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Banking, Commerce and Insurance Committee
January 17, 2017

[LB16 LB21 LB56 LB99]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 17, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB16, LB21, LB56, and LB99. Senators present: Brett Lindstrom, Chairperson; Matt Williams, Vice Chairperson; Roy Baker; Tom Brewer; Joni Craighead; Mark Kolterman; John McCollister; and Paul Schumacher. Senators absent: None.

SENATOR LINDSTROM: All right. Welcome to the Banking, Commerce and Insurance Committee. My name is Brett Lindstrom. I'm from Omaha and represent Legislative District 18. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee will come and go 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 in this committee, just part of the process. To better facilitate today's proceeding, I ask that you abide by the following procedures, the information posted on the chart to your left. Please silence or turn off your cell phones. Move to the front of the row when you are ready to testify--order of testimony: introducer, proponents, opponents, neutral, and then the introducer's closing. Testifiers please sign in; hand your pink sheet to the committee clerk when you come up to testify, and that is Jan, to my left. Spell your name for the record before you testify. Please be concise; it is my request that you limit your testimony to five minutes. We will use the light system, which means four minutes is the green light, you will get a one-minute warning to end your testimony with the yellow light, and the red light means your five minutes are up. If you will not be testifying at the microphone but want to go on record for having a position on a bill being heard today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify; we need ten copies. If you have written testimony but do not have ten copies, please raise your hand now and the page will come and assist you with making copies. We'll now introduce, to my right Bill Marienau, the committee counsel, and to my left the committee clerk, Jan Foster. And we'll start over here to my right and, Senators, please introduce yourselves.

SENATOR SCHUMACHER: Paul Schumacher, District 22. That's Platte and parts of Stanton and Colfax County.

SENATOR KOLTERMAN: Mark Kolterman, District 24. That's Seward, York, and Polk Counties.

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SENATOR BREWER: Tom Brewer, 43rd District: the Sandhills.

SENATOR BAKER: Senator Roy Baker, District 30: part of Lancaster County, all of Gage County.

SENATOR LINDSTROM: Thank you. And I know Senator Williams is introducing a bill in Appropriations, and I think McCollister might be introducing a bill, as well. The first item on the agenda is LB16. Senator Craighead? Please open on the bill.

SENATOR CRAIGHEAD: Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d, and I represent Legislative District 6 in Omaha, in Douglas County. I am introducing LB16 to streamline real estate licensing procedures and processes and eliminate the administrative burden on both licensees and the Nebraska Real Estate Commission, while not adversely affecting the protections provided to the public by the Real Estate License Act, and clean up and modernize the act. The bill would allow the commission to eliminate the requirement that all designated brokers maintain a trust account for those brokers who do not utilize one, and eliminate requirements for paper wall licenses and certificates of licensure. The bill would also allow the commission to contract with a private fingerprint processing service to provide background checks for license applications and clarify provisions relating to advance payment of fees for real estate services. And at this point in time, I'm going to turn this over to Greg Lemon, who is the director of the Nebraska Real Estate Commission, for some specifics. [LB16]

SENATOR LINDSTROM: Hold on, Senator Craighead. Any questions for the senator? Thank you, Senator. [LB16]

SENATOR CRAIGHEAD: Thank you. [LB16]

SENATOR LINDSTROM: We will now have proponents. [LB16]

GREG LEMON: (Exhibit 1) Thank you. Good afternoon, Senator Lindstrom...Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee. For the record, my name is Greg Lemon, G-r-e-g L-e-m-o-n, and I am the director of the Nebraska Real Estate Commission, appearing today on behalf of the commission in support of LB16. First of all, I would like to thank Senator Craighead for bringing this bill on our behalf. She did a very good job of briefly explaining what the bill does. I will go into just a slight bit more detail, not a lot of detail, but I would be glad to answer any questions when I get done, if you have any concerns or issues with the bill. This is essentially our--Real Estate Commission called it--clean-up bill for

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2017. We're trying to streamline the act, do away with some paper processing, and be able to do things a little bit more efficiently. First provision of the bill, first change, deals with criminal background checks. All applicants for a real estate license have to get criminal background checks. There have been times, it's actually been better lately, but there have been times with the Nebraska State Patrol where there has actually been a wait just to get an appointment to get your fingerprints done and then it's been two to three weeks or more, on average, to get the fingerprints back. We've talked to other states who use private processing services, those private processing services still collect the fingerprints, send them to the FBI, send them to the State Patrol, but can process those fingerprints faster and, from our research, for about the same cost to the licensee. So we want to explore that to be able to do those things more efficiently. When you apply for a license the applicants...there's a number of things they're trying to juggle. They want to take their classes so that, when they get done with the class, they can take the test and go to work. And, having that wild card in there of how long the background checks get done, has created some issues for some of our applicants. So we just want to streamline that. We also have changed a provision. There was a provision that said if somebody is getting a license based on their license in another state, we need a paper certificate from that state. A number of states are no longer providing paper certificates. It would allow us to get those certifications of licensure, to verify that electronically. Section 3, pages 4 and 5 eliminate the requirement for the licensee to have a wall license. Once again, a number of states have done this. The wall license, for example, has to be passed back and forth. If somebody transfers from one broker to another, it's sent back to us, it's sent back out to the broker. There's a requirement that the wall licenses be displayed in the office of the real estate company. Some real estate companies have, literally, hundreds of people working for them; it's rather cumbersome. In this day and age, you can verify that licensure electronically, so this bill would allow us basically to let people verify over the Internet, although we do do it. We'd let technology neutral, but a way readily available to the public. Next part...it does eliminate...or allows us to do an...eliminate exemption for the requirement that all designated brokers maintain a trust account. As many of you probably know, if you've been involved in a real estate transaction, oftentimes the broker, the real estate licensee comes in, gets the earnest deposit, that earnest deposit goes into a trust account. There are companies that never deal with the earnest money. There are, for example, in some of the larger cities, what we call referral-only companies that just do referrals, and so they never get earnest deposits. This change would allow us to eliminate that provision. Once again, we're often asked by licensees: why do I have to have that? And my best answer is: well, it's kind of a boy scout idea--be prepared in case you need it. But this would allow us to get rid of that. And lastly, this doesn't actually change the policy, but we have a provision in the license act that has always said that a licensee can't get paid until the transaction is completed or the contract is terminated. And basically, you know, you certainly have a fiduciary duty as a licensee, but this sort of puts the licensee's interest and the fiduciary duty in line because they haven't been paid yet; so they have some incentive to work hard. We move that from a provision dealing with trust accounts to a provision in law dealing with unfair trade practices. And we also clarify that they can get--and

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this is consistent with how we've always interpreted it--they can get an advance payment of fees for money that's just passing through for services that they provide. I don't know if there's anybody here from the industry today, but they are aware of this bill and seen the provision, so when you see the room isn't too full, that usually means there's not too many people upset about it. But with that, that's my brief explanation of the bill, and I'd be glad to answer any questions the committee might have. [LB16]

SENATOR LINDSTROM: Thank you, Mr. Lemon. Any questions from the committee? Yes, Senator Kolterman? [LB16]

SENATOR KOLTERMAN: Thank you, Mr. Chairman. You want to use an outside source to do the fingerprinting. Did the State Patrol charge a fee for that? [LB16]

GREG LEMON: Yes. [LB16]

SENATOR KOLTERMAN: Are the fees going to be comparable to what they would have paid going to the State Patrol versus the outside source? [LB16]

GREG LEMON: Yeah, that's a very good question. We were just...why, I had looked into that in the past and was just looking a little bit more this morning. We currently charge \$45.25...was just looking at a couple other states and through the private company. For example, I think it was Louisiana charges \$45.00 through that private company. Either way, part of the cost is directly paid to the FBI for the background check, and part of the cost is the processing fee. [LB16]

SENATOR KOLTERMAN: Okay, thank you. [LB16]

SENATOR LINDSTROM: Senator Schumacher? [LB16]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. A couple of questions. In the time that you've been with the...how long have you been with the department? [LB16]

GREG LEMON: I started in 2009, so about seven years to date. [LB16]

SENATOR SCHUMACHER: In that time, how many people have been caught by this fingerprinting? [LB16]

GREG LEMON: When you say, well... [LB16]

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SENATOR SCHUMACHER: Tripped up and, you know, that the license has not been issued on account of fingerprints? [LB16]

GREG LEMON: I don't have those numbers on the top of my head. We do, when they have a felony or other criminal financial crimes--things like that--if that shows up on their criminal background check, they can come in for what is called an "informal special appearance." The commission reviews and makes a decision from there as to whether to allow them to be licensed. The majority of the people that come in, even though they have something that, by statute, would...could preclude them from having a license, such as a felony...I would say 60 percent or more that come in for that special appearance get approved. We do, we probably do 20-30 special appearances a year. [LB16]

SENATOR SCHUMACHER: Okay. I'll guess what, if I understood Senator Craighead right, this was to be more business friendly. And then, and it's my understanding you can do a criminal history check, certainly on state records, without the fingerprints. [LB16]

