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Banking, Commerce and Insurance Committee
February 13, 2017

[LB72 LB92 LB474 LB480]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 13, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB480, LB92, LB474, and LB72. Senators present: Brett Lindstrom, Chairperson; Roy Baker; Tom Brewer; Joni Craighead; Mark Kolterman; John McCollister; and Paul Schumacher. Senators absent: Matt Williams, Vice Chairperson.

SENATOR LINDSTROM: (Recorder malfunction)...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 members 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 are not interested in a 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 is posted on the chart to your left. Please silence or turn off your cell phones. Move to the front row when you're ready to testify. The order of testimony will go introducer, proponents, opponents, neutral, and closing. Testifiers, sign in, hand your pink sheet to the committee clerk when you come up to testify. Please spell your name for the record before you testify. 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 for the green light. You will have a one-minute warning to end your testimony with the yellow light. And the red light means that your five minutes are up. If you will not be testifying at the microphone but want to go on record as 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 will need ten copies. If you have written testimony but do not have ten copies, please raise your hand now so the page can make copies for you. To my immediate right is committee counsel, Bill Marienau. To my far left is committee clerk, Jan Foster. And the committee members with us today will introduce themselves, beginning at my far right with Senator Schumacher.

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

SENATOR KOLTERMAN: Senator Kolterman, District 24, Seward, York, and Polk Counties.

SENATOR BREWER: Tom Brewer, 43rd District, 13 counties of the Sandhills.

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SENATOR CRAIGHEAD: Senator Joni Craighead, District 6, Omaha.

SENATOR BAKER: Roy Baker, District 30, Gage County and southern Lancaster County.

SENATOR McCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR LINDSTROM: And Senator Williams will be joining us today, he is introducing a bill in another committee. Our page today is Phillip Levos from Columbus. The committee will take up the bills in the order posted, starting with LB480. And we'll now welcome Senator McCollister to open on LB480. [LB480]

SENATOR McCOLLISTER: (Exhibit 1) Good afternoon, Chairman Lindstrom and members of the committee. I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. I'm introducing LB480 and AM260 at the request of the Douglas County Board of Commissioners. This bill is a reintroduction of LB341 by Senator Howard in 2015. Events that occurred shortly after the hearing in 2015 and competing priorities prevented the 2015 proposal from being advanced to the floor for debate. LB480 is a measure to curb escalating healthcare costs for those who are incarcerated in Douglas County facilities. Currently, there is no restriction on whether an insurance provider can drop coverage for a policyholder if the persons are incarcerated. LB480 would prohibit insurance providers from dropping coverage once an individual is processed into the county correctional center. This would only apply to individuals with private health insurance and only for the time before the disposition of their case. LB480 would not prohibit the insurance carrier from canceling the coverage after a policyholder is convicted of a crime. And if the individual is found guilty, their healthcare costs would become the full responsibility of the political subdivision in which a sentence to be carried out is located. The fiscal note of the actual fiscal impact may be small. However, since current law does not prohibit cancellation of these policies while criminal charges are pending, we don't know how many times existing policies may have been canceled. Not surprisingly, Douglas County Corrections staff believe only a small number of criminal defendants have private insurance. By prohibiting cancellation while the charges are pending, LB480 would make it possible to sustain the benefits of private health insurance in this unknown number of cases. LB480 would allow counties to reduce spending on jail inmates' healthcare and repurpose those dollars. Ultimately, the county taxpayers are paying for inmate health insurance...healthcare. It seems a simple matter of fairness for private insurers to continue existing healthcare coverage for an inmate prior to conviction. Representatives for Douglas County and private insurers are here to provide additional information about LB480 and AM260. AM260 becomes the bill. Thank you, Mr. Chairman. [LB480]

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SENATOR LINDSTROM: Thank you, Senator McCollister. Any questions from the committee? Senator Craighead. [LB480]

SENATOR CRAIGHEAD: Thank you, Chairman. Senator McCollister, would there be an additional cost to the county for this bill? [LB480]

SENATOR McCOLLISTER: No, absolutely not. In fact, they hope to save some money. And as the fiscal note shows, there's no cost to the state. [LB480]

SENATOR CRAIGHEAD: Thank you. [LB480]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you, Senator. [LB480]

SENATOR McCOLLISTER: Thank you. [LB480]

SENATOR LINDSTROM: We will now have proponents to LB480. Proponents. [LB480]

MARK FOXALL: Good afternoon, Senators. Mark Foxall, I'm the director of...F-o-x-a-l-l. I'm the director of corrections from Douglas County Department of Corrections in Omaha, Nebraska. I'm here today to testify in support of LB480. I'd like to initially start out by advising the senators gathered here today that we book approximately 18,000 to 19,000 people a year. We're very busy. We release probably as many individuals as well. Approximately 70 percent of those individuals are pretrial detainees. In other words, they have not yet been found guilty of the crime for which they have been charged. A number of these individuals that remain in custody have certain medical issues that from time to time require them to be hospitalized. These are certainly the lion's share of the individuals that we're talking about here today. Many of those individuals that arrive at our facility lack preventative healthcare, they have emerging issues that arise and those emerging issues require some sort of hospitalization or other medical care that's beyond the scope of what our medical providers can offer in-house. So I think that the provisions of this bill which allow the private insurance carriers to maintain coverage of the inmates that come into the facility will certainly assist us in terms of what our budget looks like and also would be a positive for the taxpayers in Omaha, Nebraska, Douglas County. [LB480]

SENATOR LINDSTROM: Thank you very much. Any questions from the committee? Senator Schumacher. [LB480]

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SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. And thank you for your testimony today. Couple of provisions in here--and if you're not the insurance person who can answer this, just let me know and I'll ask somebody in the future--one of which is that the carrier may limit coverage of hospital and ambulatory surgical center services to services provided by its in-network hospitals and surgical centers. What if that's...there's no close-by hospital and it would be cheaper to do it locally rather than transport them to somebody in-network? [LB480]

MARK FOXALL: Sir, we're close to two trauma centers, level one trauma centers with the Med Center and Creighton--they call it St. Joe, but that dates me a little bit--but Creighton University. So we're within close proximity to in-network providers and that has not been an issue for us in the past. [LB480]

SENATOR SCHUMACHER: Yeah, but you are not out in Cherry County either. [LB480]

MARK FOXALL: Right. I can speak for Douglas County, I can't speak for a Cherry County, for example. [LB480]

