the product could be hampered. This will eventually lead to all homeowners paying more for their insurance with that insurance company whether there were payments made or not. It can drive up that predictability. Finally, LB48 would preclude the use of weather-related claims to a previously occupied or noncovered property. Currently, Nebraska insurance companies may use all of the prior losses that that policyholder has had when setting rates. Again, although this not the only criteria that's used, past claiming behavior can reflect how that property is maintained, which is a key factor. Insurance is not only about underwriting that physical property, but relates to the behaviors of the person that owns that property. Individuals may have not...may not have any control over the weather events that occur in their community, but weather losses can often be mitigated or sometimes avoided through proper maintenance. For example, homeowners who update their roofs, including the use of hail-resistant shingles, are much less likely to have an insurance claim. An example of a nonweather claim would be theft. A person who locks their doors at night or installs a security system is less likely to have a claim than if you leave your door unlocked with no alarm. But whether the thief chooses to come in or not is beyond the control of that customer. In conclusion, by definition, insurable claims are predominantly events that are out of a person's control. Insurers do their best to predict future losses through the rating and underwriting. They do so to compete in the market by trying to price the product in a way that's attractive to the most desirable risks. Weather-related claims where no payment is made are risk factors that are important for insurance

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companies to consider. The competitive nature of this process is in the best interest of the entire population of the state. And I would add, Senator Scheer talked about a desire for a bilateral contract. He doesn't want it to be unilateral where the insurance company decides who leaves. Twenty-two to twenty-five percent of customers leave an insurance company because they choose to. Insurance companies nonrenew less than 1 percent of their homeowners clients on an annual basis. So it is a very healthy marketplace that we have today. So thank you for allowing me to testify and I would certainly entertain any questions. [LB48]

SENATOR WILLIAMS: Questions for Mr. Gustafson? Senator Schumacher. [LB48]

SENATOR SCHUMACHER: Thank you, Senator Williams, and thank you for your testimony. I tried to listen through your testimony. One of the things that you mentioned was claiming behaviors as being a cause of an insurance company not wanting to renew. Are you talking about somebody who's just really particular and puts a claim in for every little make-believe ding after a hailstorm or what is...how would a claiming behavior affect...is it somebody who enforces their rights against an insurance company? Is that what...and says "looky" I got a little ding and the neighbor might not put in for the light ding because he doesn't even notice it or care about it. Is that what you're taking about? [LB48]

SCOTT GUSTAFSON: No, and if I insinuated that, certainly did not mean to. Everybody has a right to turn in a claim for an insurance. A little ding, a major storm, you know, that's under the contract. What I guess I'm addressing is that customers that don't maintain their property, aren't keeping their roofs current, aren't taking care of the siding, so when a weather event does occur are much more likely to turn in a claim than someone that maintains the property, keeps the roof up, maintains the siding, etcetera. So those kinds of factors is what tends to have some people turning in claims so they're insurance companies take care of the maintenance of the property instead of doing that on their own. [LB48]

SENATOR SCHUMACHER: Let's say two identical houses built by an identical contractor in an identical time frame, one's a half-mile from the other. That's the only difference. And one happens to get hammered by a hailstorm and one happens not to get hammered by a hailstorm. As I gather from testimony earlier by Senator Scheer that one's rates may go up, one's may get canceled, and it's absolutely no fault of their own. It's the fault of the hail cloud. Why should they be treated differently? [LB48]

SCOTT GUSTAFSON: Sure. And I think we're trying to treat all of our policyholders fairly. So it's not like we're trying to treat anybody differently. [LB48]

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SENATOR SCHUMACHER: Fairness is in the mind of the beholder. Why should it be treated differently? [LB48]

SCOTT GUSTAFSON: Sure. From this perspective if you're saying we nonrenew somebody that chose to turn in a claim versus somebody that does not... [LB48]

SENATOR SCHUMACHER: No. Somebody got hit by hail and the other guy didn't. [LB48]

SCOTT GUSTAFSON: Right. [LB48]

SENATOR SCHUMACHER: And you canceled the guy who got hit by hail. Why? [LB48]

SCOTT GUSTAFSON: Well, and I think insurance has many factors that gets evaluated when we decide which customers to keep if hail hits. Things like how they pay their insurance premiums. Some customers are very timely in how they pay their premiums. Some customers unfortunately aren't as timely. A good example would be in a hailstorm situation. If you've got two risks, both have had a hail claim, why do we keep one and nonrenew with the second? A lot of times it has to do with those other factors. How they treat... [LB48]

SENATOR SCHUMACHER: But then it wouldn't be weather related then. It would be payment history related. [LB48]

SCOTT GUSTAFSON: The claim would be though. I guess the point of this bill and the way it's written, if they have a weather claim you could not take any action. That's how the bill is written. [LB48]

SENATOR SCHUMACHER: Okay. How would you suggest we write it in order to be just? [LB48]

SCOTT GUSTAFSON: Well, I guess I'm not certainly in your positions, so I don't know what just is, but I... [LB48]

SENATOR SCHUMACHER: Well, so that it isn't about payment history. So it's about luck. One guy gets hit with hail; half mile away, guy doesn't get hit with hail. All things else equal why should one be treated differently? [LB48]

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SCOTT GUSTAFSON: Sure. I think the principle of insurance is we're trying to treat everybody fairly, but sometimes we charge a premium based on how much coverage somebody has, about all of the factors that go into it. [LB48]

SENATOR SCHUMACHER: All things being equal. [LB48]

SCOTT GUSTAFSON: Very rarely in insurance do we have an all-things-being-equal situation that I've come across like that. I guess if you're trying to have me determine why do we keep one and ask another to go, I guess I'm just saying it's because there's many factors in addition to the weather claim. That's not the sole driving factor that I've seen utilized. We consider all of the factors, the maintenance of the property, how well somebody maintains their roof, do they have an impact-resistant roof on there, how they pay their insurance premiums. It's not as simple to come down to say somebody is good, bad, lucky, unlucky. Those aren't the kinds of things we're trying to determine. [LB48]

SENATOR SCHUMACHER: Well, to a certain extent insurance is insuring against bad luck. [LB48]

SCOTT GUSTAFSON: Okay. [LB48]

SENATOR SCHUMACHER: The hail cloud over you instead of your neighbor. What would...would it be better to say weather-caused casualties instead of weather-related? [LB48]

SCOTT GUSTAFSON: You know, as I've looked...sure, as I've looked at the bill, I think there's several challenges. And I don't know if there's an easy way to define it in a way that the insurance company is going to say this makes sense from where we sit as we look at the risk because it's written in a very challenged position. I'd have to work and look at the bill differently to try and determine those things. [LB48]

SENATOR SCHUMACHER: Would it make more sense for the law to be changed that a subsequent insurance carrier can't ask the question have you had a weather-caused claim in the prior period of time, a year, ten years, whatever, so that they couldn't be discriminated against as we're hearing now that...from Senator Scheer that once you've been blackballed by one guy, your rates are up with everybody or you're going to have to go to these out-of-state, high-risk pools that just absolutely honk you? [LB48]

SCOTT GUSTAFSON: I'm not in a position to be able to comment on that. I'm not an independent agent. I represent one company, State Farm, so I'm not sure... [LB48]

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SENATOR SCHUMACHER: Well, how do you guys handle it when you...somebody has had a claim and they marked off, yes, I've had a claim within the last whatever, year or three years, whatever the question asks? Are they put into a higher risk, avoid this guy category just because they had a claim? [LB48]

SCOTT GUSTAFSON: No. [LB48]

SENATOR SCHUMACHER: So that's not your practice at least. [LB48]

SCOTT GUSTAFSON: Correct. [LB48]

SENATOR SCHUMACHER: So if Senator Scheer has got a client that is facing that situation, he should talk to your company because you don't take that into account. [LB48]

SCOTT GUSTAFSON: I guess are you saying we don't take that into account from what is pricing? [LB48]

SENATOR SCHUMACHER: Right. In issuing pricing and issuing insurance, that they happen to have a perfectly innocent random hail-hit-my-house claim with another company. You won't take that into account when you price and you decide to insure them or not? [LB48]

SCOTT GUSTAFSON: We take many things into account. I guess some of those we would insure, some of them we wouldn't insure, and it's not solely because of the fact of a hail loss. There's many other factors that will go into that decision process. [LB48]

SENATOR SCHUMACHER: Thank you. [LB48]

SENATOR WILLIAMS: Other questions? Senator Campbell. [LB48]

SENATOR CAMPBELL: Thank you, Senator Williams. Sir, as a follow up to Senator Schumacher's question, are all the factors weighed equally? [LB48]

SCOTT GUSTAFSON: No. There's many factors. Each company does it very differently and I tried to testify to that and maybe it didn't do a good job. Companies file with the insurance department what their particular underwriting guidelines are. So everybody looks at it differently. [LB48]

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SENATOR CAMPBELL: So on a scale, this may...whether you had a prior claim may be weighted more heavily than if you had repaired your roof on a timely basis. So every company would weight those factors differently. [LB48]

SCOTT GUSTAFSON: Potentially. [LB48]

SENATOR CAMPBELL: Okay. Thank you. [LB48]

SENATOR WILLIAMS: A couple of questions. You mentioned in your testimony, Mr. Gustafson, about the current market is very healthy and a lot of companies in the PC business in our state right now. You've been in this business long enough to see that beyond the other end of that cycle I'm assuming. If we were in the area where we had a much tougher PC market going on, would you be worried that there would be companies in certain geographical areas following these massive hailstorms or a tornado at Pilger or whatever that they're just simply withdrawing from the market? [LB48]

SCOTT GUSTAFSON: That's happened in a number of markets. I've lived in different states and each state is different. So there are markets where it does get challenged. There aren't companies willing to do business because they've got restrictive laws, regulations that apply to the selection, continuation, and pricing of insurance. And in those marketplaces it tends to have fewer insurance companies and the cost for all of our customers goes up. And I really think that's the fundamental issue at stake here is that if this bill goes forward, potentially all customers across the state will pay much more for their insurance if there's limited competition. And if companies aren't allowed to use pricing mechanisms to address those that have had claims, then everybody pays more for their insurance, including the vast majority of our customers no matter which company you're with that have not had any insurance claims. So that's what we're really trying to do is keep that healthy marketplace functioning the way it should be, companies willing to come in, and rates where companies charge different rates and customers can choose. As I said, over 20 percent of the people that leave an insurance company are their choice. Less than 1 percent are nonrenewed by their homeowners insurance company because of claim situations. [LB48]

SENATOR WILLIAMS: You mentioned in your testimony the role of the Department of Insurance in this. So as I'm understanding, and correct this statement, each insurance company, be it State Farm or others that are in business in our state, file their rate structure, how they will underwrite, and all of that then is overseen by the Department of Insurance. So there is accountability in that level. You're just not out there willy-nilly making decisions. Talk to me about that a little bit, that process. [LB48]

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SCOTT GUSTAFSON: Sure. Very well stated, Senator. There's an excellent Department of Insurance in Nebraska, and they keep a healthy marketplace. But, yes, they review all companies, filings that are required as it relates to their homeowners underwriting and pricing. So you are correct. [LB48]

SENATOR WILLIAMS: So if you were going to...if you or any company were going to make a decision about we're just going to geographically pull out of this particular area, does that get presented to the Department of Insurance for their review? [LB48]

SCOTT GUSTAFSON: I believe it would. That's not something I've ever personally been involved with with State Farm, but, yes, I believe companies would need to do that if they're making those decisions. [LB48]

SENATOR WILLIAMS: I think that's it for me. Any other questions of the witness? Thank you, Mr. Gustafson. [LB48]

SCOTT GUSTAFSON: Thank you. [LB48]

SENATOR WILLIAMS: Next opponent, please. [LB48]