GREG LEMON: Yes. [LB16]

SENATOR SCHUMACHER: And I would, unless there's evidence to the contrary, almost...I'm going to say that rarely do the fingerprints contribute to the integrity of the industry. Fingerprints, from my experience as a prosecutor and also having been licensed in several things that require fingerprinting, are a major pain. You have to go find the sheriff or the State Patrol. If they use the ink method, almost invariably there is a smudged fingerprint and you got to go back again; that consumes law enforcement time. If this private outfit does the fingerprinting, I see no reason to believe that they'd be any more efficient than a law enforcement officer...have to go back and get refingerprinted again until you get a correct print. Some people, their prints are worn off, particularly if they're...they have experience with typing and things like that, so then the law enforcement has got to certify that yes, they really have worn-off prints; they weren't burned off by some Mafioso. And it seems to me that, unless there's a demonstrable reason for the fingerprinting and there is material good, why have it? It hassles a lot of people, a lot more...really a lot when you have to go through that. [LB16]

GREG LEMON: Yeah, I understand. Okay, so you're...I think I understand your question a little better. You're asking, couldn't you do a criminal background check without the fingerprinting? [LB16]

SENATOR SCHUMACHER: Yeah. [LB16]

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GREG LEMON: And does the fingerprinting catch things? I can't really answer whether the fingerprinting catches things or not. You know it's my understanding that the reason for the fingerprinting is just a more positive proof of identification when they go through the process. You know, as to whether we would get most or all of that with a name and a Social Security number, yeah, we probably would; I can't answer that. You know that was a decision, a policy decision the commission and the Legislature made a number of years ago. But I understand what you're saying. [LB16]

SENATOR SCHUMACHER: At some point we're obsessed with fingerprinting as somehow a part of the system. And if it isn't doing demonstrable good, and if it's hassling people and costing them \$50.00 plus their time just to go down to the--wherever the fingerprinting shop is--and get fingerprinted maybe once, maybe twice. I just wanted to get from you your impression as to whether or not you'd say, yeah, we catch 20 crooks a year going through the system and, boy, we'd have a crooked real estate system if we didn't have fingerprinting. But I'm not hearing you say that. [LB16]

GREG LEMON: Well, the only other thing on the fingerprinting that is sort of an issue...they do do the ink fingerprints, but the preferred method now is what they call a "live scan." They can do that at the various State Patrol offices, and the private companies can do that, as well, and apparently that's both more reliable and you can move the information around quicker and send it straight into the database, get it back. So yeah, I agree it's still an extra step, but the extra step isn't quite as bad as it used to be. [LB16]

SENATOR SCHUMACHER: Well, I may take...I mean, I have some personal experience with this. And one case, the fingerprints, the Xerox-type machine that they used to fingerprint was broke, and the person had to sit there two hours in the sheriff's office. Finally concluded that they couldn't do it that day because, as it turned out, the sheriff didn't...sheriff deputy didn't know how to press the right button in the right sequence. Another time, the fingerprint was unreadable because it was worn off, and they had to go back for a second time to confirm that yes, it was indeed worn off. So I mean, it's just as...could be just as bad as the ink method. But now we at least have your impression of how, whether or not it's worth the \$40.00 a head. The next question is, on your changing of the law here, that when somebody makes a deposit into a real estate broker's account, that they can't play with that money until they're entitled to their commission at the end. And you're changing it by saying yeah, but they can dig into that money as payment for--if they need it to pay for goods or services rendered by a third party on behalf of the client. Give me some examples of the goods or services by third parties on behalf the client. [LB16]

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GREG LEMON: Advertising...you know, you might want to do some advertising above and beyond what they generally do, and the client agrees to pay for that. Sometimes licensees assist with contractual services, you know, repairs--things like that--to a property. [LB16]

SENATOR SCHUMACHER: Titles, title commitments, fall in that category? The agent arranges for a title commitment, the bank does a loan commitment. [LB16]

GREG LEMON: I guess I've never heard of that as an example, but I don't know; it might, it could, I suppose. [LB16]

SENATOR SCHUMACHER: I mean, typically there's...banker does loan processing and part of that processing there's a title commitment that's issued that usually some money... [LB16]

GREG LEMON: I don't think those are usually paid in...I don't think that usually goes through the licensee, to my knowledge. But I could be wrong on that. [LB16]

SENATOR SCHUMACHER: Okay. So we really don't have a good parameter of what a good or services rendered to a third party on behalf of a client is. [LB16]

GREG LEMON: Well, as I said, the things I'm familiar with are the advertising services, contractual services for repairs, things like that. [LB16]

SENATOR SCHUMACHER: Okay, thank you. [LB16]

GREG LEMON: You're welcome. [LB16]

SENATOR LINDSTROM: Thank you. Senator Brewer, do you have a question? [LB16]

SENATOR BREWER: Just real quick, I assume the check they're doing is a standard NCIC check. [LB16]

GREG LEMON: Yes. [LB16]

SENATOR BREWER: And just kind of as an update for you, the reason that we were using fingerprints for national security was, it gave us a chance to match the name with a face with a fingerprint, to make sure they all came together to show the same individual. And there probably is still some antique systems out there at some of the sheriff's offices. But you're right, right now

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it's almost across the board, it's gone to the digital system for fingerprints which, you know, you eliminate that hassle of blurred fingerprints, things like that. And it does go digitally into the system. [LB16]

SENATOR LINDSTROM: Any other...Senator Kolterman? [LB16]

SENATOR KOLTERMAN: Thank you, Senator. Senator Schumacher brought up an interesting question about the fees that could come out of that account. Would that be like, let's say you write a contract and the purchaser is saying well...or the seller says I'll pay up to \$1,500.00 towards repairs to a furnace in the contract? [LB16]

GREG LEMON: Yeah. [LB16]

SENATOR KOLTERMAN: Is that the type of fee you're talking about there? [LB16]

GREG LEMON: Yeah. I mean it could be paid directly to whoever does the work, or it could be paid through the licensee. [LB16]

SENATOR KOLTERMAN: Okay. [LB16]

GREG LEMON: Yeah, exactly. Thank you. [LB16]

SENATOR KOLTERMAN: Thank you. [LB16]

SENATOR LINDSTROM: Senator Schumacher. [LB16]

SENATOR SCHUMACHER: Just want to follow up on the fingerprinting business because that's such a pain. Suppose you've got a TSA precheck or one of those other government programs where you're already fingerprinted. And if the limited function of fingerprint is to match the name and the person in the photo in the print, you've already done that. Okay, would it be out of line to say that, except if you can show to a reasonable person, or reasonably show that you've already done that, been there, the TSA precheck or who knows what else we can think of? [LB16]

SENATOR KOLTERMAN: Securities license? [LB16]

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GREG LEMON: I mean I'm sure there would...there could be other ways to try to verify identification. [LB16]

SENATOR SCHUMACHER: I don't think you can just overstress the hassle of going out and being fingerprinted over and over again to prove to the government you are you. What you're telling me is they haven't snagged that many people coming through the system. [LB16]

SENATOR LINDSTROM: Thank you. Any other questions for Mr. Lemon? None? Thank you, Mr. Lemon. [LB16]

GREG LEMON: Okay, thank you very much. [LB16]

SENATOR LINDSTROM: Any other proponents? Any opponents? Any neutral testifiers? Okay. Thank you. We'll close LB16 move on to next bill...oh, I'm sorry. Senator Craighead waives closing and that will end LB16. We'll now open LB21. Senator Riepe. [LB16]

SENATOR RIEPE: Thank you, Mr. Chairman. Good afternoon, fellow senators. I present for your consideration and support LB21. The owner of a business in my district brought to my attention an inequality in a law that was passed back in 2013. This owner will testify today. In 2013 then Senator Hadley introduced LB133 which was passed by the body on a final vote of 43-0 with 6 nonvoting with no testifying opposition to the legislation. LB133 addressed the priority of insurance liability if an accident occurs when a dealership loans a vehicle to an individual while the individual's vehicle has been...was being serviced or repaired. The Legislature determined the individual to whom the vehicle is loaned is to be the primary on insurance and the dealership's insurance policy is to be secondary if both policies have a mutual repugnant clause regarding primary insurance, and a mutual repugnant clause is a clause where both policies transfer liability to the other existing policy of insurance. Unfortunately (LB)133 failed to address other entities which also provide the same exact services as a dealership. These are garage and repair shops that also loan vehicles as do dealerships. In my opinion, it appears that LB133 failed to be all inclusive and fair to all entities that provide loaner vehicles while individual's car is in the shop being serviced or repaired. The logic behind LB133 and my bill, LB21, is that when someone borrows anything from someone else at no charge I believe the expectation of both parties is that it will be returned in the same condition as it was borrowed. In the case of a loaned motor vehicle, there is an additional complication if there is an accident. The owner of the loaned vehicle will have insurance that will cover while the vehicle is being driven with permission. If the driver of the loaned vehicle has insurance on his own vehicle, normally that driver's insurance will also cover the borrowed vehicle. Both parties have paid for and have contracted for coverage. Both parties have insurance that may pay claims. I believe the public expects that if someone borrows a vehicle and negligently causes an accident, the negligent