SENATOR SCHUMACHER: And why would you not want to be able to pay the premiums on an inmate who is in custody with a problem? You've taken him off the street, he can no longer earn any money and thus has no means of paying for his own or her own insurance. And if they become ill and have insurance, why would you not want to be able to pick up the premium so that insurance remains in force? [LB480]

MARK FOXALL: Yes, sir. We really have not had extensive conversations with my board with respect to our picking...the county picking up the premium. That's probably something that's beyond the scope of what we're here to discuss today. [LB480]

SENATOR SCHUMACHER: Okay, thank you. [LB480]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you very much for your testimony. [LB480]

MARK FOXALL: Thank you, Senators. [LB480]

SENATOR LINDSTROM: Other proponents. [LB480]

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ELAINE MENZEL: Chairman Lindstrom and members of the committee, my name is Elaine Menzel, it's E-l-a-i-n-e M-e-n-z-e-l, I'm here on behalf of the Nebraska Association of County Officials and we are in support of LB480. First, we would like to also express our appreciation to Senator McCollister for introducing this legislation and continuing to recognize issues associated with issues identified in LB480. The prior testifier was able to provide some local scenario related to the issues that they face within their jail environment. And in looking at what the national association has provided for information, it's similar in terms of 64 percent have mental illness; 76 percent of those have co-occurring substance abuse issues; and then approximately two-thirds of those detained in jails are there pretrial, many of whom are being held simply because they cannot afford their bail or have just been arrested and will be released in a few hours or days. And while the fiscal impact is potentially minimal, due to a number of the inmates not having insurance, the positive benefits to not just the county, but the individual merit strong consideration of advancing LB480. I will be willing to respond to any questions that I can. Unfortunately, I don't know that I can answer your question, Senator Schumacher, but I'll try for others if they have some. [LB480]

SENATOR LINDSTROM: Thank you very much. Any questions from the committee? Seeing none, thank you very much. [LB480]

ELAINE MENZEL: Thank you. [LB480]

SENATOR LINDSTROM: Other proponents. [LB480]

ERIC DUNNING: Good afternoon, Mr. Chairman, members of the Banking, Commerce and Insurance Committee. My name is Eric Dunning, E-r-i-c D-u-n-n-i-n-g, I appear today as a registered lobbyist on behalf of Blue Cross and Blue Shield of Nebraska. We are here in support of Senator McCollister's bill. In 2015, we were here on a neutral basis on the bill, not because we had any disagreement with the basic public policy underlying the bill, but that there were some changes that needed to be made to the language to make sure that the bill knitted up well with existing Nebraska law and didn't cause us to have a completely different claim system or credentialing system. I think it's important to note that Blue Cross and Blue Shield of Nebraska does pay these claims when they're brought to our attention. When we're receiving a claim from a provider, I don't think we're able really to say this person who's at hospital X is there who's a patient or is an inmate of the jail, but we pay those. Our policies don't cut such people off from coverage. As regards Senator Schumacher's question about the language in the bill regarding the ability to limit coverage of hospital and ambulatory service centers to in-network hospitals, I think that's language that comes to this bill again from Oregon, which was the original genesis of this language. I think the idea there is that if you have a policy that really only pays for in-network hospitals that you're not...just because you're operating under this bill, if you have a

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policy that only deals with in-network hospitals you're not going to somehow be dragged into paying claims that are beyond the scope of your policy. I would also note, Senator, that the bill does include provisions that explicitly provide for payment of out-of-network claims, so that's how I think you resolve that. Your other question related to the issue of why don't counties just go ahead and...or political subdivisions go ahead and just buy coverage? That's a provision that I think we would be concerned about. We would be very concerned about...third-party payment of coverage tends to happen primarily when it's to the financial benefit of that third party, as opposed to a broader policy for paying for all of them. And that would cause us some concern. So with that, I'd be happy to answer any questions. [LB480]

SENATOR LINDSTROM: Thank you, Mr. Dunning. Any questions? Senator Schumacher. [LB480]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Following up on that though, the insurance company takes on the risk of somebody's health, gets premiums, a person has got a right to a policy for a period of time, whatever the term of the policy is. Through no act of...well, the county then does something to make them unable to pay the premiums, pulls them off and puts them in the pokey so they can't work. Why shouldn't the county be able to pay the premiums for that individual? The insurance company is not taking on any more risk than it had originally. [LB480]

ERIC DUNNING: Well, is the county going to pay premiums for all of the inmates that come walking in the door with insurance or just the ones that pose claims to the system? [LB480]

SENATOR SCHUMACHER: Why should they have to pay for all? I mean, they've got on individual...unless it's part of a group policy of some kind, they've got an individual, that individual has a right to keep his insurance up. He can't because of the action of the county, so why can't the county just pay his premiums? [LB480]

ERIC DUNNING: Just for some? I'm sorry, Senator. Unless they pay them for all of the prisoners who are there I think you run the risk of creating some problems with adverse selection so that...because if you're only paying for those claims where you know you've got losses, that's a problem for the insurance pool as a whole. [LB480]

SENATOR SCHUMACHER: It's not adverse selection, because if the insurance company doesn't...if the county doesn't pay the premium the policy would be canceled and the county gets stuck for the bill, so it's not adverse selection. That person in jail is going to get his healthcare taken care of either way. [LB480]

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ERIC DUNNING: If the county is only paying for those claims though or for those policyholders who are presenting claims to the system, then that's where the element of adverse selection comes in. [LB480]

SENATOR SCHUMACHER: Adverse against who, the insurance company or the inmate? [LB480]

ERIC DUNNING: Yes. And adverse against all of the members that we have in that pool. So you're going to present claims but not enough... [LB480]

SENATOR SCHUMACHER: But they're going to pay premiums, too. And the other ones...the pool...they no longer have the risk but they no longer get...have premiums either. So it's kind of six of one-half dozen of the other. [LB480]

ERIC DUNNING: Okay. [LB480]

SENATOR SCHUMACHER: Thank you. [LB480]

ERIC DUNNING: Thank you, sir. [LB480]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you, Mr. Dunning. [LB480]

ERIC DUNNING: Thank you. [LB480]

SENATOR LINDSTROM: Other proponents. Seeing none, we'll now move to opponents. Any opponents? Seeing none, any neutral testifiers? Also, seeing none. Senator McCollister waives closing. And that will end the hearing on LB480. We will now open the hearing on LB92. Senator Kolterman, whenever you're ready. [LB480]