JIM DOBLER: (Exhibits 2, 3, and 4) Senator Williams, members of the committee, my name is Jim Dobler, that's J-i-m D-o-b-l-e-r. I am a registered lobbyist and I am appearing today on behalf of Nebraska Insurance Information Service. This is a state trade organization and our member companies write the majority of the homeowners insurance business here in the state of Nebraska. The courts often tell litigants that insurance is in the public interest, and I think that's very accurate. Insurance affects people in Nebraska everyday. So from our perspective we always appreciate the opportunity to visit with the committee and provide you information about how our industry works and the...in this case, some of the underwriting practices that we undertake. So we welcome this opportunity. I'd also like to express our appreciation to Senator Scheer. He always made himself available to talk to us about this bill. We had a very good discussion about it. At the end of it I guess we just agreed to disagree. But, anyway, I think...I know for our member companies they're always impressed at how open the process is here and that they have the opportunity to visit with members of the Legislature. I want to turn to certain language in the bill. It refers in part to limiting the amount of coverage on a risk due to a weather-related casualty to the risk. In other words, we would be prohibited from limiting the amount of coverage on a risk due to a weather-related occurrence. As I see it, the effect of that is that it will impact certain provisions in the policy that already do limit the amount of coverage for certain kind of weather-related events, that the most obvious one is flood. Homeowner's policies contain an exclusion for loss due to flood. Well, flood is a weather-related event I think

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generally due to heavy rain. Now it could be due to a dam bursting I suppose, but a lot of times it will be weather related. So that exclusion with this language, it looked to us as if that exclusion would not be available to us. There are several others that I wanted to point out, and what I did is I attached it as an exhibit. And it is Exhibit B, and I've included three pages of a homeowner's policy so that you can kind of see some things where we limit coverage because of a weather-related risk. On the first page of Exhibit B, I show as number 1 an exclusion due to freezing, a fence, pavement, patio, swimming pool. That's weather-related, and those things aren't covered because they're not really fortuitous. Item number 2, freezing of a plumbing system, again, a weather-related exposure and we exclude that exposure if the house is vacant and if the owner does not do something to maintain heat in the house. Another weather-related event that basically, again, is not fortuitous and so we don't cover that. So that aspect of the bill is of concern to us. Things in our policies that where we do limit coverage because of weather-related events, and I think it's important that we continue to be able to do that. In a very broad sense we put a limit on the amount of policy coverage. The face amount on a dwelling might be \$100,000. If the house is destroyed by a tornado, well, we have a limit of coverage of \$100,000. That's all we pay. So in that sense there are limits on the coverage amounts, too, that seem to come into play under this part of the bill. Mr. Gustafson mentioned that there are 113 companies writing homeowners insurance in Nebraska. That's kind of...that's what I came up with too. You'll see Exhibit A, I've listed the companies that write homeowners insurance in Nebraska. This is information from the summary of insurance that is a publication put together by the insurance department. And those companies are all listed. I would note that the top ten companies, nine of those companies belong to Nebraska Insurance Information Service. Amco is the only one that doesn't. [LB48]

SENATOR WILLIAMS: Mr. Dobler, your red light is on. So are there questions for Mr. Dobler? Mr. Schumacher. [LB48]

SENATOR SCHUMACHER: Thank you, Senator Williams. If instead of saying weather-related because that seems to be a recurring theme here in objection to this particular bill, what if we focused in on what I think Senator Scheer is focusing in on and we just simply said losses caused by hail, wind, and tornadoes because that would probably cover 90 percent of the issues rather than freezing pipes and swimming pools? [LB48]

JIM DOBLER: Sure. That definitely narrows it down, I agree. Although, again, if you include tornadoes, it seems problematic from the standpoint if the tornado totally destroys the house, we do limit the amount of coverage to whatever the face amount of coverage is on a policy. If you insure it for \$100,000, that's the limit that we will pay. [LB48]

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SENATOR SCHUMACHER: But I don't think that this...this looks as I read the language at least, it doesn't look backward and say, look, you can't...if your policy has a limit, it has a limit, but this is saying in the future, well, you know, we had insured you for \$100,000, but now we're just going to insure you for \$32. [LB48]

JIM DOBLER: Well, in terms of figuring the amount of coverage, that gets into a whole nother issue which is insuring the property to value so that you get an adequate premium. If the house is worth \$100,000, but you insure it for \$20,000, you're not getting premium that relates to the value of that property. [LB48]

SENATOR SCHUMACHER: But we saw, for example, in Pilger the flip side of that coin where the insurance company had insured it for...a house that maybe was worth \$50,000 for \$250,000 and collected premium based upon \$250,000. And then when the tornado took the house, wanted to pay \$50,000 because that's all it was worth. And... [LB48]

JIM DOBLER: Really? [LB48]

SENATOR SCHUMACHER: Yeah. So I... [LB48]

JIM DOBLER: Doesn't seem right to me. [LB48]

SENATOR SCHUMACHER: Well, might have to quote you on that I think, (laughter) send that over to the insurance department. Any rate, but if we worked on the core issue here which seems to be hail and wind and addressed your issue of limitations, do we see light at the end of this tunnel? [LB48]

JIM DOBLER: Well, it's definitely a better proposal that way. Now I can say that offhand now. Again, anything that we did of course we'd have to run it by our group. [LB48]

SENATOR SCHUMACHER: Thank you. [LB48]

SENATOR WILLIAMS: Other questions for Mr. Dobler? Senator Campbell. [LB48]

SENATOR CAMPBELL: Thank you, Senator Williams. Mr. Dobler, in the policy wording that you gave us with the samples are in a policy, do you ever talk about a surcharge? [LB48]

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JIM DOBLER: No. Farmers Mutual doesn't have any surcharges on homeowners insurance. A surcharge is really what you're getting at is something called experience rating, and that's looking at the risk and the experience of that risk over time. And if the experience is bad, then there might be some type of surcharge. We...but in the homeowners line, we don't have any experience rating, we don't have any surcharges. And that's just the way Farmers Mutual operates. And it really kind of illustrates that we're all different. We all have our business model. We all have our underwriting plans, and we think we can be profitable with whatever it is we have. [LB48]

SENATOR CAMPBELL: Thank you, Mr. Dobler. [LB48]

SENATOR WILLIAMS: So you don't have surcharges or experience rating in homeowners? [LB48]

JIM DOBLER: Not on homeowners, no. [LB48]

SENATOR WILLIAMS: Do you have situations where you have withdrawn from a market completely based on circumstances, in particular weather-related circumstances? [LB48]

JIM DOBLER: No. Farmers Mutual never has. We have about 85 percent of our business in the state of Nebraska. So if we were to withdraw from Nebraska, it would not be good. (Laugh) So we're here. [LB48]

SENATOR WILLIAMS: Do you happen to know what percentage of your business is homeowners? [LB48]

JIM DOBLER: Farm owners is our largest percentage. Farmers Mutual has about 45 percent of the farm owners market in Nebraska. Auto would be the largest share by premium simply because there's so many more cars it just generates more premium. And that would be followed with farm owners and home owners, and I think they are roughly the same amount, maybe a third each. [LB48]

SENATOR WILLIAMS: Any additional questions? Thank you, Mr. Dobler. [LB48]

JIM DOBLER: Yeah. Thank you. [LB48]

SENATOR WILLIAMS: Next opponent. [LB48]

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TAD FRAIZER: Good afternoon, Senator, members of the committee. My name is Tad, T-a-d, Fraizer, F-r-a-i-z-e-r. I'm a local counsellor and registered lobbyist for the American Insurance Association, a national trade association of some 300 property and casualty insurers, and appearing in opposition to LB48. I'm not an underwriter or actuary, so I may not be able to address those points directly, but I think looking at the broader view the very nature of LB48 kind of goes against how insurance works. It basically says when you're insuring a risk for a weather loss, disregard weather losses, which is kind of like going in for a bank loan and saying disregard the payment history of the person involved, which again you could say is volitional, but it also can depend on happenstance as to whether someone is in a position to pay. It seems to go to the very heart of what you're trying to insure against. And the language used is very broad. I think as one of you noted on page 7 of the bill in what would amend subsection (13) it talks about refusing to issue in the first place, refusing to renew, cancelling, or limiting. Basically, and this may not be the intent, but as written it sounds like anyone who shows up has to be issued a policy. You can't refuse to issue a policy in the first place. You can't refuse to renew. You can't cancel or limit it. It sounds like once a person shows up at your door, you have to take them on and they are going to be your client forever until they decide to go away. There's no option. They basically own you. It kind of goes against the usual sense of contracting of a customer and a provider determine if they want to deal with each other. I guess this basically says the potential insured decides if they want you, they have you according to the language here, at least as related to homeowners and weather insurance. And we think that just goes beyond the real intent of insurance. A company should be able to use its own proprietary underwriting standards, whatever they may be as long as they comport with other aspects of law, but this really goes against the experience of a company. If you're looking at a weather loss, you want to know what weather losses have occurred to that property, whether you were on the risk at the time or not, and you want to know what the experience of the particular insured is as well. And we think this kind of just goes against that effort to underwrite in a manner that your company thinks is a viable business model. And would, therefore, hope that LB48 is not advanced. And I would attempt to answer any questions you might have. [LB48]

SENATOR WILLIAMS: Questions for Mr. Fraizer? Senator Schumacher. [LB48]

SENATOR SCHUMACHER: Thank you, Senator Williams. Thank you for your testimony. As I read the bill, it's a refusing to issue due to the weather casualty not due to their credit, not due to their...the weakness of the structure of the house or anything. You can still deal with those, but when you're issuing insurance against weather, a truly random event, and somebody has the bad luck of being hit twice in a row and suddenly cast out into the cold simply because of luck, that's the business insurance is about, spreading that risk and not trying to jack up the cost to somebody who's experienced a loss through no fault of their own through the fault of the risk for which they've paid insurance once already. And how do you justify distinguishing between the

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two equal situations, all things equal, and discriminating against one just because mother nature dumped on him twice? [LB48]

TAD FRAIZER: Well, again, I'm not an underwriter, Senator, but, I mean, part of...insurance does two things. It spreads risk around, but it also to a certain extent it assigns some of the outcomes of that risk. If two people...I mean, there is a certain amount of luck involved, but if one person continually has weather losses, it also would seem fair, and again that's in the eye of the beholder as you've said, that maybe the person who is incurring a lot of weather losses or any other type of insurance loss should bear a little more of that cost. I mean, as I read the bill, and it may be open to different interpretations, you could show up at the door of an insurance company and say my house has been struck by lightning and burned down every year for the past ten years and you still have to issue them a policy. And if in the course of you having that policy it gets struck by lightning every year of the policy and burns down and is rebuilt, you have to continually renew it. I mean, there's no...there are no outs. There's no limitations on how many times an insurer must accept a risk. And admittedly insurers are in business to accept risk, but at the same time at some point you start saying maybe we don't continue to write a risk that keeps incurring losses or it starts jacking up the rates for everyone else involved, too. [LB48]

SENATOR SCHUMACHER: But if you apply standard probabilities, unless that house has got some special lightning rod that draws the lighting to it, then that house has got the same probability of being hit ten times in a row as any other ten houses randomly spread throughout the community of having being hit once. So why should luck if luck alone is the thing, the very luck you're insuring against or bad luck you're insuring against, why should that cause you to have to pay more when it is a distribution just due to luck? I mean, why? Why shouldn't you just randomly go through the community and pick on a few people and say, well, you know what, you were unlucky today and we're going to take your insurance premiums up or we're going to just not renew you because you just were unlucky today. [LB48]

TAD FRAIZER: Well, I'm not sure it adequately answers your question, Senator, but again it also seems appropriate that someone who's incurring losses to a certain extent should perhaps bear more of the costs related to those losses than someone who's never incurred a loss. [LB48]