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driver's insurance policy will cover the loss. If the driver does not have insurance or doesn't have enough insurance then the owner's policy is expected to pay. This seems only reasonable. Between the owner of the vehicle who did nothing and the driver who caused the loss, common sense demands that the person causing the accident ought to be the primary to pay for the loss. When there are two policies and both provide coverage, it is understandable that one should be first and the other one second. Garage and repair shops that perform the same services and repairs as a dealership should be treated the same under Nebraska law. If a garage and repair shop loans a vehicle to an individual while one's car is being serviced and that individual negligently causes an accident while using the garage's or repair shop's vehicles then why shouldn't the garage or repair shop have the same rights as a dealership? I believe this legislation promotes equality for all entities that loan vehicles while the individual's car is being repaired. I want to thank you and I want to assure you that I have in fact read LB21. And I'd gladly take any questions you may have regarding this bill. [LB21]

SENATOR LINDSTROM: Thank you, Senator Riepe. Any questions for Senator Riepe? Senator Brewer. [LB21]

SENATOR BREWER: Just real quick. [LB21]

SENATOR RIEPE: Yes, sir. [LB21]

SENATOR BREWER: So in layman's terms, insurance follows the individual, not the car. [LB21]

SENATOR RIEPE: That's correct. [LB21]

SENATOR BREWER: Okay. [LB21]

SENATOR LINDSTROM: Any other questions? Thank you, Senator Riepe. Will you be sticking around for closing? [LB21]

SENATOR RIEPE: Yes, I will. Thank you. [LB21]

SENATOR LINDSTROM: Thank you. Any proponents? Good afternoon. [LB21]

MICHELLE ROSS: Good afternoon. Thank you, Senator Riepe. My name is Michelle Ross, M-i-c-h-e-l-l-e R-o-s-s, and I'm the owner of West Omaha Auto Service in Omaha, Nebraska. We

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currently have three 2015 Honda Civic vehicles that we purchased as loaner vehicles for our customers when they come in and have service on their vehicles. We went through our insurance company, went through underwriting, everything was fine until somebody had rear-ended somebody else while they were driving, and that they signed our loaner car agreement stating that they would be responsible and their insurance would be responsible, but we were unaware that there was a statute already out there that said we want covered like the dealers. So their insurance company told them we're not going to cover them. So this was a shock to us. I filed a civil suit against them and last week was informed by their insurance company that it's really not worth the fight. We'll just go ahead cover it. Our customer was more annoyed that their insurance company wouldn't cover them than anything, but I just feel that it's unfair. I have a new Lexus and I know I had to take my car in. I have to sign their loaner car agreement and my insurance company and myself is liable but my customers, I can't offer them the same...I can't give them loaner cars and they're expecting that. They like it. I don't know what else to say. I'm kind of nervous. I've never done this before. (Laugh) [LB21]

SENATOR LINDSTROM: Sure. No, you did great. You did great. Thank you very much. Any questions from the committee. Senator Kolterman. [LB21]

SENATOR KOLTERMAN: Do you carry garage owners' liability? [LB21]

MICHELLE ROSS: Yes. [LB21]

SENATOR KOLTERMAN: And does it have hired and non-owned automobile in there? [LB21]

MICHELLE ROSS: You know, I don't know. You'd have to ask my insurance agent. [LB21]

SENATOR KOLTERMAN: Okay. [LB21]

MICHELLE ROSS: I know we pay a lot. [LB21]

SENATOR KOLTERMAN: Just a question. [LB21]

SENATOR LINDSTROM: Any other questions? Thank you very much. Any other proponents? Any opponents? [LB21]

JIM DOBLER: (Exhibit 1) Senator Lindstrom, members of the committee, my name is Jim Dobler; that's D-o-b-l-e-r. I am a registered lobbyist and I appeared today on behalf of Nebraska

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Insurance Information Service. This is a state trade organization composed of property and casualty, liability insurance...property and casualty insurance companies that are licensed to do business in Nebraska. Our organization consists of I think about 19 or 20 insurance companies that are licensed to write insurance in Nebraska. It includes State Farm, American Family, Berkshire Hathaway companies, Progressive, Allstate, Farmers Mutual Insurance Company of Nebraska, amongst others. As a group, our organization companies write the majority of personal lines automobile insurance here in the state of Nebraska. For the members that are new to the committee, just very quickly my background. I'm an attorney and I spent, oh, roughly 33 years in the property and casualty insurance business. I worked for Farmers Mutual Insurance Company of Nebraska. It's domiciled here in Lincoln. And I retired a few years ago as executive vice president, secretary, and general counsel with the company. We're here in opposition today primarily because LB21 expands the section of the law that was first enacted with LB133 and it also creates...LB21 also creates some uncertainty as to how that law would apply going forward. First, LB21 expands that section of the law to garages and repair shops. Those entities are not defined in the bill. I don't know exactly what all that would include. The original bill, LB133, is under the Motor Vehicle Dealers Registration Act. And in that act they do define what a motor vehicle dealer is. So LB133 was very narrowly drawn. And we knew exactly what was going to be covered and what wasn't. With this proposal, it's uncertain exactly what might be covered. Theoretically I think most anybody could set up something to be a repair shop; might be in their own garage, I don't know. But it just broadens it and includes a group of entities that, at times, I'm not sure the insurance company would know whether they're primary or excess because they really don't know if it's a repair shop or not. This section of the law, it changes how overlapping policies are applied to a loaner vehicle, but it changes how the entire policy is applied, not just the liability coverage. So the collision coverage, the comprehensive coverage, liability coverage--everything changes. And it all changes so that the policy of the driver goes first and the policy of the commercial business is excess. That being the case, how will it work when there's damage to that loaner vehicle? Well, it was mentioned that if somebody takes the loaner vehicle out driving it and they're negligent and they damage that loaner vehicle, well by gosh, they ought to pay for it. Well, if the person damages that vehicle whether it's through negligence or absent any negligence, the coverage that is in most cases going to apply is not your liability coverage. It's your comp and collision; that's what's going to apply. The liability coverage contains an exclusion. In part it just says we do not cover damage to an automobile that you are in charge of. That removes any coverage you're going to get from liability to comp and collision. That's where it's going to be paid. So it's not a situation where the liability coverage pays for the total cost to repair the vehicle and you're done. You're going to incur a deductible that you're going to have to pay. And so it is just different. And my next point was a comment that the insurance follows the driver or something to the effect that coverage of the driver is first and the vehicle is second. Well, it's just the opposite. If you look at Exhibit B on my handout, that's a description of what's going on. Basically there are industry organizations that establish the procedure for how the policies apply. It was done to avoid litigation. But the standard procedure for auto policies is the

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policy on the vehicle is primary policy; driver is excess. This particular statute changes that. You know, that's not the end of the world, but that's the standard process. Not totally uniform, there is common law in some states which will make it work otherwise, but that's the general idea. My last point is that really what this statute does is transfer loss cost. It's what it's doing. So it's moving loss costs that used to be incurred by the commercial carriers and it's moving those to the personal lines carriers and those loss costs are paid...incurred there and eventually individuals will pay a little more for their auto insurance because of those loss costs, whatever they might be. I see my time is up and so I'll conclude my remarks. Thank you. [LB21]

SENATOR LINDSTROM: Thank you very much. Any...Senator McCollister. [LB21]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Good to see you, Mr. Dobler. [LB21]

JIM DOBLER: Yep, thank you. [LB21]

SENATOR McCOLLISTER: Your first point that you make related to the scope of coverage, if the scope of the coverage was better defined would take away that objection? [LB21]

JIM DOBLER: It would take away...well, let's see now. Yeah, if it were better defined, yes, that would take away the objection. Off hand, I'm not sure how that could be done. I don't think that when it comes to garages and body shops or repair shops that there is any particular statutory definition of those businesses. So it certainly would be...I mean I think it would be kind of a difficult task to do that. But the reality of it is if you don't define it how does...how do we even both insurance companies figure out who is first and who is second? I don't know. [LB21]

SENATOR McCOLLISTER: Your point that before, the company where they repair...not the repair company but the auto dealer provided the car provided the coverage, when did that change? [LB21]

JIM DOBLER: So that they did not? [LB21]

SENATOR McCOLLISTER: Yeah, well...so...where there's an effort here through this bill and others I would guess to make the driver of the car primary in terms of the coverage, isn't that right? [LB21]

JIM DOBLER: That's the point of the bill is to make the driver primary for garages and repair shop loaner vehicles. [LB21]

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SENATOR McCOLLISTER: I thought that was the case before. [LB21]