SENATOR KOLTERMAN: (Exhibit 1) Good afternoon, Chairman Lindstrom and fellow members of the Banking, Commerce and Insurance Committee. I'm Senator Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n, and I represent the 24th District of the Nebraska Legislature. I'm here to introduce LB92, a bill to require certain health carriers to provide coverage for certain services delivered through telehealth. I bring this legislation on behalf of the Nebraska Hospital Association. Language in LB92 requires health insurance companies to cover any service offered through telehealth that is already covered for an in-person consultation. Currently, even though

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many doctors have embraced telehealth technology, some have been reluctant to embrace it because they do not know whether insurers will reimburse them. This policy is already in place for state Medicaid. Telemedicine is the use of advanced telecommunications and other technologies exchanged in real time via electronic communication between sites to monitor patient health status. Tools that can be utilized to deliver telemedicine include: network programs, point-to-point connections, monitoring centers or web e-based, e-health patient service sites. Services provided include: primary care, specialists, referral services, remote patient monitoring, consumer medical and health information, consultation, diagnosis, and health education of patients. Telemedicine is particularly important in assuring timely and effective delivery of health services to vulnerable populations, such as individuals in rural areas, low-income individuals, and individuals with mobility impairments. Telemedicine provides the opportunity for alternative effective delivery of care and cost-saving opportunities for plans, providers, and beneficiaries. Telehealth is designed to serve smaller communities that have health clinics with few, if any, full-time doctors. As we consider the shortage of doctors and practitioners throughout the state, we're going to need telehealth. Telehealth consultations can also be significantly less expensive than an in-person doctor visit. It is time for Nebraska to expand telehealth services across the state and eliminate any doubt for doctors and patients that those services are covered by insurance. There are several experts on telehealth here to testify in favor of the bill. I'm happy to answer any questions you may have, but the experts might be better suited on the more technical issues. Also, I do have an amendment to LB92. It's AM253, which I'd like to pass out. And all it does is clarify what policies are covered with telehealth. At the present time, we're talking about your major medical type of plans, health insurance plans. What this amendment does is, it eliminates some of the stand-alone coverages, like cancer and the Aflac-type of single policies out of the equation. [LB92]

SENATOR LINDSTROM: All right. Thank you, Senator Kolterman. Any questions from the committee? Seeing none, thank you. We'll now have proponents. Afternoon. [LB92]

MANDI CONSTANTINE: (Exhibit 2) Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. I am Mandi, M-a-n-d-i, Constantine, C-o-n-s-t-a-n-t-i-n-e, and I represent CHI Health as the division director of virtual services and I also offer testimony on behalf of the Nebraska Hospital Association. As a representative of CHI Health's more than 12,000 employees serving patients from Kearney, Nebraska, to Corning, Iowa, I would like to thank Senator Kolterman for introducing this bill. Thank you, also, for the opportunity to testify in support of LB92, a bill to require certain health carriers to provide coverage for certain services delivered through telehealth. The language in LB92 requires health insurance companies to cover any service offered through telehealth that is already covered for an in-person consultation. Telehealth implementation varies from state to state in terms of what service providers will be reimbursed for delivering, as well as what sort of parity--defined as equivalent treatment of comparable services--is expected between in-person health service

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reimbursement and telehealth reimbursement. This variation affects providers' ability to implement telehealth options, thereby reducing the patients' ability to use these services and for both the provider and the patient to become comfortable with the telehealth processes. Telehealth is believed to have the potential to level inequity in care and access across socioeconomic and cultural levels and to improve the efficiency, coordination and integration of healthcare systems. When certain telehealth services are not reimbursed or are reimbursed at lower levels than in-person services, the incentive to provide telehealth services decreases. States have significant control over reimbursement for telehealth services, both within their state Medicaid program as well as through laws governing private insurers. Without parity laws, health plans can pay for telehealth services at only a fraction of what they pay for in-person services. Currently, 32 states and the D.C. area have some form of parity law in place for private insurers, but each state approaches the matter differently. Twenty-three states and D.C. have full parity, while other states have limited parity laws. Opponents of telehealth parity argue that telehealth services are not equivalent to in-person services and therefore should not receive parity to in-person services in reimbursement, citing multiple factors for this argument. Some state that telehealth is a new technology. In Nebraska, we have used telehealth technology for 60 years. Others argue that parity legislation will increase covered services and that telehealth is a benefit. This is also not true, as telehealth is not a service or a benefit. It is a method of delivering existing covered services. Some state that it costs less to deliver services through telehealth than in-person. But you have to remember that the costs of the technology, managing that technology, and presenting a patient to a provider are costs that our organizations bear every day. There has also been the concern raised that if barriers to access are removed, people will excessively use telehealth, but there is no evidence to support this claim. As our country moves forward from uncoordinated, volume-based delivery of healthcare to an integrated, patient-centric, value-based model, healthcare delivery will increasingly focus on achieving higher quality care, improving care access, and lowering costs. Telehealth plays an important role in enabling healthcare organizations to provide that high-quality care, anytime, anywhere, to patients and operate more cost effectively. By reimbursing at the same rates as in-person services, you support the growth and development of telehealth, while encouraging more and more physicians to use it as a method of care. However, if reimbursement for telehealth does not align with in-person services, the cost savings projected for telehealth will never be realized because providers and healthcare organizations will stay with in-person services to recoup their costs. CHI Health and the Nebraska Hospital Association greatly appreciate the committee's work and hope that you consider us as resources on all healthcare issues. And we urge you to advance LB92 to General File. I'll take any questions at this time. [LB92]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you very much. [LB92]

MANDI CONSTANTINE: Thank you. [LB92]

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SENATOR LINDSTROM: Other proponents. Good afternoon. [LB92]