SENATOR SCHUMACHER: If we take that to the extreme, why don't we just get rid of insurance and then if you incur loss, you incur loss? I mean, isn't that the whole principle of insurance, to spread that risk for bad luck? [LB48]

TAD FRAIZER: Well, as I said, it spreads the risk and to a certain extent it assigns the risk I think. [LB48]

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SENATOR SCHUMACHER: Thank you. [LB48]

SENATOR WILLIAMS: Other questions? Seeing none, thank you, Mr. Fraizer. Next opponent. [LB48]

JAN MCKENZIE: Senator Williams, members of the Banking, Commerce and Insurance Committee, 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, your association of Nebraska domestic companies. The majority of the Nebraska Insurance Federation are life insurers, but we do also have three health insurers who are members and four or five property and casualty insurers. The committee, my legislative committee, voted to be on the record in opposition to LB48 principally because of the issue of underwriting and the way in which various companies both compete with each other in the market, but also use different approaches for underwriting, and those have to be reviewed and approved by the department. I can't answer any very specific questions, so. [LB48]

SENATOR WILLIAMS: Questions for Ms. McKenzie? [LB48]

JAN MCKENZIE: Thank you, Senator Schumacher. (Laughter) [LB48]

SENATOR WILLIAMS: Seeing no questions, thank you for your testimony. Are there any other witnesses opposed to LB48? If not, is there anyone here to testify in a neutral capacity? If not, Senator Scheer, would you like to close? [LB48]

SENATOR SCHEER: Please. Just want to follow up on a few of the things that some of them said just to make sure that everything is clear. First gentleman from State Farm essentially said we have a great market out there and less than 1 percent are nonrenewed or a half a percent I think it said. Well, that's not true in Norfolk, Nebraska, for that surrounding area. I have talked to a number of agents that it's up to 20 and 30 percent of their book of homeowners has been nonrenewed. Those are big numbers. Mr. Dobler brought you the information that was stapled together, and in the back it showed you some exclusions and so forth. Okay. Remember, this doesn't have anything to do with policy language. Those exceptions are still there. If a pipe breaks and it's exempted, it's still exempted. They're not going to pay a dime nor should they. That's in the policy. Well, what the bill says is if you have a weather-related claim and regardless if you had to pay it out of your pocket or they paid it you can't nonrenew. And for crying out loud, if the house was fixed after a pipe broke, it's not covered, that's on my dime. It's still as good a risk as it was a year ago. Nothing has changed. Now I get that they don't like the idea of having this be part of the statute. Mr. Fraizer said that the risk was there and everybody, you know, was paying for everybody else. Well, that's the principle of insurance. Everybody spreads

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the risk. But bear in mind indeed most carriers, and I would say Farmers Mutual does not surcharge, they would be the exception to the rule, surcharge is for losses. Not only surcharge is for a loss, surcharges you if you move to a different house in a different town in the state of Nebraska. And if you buy my house, they're going to surcharge you because you're in a house that had a claim either one year or three years ago. That's what we're talking about here. And the fact that they're saying, well, if you have a policy with somebody that you're stuck for good. That's not true. They can still cancel or nonrenew for any number of reasons. If your credit goes in the tank and if that's one of their eligibility requirements, this doesn't stop them from nonrenewing you. If you've had three claims where a log fell out of your fireplace and they've recarpeted your family room three times, this doesn't stop them from nonrenewing you. What it does stop them from nonrenewing you is in the case of a weather-related loss. That's all we're talking about. So getting back to what the bill really does, it just says that if you have a loss that's weather related, you have to continue to insure them if they keep the house in good maintenance condition. One of the gentlemen talked about, well, you know, takes away our underwriting because, you know, maybe replace the roofs on a more scheduled basis or something else like that. Well, you know what? I thought that was what underwriting was for. If an insurance company is concerned about the age of roofs, which some are, they'll hire people and they will go around and look at homes. And if your roof is not in very good condition, they're going to send their agent a little note saying you need to go over and talk to Joe and tell him he either has to replace the roof or we're going to exclude the roof because we don't think it's worthy anymore. That's what insurance companies do. They have people on staff that do that. They're not stuck with them. If they've got a home that is in disrepair, that has nothing to do with the weather. They can nonrenew it based on the current contract. This doesn't impede their ability to do business at all. What it really does is says, look, we understand that if you have a weather-related loss you couldn't control and if you fixed the house with the proceeds, we're going to continue to insure you. If you don't fix it, all bets off. It's that simple. It's not that radical of an idea. I don't think you're going to see this exodus of a multitude of carriers in the state of Nebraska. It's remained fairly stagnant. And, honestly, when I looked at the list, there's a lot of them that don't have a lot of premium, which is sort of surprising. But I don't know that you're going to have to worry about the last one leaving because he doesn't have premium or because he can't cancel or nonrenew because of the weather-related. Maybe one or the other, I don't know. But having said that, all this bill does is tells insurance companies you can rate them based on the loss. A lot of them talk about, look, actually we just don't get enough money. Yep, you can still get the money. You can get more money. And as far as being the marketplace, I will tell you from my perspective, I'm not a metropolitan insurance agent, I'm rural, more rural. But I would venture to say if all of you went back home and looked at the last five years of your homeowners premium, in the last five years it may have doubled. If not, it's gone up 50-60 percent statewide. Companies are already increasing their premium basis to cover losses throughout the state. That's what they do. This doesn't hamper that at all. They can go file a price increase based on losses. That's what insurance companies do. None of that's prohibited. All it says is that if the house is fixed, it was

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the same risk we had before. If I'm a criminal and I started robbing banks this year, then certainly there's a difference. I've got a moral change. You can get off that risk based on that. But if I'm still the same person I was a year ago in the house that maybe even had a two-year-old roof now has a new roof and two-year-old siding and now has new siding, it's still a better risk under their own underwriting basis. This isn't bad legislation. This is protective legislation for constituents. And it may be happening in my neck of the woods, but weather is a fleeting project. It can happen in your neighborhood next. And that's part of the reason that insurance changes like this are hard to do because I'm trying to tell people about a process that's working that's going on that none of you have experienced, but I got the phone calls. You guys haven't. This is a real problem and we should really address it. Thank you, Senator Williams. [LB48]

SENATOR WILLIAMS: Any final questions for the senator? Thank you, Senator Scheer. [LB48]

SENATOR SCHEER: Thank you. [LB48]

SENATOR WILLIAMS: That will close the hearing on LB48. We will go ahead and open the hearing on LB213. As Senator Schumacher is coming up, if the proponents would move to the front row, we would appreciate it. And we would invite Senator Schumacher to open on his bill. [LB48]

SENATOR SCHUMACHER: Thank you, Senator Williams, members of the Banking, Commerce and Insurance Committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature. And it looks like today is starting out as you heard this before Tuesday because LB213 you've heard before, and it is part of a festering problem that doesn't seem to want to go away, and each year that we don't act on it, it doesn't go away. It deals with the annoying issue of what happens, and it happens all too often, of a property burning down, mostly burning down, I suppose there could be some other type of calamity, but basically a property burning down in a city and the owner of the property having it insured, getting an insurance check, maybe even living out of state, looks at the property and says it's not worth fixing. There's a bunch of junk I got to pick out of the basement and some of that has asbestos in it and it's just not worth it. I've got my insurance check and I'm out of here. And there sits the eyesore affecting neighborhood values, affecting public safety, and the city gets stuck with it. It can bring a nuisance action. It can bring some type of condemnation action. But in the end the city gets stuck with cleaning up the problem and it's very hard and I think you'll maybe hear testimony indicating that it's virtually impossible to chase down the person who's made off with the insurance check on the insurance policy that they paid for. And they feel they should have the whole insurance check. And what this bill does is say, wait a minute, we recognize that this property needs to be cleaned up and the taxpayers, the property taxpayers, shouldn't be left with

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the bill for the cleanup when that insurance policy should have been used rightfully is owed toward cleaning up the particular property and at least bringing it into a clean-lot status. This mechanism as proposed in the bill and it always seems that this gets gummed up when the devil is in the details is try to how to work out the process, but this would reserve \$10,000 or 10 percent of the policy payout for the purposes of cleanup, whichever is higher. And it sets forth a mechanism of various notices back and forth to make sure that the city notify the insurance company and the insurance company notify the city so that they were all on the same page of the availability of coverage. And if the owner did not take care of the problem or enter into some type of undertaking to make sure that the property was guaranteed to be cleaned out that the money be available for the city to do it. And it is dealing with the very basic issue of should the owner have to pay for the cleanup and, as such, the insurance policy sort of act as a security for that cleanup? Or should the taxpayers get hung with it and the owner be able to have a 100 percent of the insurance proceeds? I introduce this bill again to bring the issue to the committee and to give the city officials that have to grapple with this reoccurring problem an opportunity to, again, make their case to the committee. Be happy to answer any questions. [LB213]

SENATOR WILLIAMS: Questions for Senator Schumacher? No questions at this point. [LB213]

SENATOR SCHUMACHER: Thank you. [LB213]

SENATOR WILLIAMS: We'll invite the first proponent. [LB213]

JOE MANGIAMELLI: Senator Williams and members of the Banking, Commerce and Insurance Committee, my name is Joe, J-o-e, Mangiamelli, M-a-n-g-i-a-m-e-l-l-i. I'm the city administrator for the city of Columbus. I thank Senator Schumacher for bringing this bill before the committee again. This bill has been in committee. Senator Schumacher is the third senator to bring this forward. We certainly appreciate his efforts. When I first came to Columbus in 2005, shortly thereafter, we had a couple of significant fires in neighborhoods that were just as the senator described. We worked for a number of months into years to try to get owners to cleanup the property. Eyesores, property value decreases, public safety nuisances. One property ended up going at sheriff sale to another owner who we tracked down after about six months in California. Got his attention, finally, and he did something with the property. The other one we were left holding the bag, as Senator Schumacher described. We asked that...at that point I began looking at what were other states doing in this regard. Found that Iowa had a provision where not only would they make the owner responsible for the cleanup, but if the owner failed, the city could take the property. And I didn't want to be in the property management business, so we looked at perhaps another state around Nebraska and found that Kansas had a bill that is very similar to what the bill that Senator Schumacher has introduced and has been introduced before. And we

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think it's very workable. We've heard complaints from the insurance and banking people that, you know, this could be tied up for a long time and you'd never get a settlement in a case, etcetera. Believe me, as administrators in a community or as elected officials in a community, we will get a process put in place that will very effectively and efficiently get the property cleaned up. And if there is a balance that is owed to that homeowner or that property owner, we will make sure that it gets done so that the insurance company can square up with the property owner. This is a bill that when Columbus first asked that it be considered, a number of communities thought, well, you know, it's not that bad a deal. Current law is not that bad. But then when the city of York had a major fire in the downtown area, Hastings had a major fire in the downtown area, and the same thing that was going on in their downtowns as was going on in Columbus in a residential neighborhood, then it got people's attention. And so we do have support from other communities. I think the League will testify to you as to how many other communities are supportive of this and through the legislative committee that asked that you favorably consider this. I'd answer any questions you might have. [LB213]

SENATOR WILLIAMS: Thank you. Any other questions? Senator Campbell. [LB213]

SENATOR CAMPBELL: Thank you, Senator Williams. Right now, does...Senator Schumacher takes the insurance and leaves town, but still owns the property I assume is the owner of record? [LB213]

JOE MANGIAMELLI: He may be. [LB213]

SENATOR CAMPBELL: So now in Columbus if he's the owner of record, do you put a lien against that property? [LB213]

JOE MANGIAMELLI: Well, we haven't had a fire since where this would be applicable. We had the two. They got our attention. Fortunately we've been pretty lucky. But if we had to go to the point of demolishing the property, as Senator Schumacher indicates we could use our nuisance ordinance which would eventually put a lien on the property. But if the property owner has left town, you know, then the property sits and sits and it eventually goes to a sheriff's sale, and who knows what ends up with it. But, again, it's...besides that nuisance, besides that public safety, we've still got the taxpayers of our communities that are stuck. [LB213]