JIM DOBLER: Oh, no. Again, the procedure and the custom within the auto industry and with a majority of case law is that the auto policy on the vehicle is primary and auto policy for the driver of the vehicle is excess. [LB21]

SENATOR McCOLLISTER: Okay. So it's the owner of the car that...you know, you bring in, you want repaired. They provide you a loaner vehicle. You take that car out and hit a post. So it's based on the insurance on the car. [LB21]

JIM DOBLER: Yes. It's how the policies apply to that car. And the owner of the car, their insurance is insuring that particular car, that item. And that is what is used and triggers which goes first. And it's true not just in cases of loaner vehicles. Senator McCollister, if I'm driving your car and I get in an accident, your insurance on your car is primary; my coverage applies as excess to yours. [LB21]

SENATOR McCOLLISTER: Thank you. Thanks, Mr. Dobler. [LB21]

SENATOR LINDSTROM: Thank you. Any other questions? Senator Schumacher. [LB21]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. To the extent that these issues of coverage and that you spelled out in your little memo here apply or would apply to folks in the garage or repair shop business, then those same criticism applied to the existing statute as it applies to dealerships. [LB21]

JIM DOBLER: Yes. [LB21]

SENATOR SCHUMACHER: And was that change made fairly recently, wasn't it? [LB21]

JIM DOBLER: It was made it 2013. [LB21]

SENATOR SCHUMACHER: Because I remember that being before the committee. [LB21]

JIM DOBLER: Yes. It was LB133. [LB21]

SENATOR SCHUMACHER: So the evil is in the system already, if it is really a big deal. But as I understood Senator Riepe, this is a question of fairness. If you go to the Lexus dealership to

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have your car fixed, one rules applies that costs the Lexus dealership arguably less money. But you go to Joe's Body Shop and Joe's Body Shop has got to charge more for their service because they've got to pay for more expensive insurance policy to do the same business. So on the equity argument we're treating one person that essentially does the same business and the same kind of work different under the law than another person the way it is now. [LB21]

JIM DOBLER: Senator, it's a good point and I think the point that Senator Riepe made is appropriate and I can understand how the owner of the repair shop who looks at it. My thoughts about that would be several things. First, when you get right down to it--and it's part of why our thinking back when we were looking at LB133 in 2013--is this doesn't come up a lot, I don't think. I mean you stop and think, we're talking about nothing but loaner vehicles and the possibility of loss I don't think is substantial. My guess is the loss costs associated with this are not real significant and in fact they're probably small enough that you don't even rate on it by itself. It would be part of a larger rate application. So you can say, well, the repair shop should have it, too, but really in terms of costs to the repair shop because they're not in this I think it's negligible, very negligible. I don't think you can show how that commercial policy is more than the auto dealers policy. Aside from that in terms of the fairness argument, is it fair to say that, well, we're going to make the individuals pay for this loss cost exposure even though with the only reason the loaner vehicle thing is out there is as a business incentive, a business benefit, something to draw customers. It's part of the process of those shops to do better business. Why should that loaner vehicle now become the responsibility of the individual? I mean in the end to be providing a loaner vehicle to me, it could bring in more business. And so in that sense I think an argument can be made from a fairness standpoint that that cost, whatever it is, ought to remain with the business. They're benefiting. Now you can say the individual is benefiting because you get a loaner car. But you know, I don't think it's that simple. I think you can argue it's not fair to put the loss cost on the individuals. It's not an easy thing. [LB21]

SENATOR SCHUMACHER: Just in follow up to that, Senator McCollister raises a common sense point that it should be the other way around, that the driver should always be the one responsible because he's the one that's negligent and you're insuring against negligence, not against ownership. And to me, clearly the negligent party, the party responsible for damage in the event of the accident is the driver. The business isn't negligent for...as long as they know that the guy isn't drunk or something when they give him the keys to the car. So why should the business have to carry the insurance for the negligence? How did this get twisted around from what we learned in law school, that you're responsible for your negligence and the ownership supersedes negligence as a measure of whose insurance applies? [LB21]

JIM DOBLER: I'm glad you brought that up. And negligence is one part of it, but that's not all of it. The bill and the law moves all coverages and it makes all the coverages of the driver primary. Having said that, what if you are not negligent, but the loaner vehicle is damaged? For example,

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you drive it home at the end...that day. It stays at your house overnight until you can pick your own car up the next day. But that night there's a thunderstorm and the wind blows a branch down from a tree and it lands on the loaner car. So now the car has got to be fixed. Well, under this law the driver is responsible for it. Driver didn't do anything wrong, nothing wrong. But to fix the car it's going to have to be submitted to his or her own insurance company under the comprehensive coverage and his or her policy is going to have to pay to fix that car. Now is that fair? You know, I... [LB21]

SENATOR SCHUMACHER: Well, going back to that expectation, if I'm the owner of that car and I buy the comprehensive part of it, I'm buying it to cover me if the branch falls on me, okay? And I can understand then why my policy should cover what I paid for it to do, and that is cover me against acts of God if God gets mad at me. On the other hand, is the flaw in the bill then and this whole approach that this doesn't say that liability coverage is governed by these rules? [LB21]

JIM DOBLER: That's another consideration, yes. My recollection when the issue was looked at in the past is from the businessperson standpoint it was troublesome that if somebody negligently wrecked the loaner car that the business insurance had to pay for it. And I don't think there was a lot of consideration given to, say, comprehensive claims where the driver has done nothing wrong and the vehicle is damaged by hail or some other natural cause. And those kinds of claims would also have to be handled by the driver's policy. I think if you asked most people that they would not like that process. I don't own this car, I really have no insurable interest in this loaner car, but now I got to fix it and I got to have it paid for on my policy. And at the very least if somebody would have told me that, you know, maybe I would have declined to take out the loaner car. [LB21]

SENATOR SCHUMACHER: So we can fix this problem by limiting this particular section to liability coverage and going back to the old way for the comprehensive coverage. [LB21]

JIM DOBLER: Well, it's...again, most personal auto policies contain an exclusion in the liability coverage for cars you are in charge of. It all is insured under the comp and collision. So if you limit it to just liability coverage, the liability coverage will never apply. I mean you can say liability coverage is primary, but there is an exclusion in there. So I know offhand I don't think it would apply. [LB21]

SENATOR SCHUMACHER: The exclusion is a matter of contract. [LB21]

JIM DOBLER: Yeah. [LB21]

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SENATOR SCHUMACHER: And you pay for contract provisions. [LB21]

JIM DOBLER: Right. [LB21]

SENATOR SCHUMACHER: So the exclusion is something that some insurance companies would eliminate, make their policies more competitive. [LB21]

JIM DOBLER: They could. [LB21]

SENATOR SCHUMACHER: Okay. Thank you. [LB21]

SENATOR LINDSTROM: Thank you. Senator Kolterman. [LB21]

SENATOR KOLTERMAN: Mr. Dobler, on you instance, on your example, if somebody has a loaner car and they keep it overnight and the tree falls on it, the comp and collision of people that own the vehicle would pay for that. [LB21]

JIM DOBLER: Yes. [LB21]

SENATOR KOLTERMAN: What this bill would do would allow the driver that has a car overnight to pay for it. [LB21]

JIM DOBLER: I'm sorry. I didn't... [LB21]

SENATOR KOLTERMAN: The bill as proposed would take that away from the owner and transfer it to the... [LB21]

JIM DOBLER: Oh, the owner being the repair shop. [LB21]

SENATOR KOLTERMAN: Yeah. [LB21]

JIM DOBLER: Yes, it would take it away from the repair shop and it would put it...it would take it away from the repair shop insurance company's comprehensive coverage and put it under the driver's comprehensive coverage. [LB21]

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SENATOR KOLTERMAN: Okay. And then let's take that one step farther. Let's say that the driver doesn't carry comprehensive or collision. Then we got a real problem. They've got to come up with it out of their pocket, is that correct, if this bill passes and the law advances? [LB21]

JIM DOBLER: No, and that's kind of an oddity to it, too. The only way the driver of the loaner vehicle would have to pay is if they were legally, you know, responsible, if they'd done something to damage it. If they had done nothing to damage it and the limb fell on it overnight and they have no coverage, no comp and collision coverage, there just isn't any policy that applies and the repair shops commercial auto policy, if it had comprehensive coverage, it would apply. [LB21]

SENATOR KOLTERMAN: So a question in my mind is, does a repair shop and the dealer have the same opportunities to buy the same type of coverage to cover this type of a loss? [LB21]

JIM DOBLER: I don't know for sure. I can say generally the policy you're talking about, for entities that handle cars it's...the one I'm somewhat familiar with is garage liability or garage owners liability coverage. It's a commercial auto product that is specific for auto dealers. Is it exactly the same as for repair shops? I'm not sure about that. [LB21]

SENATOR KOLTERMAN: Okay. Thank you. [LB21]

SENATOR LINDSTROM: Any other questions? Thank you very much for your testimony. [LB21]

JIM DOBLER: Thank you. [LB21]