MARGARET WOEPPEL: (Exhibit 3) Good afternoon, Chairman Lindstrom and fellow members of the Banking, Commerce and Insurance Committee. My name is Margaret Woepfel, M-a-r-g-a-r-e-t W-o-e-p-p-e-l. I am here representing the Nebraska Hospital Association. My background is nursing. I have spent the last six years working with over 50 of our rural...small rural hospitals spanning across the state of Nebraska. In my role as both the rural division quality officer and network coordinator, I am responsible for aiding Nebraska hospitals to assure that they are providing quality, patient-centered care. I am here to ask you to support in ensuring that healthcare services not be excluded from insurance coverage solely because the service is offered through telehealth. Medicaid currently holds this same provision for their providers. Telehealth is essential in improving access to quality healthcare services to our hospital partners throughout the state. Currently, our hospitals are striving to provide comprehensive local patient care despite being burdened with a lack of providers. The only way to accomplish comprehensive local patient care is through the use of telehealth. In the last 18 months my hospitals have been partnering with Nebraska providers to offer services through telehealth that historically patients would have only been able to access via driving anywhere from 30 minutes to six hours each way. Eighteen months ago my hospitals were able to implement trained inpatient hospital specialist consulting through telehealth. For one hospital, having access to this service has saved them up to seven costly patient transfers each month. Not having to transfer these patients was not only the cost effective option, but also the highest quality option. In the last 12 months three of my rural hospitals were able to provide mental health counseling to their patients through telehealth, and ten of my rural hospitals were able to access infectious disease specialists through telehealth. We are now currently exploring telehealth options to provide additional specialties, including endocrinology and pediatrics, and also patient population health management options, such as diabetes control and weight management through remote dietician consulting. Through my work, I see telehealth as the only viable option to ensuring comprehensive patient care in all communities throughout our state. Therefore, I am asking you to please support LB92. Thank you. Any questions? [LB92]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you very much. [LB92]

MARGARET WOEPPEL: Thank you. [LB92]

SENATOR LINDSTROM: Next proponent. Seeing none, any opponents? Seeing none, any neutral testifiers? [LB92]

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ERIC DUNNING: Good afternoon, Mr. Chairman and members of the Banking, Commerce and Insurance Committee. My name is Eric Dunning, for the record that's spelled E-r-i-c D-u-n-n-i-n-g, I'm a registered lobbyist. I'm here today on behalf of Blue Cross and Blue Shield of Nebraska. I am here in a neutral capacity on LB92 and really only neutral as opposed to proponent because I was concerned about some of the testimony that you'd heard from the first testifier. We do not read the bill as requiring payment parity between telehealth and in-person services, but coverage parity. And to the extent that we are talking about a bill that only requires coverage parity, yes, and we would have no problem with that and we would be more than happy to help. So with that, I have...if there are questions, I'd be happy to answer them. [LB92]

SENATOR LINDSTROM: Thank you, Mr. Dunning. Any questions from the committee? Seeing none, thank you very much. [LB92]

ERIC DUNNING: Thank you. [LB92]

SENATOR LINDSTROM: (Exhibits 4-13) Any other neutral testifiers? Seeing none, I do have several letters in support of LB92: one from Nebraska Medical Association; one from Nebraska Planning Council on Developmental Disabilities; one from the Norfolk Area Chamber of Commerce; one from Children's Hospital and Medical Center; one from AARP; one from the Alaska Collaborative; one from The Nebraska Psychological Association; another from Center for Rural Affairs; another from NPA, Nebraska Pharmacists Association; and finally, one from Nebraska Child Health and Education Alliance. Senator Kolterman waives closing. And that will end the hearing on LB92. The next bill up is LB474, Senator Baker's bill. Senator Baker, whenever you're ready. [LB92 LB474]

SENATOR BAKER: Thank you, Chairman Lindstrom, members of the committee. I'm Senator Roy Baker, R-o-y B-a-k-e-r, bringing you (LB)474. It's a fairly simple concept that would enable beneficiaries to synchronize their medications so they could order and receive them on the same day each month, instead of having to make multiple visits to the pharmacy. This would reduce medication waste, as well as more healthcare outcomes that result from decreased medication adherence. This would be an advantage for people of all ages. I Googled old age this morning and it indicated over 65 could be old age. That catches a few of us up here. And it went on to further say that the first ten years of old age, 65 to 75, things generally go pretty well. But after 75, not so much. So I'm thinking of everybody, but particularly old-age people trying to keep their medications straight. So the advantages of have it synchronized--except for specialty situations--to be able to...when they're taking multiple prescriptions, be able to go once a month rather than once a week or who knows how many times in a month. This does ensure the pharmacy receives a full dispensing fee. As determined by the contract it has the individual or group health plan as the pharmacy overhead costs remain the same. You might think this concept

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would be opposed by the insurance industry, but it appears that patients, pharmacies, and insurance industry support the concept. There are some...apparently, some fine tuning needs to be done, some bugs to be worked out, and the desire is to work this over the interim and come back with an amendment at the start of the 2018 session. As you can see, there's a fiscal note here. It would seem to me that there's a way to do this, to simply changing so that all medications are coming up on one day of the month. It would seem to me it would be possible to do that without much, if any, cost. But then, I've been wrong before. So we'll see what we can work out in the interim. Thank you. [LB474]

SENATOR LINDSTROM: Thank you, Senator Baker. Any questions from the committee?
Senator Craighead. [LB474]

SENATOR CRAIGHEAD: Senator Baker, I just want to tell you, thank you for introducing this, because I think this is a very necessary bill. [LB474]

SENATOR BAKER: Thank you, Senator Craighead. [LB474]

SENATOR LINDSTROM: Any other questions? Thank you, Senator Baker. We will now move to proponents of LB474. Good afternoon. [LB474]

JIM OTTO: Good afternoon. Senator Lindstrom, members of the committee, my name is Jim Otto, that's J-i-m O-t-t-o, I am president of the Nebraska Retail Federation. And I want to extend a big thank you to Senator Baker for introducing this. It is supported significantly by our pharmacy members. Senator Baker explained it very well. It is true that we need to come together on some details between some of the people in the insurance industry and the pharmacists, but we truly think we can do that over the interim. And I won't waste any more of your time. [LB474]

SENATOR LINDSTROM: Thank you, Mr. Otto. Any questions from the committee?
Seeing...oh, Senator Kolterman, sorry. Mr. Otto, Senator Kolterman does have a question. [LB474]

SENATOR KOLTERMAN: Thank you, Mr. Lindstrom. What are the differences that we're looking at here? I mean, why should we put this off for another year? [LB474]

JIM OTTO: Well, I think there's some specifics as to far as which...actually, Mrs. Cover from the Pharmacists Association I think can answer that better than I. [LB474]

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SENATOR KOLTERMAN: Thank you. [LB474]

JIM OTTO: But there's some specifics on what would be covered, whatnot or whatever. [LB474]

SENATOR KOLTERMAN: Thank you. [LB474]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. Next proponent. [LB474]