SENATOR CAMPBELL: That are backing it up. [LB213]

JOE MANGIAMELLI: Yes. Yes, ma'am. [LB213]

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SENATOR CAMPBELL: Thank you. [LB213]

SENATOR WILLIAMS: Senator Gloor. [LB213]

SENATOR GLOOR: Thank you, Mr. Vice Chair. Mr. Mangiamelli, I think I've been on this committee the entire time these...this has come up. And we'll probably hear this from opponents to this bill if there are any, but the counterargument has always been that there are other venues, liens are one. And the first one that comes to mind for me though is 10 percent or \$10,000, whichever is greater, is a big chunk of change. And if I'm an owner of that property and I want to do right with the insurance settlement, which may have to do with any number of things, you're holding onto a big chunk of money that I paid insurance on for the potential, not because you have to clean up, but just in case you have to hold up. And that's a lot of money in a gray area, and I think in the past what we've heard is this happens so infrequently that to hold those kinds of monies in all cases where this sort of occurrence happens ends up being problematic to the citizens who at the same time we're trying to protect we're also grabbing onto a chunk of money that they paid premiums on saying you can't touch this, the city is hanging onto this until we're sure you're going to do right by the community. That's been a tough decision I think to bring this bill forward. Not to argue that it doesn't happen in occurrences, but I don't think there's been enough of a comfort level that it happens often enough to want to hold onto those kinds of funds in all cases. [LB213]

JOE MANGIAMELLI: I would agree, Senator, except that as Senator Schumacher indicated, there are notices that are required, and those notices don't start until and unless that owner has failed to take action. Okay. So...and, you know, in our process we would get an estimate of what it's going to take to demolish the property, cap off the utilities, whatever. And so we would only be asking the insurance company for the value of that estimate and what it's going to take on that specific property. It wouldn't be a blanket 10 percent. It wouldn't be \$10,000. It would be whatever is our estimate of what it's going to cost to do the work to get that property back in shape. [LB213]

SENATOR GLOOR: Actually what the bill says is that after making payment on mortgages, the insurer shall reserve \$10,000 or 10 percent of the coverage limit, whichever is greater, to be held as a demolition cost reserve. Now there has to be proof the loss has been submitted by the policyholder to the insurer per some in excess of 75 percent of the face value of the policy. But what I'm not reading makes me comfortable with the scenario you're pointing out here is accurate. I mean, I think I don't...I think I've lost \$10,000 on that insurance settlement which may be money I need to use to get back in business, to get the contract signed to construct again. [LB213]

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JOE MANGIAMELLI: And if that was the case, Senator, we wouldn't be invoking this legislation, if you were a responsible business owner, a responsible property owner who was working to get the property back in shape, renovated, whatever it took. This law wouldn't be invoked at that point. [LB213]

SENATOR GLOOR: I don't think that's true. I think the insurer is the one that's obligated. I don't think it's the city that is mandated under this. I think it's the insurer that's mandated. I mean, we may have absolute agreement, but if the insurer looks at this law, they're the one that's going to have to say, I'm glad you guys are getting along well and I hope you'll work it out, but in the meantime I've got to adhere to this, and \$10,000 is going in the kitty. [LB213]

JOE MANGIAMELLI: Well, if that's the way that you're interpreting and maybe that's the way it's written, I guess I would ask that you still consider the bill... [LB213]

SENATOR GLOOR: Sure. [LB213]

JOE MANGIAMELLI: ...because, again, in Columbus and I'm sure other communities would work with that owner to expeditiously get the property addressed. [LB213]

SENATOR GLOOR: Okay. [LB213]

SENATOR WILLIAMS: Other questions? If you don't know, don't answer. I'll ask someone else, but is this the exact same bill that's come forward the last two or three years? [LB213]

JOE MANGIAMELLI: No. There have been amendments... [LB213]

SENATOR WILLIAMS: There have been changes. Okay. It's got some... [LB213]

JOE MANGIAMELLI: ...as a result of negotiations with banking, with the insurance company, etcetera. [LB213]

SENATOR WILLIAMS: Okay. [LB213]

JOE MANGIAMELLI: Thank you. [LB213]

SENATOR WILLIAMS: Thank you for your testimony. Would the next proponent come to the stand? [LB213]

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BEN GRAY: (Exhibit 1) Mr. Vice Chairman, members of the committee, my name is Ben Gray. I live at 5425 Fort Street in Omaha, Nebraska. I am the city councilman for the 2nd city council district in the city of Omaha, and I'm here along with a resolution that was unanimously passed by the Omaha City Council. In addition, comments from Jay Davis who is with our permits and inspection division with the city of Omaha, as well as our director of the planning department, Jim Thele, is also supportive of this legislation. I think the best way to address this in some instances is by example. In my district alone, there are significant properties that fall into this sort of category that cause very difficult circumstances to exist in the northeast Omaha area. I'll give you an example of one individual who is a landlord in my district who owns ten properties. Actually he owns 29 properties but 10 of those properties are slated for demolition, and 2 of those properties caught fire, one of them less than a thousand feet from a school. And we have tried very desperately to get this individual to adjudicate the problem, deal with it the way that it needs to be dealt with. We have been unable to do that up to this point. And it seems right now that what this legislation will do is to provide, as Senator Schumacher talked about, it will provide a set aside so that the city, and more specifically taxpayers, are not on the hook for these kinds of problems that continue to exist. What I talk about in north Omaha plays itself out all across this state on a too frequent basis. Although you may think that there is not enough here to address it in a bill, I will assure you that specifically in the Omaha area and specifically in my district it is a significant problem and it's one that as I talk to representatives across this state I see it continually as a problem as well. So I'm supportive of this legislation. The city council for the city of Omaha is on record in support of it. The planning department along with our permits and inspection division is in support of this legislation. And I'm not necessarily sure that it would create the undue burden, Senator Gloor, that you talked about because it says here that the city will have up to 180 days to address this. Now if a landlord or a property owner is diligent about doing that work, repairing the damage that was done from a fire, I don't know why the city needs to take 180 days to release those funds so that that particular property owner can continue to make repairs on his home. So...and in our...and the way we operate within the city of Omaha is we will ask a property owner for a schedule, and if that schedule and if that property owner adheres as close as possible to that schedule, things get done in an expeditious manner. Some of our property owners, however, don't do that on a regular basis or in some cases, especially around in my district, don't do it at all, and therein lies the problem of all sorts of things, including crime and other kinds of things that take place. So it is important in my judgment for us to, first of all, consider this legislation strongly, but more importantly decide that for once the taxpayer is not going to be the person that's going to be on the hook for property that belongs to someone else. With that, I will finish and answer any questions that you all might have. [LB213]

SENATOR WILLIAMS: Thank you, Mr. Gray. Senator Campbell. [LB213]

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SENATOR CAMPBELL: Thank you, Senator Williams. Councilman Gray, in the landowner that you talked about or the homeowner that owns a number of properties, does that person have them all insured to your knowledge? [LB213]

BEN GRAY: I think all of them are insured to my knowledge, they are, but I can't speak specifically about all of them. [LB213]

SENATOR CAMPBELL: Because that would make a difference in terms of your being able to recoup the funds. And I would worry that some insurers might say, well, that's all well and dandy. It goes back to Senator Gloor's that you're working it out, but just in case I'm going to hold that last \$10,000. Do you think that's an impediment? [LB213]

BEN GRAY: No, I don't think it's an impediment because like I said before, Senator, we...and I think across the state, municipalities do something similar to what we do in Omaha. And what we do in Omaha is we will ask that property owner to adhere to a schedule. And if he adheres to that schedule or she adheres to that schedule, I don't know that it takes 180 days or whatever the case may be to release the rest of those funds so that that property owner who is dealing in good faith can continue to get the work done on the property. [LB213]

SENATOR CAMPBELL: Thank you. [LB213]

SENATOR WILLIAMS: Other questions for the witness? If not, thank you, Councilman Gray. [LB213]

BEN GRAY: Thank you. [LB213]

SENATOR WILLIAMS: Other proponents. [LB213]

GARY KRUMLAND: (Exhibit 2) Senator Williams, members of the committee, my name is Gary Krumland, it's G-a-r-y K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. And today I'm also here on behalf of the city of Hastings. Joe Patterson, the city administrator of Hastings had planned to come, but the snow hit Hastings a little earlier and he was having blizzard conditions about the time he had to leave. So he sent a letter and that is the letter that is being handed out now. Hastings has also had problems, as have other cities across the state. They even had a property owner who left the country, not only left the state, but left the country after he received the proceeds. We do support this and so do cities and villages across the state. Just to answer some of the questions that were asked, Senator Williams, you asked about this version of the bill. It has been introduced several times in various versions. In 2011,

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Senator Utter of Hastings introduced it and got a group of people together to discuss a possible compromise. And there were some people and there was some language that was agreed to at the time it was adopted as the committee...as a committee amendment in 2011. Then as you know, Senator Utter died and did not continue, so it just kind of set there, but the language in LB213 represents what the committee amendment was in 2011. I'm not saying anybody still agrees with that or anything else, but that's where we thought is a good place to start. There is a provision and I think it was attempting to get at what you were talking about, Senator Gloor. Bottom of page 2, subsection (4) where it says the reserve will not be required under (a) if both the insured and the city notify the insurance company that they are working it out or that they have attempted to. Now there's probably places here where the language could be clearer and the procedure could be a little more precise, but the intent was to attack and to target those properties where the property owner has received insurance proceeds, but has not used them to rehabilitate or demolish the damaged property. And as you've heard, the intent of the cities would be is that if the property owner is doing it, there's no need or no intent to hold proceeds or reserve some of this if the property is being worked on. But in those situations where the insurance is paid out and the property is abandoned, that's what we're targeting. The abandoned property is a problem not just here, but when property owners leave the property and then stop paying taxes and the property deteriorates, becomes a nuisance, cities end up having to pay for it. And this is one area that we're targeting because there are proceeds that are paid out. Be happy to answer any questions. [LB213]

SENATOR WILLIAMS: Questions for Mr. Krumland? Senator Gloor. [LB213]

SENATOR GLOOR: Thank you, Senator Williams. Mr. Krumland, do you know who Senator Utter worked with when he was drafting that compromise by any chance? [LB213]

GARY KRUMLAND: There was a room full of people of about 12 or 15 people and I'd have to go back and check but... [LB213]

SENATOR GLOOR: I mean, do you know if it was organizations or was it... [LB213]

GARY KRUMLAND: There was mainly...it was mainly, and I'm a little hesitant because I don't want to...I mean, that was several years ago so I don't want to say anybody... [LB213]

SENATOR GLOOR: Sure. [LB213]

GARY KRUMLAND: ...has made a commitment to support this because of that. But there was mostly representatives of the insurance industry. I think... [LB213]

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SENATOR GLOOR: Developers? [LB213]

GARY KRUMLAND: The bankers were there. I'm not sure if the developers were there. I can't tell you that. [LB213]

SENATOR GLOOR: Okay. Thanks, Gary. [LB213]

SENATOR WILLIAMS: Additional questions? I have a question and I guess I'm asking this of you and I'm hoping that you and other people who may testify could help me with this. We have a situation where we have a contract between an insurance company and an individual. And now we have a potential law that's going to come in there and alter the payments required under that contract. How does that work? And if you'd rather have anybody from the insurance agency that's going to...I would be happy to warn them that question is coming. [LB213]

GARY KRUMLAND: Well, I'm sure they can give you their point of view. Yeah. I don't know that I can give you an answer. I'd have to...it's not...well, I just, I guess I don't know if I can give an answer to that off the top of my head. [LB213]