SENATOR LINDSTROM: Any other opponents? Any neutral? [LB21]

LOY TODD: Senator Lindstrom, members of the committee, my name is Loy Todd; that's L-o-y T-o-d-d. I'm the president and legal counsel for the Nebraska New Car and Truck Dealers Association. We were hoping we didn't have to testify and we're going to be as neutral as we can possibly be. The existing law is one that we were responsible for asking the Legislature to pass a couple years ago. And it addresses a situation where there were two lines of cases coming down in Nebraska regarding primary insurance between owners of loan vehicles and the drivers of loan vehicles. And interestingly enough, the two lines of cases never mentioned each other. They were just paralleling and some held that the driver of the vehicle was responsible; others held that the owner of the vehicle was responsible. Eventually there was a Supreme Court case that resolved it and said, well, basically we insure cars so we're going to resolve it that way. And the

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insurance industry sort of agreed to that and said, well, simplicity. It's a simple answer. Let's make it that way. Well, it's...it was an unfair answer. And the reason for it is as you correctly point out, Senator, negligent drivers of vehicles ought to be responsible for their negligence. And the law as it was passed in LB133 doesn't require anyone to have insurance. It didn't require anyone to buy a dime's worth of insurance in any way. It simply addressed a case where both parties had voluntarily paid for and acquired insurance policies that covered the vehicles. The car dealer's insurance covered a loaned vehicle if the person was driving it if it was free. And free is the key to this whole statute. We provide a free loaner vehicle to someone. They go out and wreck it. And if they have insurance that provides coverage if they're driving a loaned vehicle then theirs is primary because what the wordsmiths with the insurance companies were doing is most of them were just drafting as fast and as hard as they could to come up with reasons they didn't have to be primary. They both agreed that they had insurance. They both charged the customer for the insurance. They both had coverages for that vehicle and both policies said, we're second. The other guy is first, we're second. And all this bill did was resolve that issue that when two parties both have insurance on the vehicle, voluntarily have that insurance on the vehicle whether it be comprehensive or liability or whatever, when they both have insurance, then you have to decide which policy is going to be primary. So we came to the Legislature and said you decide. Are you going to hold the negligent driver of the vehicle responsible or the person that got the free loaner responsible primarily? It doesn't change liability. This insurance has nothing to do with liability. It has everything to do with who pays. Now in the examples that we're struggling with, what we had was a situation where, okay, you go wreck...I borrow your vehicle. I run it into a pole. I bring it back and say, hey, sorry. Wrecked your vehicle. Good luck. Hope your insurance rates don't go up too much. That's not the way people expect the law to be, okay? Now if there's insurance to pay for it, that's where the funding comes for that, but it doesn't change the liability. And then when you get into the comprehensive part of it where it says my policy, my policy, and it's one of the things I made sure it did is, say, if I borrow your vehicle and it gets wrecked while I'm in possession of it, it will pay. That's what I paid for. My expectation isn't that I was going to try to make somebody else's pay first. And so that's...this, the current law was to resolve this dilemma and to try to find a fair way to do. And the law says now and it was passed unanimously by the Legislature, no dissenting votes whatsoever, okay? And it was debated for days on the legislative floor and there were no dissenting votes. And what it said is when both parties have insurance and you have to decide which one is going to be primary because of mutually repugnant clauses where both policies are trying to make the other policy pay then the resolution of that is simple. And that is the driver's policy pays first. And so that's the law. It's been settled. It's worked very well. And as Mr. Dobler correctly pointed out, it isn't very broad. It doesn't go very far. I means it's pretty...we don't have a lot of these claims but when we have two claims it's resolved. And the expansion of this, this particular bill, the expansion of it into garages and other locations that have free service loaners which I'm going to tell you, as representing the industry, that's pretty unusual. I applaud these people for having this business policy, but it's really unusual. We didn't think about...when we made it narrowly for free

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loaners and that was our main goal. We thought we were the only ones that did it. It just didn't come up that there were other entities that were doing that. So basically it's just that. You know, if...it's a policy. If I have a pickup truck, old, awful pickup truck and I've got a half a dozen friends that at Christmas every year they borrow it. They go get their Christmas tree and they take it to the dump afterward, okay. Everybody's expectation is if they go wreck that and they have insurance, it ought to be on their insurance, not on mine. That's all this does. That's all the current law does. That's all that this senator's bill. We are absolutely neutral about whether you expand it or not. That's....but it works and it works well. Thank you. [LB21]

SENATOR LINDSTROM: Thank you, Mr. Todd. Any questions from the committee? Senator McCollister. [LB21]

SENATOR McCOLLISTER: Thanks, Mr. Chairman. Does an existence of an agreement with an auto dealer eliminate some of the confusion in the coverage? [LB21]

LOY TODD: Not particularly because my agreement with you if I'm the auto dealer and I loan you a vehicle, you can sign all the papers you want to sign that says that your insurance company is going to pay. You can't bind your insurance company. It's simply going to be what is your policy say. And your insurance carrier is going to going to look at the terms of the policy. So we can't contract our way out of those things very well. It's...now on a rental car, on one that's not free anymore, none of this applies because at that point it is a relationship that can be controlled by contract. But as far as the free loaners and the demonstrators, those kinds of things, that is something that you and I cannot contract to avoid or to change and bind a third party. I'm sorry. [LB21]

SENATOR McCOLLISTER: Well, since you brought up the rental car agency I'm going to have to ask a follow up. Who generally has the liability on that rental car if you go out and wreck it. [LB21]

LOY TODD: If you're renting a vehicle I think that form that you've signed with the rental car company says everything is your fault and you could buy the collision damage waiver, you can do all other kinds of things. But they can't change whether you have insurance or not, so that contract would probably indicate that it's your responsibility. How that's covered I don't know. [LB21]

SENATOR McCOLLISTER: Thanks, Mr. Todd. [LB21]

SENATOR LINDSTROM: Thank you. Senator Schumacher. [LB21]

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SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Is there any reason why two similarly situated vendors as we have here between the dealership who does the repair work and Joe's Body Shop that does repair work should be treated differently under the law? [LB21]

LOY TODD: You're flushing me out of this neutral. (Laughter) [LB21]

SENATOR SCHUMACHER: I mean that's my job. Your job is to not get flushed. (Laughter) [LB21]

LOY TODD: In our view, these are parties...as long as it's free, the parties are in identical circumstances if you can identify them. [LB21]

SENATOR SCHUMACHER: Thank you. [LB21]

SENATOR LINDSTROM: Any other questions? Thank you, Mr. Todd. [LB21]

LOY TODD: Thank you. [LB21]

SENATOR LINDSTROM: Any other testifiers for neutral? Senator Riepe, would you like to close? [LB21]

SENATOR RIEPE: Thank you. I'll be brief. LB133 resolved the problem of who is primary, who is secondary. We're simply asking that the same clarification be extended to the garages in an interest of fairness. We also stand willing to work with any entity to clarify any definitions or anything else in the bill prior to its moving forward under the assumption that this committee approves it to go forward. [LB21]

SENATOR LINDSTROM: Thank you, Senator. Any last questions for the senator? Seeing none, thank you, Senator Riepe. [LB21]

SENATOR RIEPE: Thank you all. [LB21]

SENATOR LINDSTROM: And that will close the hearing on LB21. We will now move on to LB56. Senator Morfeld. [LB21]

SENATOR MORFELD: Thank you, Chairman Lindstrom, members of the committee. For the record, my name is Senator Adam Morfeld, A-d-a-m M-o-r-f-e-l-d representing the "Fighting"

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46th Legislative District here today to introduce LB56 at the request of the Auditor of Public Accounts, Auditor Charlie Janssen. LB56 would allow two years of accounting experience in the Office of the Auditor of Public Accounts and the Department of Revenue to be a CPA rather than the current three years. Section 1-136.02 lays out how many years of accounting experience is satisfactory to the Board of Accountancy to grant a certified public accountant's license. Current statute states that two years of experience as an accountant in a firm, proprietorship, partnership, corporation, limited liability company, or other business entity authorized in any state or foreign country to engage in the practice of public accountancy under the supervision of an active certified public accountant. However, it also says that three states...three years of experience is satisfactory to the board in any state or foreign country in employment as an accountant in government or business under the supervision of an active CPA. LB56 would move accountants and auditors in the Office of the Auditor of Public Accounts and the Department of Revenue from the three-year threshold to the two years of experience threshold. I'm not sure why we put government at a disadvantage to hire the best and brightest and most ambitious. Passing the CPA test is no easy task and not all accountants want to go through all the work to get...want to go through all the work and an extra year to get their license and I think that we would want government to be on a level playing field to attract these individuals who want to work for the state. In addition, according to a recent study by Accenture their research shows that 64 percent of public service leaders report that it is difficult to attract and retain talent. They also state that nearly half of those who are employed or have been employed in the public sector say it is an attractive place to work. But among those with no experience in government work only 20 percent say that they would find work in the public sector attractive. Competition for talent particularly in the public sphere is growing every day. And young people are coming out of college with accounting degrees and have many options for work and private business seems to be able to offer a more competitive advantage than government. I'm sure that most private accounting firms have a higher starting salary and have at least comparable benefits and a quicker path to becoming CPA at this point. LB56 does not give the Auditor of Public Accounts and the Department of Revenue an advantage, but rather levels the playing field. There are people behind me from the Auditor's Office, hopefully, to testify, but I'd be happy to answer any questions that I can. Thank you. [LB56]