JONI COVER: (Exhibit 1) Good afternoon, Chairman Lindstrom, members of the Banking, Commerce and Insurance Committee. My name is Joni Cover, it's J-o-n-i C-o-v-e-r. I'm the CEO of the Nebraska Pharmacists Association, and on behalf of our members of the Nebraska Pharmacists Association I'm here to testify in support of LB474. I'd like to thank Senator Baker and I'd like thank the Nebraska Retail Federation for introducing the legislation. So just a little bit of background, Senator Baker provided some great information, but medication synchronization--or we call it med sync--allows patients to pick up of all of their ongoing prescription refills at the pharmacy on a single, convenient day each month and work closely with the pharmacist on sticking to their medication regimen. In addition, once a month appointment day facilitates increased pharmacist-patient dialogue and allows time for additional patient care services. So I can come in on one day of the month, they can check to make sure that all my prescriptions are up to date, that I've been taking them the way I'm supposed to, that I don't have anything new going on, and do a lot more in-depth conversation. LB474 would require insurance companies to allow a pharmacist and a physician to determine if medication synchronization is appropriate for their patients; allow a small or partial fill-up of a portion of a prescription to be filled; and then cover the extra copayment for the short fill. The goal of med sync is to really improve medication adherence for patients, which also provides quality care, and then it also reduces waste. And as we move to a value-based system with healthcare, there needs to be a demonstrated pharmacists' value and this med sync program is definitely a valuable service that we can provide to patients. One of the biggest challenges that we run across is the cost to patients, which is partly the reason for this bill. Again we have to do 30 days'...often 30 days' supplies, we have to do a short fill to make it every 30 days and so we're just asking that the fill be...that partial fill be covered by insurance. Now, sort of different, Medicare Part D which this bill doesn't cover, does allow med sync already. Med sync became a provision under Medicare Part D in 2014 and that program, sponsors are required to offer prorated copayments for patients. And I think the only drugs, in my quick review, that aren't covered as the med sync program are oral antibiotics. So for those reasons we'd really like to see this bill go forward. And there are some concerns from the insurance companies and so we'll work with them and with Senator Baker and Jim and try to get those resolved. [LB474]

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SENATOR LINDSTROM: Thank you very much. Senator Kolterman. [LB474]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. So what are the problems there? [LB474]

JONI COVER: What are the problems? Well, a couple of things were brought to the attention that the insurance companies brought up. One of the things they wanted to make sure--and I'm not speaking for them because I don't represent them, so maybe one of them would be able to come up and answer if I don't get all the issues covered--they wanted to put in provisions that would not allow for scheduled...controlled substances in Schedule II, III, or IV to be covered. We have pushed back a little bit on that because I know that I have pharmacists that are already providing med sync, especially for mental health drugs, patients that are being...their meds are being synched so that they're compliant. So we had a problem with that. There were some concern about specialty drugs, drugs coming from specialty pharmacies. Again, we have pharmacists that are already doing that in some capacity, so that was...we don't want to take a step back with this legislation, we want to continue to move forward. And, in our opinion, that was a hindrance. So we just have to work on some of those things. There's been a few states that have passed med sync in some form or the other, so it's a matter of taking a look at those different states and seeing how they've done it. So I think we can work on it, but... [LB474]

SENATOR LINDSTROM: Senator Kolterman. [LB474]

SENATOR KOLTERMAN: Let me ask you this. Is it an accurate statement, from your perspective,... [LB474]

JONI COVER: From my perspective. [LB474]

SENATOR KOLTERMAN: ...that the insurance companies that are doing Part D are probably also the same players that are looking at this coverage? [LB474]

JONI COVER: I would assume some of them are, yes. [LB474]

SENATOR KOLTERMAN: So if they're doing Part D, why would they not want to just move forward with this? [LB474]

JONI COVER: You know what, that's a really good question and I would say that maybe you should ask that of the insurance companies. [LB474]

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SENATOR KOLTERMAN: Okay. Thank you. [LB474]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Senator McCollister. [LB474]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. Following up on Senator Kolterman's question, wouldn't it be a cost-effective thing for the insurance companies to promote this, rather than having noncompliance from their elderly patients? [LB474]

JONI COVER: I guess we believe so in pharmacy. I know, I've had some conversations with some of our pharmacists who are really involved in med sync on the Part D side. And they have not done any studies, but there are studies out there that have talked about just the compliance factor, especially with compliance packaging, so you don't get ten vials of medications. They put them in different sort of cassettes or baggies, if you will, that are labeled. And that does help patients take their drugs when they're supposed to. In our opinion, and I believe that there's studies to prove that, that it does keep people out of the hospital. I mean, we have a \$534 billion problem with prescription misuse in the United States, not just for abuse, but just people don't take their drugs. And if you don't take your medication the way you're supposed to, it doesn't do you any good. So you can have the great healthcare providers in our world prescribing all these great drugs and new therapies and if you don't take them right or you don't take them at all, they don't do you any good. So I think this is another really great tool. And, obviously, CMS under Medicare Part D has recognized that. [LB474]

SENATOR McCOLLISTER: Well, I know for a fact this is an effective thing. My wife's parents are using this program and it's a lifesaver. [LB474]

JONI COVER: Yeah. My father-in-law is, too, so. [LB474]

SENATOR McCOLLISTER: Thank you. [LB474]

JONI COVER: You're welcome. [LB474]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. [LB474]

JONI COVER: Thank you very much. [LB474]