SENATOR WILLIAMS: Okay. Thank you. Any additional questions? [LB213]

GARY KRUMLAND: But I can talk to you later. [LB213]

SENATOR WILLIAMS: (Exhibit 3) Thank you, Mr. Krumland. Additional proponents. Seeing no other proponents, we would ask the opponents to come up and sit in the front row somewhere and first one to the stand. Excuse me, while you are getting ready, we do have a letter from the Omaha City Council from another councilman, Garry Gernandt who has submitted a letter in support of LB213, and we will make that part of the record also. Go ahead. [LB213]

JOHN CHATELAIN: (Exhibit 4) Okay. My name is John Chatelain, C-h-a-t-e-l-a-i-n, and I'm speaking on behalf of the Statewide Property Owners Association. And the Statewide Property Owners is a umbrella group for Metropolitan Omaha Property Owners Association in Omaha, the Real Estate Owners and Managers Association in Lincoln, and the Gage County Landlords Association in Beatrice, and a few others around the state, and our association opposes LB213. Obviously in the first section here there's been an attempt to placate the bankers by making sure that the mortgage would be paid first. But if you have...most likely the properties that you're concerned about are going to be the ones that will be heavily mortgaged. And so if the mortgage is paid first, there will be nothing left to apply to this purpose and this bill will sort of miss its mark. And in addition, losing \$10,000 or 10 percent of the insurance proceeds, whichever is

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greater, could put a real burden on the property owner to get the property fixed. If the mortgage has been paid off first, and then they have to take another slice of insurance proceeds for the \$10,000 or the 10 percent, whichever is greater, they may simply not have the money then to fix the property. I think oftentimes the assumption is made that the property owners are filthy rich, and that is simply not the truth. A lot of them are mortgaged and they're struggling to pay expenses and they're struggling quite frankly to pay for insurance costs which is a huge cost. And this also includes properties in the extraterritorial jurisdiction. I happen to live in one of those, and this always kind of irks me that I don't have the right to vote. As much as I like Ben Gray, I mean, I think we get along well, but I don't have the right to vote for any of the city council because I don't live in the city. But yet the city is going to try take 10 percent of my insurance proceeds. I think that's an issue here that needs to be explored. Then who would make the determination that the property is uninhabitable or unfit for the purpose that it was intended in section (b) there? Assuming that it's the city making that determination, then don't they have a built in conflict of interest? They're going to want this money. And so they will have a reason to declare that the property is uninhabitable and unfit. What type of policy are we talking about? Section (c), the proof of loss has been submitted to the insurer for the sum in excess of 75 percent of the face value of the policy. To my knowledge, and I'm not an insurance expert, but there's at least two different types of policies. There is one that's a replacement policy and then there's one that's based on the fair market value of the property. And if this policy is fair market value, then the replacement cost is going to be \$100,000, but the fair market value is \$30,000. We could get up to that 75 percent very quickly. So I think it needs to be ironed out what type of policy we're talking about. And section 2 and 3, again, I see an incentive for the city to never release those funds and to try to get them. The city can much more easily institute legal proceedings to extend that 180-day period or to apply for the money than the property owner can. They have a lot deeper pockets and a lot more resources for that. Section 4(a), the test is that the property has been rehabilitated in compliance with applicable state and local laws. That's a very vague and broad standard, in my opinion, and I've practiced law for 35 years. Whenever I want to try to stop something dead in its tracks, I'll put that language in the agreement, in compliance with all applicable state and local laws, because nobody really knows what that means. And it'll be very difficult for the property owner to get these funds out of the reserved account if they have to prove that the property is in compliance with all applicable state and local laws. I just think that that is too vague and difficult to work with. In conclusion, we understand the problem. There's a few irresponsible property owners out there and we certainly are sympathetic to that. We are concerned, however, that making the solution so broad and burdensome on all property owners that are trying to rehab the properties we're actually going to make the situation worse. We're going to make it more difficult for properties to be rehabilitated. Cities should seek another solution to this problem, including budgeting for the tear down of these properties. I know there's a number of representatives from cities here that say they're concerned about the taxpayers, but property owners are taxpayers, too. I mean, we pay a lot of taxes, and so we're certainly sympathetic to this situation. But cities should budget for this and

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not try to raise a new source of revenue simply on the industry of property investors. Finally, deal with the irresponsible property owner rather than the entire industry. If there's a situation where someone takes all the insurance proceeds and runs off to California and doesn't do anything to fix the property and leaves it in the hands of the city, then perhaps that...maybe you should consider making that illegal to do that and targeting that individual that is the problem, not the entire industry. [LB213]

SENATOR WILLIAMS: Thank you, Mr. Chatelain. Questions for the witness? Thank you for your testimony. [LB213]

JOHN CHATELAIN: Okay. [LB213]

SENATOR WILLIAMS: Next opponent. [LB213]

DAN FRIEDMAN: Good afternoon. I'm Dan Friedman, F-r-i-e-d-m-a-n, and I'm here today on behalf of the Nebraska Association of Trial Attorneys. Our association does not oppose the bill in full, but we do oppose the language in section 1(7) as it creates an immunity for insurance companies and their agents in demolishing real property. While trying to institute a uniform procedure for demolishing uninhabitable properties is a sound goal, the bill would potentially invite carelessness in the manner in which demolitions occur. No bill can account for every potential contingency that may arise in these situations. Whether an insurer is careless ought to be determined after the facts are known, not before these situations even arise. Insurance companies should be given sound procedures for carrying out demolitions, but there is no reason to shield them from liability to the extent that they may engage in careless behavior. An insurance company knows that they have a shield of immunity. It only encourages carelessness. And on that basis, we would oppose just the immunity provision of the bill. Thank you. [LB213]

SENATOR WILLIAMS: Thank you, Mr. Friedman. Questions for the witness? Thank you. [LB213]

DAN FRIEDMAN: Thank you. [LB213]

SENATOR WILLIAMS: Next opponent. [LB213]

MICHAEL FALLESEN: Members of the committee, my name is Michael Fallesen, F-a-l-l-e-s-e-n. I am here representing the Seldin Company based in Omaha, Nebraska, as well as the Nebraska Association of Commercial Property Owners. We're a member, Seldin Company is a member of that organization. As you may know, Seldin Company, based in Omaha, we are a

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commercial property developer and manager, as well as a residential property developer and manager. Our portfolio includes about 14,000 apartment units in multiple states primarily in Iowa and Nebraska. I'm here to...we oppose this proposed legislation. And I'll make my comments very brief. I really have three points that I'd like to make. Obviously we believe that we're one of the good guys and that we would...our responsibility is to our properties and to our owners who we represent. We would make the...we would do the right thing, and we just feel that this legislation hurts the good guys in an effort to penalize a small...or to address an issue that is relatively small, we believe. We feel that it unfairly penalizes a property owner who has initiated reconstruction. A property owner may be out of pocket to pay the contractor until the reserve is released. We feel that that's a real problem. And, again, this \$10,000 that's being reserved could be used to make the necessary improvements that are needed. But in conclusion, we feel that this legislation may interfere with the contract rights between the insured and the insurer since the city, village, or county is not named as an additionally insured. Thank you. [LB213]

SENATOR WILLIAMS: Thank you, Mr. Fallesen. Questions for the witness? Next opponent. [LB213]

JAMES CAVANAUGH: Senator Williams, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh. I'm an attorney and a registered lobbyist for the Independent Insurance Agents of Nebraska. I appear here today on their behalf in opposition to LB213. Briefly, I've been doing this for about 27 years. This is probably the sixth or seventh time that this bill has appeared before this committee at least, and we have consistently opposed it in all of its forms. And you've heard most of the policy arguments from previous testifiers, so I won't go through those again. Let me just point out that this bill almost invariably is introduced by a senator who has a building that recently burnt down in their district, and the proceeds went to someone who skipped out and left the wreck of a building on Main Street, in this case Columbus. It has been Hastings. It has been York. It could be your district next. So I'm just pointing out that the incidence of this is geographic-specific and that's, you know, neither good nor bad. The point is buildings burn every day in the great state of Nebraska; 99.99999 percent of property owners do the right thing and clean up after the fire. I would submit that if you went home tonight and found that your home or business had been burnt to the ground, and you got your insurance settlement, ask yourself what would I do? Would I leave town with the money or would I do the right thing? And most people do the right thing. What this well-intentioned, but misguided piece of legislation seeks to do is to impose on the 99.99999 percent the burden for that .00001 percent of bad actors' irresponsible behavior. It's killing a flea with a sledgehammer. The current form that it's in makes some changes that may be good or bad. In the previous ones, the underlying bill remains the same. In the past, this committee has shown the wisdom of not advancing this particular piece of legislation, and I'd urge you to follow that historic trend. Again, thank you. I'd be happy to answer any questions you might have. [LB213]

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SENATOR WILLIAMS: Senator Campbell. [LB213]

SENATOR CAMPBELL: Thank you, Senator Williams. Mr. Cavanaugh, would you like to comment on the city of Omaha's testimony? I mean, that's not...it's not an isolated situation Councilman Gray was talking about, number of properties in their community. So it's not like just one thing has happened in Omaha. And I thought you might want to comment on that. [LB213]

JAMES CAVANAUGH: You know, I'm a resident of Omaha and Councilman Gray is exactly right. In particular parts of our great city, real estate is neglected or abandoned, more so than in other parts. And I think that might be true of any large city in America. I don't know that this would particularly, appreciably affect that. It could in those rare instances that fit this exact description, which is it burnt down and it was insured. But much of that property is not burnt down, it's just kind of abandoned or derelict and much of it's also not insured. I think one of the previous witnesses maybe hit on something, and I know the city and Councilman Gray is taking a leadership position in this on making strides to combat the urban blight of abandoned and neglected properties. Part of that is going to involve a greater investment by the city in doing something about them. I think recently there was initiative to step up tax foreclosures on a lot of these properties are just, they walk away, they don't pay the taxes, they don't do anything. So put them on the block, resell them to somebody who's going to, you know, either rehab them or redevelop them entirely. And that's probably a better way forward. This wouldn't I think appreciably affect the vast number of properties that we're dealing with in the areas of Omaha that have this problem. [LB213]

SENATOR CAMPBELL: Thank you. [LB213]

SENATOR WILLIAMS: Additional questions? Seeing none, thank you, Mr. Cavanaugh. [LB213]

JAMES CAVANAUGH: Thank you. [LB213]

SENATOR WILLIAMS: Next opponent. [LB213]

TAD FRAIZER: Good afternoon, Senators. My name again is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of some 300 property and casualty firms. Just wanted to make a few points here. We understand the problem, but it's important to note we think that the municipality, village, or county is a stranger to the insurance contract here. It's not named on the contract. It has not paid any of the premiums, so