SENATOR LINDSTROM: Thank you, Senator Morfeld. Any questions for Senator Morfeld? Seeing none, are you going to stick around for closing? [LB56]

SENATOR MORFELD: I will. [LB56]

SENATOR LINDSTROM: Okay. Thank you. Any proponents? [LB56]

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TONY FULTON: Good afternoon, Chairman Lindstrom and members of the Committee on Banking, Commerce and Insurance. My name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I serve as Nebraska's Tax Commissioner appearing in support of LB56. This bill would benefit the Department of Revenue by reducing the number of years our auditors must be employed by the department as an accountant to be certified by the Board of Accountancy as a public accountant. The bill, if passed, would help us recruit and retain competent staff. Up until about three or four years ago the department was one of the few employers where one could meet his or her CPA experience requirement. At that time a statute was passed allowing individuals to obtain experience either working for academia, any government entity, or private business. So the benefit of obtaining one's CPA experience was no longer limited to primarily the department. Based on the law change, recruiting talent has become much more of a competitive process. The department audit staff experiences on average a loss of six auditors per year to turnover. The department's Omaha division has had turnover of 11 auditors in the past two years. LB56 would help the department by equalizing the hours it takes for an auditor to obtain his or her certification with the private sector. The job market, as the senator referenced earlier, I'll touch with a little more specificity there, the job market in Omaha for accounting majors is competitive. CPA firms start their officers in the neighborhood of \$45,000 a year. That's approximately \$5,000 more a year than we can offer. Granted, state employment offers many benefits, but often those additional benefits are not enough to overcome the pay disadvantage. In their work for the department, auditors audit a wide variety of business types and accounting systems generally more than an equivalent size CPA firm. This provides a well-rounded experience and prepares them for being a CPA. Within two years of work with the Department of Revenue auditors have been primarily responsible for planning, directing, and completing audits in the field. Auditors in the department quickly gain extensive experience in a variety of situations. Lowering this experience requirement will help the department recruit and retain good accountants and auditors and provide better service to the taxpayers of Nebraska. And I point out it does so with minimal fiscal impact. Thank you for considering the legislation. I advance...I respectfully ask that you advance this to the floor. [LB56]

SENATOR LINDSTROM: Thank you, Commissioner. Any questions? Senator Schumacher. [LB56]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Thank you, Commissioner Fulton. To be an auditor with the Department of Revenue, do you have to be fingerprinted? [LB56]

TONY FULTON: At this point, the answer is no. [LB56]

SENATOR SCHUMACHER: Thank you. [LB56]

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SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you very much. [LB56]

TONY FULTON: Thank you. [LB56]

SENATOR LINDSTROM: Other proponents. [LB56]

RUSS KARPISSEK: Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee, for the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I am the legislative liaison for the Auditor of Public Accounts, Auditor Charlie Janssen. Auditor Janssen is here today and will...could take questions if you would like. He also has to testify in front of Appropriations Committee today to try to hang on to some of our funds. The reason we're dressed the same is that way if one is here and one is there they won't be able to tell the difference. (Laughter) Except one might be tall and slender and one might be shorter and chubbier. I would like to thank Senator Morfeld for introducing LB56 and also Commissioner Fulton for testifying. As Senator Morfeld said, this is a fairly simple bill, but one that could really help the Auditor's Office. Starting salary for an accountant in the Auditor's Office is \$40,000. In some cases we're competing against companies that may pay \$55,000 or around that area. So we already have a hard time attracting people. Add to that fact that a starting CPA in Nebraska usually pays between \$47,500 and \$71,000, which seem high but that's what I got off the Internet, people are anxious to get their CPA licenses. One extra year doesn't seem like a long time to those of us that have been around a little while longer, but the younger people coming out of college, one year does seem like a long time. And the Auditor's Office does give a \$5,000 salary increase for obtaining your CPA license. That's a big help to anyone, I would think, especially someone who has been out of college for two years. One kind of a disadvantage that our auditors have is that we audit all over the state. And when I say we I don't mean me, I mean the Auditor's Office. But our auditors are all over the state and they have to travel quite a bit, especially of course the younger ones. We have lost at least one employee recently because of travel taking away from a young family. Auditors in many businesses don't have to do as much travel. I also looked on the Web site "CPA this way" (sic: [ThisWayToCPA](#)) to see what neighboring states have for experience requirements. Iowa has a one year of experience in more than one employment situation including internships in government, industry, academia, or public accounting; two years of experience for attest CPA which includes one year of attest and one year of general experience; South Dakota--one year experience gained through employment in government, industry, academia, or public practice; Kansas--one year of accounting experience in government, industry, academia, or public practice; Colorado--one year of employment...I'm sorry employment as an employee of a CPA which may be gained through public accounting, industry, government, or academia; Missouri--one year experience in industry, government, academia, or public practice; Wyoming--one year experience in public accounting, all public accounting experience shall be gained through employment in

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government, industry, academia, or the practice of public accounting. That's all the surrounding states: one year. Nebraska does reciprocate with these other states on accepting CPA licenses and last year with LB853 introduced and passed by Senator Stinner last year, the board will now accept two year's experience in private business from other countries. So now we will accept two years of experience from outside the U.S., but not two years of experience for our own people working in our own capitol. Many of the budgets that are turned in to the Auditor's Office come from private CPA firms that our employees need to look over. So, many times we have people overlooking the work of CPAs, but they are not able to sit for the CPA test themselves. To me, that sounds like the students grading the teachers' homework. Again, as Senator Fulton said and Senator...sorry, Commissioner Fulton and Senator Morfeld, LB56 does not give government an advantage but levels the playing field. This is a work force issue and I urge you to support it. Thank you and I will try to answer any questions that you would have of me. [LB56]

SENATOR LINDSTROM: Thank you very much. Any questions? Senator. [LB56]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Do auditors in the Auditor's Office have to be fingerprinted? [LB56]

RUSS KARPISEK: I don't know that, Senator. But I am not an auditor so I did not have to be fingerprinted. But I don't believe so. If I'm wrong I'll get back to you. [LB56]

SENATOR SCHUMACHER: Okay. And likewise you don't know whether CPAs have to be fingerprinted. [LB56]

RUSS KARPISEK: I do not. [LB56]

SENATOR SCHUMACHER: Okay. Thank you. [LB56]

RUSS KARPISEK: Thank you. [LB56]

SENATOR LINDSTROM: Thank you, Senator. Any other questions? Seeing none, thank you very much. [LB56]

RUSS KARPISEK: Thank you, Senators. [LB56]

SENATOR LINDSTROM: (Exhibit 1) Any other proponents? Seeing none, any opponents? Seeing none, I do have a letter in a neutral capacity from Dan Vodvarka who's the president of

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Nebraska Society for CPAs. Read that into the record. Any neutral testimony, testifiers? Seeing none, Senator Morfeld, would you like to close? [LB56]

SENATOR MORFELD: Thank you for hearing the testimony today and I'd be happy to answer any questions that you may have, including Senator Schumacher. [LB56]

SENATOR LINDSTROM: Any questions for the senator? Seeing none, thank you, Senator Morfeld. [LB56]

SENATOR MORFELD: Thank you very much. [LB56]

SENATOR LINDSTROM: That will close the hearing on LB56. Let's take a quick five-minute break. Senator Stinner is working his way down so we just take a quick five-minute break.

SENATOR WILLIAMS: He's right in the middle of...

SENATOR LINDSTROM: Yeah, so five minutes, come back, and we'll start the hearing on LB99. Thank you.