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SENATOR LINDSTROM: (Exhibits 2, 3, 4, 5) Other proponents. I do have a couple of letters here of support: Nebraska Medical Association; PhRMA supports LB474; National Association of Chain Drug Stores in support; and American Cancer Society Action Network, also in support. We will now move to opponents. Opponents to LB474. Seeing none, any neutral testifiers to (LB)474? Also seeing none. Senator Baker? Senator Baker waives closing. And that will end the hearing on LB474. We will now move to the last bill of the day, LB72. Senator Schumacher, whenever you're ready. [LB474 LB72]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. Members of the Banking, Commerce and Insurance Committee, my name is Paul Schumacher, spelled S-c-h-u-m-a-c-h-e-r, here today to introduce LB72 in my role as senator from the 22nd District. We couldn't go today without having a little controversy. This bill has been around for a couple of years and its genesis is basically a lesson that was learned from the great repression, and that is that municipalities can have serious financial difficulties. And when that happens, the bankruptcy courts that they find themselves in are put in a position of determining a thing called priorities. Limited amount of money, whole lot of bills, who gets paid first? It's as simple as that. The lessons that have been learned from the federal courts in juggling with this is that there is a good chance that the federal courts will say, well, let's look to state law to see what the rules are as to who gets paid first. And if there are rules, particularly if they are very clear rules, we'll do the easy thing and follow those rules, saving us from making up new rules or trying to make something out of a lot of uncertainties. In Nebraska we think there might be rules, but then again there is some argument that there are no rules as between people who bought bonds and other debtor or other creditors of the cities or, I guess, it could be a county also. And such things in that other creditors category are folks like labor union contracts. Who comes first? And when that uncertainty exists, generally people with common sense say that's not a good thing. You want to know where you sit. If you are on the bondholders' end of the spectrum, if you are not going to be first--as there's some suggestion you might be, but it's an unclear suggestion in Nebraska--then you want to know that, because then you can buy the bonds for a cheaper rate of interest. And that's in the interest of the cities, it's in the interest of the persons who are "middlemanning" the bonds, it's in everybody's interest to know that, hey, you're really in solid, secure position and you don't have to start factoring in the chance that you might not be. When you factor it in, interest rates go up. On the other end of the spectrum with the various labor unions, gee, are you on equal footing in the bankruptcy court? Is that where the judge is going to come down? Are you on top in the bankruptcy court? Is that where he's going to come down? Are you subservient to the bondholders? Is that where he's going to come down? Well, if you don't know, how can you then protect yourselves in labor negotiations? Should you care? Well, seeing as how pensions are probably going to be a big thing if they aren't already, probably should care. And if you aren't number one or on equal footing, shouldn't you make that part of your next round of negotiations, some limitation on the ability of the city to run up more debts and more competition with you? It's in everybody's interest to know where you stand. Now, it's

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kind of interesting, because it appears that right now one of our major municipalities is trying to date two girls at the same time and tell them both that they are dearly loved. And we all know how that works out. He can't play the game that way. And kind of as a test, a couple of years ago I ran a companion bill which was before the Judiciary Committee. And it said, okay, cities, at least let's be honest with the bondholders. When you put out a prospectus saying, here, we're going to offer these bonds, come on in and buy them, put on there a big stamp that says we don't know if these bonds have priority or not vis-a-vis our other creditors. We don't know. And see what that does to your interest rates. Well, guess who came in in opposition saying, oh, no, we don't want that kind of stamp because it might drive up our interest rates. The municipalities. They didn't want full and fair disclosure. They claimed, well, everybody knows that anyway, you don't have to spell it out. But this is a concern. And you say, look at, our cities might not be in problem territory. But look at how quick the screw turned upstairs. We were fat enough three, four years ago to think we could afford \$600,000 fountains in every corner upstairs. Today, we were arguing whether or not we can afford to fix the air conditioning and heating system, because we're short on money. Things change rather rapidly. We're looking at a possible billion dollar shortfall. And two years ago we were talking in terms of, gee, what happens when we get to our two-months' revenue standard in the Cash Reserve and what are we going to do? We'll have this money. Shall we give it back to the taxpayers? Should we start giving it back already? Things change really fast. And it is our responsibility at this point, as a Legislature, to lay the ground rules of how we want those priorities fixed, creditors, unions, bankers, rather than just say we'll close our eyes, shirk our responsibility to this issue which could very well be upon us and just let a bankruptcy judge--who may not even yet be appointed today--make the decision at the time. That's not fair to the bondholders and the people who've invested in bonds as part of their old-age pension. It's not fair to the labor unions who hope that they're going to be number one or have equal footing before that judge. It's not fair to the other creditors. It's our job to foresee a problem, lay down the ground rules so the players out in society can adjust their positions accordingly, rather than just gamble. I'll be happy to take any questions. [LB72]

SENATOR LINDSTROM: Thank you, Senator Schumacher. Hands are at the same time. Senator McCollister. [LB72]

SENATOR MCCOLLISTER: Thank you, Mr. Chairman. How long has it been that these rules have been ambiguous? [LB72]

SENATOR SCHUMACHER: There's some court cases that go back I think more than a decade. I don't have them right here, but they don't address the issue here on these...whether a bond is a unsecured obligation, a general obligation bond, or not, so they're by inference. I think there's an SID case, for example, in which by inference it suggests that perhaps the bondholders have priority. But that inference is not necessarily binding on a bankruptcy judge or we don't know how a bankruptcy judge would view it, if he'd find it as binding on him. So this is an ambiguous

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situation. And what brought it to a highlight is the fact that municipalities have now declared bankruptcy and that at least one of our major municipalities has got a whole lot of debt and a whole lot of unfunded pension obligations and who knows what the future is going to bring. [LB72]

SENATOR McCOLLISTER: I think that municipality was Detroit, correct? [LB72]

SENATOR SCHUMACHER: Yes. That was one of the first ones. [LB72]

SENATOR McCOLLISTER: Can you give us the legal background of how...what transpired in that case? [LB72]

SENATOR SCHUMACHER: Not in enough detail to want to go on the record with it. But what ended up happening is, I think, that the bondholders lost some of their position. [LB72]

SENATOR McCOLLISTER: That's correct. Thank you, Senator. [LB72]

SENATOR LINDSTROM: Thank you. Senator Kolterman. [LB72]

SENATOR KOLTERMAN: So...thank you, Senator Lindstrom. So, Senator Schumacher, are you familiar on a national basis how many states have cleared this issue up? [LB72]

SENATOR SCHUMACHER: I think perhaps one of the proponents has got the latest figures. But I believe that quite a few of them have addressed the issue. [LB72]

SENATOR KOLTERMAN: Okay. And then along those same lines, when you started talking a little bit about position of bondholders and you also talked about labor unions, are we talking about the labor contract or are we also talking about the pensions as well or all of the above? [LB72]

SENATOR SCHUMACHER: I think we're talking all the above. The pensions are where the unfunded liability lies. And in any contract negotiations, if a union understands where it is in the pecking order it can adjust its contract negotiations. And it's particularly...there's a little bit of self defense here when it comes to those situations, because if one of our major cities would get into a pinch you just about know where they're going to come first for a bailout before that bankruptcy court convenes. And they're going to be here. And so by dealing with this reality

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now, we may decrease some of the possibility of them knocking on our door in the future.
[LB72]