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it's kind of coming in and involving itself in a transaction where it has no interest as such. This is not like mandatory automobile insurance under Nebraska law where you're required to carry insurance for the benefit of someone who may be injured. There is no requirement to carry insurance. That's totally up to the property owner. This isn't like a bank situation where you would...a loan from the bank gets you the property so there would be nothing to insure if the bank wasn't involved and, therefore, the bank is shown as a loss pay. I mean, we understand there's a pot of money out there and people would like to access it, but, again, the municipality or county is not involved. And to go to Senator Gloor's or actually I think it was Senator Gloor and maybe it was your question, Senator Williams, I believe this bill is exactly the same as the 2013 edition of the bill which I believe was LB614 in 2013. I can't...I think there are some changes from the prior version. But the language of the bill is pretty well automatic. It says if you meet the requirements of section 1, the loss reserve goes into effect. It kicks in. There's no notice required from the municipality or the county. If the property is located within the limits of a city or actually the way the bill is written within a county, basically it's any piece of property in the state, and the damage goes above a certain level and the proof of loss comes in, that loss reserve kicks in. And then it's up to the city, village, or county has up to six months to decide what action it's going to take. So it doesn't have to do anything for six months and then at the end of six months it could enter a demolition order or bring a lawsuit or something which would then extend the holding of the loss reserve even farther. So this...in some ways, this kind of runs counter to the usual experience insurance companies have in dealing with legislation. Normally we're being encouraged to pay out faster. People complain that insurance companies are not paying fast enough and people want to impose penalties. Here we are being told, yes, insurance company, you agree there's a loss. Yes, you've agreed on the amount. Yes, you've agreed that you should be paying off your insured, but don't pay off your insured for a minimum of six months or to whenever we get around to deciding what we want to do with this \$10,000 or 10 percent of whatever the available insurance proceeds are, which could well be beyond \$10,000. And although this may be for the benefit of the municipality or the county, just as a practical matter the insurance company is going to catch the blow back from it. It's going to be the local agent or the person from the claims department who calls up the insured and says we're ready to send you a check except we're holding back \$10,000 or 10 percent. And the insured asks, when do we get our money? And, well, when the local governing body gets around to deciding what it wants to do in six months or maybe thereafter, at which point the paint starts getting blistered off the wall by the insured who's going to be just as unhappy with the insurance company, although this is not the insurance company's doing, as they are with the municipality. I had some questioned, although I'm not advocating for the insureds as such, if this isn't a seizure without due process. The property is essentially seized up front and any action to determine the validity of the seizure comes after the fact. So there's a question there. And I'll just point out, there is some question about how the procedures run. You're supposed to send notice to the local clerk. I don't know that you can tell right off the bat from a given address or a legal description if a given property falls within the corporal limits of a city or if it's out in the county. If it's within the zoning jurisdiction

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of a city or village, how do you determine that in an efficient manner, and then how do you get the proper notice to the proper person? That can be an administrative issue. And if it's not determined properly, section (7) suggests that the insurer may be liable for possibly to the local governing body if we don't do so, so. [LB213]

SENATOR WILLIAMS: Thank you, Mr. Fraizer. Any questions for our witness? Thank you, Mr. Fraizer. Next opponent. Seeing nobody coming forward, are there any...is there anyone here to testify neutral? If not, Senator Schumacher, would you like to close? [LB213]

SENATOR SCHUMACHER: Thank you, Senator Williams, members of the Committee. As the introducer of this well-intentioned but misguided piece of legislation, (laughter) it is nevertheless transparent and economic development. [LB213]

SENATOR WILLIAMS: Thank you, Senator Schumacher. [LB213]

SENATOR SCHUMACHER: Addressing...does this mean, I'm supposed to shut up already? (Laughter) [LB213]

SENATOR CAMPBELL: We could hope. I mean... [LB213]

SENATOR WILLIAMS: Well, that was there for a reason. [LB213]

SENATOR SCHEER: It was just a subtle hint. [LB213]

SENATOR SCHUMACHER: Okay. Quickly touching upon a couple of issues. First of all, the bankers were at the meeting for sure. (Laughter) Line 1 says after payment of all mortgages... [LB213]

SENATOR GLOOR: Yep. We talked about that over here. [LB213]

SENATOR SCHUMACHER: Okay. I think a lot of the issues that have been raised could be resolved very simply by adding a provision which says that the landowner can enter into an undertaking with the city to have the work done in a timely manner and that that could cause release of the insurance proceeds. As far as any unlawful taking and those kind of theories, perspectively applied, the statute becomes a part of any insurance policy and is effectively there as long as it's perspectively applied. The insurer is not going to go out there and do the demolition. So arguments regarding immunity for a sloppy job of demolition do not apply here.

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This is...the immunity is simply if the insurance company follows these particular rules and withholds the up to 10 percent, that they cannot be sued for not making a prompt payment on what is required by them to be withheld. I'd be happy to answer any questions with regard to this, but this is a continuing problem. This is decent effort at trying to solve the problem, although misguided, and it is...I think can be fixed mostly by just having a provision where the landowner can enter into an undertaking with the city, setting forth a time table, and the city can release its hold on the 10 percent. Certainly the 10 percent is going to be required almost any circumstance to deal with a piece of property that's been burned down or demolished to at least 70 percent of value. And so I think that that can be worked out simply by an undertaking that's entered in between people of good will. This is a problem and people have left the state and left the city for some time with a ugly piece of real estate that they have to take care of. And, naturally, the city doesn't want to, if it got to foot the bill, move instantly on it because it's going to try to exhaust other mechanisms in order to get the work done before it gets involved with its expense of trying to figure out how to let bids or whatever to get the thing taken care of. So the property hangs around for a long period of time, and it is a danger and it's an eyesore, and ultimately it...if there is not good faith and if the landowner has walked away from the property, that results in a burden on the taxpayers. I'll take any questions. [LB213]

SENATOR WILLIAMS: Any final questions for Senator Schumacher? Thank you, Senator. [LB213]

SENATOR SCHUMACHER: Thank you. [LB213]

SENATOR WILLIAMS: That will close the public hearing on LB213 and we'll stay on schedule and take a five-minute break. Plan to be back no later, we'll start at 3:45. [LB213]

BREAK

SENATOR SCHEER: Okay. Being right at the point in time, we will go ahead and start again, and we are on the last bill today, LB628, Senator Schilz. [LB628]

SENATOR SCHILZ: Thank you, Senator Scheer and members of the Banking, Commerce and Insurance Committee. Thank you for having this sign up here so I got the committee correct. I appreciate that. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm introducing LB628. LB628 will modernize the state's insurance laws and allow insurers to respond to changing consumer preference for electronic communication over traditional mail services. In today's day and age, consumers are conducting more and more business on-line, everything from shopping to banking to paying bills. This applies to the business of insurance as well. As policyholders are increasingly opting to receive policyholder documents from their insurer electronically via e-

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mail, there are questions, however, about what insurers are allowed to electronically deliver to policyholders who consent to such delivery. Generally speaking, the federal Electronic Signatures in Global and National Commerce Act, E-SIGN, and state Uniform Electronic Transaction Act, UETA, laws allow businesses and consumers to conduct such business on-line so long as both parties consent and certain disclosure language is provided to the consumer. However, insurance is highly regulated and governed by laws with detailed specifications about when and how certain notices must be provided. There is a question as to whether or not insurers may electronically deliver all legally required documents to consumers who consent to receive those documents electronically. This is why LB628 is necessary. Consumer convenience, consumer choice. Electronic commerce laws make it clear that the decision to receive policyholder documents electronically is the choice of the policyholder. Policyholders must give prior approval to their insurer to opt in to electronic delivery of policy information, bills, and notices, and can opt out if they choose. Similarly, an insurer that chooses to post generic policies on-line must provide policies directly to the policyholder if the policyholder requests it. Under these laws, statutory notice time frames still apply to electronic delivery. For example, if insurers are required to mail a document 30 days in advance, they are still required to electronically deliver that same document 30 days in advance. E-delivery and e-posting are similar, but different. E-delivery refers broadly to the electronic transmission of any and all insurance documents, including policy, notices, including cancellation or nonrenewal, and billing to policyholders who consent, i.e., opt in, to receive such materials electronically. E-posting or posting policies to the Internet refers to the posting of a generic policy forms and endorsements that do not contain personally identifiable information to the Internet and sending a link to the materials via e-mail to the policyholder in lieu of mailing paper copies to the policyholder. Under this legislation, policyholders who wish to receive all communication from their insurer electronically may elect to do so while those who do not will continue to receive physical copies. An amendment has been discussed among the interested parties who would wish to see this bill further drilled down to be most effective. It is currently being drafted and will be presented to the committee as soon as it is finished. And there are folks behind me that understand all the ins and outs of what that is and I'm sure that they will be able to answer most of your questions. And with that, I would try to answer any of your questions if you have them. [LB628]

SENATOR SCHEER: Thank you, Senator. Any questions? Seeing none, you're off right now. [LB628]

SENATOR SCHILZ: Tough crowd, huh? Thank you. [LB628]

SENATOR SCHEER: Now turn to proponents. [LB628]

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COLEEN NIELSEN: (Exhibit 1) Good afternoon, Chairman Scheer and 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 the Nebraska Insurance Information Service. The Nebraska Insurance Information Service is a local trade of property casualty insurers with members writing the majority of property casualty insurance in this state. Senator Schilz did a very good job of summarizing the bill before you. I'm just going to give you a couple of highlights that are in the bill as well. This bill appeared before this committee last year, and we did make some changes to the bill and there will be other amendments to the bill to make sure that all interests and considerations are prescribed in this piece of legislation. The bill particularly does provide for the electronic delivery of notices and documents, and as Senator Schilz indicated, currently under chapter 44, most of the notices and documents are sent by mail and prescribed the way that those notices must be sent, either by certified mail or by registered mail or whatever. What this bill does is it allows a party or the insured to elect to have those notices sent to them electronically and, consequently, this bill changes it so that all of the requirements of registered or certified are taken into consideration when electronically delivered. So, for example, if the mailing of a notice requires certified mail, then in this bill if it is delivered electronically it must provide a verification or acknowledgement of receipt. So consequently that would fulfill the requirements of chapter 44. In addition, while we were working on this piece of legislation, we did talk to the Department of Insurance to see if they had any concerns. One of the things that they asked that be considered is that if notice is delivered to an individual and it does seem to have not been...I'll just say, and it bounces back, then the department wanted to make sure that the person would then be allowed or be sent the notice by mail as a result, and that is contemplated in this bill. So for whatever reason, if there is a...if the insurance company does not believe that this has been communicated to the party, then it will be sent by mail. There's also a provision that if the person no longer wants to receive these notifications electronically, then they can withdraw the consent and the insurance company will then comply with that. The section...section 2 of LB628 also, that's the posting part of this bill, and what it allows for as Senator Schilz has already testified to is that the insurer will post the insurance policy on the Website and the party will be given the address of this particular Website so that they can view their policy without having to look for it or file it away. I found that to be true in other sorts of financial service documents that it's easy then to go and look that...look at them on your mobile device or whatever so that you can see what the provisions are in your particular policy. After they've expired, they have to archive them for a period of five years so you can look back at your policy. And so it's just a matter of convenience for a person that we'd like to take a look at their policy whenever they could. With that, I will tell you that we are...we have been in negotiations with the big I and we have some other additional changes that I think that the testifiers following me will describe to you. And with that, I'd be happy to answer any questions. [LB628]

SENATOR SCHEER: Any questions? Senator Schumacher. [LB628]

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SENATOR SCHUMACHER: Thank you, Senator Scheer. A lot of this refers to e-mail delivery of documents. [LB628]

COLEEN NIELSEN: Yes. [LB628]

SENATOR SCHUMACHER: And I do not personally know what's in the Uniform Electronic Transactions Act. Does that set standards for the servers of the accessibility of the e-mail servers for electronic transactions? [LB628]

COLEEN NIELSEN: You know, I looked at that. It's in section 86 of the Nebraska revised statutes currently. We've adopted that in 2000. I didn't look at it particularly as to the uniform requirements of that. [LB628]

SENATOR SCHUMACHER: If it was adopted in 2000 almost certainly does not because that predates a lot of these issues. But when you send an e-mail and a lot of commercial senders, insurance companies, banks, financial advisors contract with a commercial e-mail server sometimes called spam servers to send out their mailings rather than doing them inhouse from their own particular servers that are clean and well-maintained. And when those mailings hit such things as the Internet provider spam screens, barracuda network screens that many people have on their Internet service, their own internal spam screens that are on their own PCs, those things evaporate because they are coming from what has been questionable servers. So is there anything in here that requires a standard of e-mail server to be employed and that will require the delivery to be by someone or a server that is not on a spam hit list or a spam advisory list that would cause it not to go through? Because the only verification required is in those things that are specifically under law required to be verified, not ordinary communications. [LB628]