BREAK

SENATOR STINNER: Thank you. Good afternoon, Senator Lindstrom and members of the Banking, Commerce and Insurance Committee. For the record, my name is John Stinner, J-o-h-n S-t-i-n-n-e-r, and I represent District 48, Scotts Bluff County. LB99 would amend provisions of law relating to conversion of foreign and domestic corporations, partnerships, limited partnerships, and limited liability partnerships into other business entities. Under the bill the entity being converted would be required within ten business days of the conversion taking effect to provide written notice of the conversion to the last known address of any holder of a security interest and collateral of the converted entity. In layman's terms, a bank or some other financial institution needs to be notified so that they can change their documentation in accordance with that change. Last session Senator Burke Harr introduced LB1050 which was designed to authorize partnerships and limited liability partnerships the ability to convert the entity to a limited liability company. During the course of the debate on (LB)1050 I raised concerns regarding the effect of any entity conversion upon a lender that had a perfected security interest. As a result of my concerns, amendments were adopted that required the converting entity to send written notice of conversion to lenders within at least ten business days before filing the articles of conversion. There are, however, additional statutes that authorize various types of conversion by foreign and domestic entities into other business entities, but only the conversion statutes

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addressed in LB1050 were amended. LB99 would amend those other provisions of law to provide similar protections to lenders under these additional statutes. The intent of LB99 is to simply address all types of entity conversions permitted under the law. In the course of making amendments to the additional statutes authorizing conversions of business entities it was discovered that some of the statutes allowed the articles of conversion to be filed with the Secretary of State with a delayed effective date. These statutes would allow conversion to be abandoned by the filing of a notice of abandonment prior to the time that the conversion is to take effect. As a result some concerns are that a lender holding a security interest could receive notice of conversion for which a notice of abandonment could subsequently be filed. However, statute does not require notice of abandonment to be provided to be a lender. In order to avoid this situation, conversion notice required should be provided ten days after the conversion takes effect. While the notice proposed under LB99 would be given after the conversion takes effect the requirements of the Uniform Commercial Code would still provide adequate protection to lenders that have perfected security interest. The Uniform Commercial Code allows the lender a grace period of four months within which to amend a financing statement--financing statement is our notification process--financing statement that has been rendered seriously misleading or to file a new financing statement in the event the debtor has changed its location or the type of entity that it is. As a result, the requirement under LB99 for notice of conversion to be provided to the lender within ten days after conversion takes effect will provide additional protections to secure the creditors in the event that the filing of a new or amended financing statement is required. And I know that really sounds complicated. It isn't that complicated. I'm a banker. I've got a corporation, you know, and there's ten people involved in that corporation. That corporation decides it wants to go to a limited liability corporation. They need to notify me because all my documentation--my articles of incorporation, my borrowing resolution, my financing statement, some of my guarantees of the individuals--goes to that corporation. So when they convert, I need to get a notice that that has happened so I can restructure all of my documentation and that keeps me as a secured party. That's kind of, in a nutshell, what we're talking about. And there are some nitty-gritty things. Why did we...we had "prior to." We had to switch it to ten days after to take care of some of the other parts of this statute. Are there any questions? [LB99]

SENATOR LINDSTROM: Thank you, Senator Stinner. Any questions? [LB99]

SENATOR SCHUMACHER: I'll wait for Bob. [LB99]

SENATOR STINNER: I just knew you'd come up with one. [LB99]

SENATOR LINDSTROM: No questions. Thank you. Are you going to stick around for closing?
[LB99]

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SENATOR STINNER: I am going to waive closing. [LB99]

SENATOR LINDSTROM: Okay. Thank you. [LB99]

SENATOR STINNER: Still wrestling with snakes and alligators. [LB99]

SENATOR LINDSTROM: (Laugh) Proponents. [LB99]

ROBERT HALLSTROM: (Exhibit 1) Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB99. I'd start out since Senator Stinner's remarks are surprisingly similar to my written testimony, I'll just say that he did a remarkable job in conveying to the committee what the issue is. As far as the primary issues, again, Senator Stinner has outlined those adequately for the committee. I think going into a little bit more detail with regard to the Uniform Commercial Code and why these issues become important is that if anything gets done--either a change in the debtor's name, a change in the debtor's location, or a change in the type of business entity proves to be seriously misleading or requires the filing of a new financing statement in another jurisdiction--those are all things that the secured lender wants and needs to know. As Senator Stinner pointed out, last year when we were working kind of at the eleventh hour late in the session with the amendments, we knew we did not cover the field in terms of all the statutes that addressed conversions of business entities and we had put in the ten days in advance of filing would be the time for notification. We subsequently found out that some of those converting statutes, number one, allow for a delayed effective date, and number two, allow for an abandonment as long as it's filed before the delayed effective date. So we construed this that we could be creating a situation where notice would be given ten days before the documents for conversion were filed. They may say they don't take effect for a period of 45 days. Before that 45-day period had elapsed, they go in, changed their mind, file an abandonment. There was nothing in that statute or those amendments that we changed last session that required the lender to receive notice. King's X timeout, we decided not to go forward with the conversion. So upon reflection, the better approach is to provide ten day's notice after it takes effect. Abandonment is no longer an issue. It's taken effect. The conversion has been completed. The notification is given one might ask, well, why after the fact? The UCC provides us with a four-month grace period when any of those things that are seriously misleading that may necessitate the filing of an amendment to a financing statement or if it's a relocation of the debtor which requires a new financing statement perhaps in another jurisdiction. We have four months to do so to make those changes in order to continuously perfect our security interest in after-acquired property. So even though it's given after the fact, so to speak, it still provides adequate protection to the secured party. With that, I'd be happy to address any questions that the committee may have. [LB99]

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SENATOR LINDSTROM: Thank you, Mr. Hallstrom. Any questions? Senator McCollister. [LB99]

SENATOR MCCOLLISTER: Yeah, thank you, Chairman Lindstrom. I'm surprised that you allow after the fact as well because a change of ownership structure could be because of some kind of financial difficulty. Would it be such that the change in structure would eliminate the owners from any person liability or any other liability that...? [LB99]

ROBERT HALLSTROM: It should not, Senator. The after the fact and the grace period just is a continuation so that you have a continuous perfection. The issue may become that if there is something that has caused that financing statement to be seriously misleading or necessitates filing in another jurisdiction that a third party searching the record may not be able to determine that the first lender has or had...has had a security interest in property of the new converted entity. But even within that four-month period, all of the lenders know that there might have been somebody out there and if they come in and perfect or reperfect or amend their security interest within four months that they will continuously be perfected and that's just the grace period that the Uniform Commercial Code has provided. If there's financial difficulties with that company, the documentation and the fact that you are already perfected is going to provide some measure of protection and you may also have guarantees with regard to personal liability for the individuals that are part of the formal entity. [LB99]

SENATOR MCCOLLISTER: Okay. Thank you. [LB99]

SENATOR LINDSTROM: Thank you. Senator Schumacher. [LB99]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. Thank you, Mr. Hallstrom. The other three bills I wrote on my covers after I read them the first time: maybe okay. On this one I wrote lots of questions. [LB99]

ROBERT HALLSTROM: Fair enough. [LB99]

SENATOR SCHUMACHER: Okay. So you drew the short straw. [LB99]

ROBERT HALLSTROM: I generally do. [LB99]

SENATOR SCHUMACHER: I know. We enjoy it when you do. First of all, so that...and maybe this is a bit of introduction to the people who haven't gone to law school on the committee or who are new to the committee, can you explain to us what a security interest is, and the

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difference between a security interest and a perfected security interest? Senator Stinner made that distinction. [LB99]

ROBERT HALLSTROM: Yes, Senator. And thank you for that opportunity. Security interest 101, perhaps, to the best of my ability. When a borrower comes into a bank to borrow money if it's going to be secured by personal property, you have a situation where the debtor is going to sign a document that's called a security agreement. That security agreement is going to allow a security interest or a lien to perfect...to apply or attach to the personal property that's covered under that security agreement. Subsequent to the that, or contemporaneously with that, a UCC-1 financing statement is filed generally with the Secretary of State. And that is the action that is taken to provide perfection of that lien and the perfection of the lien becomes important with regard to the rest of the world or other secured parties because we have a system in Nebraska that's based on first to file, first in time, first in right. So if you're the first party to file against Paul Schumacher, debtor, with a financing statement, you will be first in line. If someone else comes to loan Paul money, they'll check the record, they'll check under the name that's been...that the financing statement has been filed under which is the one that applies on your driver's license under Nebraska law. And at that time when they see that there's a financing statement filed under your name, and they discover that from their search of the UCC records at the Secretary of State, they will know that if they want to take a security interest in that same personal property they will be in a second lien position. [LB99]

SENATOR SCHUMACHER: So essentially, in the case at least involving the bankers, you go to the bankers and say I need a loan, give me some money. The banker says, okay, after they do all kinds of examinations on you and loans you the money, you sign a note saying I promise to pay you the money back with interest on these terms. And there's then a second piece of paper that's called, as I understand, a security agreement or a financing statement? [LB99]

ROBERT HALLSTROM: They can be combined, but generally you'll have a security agreement to attach the interest between the debtor and the bank and the financing statement is filed to give notice to the world, so to speak, that you have perfected and established your priority as of the date of filing. [LB99]

SENATOR SCHUMACHER: And the security agreement basically says, and to make sure that your banker gets paid, I understand that if I don't pay you can take this piece of property away, basically. [LB99]

ROBERT HALLSTROM: Correct. You're granting a security interest or lien in that specified property. [LB99]

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SENATOR SCHUMACHER: And then there's a third slip of paper that basically says so and so is the banker, so and so is the debtor, here's what property it covers. And that get's filed to the Secretary of State to give notice. [LB99]

ROBERT HALLSTROM: Correct. And that would be the UCC-1 financing statement. [LB99]

SENATOR SCHUMACHER: And then how is it that one making these conversions can defeat that system by making a conversion? [LB99]