SENATOR KOLTERMAN: The question that comes to my mind then is, if their negotiated agreement...that's not just their pension. I mean we're talking their salaries and everything else. If that's part of the equation, I can understand that. But on the pension side I would think they'd want to know where that stands simply because it determines whether or not their pension plan is in jeopardy as well as their wages. Was that a correct statement? [LB72]

SENATOR SCHUMACHER: You're very correct on the pension side. I would think from a business perspective, you'd want to know where you stand. Now the bankruptcy court in Detroit and in these other cases, it's my understanding that it kind of puts operations in a separate category or a preferential category for applying the tax dollars that come in, so that it will pay today's wage to the police officers and the firemen and paving the streets and moving the snow and those kind of things to keep business....the lights on. And they will...but it's the creditors, the people that have run up a claim against the city and, particularly and acutely, the union contracts or the union pensions and the bondholders where it's already--you know, there's no new money coming in from there, that's a past deal--where this cat fight begins. [LB72]

SENATOR KOLTERMAN: Okay. Thank you. [LB72]

SENATOR LINDSTROM: Thank you. Any other questions? Senator Baker. [LB72]

SENATOR BAKER: Senator Schumacher, help me through your bill. Does it...do you say what the order should be or are you just suggesting it should be stated when the bonds are issued?
[LB72]

SENATOR SCHUMACHER: This bill puts the bondholders with priority. [LB72]

SENATOR BAKER: Okay. How would that stake up against a court-ordered judgment against a governmental subdivision? [LB72]

SENATOR SCHUMACHER: The bondholders are secured. It would be like if somebody sued you and the banker has a mortgage on your house. You'd be paid first or the banker would be paid first and then the creditor would get the leftovers on your house. [LB72]

SENATOR BAKER: Thank you. [LB72]

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SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you. We'll now have proponents. [LB72]

BOB HALLSTROM: (Exhibit 1) Chairman Lindstrom, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB72. LB72 is designed to enhance access to capital markets by governmental units by providing that general obligation bonds have a lien on bond-pledged revenue sources, as defined under the legislation. What I'd like to do is give the committee, by way of background, how we've gotten here. Probably four or five years ago we had some bankers approach the NBA and they basically said, we're seeing some bankruptcies across the country, Harrisburg, Pennsylvania, Central Falls, Rhode Island, Jefferson County, Alabama, and what's the lay of the land in Nebraska? And so we did some research and what we found out is that under bankruptcy law we generally look at two types of bonds, general obligation bonds which are backed by the full faith and credit of the issuing entity and revenue bonds which are tied to a specific source of funding, such as a water or a sewer bond. And when we did our research we determined that the traditional notion of a general obligation bond is that it's the gold standard, because it is backed by the full faith and credit taxing authority of the issuing entity. However, once a Chapter 9 bankruptcy is filed--and by the way, Nebraska law under (section) 13-402 does authorize political subdivisions to file bankruptcy--that once that bankruptcy is filed, unless the state has a statutory lien as proposed under LB72, that the bondholders become general, unsecured credits and just fall in line with pension recipients and other unsecured creditors of the municipality. In my testimony I've gone through what we believe are some of the benefits that go to the...or accrue to the issuing entities under LB72. I've outlined the issue regarding how bankruptcy works, but I've also talked about statutory lien protection. Senator Kolterman, in response to your question, there appear to be, from the information that I've derived, 28 states that have some form of statutory lien protection. There are a number of states--about 20, I think--that do not allow bankruptcy to be filed, so the need for statutory lien protection seemingly does not exist. But there are five states, specifically, that I've identified, California, Colorado, Florida, Louisiana, and Rhode Island, that have an express statutory lien. Rhode Island and California are the most recent. A vintage in Rhode Island has been upheld in bankruptcy court and is the state after which LB72 is patterned. I've talked about the Hollstein case, which is attached to your testimony that I've submitted. Basically, that was an SID case where the court said, we're looking to Nebraska law. We don't necessarily see that there is express statutory authority. However, the spending of the money is primarily geared towards taking care of the bondholders before warrant holders, so the court decided that, in fact, the SID would have to pay the bondholders before they got down to the other warrant holders or unsecured creditors. That was the basis upon which we probably have some implication that the bondholders might prevail in Nebraska. And that is because we have a 50 cent levy limit for general obligations and we have an unlimited levy limit for...no levy limit for general bond obligations. But again, as Senator Schumacher pointed out, that's unclear as to what a court

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might do. One of the things that's changed since we've introduced this legislation, I believe initially in 2014, is the landscape in Nebraska. I certainly don't know what the opponents are going to come up and testify to today, but in the past some of the things that they've brought to the attention of the committee is that they don't believe that they're likely to file bankruptcy. Well, if that was the case, then putting this law on the books can do them no harm, because it would never have to be implemented. But having it on the books might provide some degree of marketplace certainty so people know in that unlikely event of bankruptcy that they are going to be protected. In addition, the opponents have suggested that bankruptcies in faraway places have not yet had an impact on the rates that they have to pay in Nebraska. And I'd highlight the use of the word yet, because what we've seen since we were last before this committee is that Michigan and California have considered and California has adopted a statutory lien priority bill. And in the testimony and background it was indicated that Detroit was paying approximately 100 basis points annually extra in light of the Detroit, Michigan, bankruptcy. And in California, far away from Michigan, 50 basis points extra were paid. And I'll just close in saying the other changing landscape, as I'm sure you've all read, is the Ralston City Arena bonds have been downgraded by seven steps, suggesting in the newspapers at least that they're the equivalent of junk bonds. And we have, as Senator Baker is fully aware of, the Beatrice Six judgment of \$28 million in Gage County where there's been some discussion about the potential filing of a bankruptcy, among other alternatives down there. So we think the lay of the land has changed in that we ought to put the certainty back in the marketplace, avoid the taxpayers from having a double whammy of having to pay for \$600 million in unfunded benefits up in Omaha and then having to pay extra interest rates on their bonds. So with that,... [LB72]

SENATOR LINDSTROM: Senator Kolterman. [LB72]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Mr. Hallstrom, can you talk a little bit about the California situation? Where do the bondholders stack up in that situation? [LB72]

BOB HALLSTROM: In California, because of I think it's SB22, they had the municipalities and school districts come in and request specific statutory lien protection be adopted in the statute. My understanding is that that is one of the five states that should be on the side of the equation that now say they have an express statutory lien protection built into their law that should provide those general obligation bonds with that protection within the confines of a Chapter 9 political subdivision bankruptcy. [LB72]