COLEEN NIELSEN: The only thing that comes close to what you're asking that I'm aware of is that the individual will be told what software requirements are involved, software and hardware requirements, they will need to have on their computers. And that probably doesn't answer your question. [LB628]

SENATOR SCHUMACHER: It doesn't. Thank you. [LB628]

COLEEN NIELSEN: But it does...they do have to confirm access by delivering an e-mail to that individual and having a response. The consent must be sent electronically. [LB628]

SENATOR SCHUMACHER: But that's only under those things that the statute requires confirmation. [LB628]

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COLEEN NIELSEN: Right. [LB628]

SENATOR SCHUMACHER: Okay. But another...if other communications that they may consent to, if the statute doesn't require a return receipt, they don't...that's not required. It could be evaporated in space. [LB628]

COLEEN NIELSEN: Well, all I'm going to say is that the insurance companies have reason to get those documents to an individual, and so I think, you know, everything that they can do to make sure that that happens is going to happen. But there are no particular requirements in this bill that I know of. [LB628]

SENATOR SCHUMACHER: Or standards for those service, right? [LB628]

COLEEN NIELSEN: Or standards that I've seen, no. [LB628]

SENATOR SCHUMACHER: Thank you. [LB628]

SENATOR SCHEER: Any other questions? Seeing none, thank you. [LB628]

COLEEN NIELSEN: Thank you. [LB628]

SENATOR SCHEER: Next proponent. I'm not going to ask if you had a good weekend. [LB628]

KORBY GILBERTSON: (Laugh) Oh, yes. Good afternoon, Chairman Scheer, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America. As Coleen mentioned, this is a bill that you saw last year. It was introduced by Senator Gloor at the time. It was then held in committee and obviously with the short session we did not have time to move things on, and so it just kind of sat there. It did have a sister piece of legislation that was to allow for electronic proof of insurance, and that bill was passed by the Legislature last year. First of all, to try to answer Senator Schumacher's question, this is already happening in over 30 other states. I think if there was a huge issue with server qualifications and being able to get into...being able to be delivered we would have heard about that. But there also is an amendment that we were hoping would be back down from Bill Drafting before we had the hearing today, but it's not quite down here yet. We'll make sure that that gets distributed. PCI and the big I started having discussions about this legislation during the interim unbeknownst to a number of us who are here on the ground in the state. We became

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aware of those negotiations right after the bill got introduced. PCI then said that we would stick with whatever came out of those negotiations and support them. So I believe Mr. Cavanaugh will follow me in testifying, so we are all on board as far as we know with this amendment, and there are a number of things that change in bill that I think might help all of you and help give consumers a little bit more of a peace of mind. It does require that there's...any time an insurer has any reason to believe that the notice has not been received or that their electronic mail address might not be valid, they then have to physically mail the documents to them. That was added in new language based on some concerns that they had to make sure that things actually go through. I know that from my office when I send out memos to clients, and some clients they bounce back because I have a Web-based database that I use. And so I constantly have to call clients and say, just make sure you say that accept my e-mail address or accept this address so that you can continue to get those mailings. It's my understanding that's what happens. And I know for at least myself and a number of my friends, we have all opted to receive banking statements and investments statements in those huge books that you used to get in the mail every six months from different investment things. I get all of that electronically now and it's so much easier to be able to file that electronic file than keep books and piles of paperwork. And we're just trying to give consumers the option to do that same thing with their insurance documents. With that, I'd be happy to answer any questions. [LB628]

SENATOR SCHEER: Thank you. Any questions? Seeing none, thank you very much. [LB628]

KORBY GILBERTSON: Great. Thank you. [LB628]

SENATOR SCHEER: Welcome. [LB628]

JAMES CAVANAUGH: (Exhibit 2) Senator Scheer, members of the Banking, Commerce and Insurance Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist for the Independent Insurance Agents of Nebraska. I appear here on their behalf in favor of LB628. As Ms. Gilbertson said in her testimony, the Independent Insurance Agents and the Property Casualty Insurers and others interested in this bill have agreed with Senator Schilz on some amendment language that you'll see does a considerable amount of tightening up language that is contained in the green copy. And just to give you some examples of, you know, some of the tightening up that we're talking about, our interest as independent insurance agents are, you know, in the interests of the consumer are clients. We don't work for companies. We work for individuals who buy insurance through our agencies. As such, it falls upon us to explain to our clients the properties of the policies and the products that they're purchasing. Under pain of liability, the liability is called errors and omissions. That's essentially malpractice on the part of insurance agents. If we error or omit to tell you something that's an important piece of the policy that we're selling to you, we can be held liable for that down the road. So we're very concerned

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to make things as clear as possible in the language and the policies so that (a) we can explain it to you and (b) so that you can understand it and there's not disagreements down the road that would result in errors and omission type of claims against us. So in this particular case, you know, we're recognizing that the world is turning economic conditions of change, and e-commerce is the wave of the future. It's here actually. And so this is happening. It's going to happen. What we need to do is make it happen as effectively and coherently and transparently as possible so that the poor consumer at the end of the marketplace can understand what's happening. You'll see in the amendment language the deletion of certain sections of the green copy of (LB)628 which we felt were, you know, kind of hard to understand, frankly, and clarification and much simpler language that is easier to understand. What we're trying to do is say, look, if you want to do this, you can do this. And if you stop wanting to do this, you can stop doing this. Make that as clear and as simple as possible, and in the course of that, it'll be done in this fashion. And the question that Senator Schumacher had about the software actually used in there, that is addressed in the amendment language so that it's agreed upon stuff. It's nothing esoteric. We also make it clear that the notices and documents will be delivered...that will be delivered by electronic means are these ones that, you know, you will know in advance the ones that are coming via electronic media that you could withdraw, you know, at any time. And we try to make that as simple as possible without penalty. If you want to go back to receiving it by mail, you can do that and there's not going to be any penalty for doing that. If the insurer runs into a bounceback bad e-mail that they shall then initiate a policy of notification by other means, you know, probably going back to the notification that's usually involved in important notifications, which is certified mail. But that shall happen. That's not a may or, you know, it's a backup system that will kick in. And we think that the bill as amended is, you know, a recognition of the way that the industry is moving, a recognition of the fact that, you know, a lot of consumers might not be the most sophisticated computer people, and a recognition that plain English is usually preferred over technical jargon. I'd be happy to answer any questions you might have. [LB628]

SENATOR SCHEER: Questions? Senator Williams. [LB628]

SENATOR WILLIAMS: Yes. Mr. Cavanaugh, the one question that I have about this, and of course electronic communications is where we are, where are we with all of this when you get to the final end with the policy that might be lapsing or could fall out of good graces with that? [LB628]

JAMES CAVANAUGH: Right. If at the beginning of, you know, your policy you...the bill says affirmatively consent, but basically opt in to... [LB628]

SENATOR WILLIAMS: I've opted in and said I'm doing this... [LB628]

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JAMES CAVANAUGH: Okay. You're going to get an e-mail. You're going to get an e-mail from the company that says your policy is cancelled or something like that. Essentially, that's what happens. [LB628]

SENATOR WILLIAMS: Okay. There's no requirement in here that that final thing would be a certified letter or something like that? [LB628]

JAMES CAVANAUGH: Well, not if you've opted in. I mean, you're opting in for electronic media. [LB628]

SENATOR WILLIAMS: Right. [LB628]

JAMES CAVANAUGH: So what would happen is you've changed your e-mail. Now I have the same e-mail that I had in 1992. The reason I have the same e-mail I have that I had in 1992 is I don't want to learn any new numbers or e-mail addresses. I've got my law firm and everybody else has got plenty of other new e-mails that have come in the last...since 1992, and I have one of the oldest e-mails in Nebraska simply because I don't want to learn a new one. But if you change and for whatever reason you didn't inform the insurance company that your e-mail isn't the same one that you had in 1992 and it starts bouncing back to them, this says they then have to go back to notifying you, you know, probably by certified, mail but by an accepted legal means of notification. An insurer shall deliver a notice or document by any other delivery method permitted by law other than electronic means. And then it goes, if a couple of different things on how they become aware. But it becomes incumbent upon them to go back and notify you as best they can by other means. [LB628]

SENATOR WILLIAMS: Thank you. [LB628]

SENATOR SCHEER: Senator Schumacher. [LB628]

SENATOR SCHUMACHER: Thank you, Senator Scheer. As a practical matter, you probably at that 1992 e-mail address get hundreds if not thousands of e-mails a day that you never see that you don't have any control over being blocked because they are taken out by a commercial spam screen between you and the sender. That spam screen does not send something back to the sender saying this has been screened from Jim's e-mail because it doesn't want to alert the sender that you're alive and well and available to receive e-mails and, thus, overload the system. So I think the point raised by Senator Williams is very, very good that it may be fine and it may be convenient and it may work, but when it comes right down to the bottom line and your policy is going to be canceled, you need to have something besides something that relies on an e-mail

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server, particularly when there is a propensity in business to cut costs at every corner and may, in fact, be using servers which sometimes permanently, sometimes for just a few days, sometimes for a few hours, are taken offline by the various spam authorities and not let that stuff through. And so I doubt very much if that's addressed in your amendment. But would there be great difficulty with before a policy is canceled, before something, you know, you're left without coverage to require that last certified letter saying regardless of what you signed, you didn't make your payment, we didn't receive it, and we're not renewing you. Goodbye. [LB628]

JAMES CAVANAUGH: You know, this is not the only state that's addressed this issue or adopted. This is kind of legislation that's been, you know, coming around the country because that's the nature of electronic marketplace today. So if we can make it better, you know, there's nothing chiseled in stone here. Let's make it as good as we can make it. All the people that have worked on this have kind of brought that to the table. We want to make this as good as we can possibly make it. And if you've got an idea for a better mousetrap on this, you know, we'd be open to that because we want it to work. And I agree with you that there are difficulties and I'll tell you why. If you pulled your bar dues this last year (laughter) or you certified your hours for continuing legal education, you jumped through some incredible hoops to do that. And I'm thinking there's some great old lawyer out in Lexington or someplace been practicing law for 80 years, brilliant legal mind, who's probably run afoul of just recertifying himself for practicing law for another year. And so it happens. Okay. You know it happens. I know it happens. And we don't want it to happen. The purpose of this is to try to make it as good as we can make it. So, you know, you're the committee, you can make a better change in this. That's what we tried to do with this amendment. I wish somebody at the Bar Association was working as hard on my bar certification as we are working on this. [LB628]

SENATOR SCHUMACHER: All you had to do with the bar is not click to get a runaround button (laughter) and (inaudible). [LB628]

JAMES CAVANAUGH: I'm going to come and see you. [LB628]

SENATOR SCHEER: How is this different than is in current practice right now within the state? [LB628]

JAMES CAVANAUGH: Well, I think there are requirements now for, you know, cancellation notices to be in, you know, a hardcopy form in order to be compliant. [LB628]

SENATOR SCHEER: So the only difference between what's going on right now is the final documentation has to be sent certified? [LB628]

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JAMES CAVANAUGH: Right. I know people, I have people working in our firm who they have desks cleaner than this. They don't allow a single scrap of paper in their life if they can avoid it. This is going to be great for those people, and they're kind of all under the age of 40. But there are also people like me who have desks that have real paper on it and I receive real mail and I read it. This is going to allow for those people to, you know, continue on because you have to opt into that no paper thing. [LB628]

SENATOR SCHEER: Well, I'm not familiar with every company by and large, but there are companies out there that are doing exactly what you're proposing under this legislation to the extent that all the documents are sent via e-mail and you opt in and you...they'll send you the first e-mail where you have to return it so it's telling...somehow it magnificently tells your computer and all the spam people that this is supposed to be real mail. And it does work. I'm not technical. I don't know how it works, but it does work. The company that I'm discussing, I think, does send out a certified notice of cancellation, but from my vantage point I would say well over half, at least 50 percent, I'm picking those up at the post office anyhow because they refuse them anyhow. So, I mean, to a certain extent that's...you know, they don't answer an e-mail, they don't answer the mail that comes to the door either. [LB628]