ROBERT HALLSTROM: Well, they don't necessarily defeat the system, Senator. What the issue is that we're addressing here is that if anything associated with that conversion triggers a need for that first lender that has a perfected security interest to make a change in that filing document, and the reason that you would have something triggered is that, for example, if the name of the entity changed, if we had a foreign corporation or a foreign entity that's coming into Nebraska, they have been operating under Missouri law under a particular name and when they come to Nebraska that name is already taken, if the lender has perfected under the old name and they have to change their name upon conversion because the name is taken Nebraska, that will provide notice that an amendment to the financing statement is probably likely. And that's where the four-month period comes in. The original lender is still perfected as to all collateral that exists at the time of the change that necessitates an amendment to the financing statement. But as to after-acquired property, that first lender could lose its first priority position if a third party searching the record is unable to determine from that search that you have a security interest against that original entity. [LB99]

SENATOR SCHUMACHER: There are three phrases that are used in the bill. I'd like to have you explain for my refreshment of memory and maybe some others' edification if they're edified by such things, we have domestic business corporation, a foreign business corporation, a domesticated business corporation both...and also in the same breed in the nonprofit version of those things, and then also in the limited partnership, the way it looks, version of those things--difference between foreign, domestic, and domesticated. [LB99]

ROBERT HALLSTROM: With regard to foreign and domestic, you can have a foreign corporation that can be authorized to do business in Nebraska and I believe there are certain steps that that foreign entity has to take in order to be recognized and authorized to do business in Nebraska. A domestic corporation is simply one that is organized in Nebraska. And so their articles of incorporation for a corporation, their articles of organization for an LCC or a limited liability company would be in Nebraska. That's what we commonly refer to as the birth certificate of an entity, business entity, or organization. [LB99]

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SENATOR SCHUMACHER: And by foreign we don't mean Ethiopia. We mean another state or jurisdiction. [LB99]

ROBERT HALLSTROM: I believe that's generally true, yes. [LB99]

SENATOR SCHUMACHER: Okay. So how is it if a Kansas company decides it wants to do business in Nebraska and files paper with the Secretary of State saying please authorize me to do business in Nebraska, how is it that at that point their security interest on the bank would be affected? [LB99]

ROBERT HALLSTROM: It may or may not, Senator. If they are still organized under that state and simply have been authorized to do business in Nebraska, it may not trigger the need for a change in that financing statement. But if, for example, upon that conversion and in starting to do business in Nebraska they discover that they can't do business under the same name and that a name change would result from that conversion, that would be something that could render the financing statement seriously misleading. Now the better example, because Nebraska lenders would be more likely to be doing business with a Nebraska corporation would be if a Nebraska corporation was going to go to another state and going to the other state resulted, for example, in them not being able to use the name that they have been doing business under, the second step of that may be that they have to change their name. And at least in this case then the debt...the lender will have been notified that there is a conversion and they would be able to take any necessary steps, particularly if there was a name change to amend their financing statement to reflect the change. [LB99]

SENATOR SCHUMACHER: Well, then that raises the issue of if a Nebraska corporation domesticates in Kansas. Does this require them, the borrower, to notify the Nebraska bank? [LB99]

ROBERT HALLSTROM: I believe that's one of the sections that's covered in the bank as well. It's a Nebraska domesticating in Kansas or another state or a foreign coming into Nebraska. I know the foreign coming into Nebraska is covered, Senator. I have to look back at the bill to see if we've covered...if we have a statute that covers that, I believe we do. [LB99]

SENATOR SCHUMACHER: So let's look at the bottom of page 2 which calls: "Within ten business days after the articles of domestication take effect"--that means somebody from, say, Kansas comes and files a paper with the Secretary of State saying we're going to do business in Nebraska; we want to be domesticated—"a foreign business corporation becoming a domestic business corporation shall send written notice". Should that language be a domesticated business

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corporation instead of domestic because you can't be a foreign corporation and domestic corporation at the same time? [LB99]

ROBERT HALLSTROM: I will have to look at that, Senator. I don't have the bill right in front of me but I will... [LB99]

SENATOR SCHUMACHER: Okay, well I...somewhere we should make a note of that because that struck me as not...being inconsistent language. You can't be both at the same time, unless I've long forgotten what I was supposed to know. [LB99]

ROBERT HALLSTROM: I believe that's probably correct, Senator. [LB99]

SENATOR SCHUMACHER: Okay, so we've got a language problem there. Let's see if I can find anything else to try to stump you. An entity conversion, as I understand it here, is an LLC flipping to a corporate status or vice versa. [LB99]

ROBERT HALLSTROM: Well, there's different types of conversions that are authorized in the various sections. (LB)1050 year, for example, Senator, allowed partnerships and limited liability partnerships each to convert to limited liability companies. And there's different types of entity conversions depending upon the statute that we're dealing with. [LB99]

SENATOR SCHUMACHER: What would stop a bank just from putting into the form language of its loan agreements these provisions? Why necessary in statute? Why couldn't you say, and you are hereby as part of this, if you do screw around with domesticating or foreign... [LB99]

ROBERT HALLSTROM: Converting. [LB99]

SENATOR KOLTERMAN: (Inaudible.) [LB99]

SENATOR SCHUMACHER: Yeah, that would have been wrong. (Laughter) [LB99]

ROBERT HALLSTROM: There's no (inaudible) on that, Senator. [LB99]

SENATOR SCHUMACHER: That you've got to let the banker know...that you've got to let the banker know. [LB99]

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ROBERT HALLSTROM: There are, Senator, certain provisions in loan documents that have warranties or representations that if you change your name or if you change the structure of your business or if you relocate, those may not be uncommon to loan documentation. But we'd probably find in many cases that our borrowers are not the most reliable and in living up to those representations or warranties that they've signed in those documents. [LB99]

SENATOR SCHUMACHER: What's the consequence of blowing this all off? [LB99]

ROBERT HALLSTROM: Well, there's... [LB99]

SENATOR SCHUMACHER: Not sending this notice. [LB99]

ROBERT HALLSTROM: There's no penalty in the statute, Senator, but I assume since it's right in the conversion statute that any good lawyer that's doing business is going to dot the I's and cross the T's and send the notice accordingly. [LB99]

SENATOR SCHUMACHER: That's a big assumption. Thank you... [LB99]

ROBERT HALLSTROM: If it's in the statute, we can't make it any clearer. If they get to the statute to know what they need to do to convert, they ought to be able to read that there's a notice requirement as well. So thank you, Senator. [LB99]

SENATOR LINDSTROM: Thank you. Senator Baker. [LB99]

SENATOR BAKER: Thank you, Chairman Lindstrom. Mr. Hallstrom, let me see if I got this right. So conversion takes place. They have to provide written notification within a satisfying period of time to a lender who has a security interest. [LB99]

ROBERT HALLSTROM: Correct. [LB99]

SENATOR BAKER: All right. So then is it incumbent upon the lender to do certain things? I mean do they have to file forms with the state or any state agency? [LB99]

ROBERT HALLSTROM: The answer is, Senator, it depends. There are a number of things that trigger the need to change the forms that the lender has already filed and that's the UCC-1 financing statement. If what has occurred as a result of the conversion or follows from the conversion now that the lender is on notice that would trigger the need to change those forms,

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then yes, in order to continue to maintain their perfected status in that personal property security or collateral they may have to take steps. And those steps would be an amendment of the existing financing statement if there is, for example, a change in name of the debtor or a change in the business entity or structure. If there is an actual relocation of the debtor, then it could trigger the need for a new financing statement perhaps in that new jurisdiction to continue the perfected status with the collateral. [LB99]

SENATOR BAKER: What then would be the implication if the lender failed to do those things? [LB99]

ROBERT HALLSTROM: If the lender fails to do those things then the easiest one, and this may not always be the case in these types of situations, but if something occurs that a third-party lender, let's say even within the state of Nebraska or in another state, a third lender comes into play. I've got a financing statement that's perfected my interest in collateral that your business entity owns and you go to another financial institution to borrow money. When that financial institution checks the UCC records either in that new state where I haven't filed at all under certain circumstances or if it's in the state of Nebraska still, when they check the record if whatever you've done has resulted in the fact that when they now search under who and where you are now and they don't find my financing statement then you're going to be able to come in and have a first lien priority notwithstanding the fact that I'm already perfected over here and if I don't take that action within the four-month grace period I risk losing my perfected status as to after-acquired collateral. [LB99]

SENATOR BAKER: Understood. Thank you. [LB99]

ROBERT HALLSTROM: Thank you, Senator. [LB99]

SENATOR LINDSTROM: Thank you. Any other questions? Thank you, Mr. Hallstrom. [LB99]

ROBERT HALLSTROM: Thank you. [LB99]

SENATOR LINDSTROM: Any other proponents? Any opponents? And any neutral? Okay, thank you. Senator Stinner waives closing. And that will end the hearing for today. Thank you very much for coming. [LB99]