JAMES CAVANAUGH: Right. [LB628]

SENATOR SCHEER: So, I mean, either way they're still not going to get notice. But... [LB628]

JAMES CAVANAUGH: You do the best you can. You know, this is...had a lot of thought by a lot of people and, you know, we're in the second, third year of offering it as a legislative proposal. And is it perfect? Probably not. It's as good as we can make it and it's better than, you know, the last one that you saw. But, you know, two, five years from now if you pass this is somebody going to be back here saying, you know, maybe, Senator Schumacher, that, you know, this thing could be better now? Yeah, probably, because, you know, the technology is changing so fast. You know, you may be at a place five or ten years from now where you get certified mail on your, you know, computer and it automatically prints it out in a hardcopy form. I don't know. Stuff is changing faster than I can keep up with it, but this recognizes that that change is inevitable and we got to do something about it. [LB628]

SENATOR SCHEER: Okay. Thank you. Any other questions? Thank you very much. [LB628]

JAMES CAVANAUGH: Thank you. [LB628]

SENATOR SCHEER: Next proponent. [LB628]

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TAD FRAIZER: Good afternoon, Chairman Scheer, members of the committee. My name again is Tad, T-a-d, Fraizer, F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property and casualty firms. We have not been involved in the most recent discussions on the amendment to the bill. As a matter of fact, I just was handed a draft of the amendment about 15 seconds ago, so I can't comment on the details of it. But we're supportive of the general thrust of allowing an opt in to e-delivery and e-posting of documents. As Mr. Cavanaugh noted, it's the way of the future. This Legislature several years ago mandated that most reports coming to the Legislature are in e-form. I know this year when I had to do my lobbyist renewals and lobbyist reports, that's all on-line. You can't use paper forms anymore. They were kind enough to let me hand carrying in a check, but that was about the extent of it. But, again, since it is on an opt-in basis and the option for hardcopy is still reserved to the insurance consumer, we think this is a good direction to at least go. And if there are some tweaks that will be needed along the way, I'm sure those can be accommodated. And I'd try to answer any questions you might have. [LB628]

SENATOR SCHEER: Any questions? Thank you, Mr. Fraizer. Any other proponents? Are there any opponents? Good afternoon. [LB628]

DAN FRIEDMAN: Good afternoon. My name is Daniel Friedman, F-r-i-e-d-m-a-n, and I am testifying on behalf of the Nebraska Association of Trial Attorneys in opposition to LB628. While technology is a benefit to society, technological advances can also create new problems. By trying to replace traditional mail with electronic mail for insurance companies, LB628 would create new problems for consumers and certainly invite endless litigation over the meaning of certain phrases in the bill. The insurance that consumers purchase can mean the difference between financial ruin and solvency after a calamity strikes. Insurers should be bound to provide the maximum amount of notification to ensure that the citizens of our state are given adequate warning about cancellations or other important insurance events. Section 1(3) of the bill makes electronic delivery the legal equivalent of first-class mail and the like. This provision does nothing to benefit consumers. It only benefits insurance companies insofar as they would save money on postage. If anything, consumers should be able to use electronic delivery to supplement traditional forms of notification rather than replace it. Section 1(4) of the bill contains many ambiguous and undefined phrases. There is no definition, for example, of clear and conspicuous in terms of the notice given to consumers. We've all seen the fine print in insurance policies. This bill only gives insurance companies the opportunity to create more loopholes and trapdoors for unwary consumers. This section also permits insurers to charge fees for a paper copy of the documents and doesn't limit the amount that can be charged. This only benefits insurance companies, not consumers. The section further permits insurance companies to create Byzantine procedures for a consumer to withdraw consent to electronic notification. The section would create further havoc by allowing insurers to define the hardware and software requirements to obtain electronic delivery. Mailbox technology never changes and probably

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never will. For something as important as notifications of insurance coverage, including cancellations, we ought to continue to benefit consumers by giving them as much notice as possible. Consumers are burdened by having to maintain electronic hardware even if their financial circumstances change or their technological devices become obsolete. The bill uses the endlessly ambiguous phrase "reasonably demonstrates" in describing the manner in which a consumer can electronically consent to notice. The bill invites additional litigation and confusion by allowing an insurer to try and use oral communications as evidence of consent for electronic deliver. I can picture the endless litigation over whether a particular voice was or was not an insured. In sum, it is probably wise to make information and notices and policies themselves available to consumers electronically. However, by eliminating paper copies in the mail, this bill would create a substantial risk that certain consumers would not receive important information from their insurance companies. There are too many ambiguous phrases in the bill and too many opportunities for insurance companies to create complicated procedures and utilize hidden fees. If it ain't broke, don't fix it. LB628 creates more trouble than it's worth. Government agencies such as the IRS, the state Department of Revenue, and similar continue to utilize the U.S. mail for important notices to citizens. Consumers in our state should be given the maximum protection of receiving important notifications about their insurance coverage. With that, I'm open to any questions. [LB628]

SENATOR SCHEER: Any questions? Mr. Friedman, why would this be bad if the person opts into it? They're acknowledging perhaps whatever pitfalls may be there. It's their choice. So how is it harmful to the insured if that person indeed opted into the program? [LB628]

DAN FRIEDMAN: Well, the person opts in, but there's still a much bigger risk of them not getting an e-mail than them not getting a certified letter. I've had so many clients who come to me with policies that have lapsed. And if there's not proof of that certified mail, then the insurance company isn't allowed to cancel the policy. The procedures in this bill just don't ensure that same level of notification. While a consumer might have opted in, it's our position that it just creates too big of a gap between people and the lapses in their insurance coverage, and we ought to increase the level of information that consumers get. And there's no real benefit to consumers. They can opt in, but they're not...they're getting the convenience of an e-mail, but they're not getting the certainty and predictability of knowing that if something really bad happens and their policy is cancelled, they're going to know about it in a certified letter. It's better for the state to have people insured and know whether they're not insured if something bad happens. [LB628]

SENATOR SCHEER: Well, conversely though, an insured would still have benefits because if indeed the system worked correctly, you have ABC Company sends out a notice of cancellation or a notice for payment, you're going to get that the same day as an e-mail. And if you're getting it by mail, you may get that notice of payment three to five days later which may only leave you three days to make the payment, and had you known five days in advance, could have taken care

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of it. So, I mean, there is another side that would be a benefit to the insured, can't you see?
[LB628]

DAN FRIEDMAN: We think that it makes sense for insureds to be able to get notifications via e-mail and U.S. mail. More information is better for the consumer. There's no downside to continuing to use the U.S. mail. There's none. The only downside is that insurance companies have to pay for postage. We don't think that's enough of a downside that the elimination of U.S. mail for the insurance industry in Nebraska should be mandated or allowed. [LB628]

SENATOR SCHEER: Well, it's not...so you don't trust the individual to make that decision.
[LB628]

DAN FRIEDMAN: I trust an individual to make a decision to get information via e-mail, but we think that certain important pieces of information should be shared via U.S. mail, similar to how the IRS handles things, how other government agencies handle things. Important things in this society come via the United States Postal Service. Knowing that your insurance policy has lapsed is really critical information and the state should continue to require insurance companies to protect people from financial calamity to get that information via U.S. mail in addition to e-mail if a consumer so chooses. [LB628]

SENATOR SCHEER: Is your perception that everyone goes and picks up that certified mail then? [LB628]

DAN FRIEDMAN: Well, they have to have a green card in order to have the cancellation be effective. [LB628]

SENATOR SCHEER: I understand, well, no that's not true. Not true at all. That cancellation can go out via certified mail and if they choose not to pick it up, that policy is still canceled, sir.
[LB628]

DAN FRIEDMAN: Well, Senator, forgive me if I'm misstating the law on that point, but in any event it still remains to be...remains the truth that more information is a better outcome for consumers than less information. And the more certainty you get from delivery of information, the more protection the consumers in the state have. [LB628]

SENATOR SCHEER: Okay. Any other questions? Senator Schumacher. [LB628]

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SENATOR SCHUMACHER: Thank you, Senator Scheer. To the extent a consumer consents or opts into the program, to what extent do you see informed consent being part of the essence of that consent? Most consumers have absolutely the foggiest notion of how an e-mail is delivered to them and the screens and the various things involved. To what extent, for such a consent to be valid, would that have to be disclosed and understood by them the vulnerabilities of e-mail? [LB628]

DAN FRIEDMAN: They wouldn't have to understand anything. They would just have to click an e-mail saying e-mail me things, and there would be no requirement for reading the procedures and the procedures could be very lengthy. And then the procedures for a consumer to change his or her mind could be lengthy. And then what if a consumer...you know, the computer breaks, the phone breaks, and they can't check their e-mail with relative ease? If they had opted in a year earlier, their financial circumstances change, they have to remember to get to their library and read their e-mail there and go through the complicated procedure that the insurer is allowed to put into the policy to change the opt in to and opt out. We just think that this is creating more problems than it's worth. If you want to give consumers the right to get things via e-mail, it should be in addition to U.S. mail. [LB628]

SENATOR SCHUMACHER: Thank you. [LB628]

SENATOR SCHEER: Any other questions? Seeing none, thank you, Mr. Friedman. [LB628]

DAN FRIEDMAN: Thank you. [LB628]

SENATOR SCHEER: Are there any other opponents to LB628? Seeing none, are there any that wish to speak in a neutral capacity? Seeing none, Senator Schilz to close. [LB628]

SENATOR SCHILZ: Thank you, Senator Scheer, members of the committee. Senator Schumacher, thank you very much for your questions. I think it's important to note that this bill with the amendment doesn't change the underlying law and that if there is any concern that somebody did not receive the e-mail either through read receipt or through somebody replying to that e-mail, then the insurer is obligated to send a certified letter just like the law says today. So that's already in existing law and that doesn't change with this bill. So if you opt in, you would get an e-mail. If you don't answer that e-mail or you don't send back the read receipt, then the original law kicks into play and you would get a certified letter moving forward. So I think that that is still there. We aren't knocking out any of the existing law that's there. There was also something about a fee for the paper copy. Underneath the amendment, and I know folks haven't seen that necessarily, the fees are stricken for getting a paper copy of that certified letter. And then you can always opt out or ask or request for a paper copy, and if there's any issue with that,

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I think that it would be wise for the committee to make sure that somebody should ask for that in a fashion that is documented to make sure that nobody can say, well, I asked for it, but it never came. So make sure that there's a documented process there that somebody could say, yep, you did ask for that. And then the last thing, you know, we talked about small print a little bit. And the only thing that I know is that a small print on a paper, you can't do much with that. But small print on a computer screen or an e-mail, you can make that bigger and read it. So I think that that's something that we can all agree to there. And if you would ask a 20-year-old whether or not they would rather receive a piece of paper or an e-mail, I can tell you this. Paper anymore is becoming more and more obsolete and mail really means nothing to them. And I can tell you many people don't know how they get an e-mail and just as many people don't really understand how they get regular mail either. So I think it goes both ways. So with that, I would attempt to answer any other questions you have. But I think this is the future. I think it's coming, and I think that we shouldn't try to hold it back just because we have fears of what could be. I think this makes sense. I don't think it in any way hurts anyone to try this or to move forward with this. So with that, I thank you and I would hope that you would support this and move it to the floor on General File. Thank you. [LB628]

SENATOR SCHEER: Thank you, Senator Schilz. Any last questions? Seeing none. [LB628]

SENATOR SCHILZ: Thank you very much. [LB628]

SENATOR SCHEER: With that, the hearing for LB628 is over. That is the last item today. [LB628]