SENATOR KOLTERMAN: So is, in your humble opinion, is that so that they can continue to at least sell some bonds? [LB72]

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BOB HALLSTROM: Well, I think you have the issue, Senator, with regard to affordability and availability, and it's what the marketplace...how the marketplace is going to react to that type of situation. I think in my conclusion I've noted that what you have is, when people start getting skittish about what types of protections and security they have going in, that they may demand a higher market rate of interest to be paid for that extra degree of risk. If that happens, ultimately it boils down to it costs the community more to issue that bond...a \$30 million bond over a 20-year period, do the math, if it's an extra 50 basis points or 100 basis points over the life of that issue and then ultimately the taxpayers are the ones that foot the bill for that. [LB72]

SENATOR KOLTERMAN: Thank you. [LB72]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you very much for your testimony. [LB72]

BOB HALLSTROM: Thank you, Senator. [LB72]

SENATOR LINDSTROM: Other proponents. Seeing none, we will now move to opponents. Good afternoon. [LB72]

PAUL KRATZ: Senator Lindstrom and members of the committee, my name is Paul Kratz, K-r-a-t-z, I'm the city attorney for Omaha. I testified against this bill in the past and I'm here opposing it today. This bill I think is...and again, with all due respect to Senator Schumacher, this bill is unfair to four different groups. The banks...let me see, I should say three different groups. The banks will come out fine in any type of bankruptcy. But the three groups that it impacts significantly are: first of all the city and the city services that it could provide--if the banks and bondholders get priority, the city would invariably have to cut services; to the employees whose pensions are likely to be reduced by the bankruptcy judge in order to pay the banks and the bondholders; and finally, the citizens who will have to probably experience a tax increase in order to make up for any shortfall by the city or to the employees. And from that standpoint, I believe this bill is unfair. I should also point out that I've been with the city of Omaha for I think 19 years. During that period of time we've issued anywhere from \$50 million to \$100 million worth of bonds each year. And I've been...before rating agencies, two agencies each year, for those 19 years. None of the rating agencies in all that period of time have indicated that there is an issue with the priority set up in Nebraska. They've never indicated that interest rates would be lower if this priority was established in Nebraska. In fact, it's never been raised. The question is, how should...if there is a bankruptcy, how should this be handled? Typically, it's by the bankruptcy judge. That's how the courts were set up. The bankruptcy courts were set up to handle these type of situations. They can deal with the various issues of a city. They don't have to deal with a state-imposed priority system. Each city, each county is going to be different. This

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gives a bankruptcy judge a lot of flexibility on how to structure how a city or county would come out of a bankruptcy. I think for those reasons the city of Omaha opposes this bill and would urge the committee not to vote it out of committee. Thank you. [LB72]

SENATOR LINDSTROM: Thank you, Mr. Kratz. Any questions? Senator Kolterman. [LB72]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Mr. Kratz, can you tell me what the bond ratings are for the city of Omaha now when they're going out to sell new bonds? [LB72]

PAUL KRATZ: It's AA-plus [LB72]

SENATOR KOLTERMAN: Is that a reduction from where it's been in the past? [LB72]

PAUL KRATZ: It has been AAA for a number of years. Probably five years ago it was reduced to AA-plus. [LB72]

SENATOR KOLTERMAN: Would that have an impact on the people that are buying the bonds? [LB72]

PAUL KRATZ: The interest rate ticked up a little bit because of that, but not much. I think we looked at it and there's probably 20 basis points difference between AA and AA-plus. [LB72]

SENATOR KOLTERMAN: Okay. Thank you. [LB72]

SENATOR LINDSTROM: Senator McCollister. [LB72]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. Mr. Kratz, thanks for being here. [LB72]

PAUL KRATZ: You bet. [LB72]

SENATOR McCOLLISTER: Would the city of Omaha receive any benefit if this ambiguity were cleared up by receiving lower interest rates? [LB72]

PAUL KRATZ: I do not believe so. Again, that's never been mentioned by any rating agency and, certainly, our bond counsel or banking underwriters have never suggested that it would make any

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difference in the interest rate. What does impact the interest rate is how the city manages its debt, the income and the outflows and the strength of the city itself. [LB72]

SENATOR McCOLLISTER: I see. [LB72]

PAUL KATZ: But I don't believe this would have any impact at all. [LB72]

SENATOR McCOLLISTER: A bankruptcy for a city like Omaha is very unlikely, because we haven't gone up to our mill levy, correct? [LB72]

PAUL KRATZ: That's correct. [LB72]

SENATOR McCOLLISTER: Thank you. Thank you, Mr. Kratz. Thank you, Mr. Chairman. [LB72]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you very much. [LB72]

PAUL KRATZ: Thank you. [LB72]

SENATOR LINDSTROM: Other opponents? [LB72]

JOHN CORRIGAN: Good afternoon. Members of the committee, Mr. Chairman, my name is John Corrigan, C-o-r-r-i-g-a-n, I'm an attorney in Omaha and I represent the Nebraska Professional Fire Fighters Association and I appear today in opposition to LB72. And I have also, with Senator Schumacher and Mr. Kratz, testified several times on this bill. I can just tell you that on behalf of the employees, and particularly the retirees that would be affected by this, that is, our most serious objection is the retirees. Once they separate, nobody is bargaining on their behalf at a bargaining table. In fact, the union can't bargain for the retirees. And they are placed in a position now where...and particularly death or disability retirees--meaning if your spouse was a firefighter who died--you are going to receive a 50 percent death benefit pension for the remainder of your life, as long as you don't remarry. And that person now is placed in a position where that benefit will be second class to a person who lives in Antigua and bought some bonds as an investment. I certainly respect...and we--as people in the labor movement who participate in investing all the time because we participate in pension funds--we respect the need to have these questions answered or to have viable markets. But if you look at either of the...any of the municipal bond issuers in the state of Nebraska, ask them--Omaha, Lincoln, you name it--how long does it take you to sell these bonds? In Omaha it's between \$50 million and \$100

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million a year. They have no problems selling those bonds. They go like hotcakes, because they are sound investments and they're tax free so they're already getting the benefit. The interest earned on those bonds is...they're already getting the benefit of the tax-free benefit. But now we're asked as a state to say, we will prioritize your investment over the life and service that the employee, the retiree gave, who had nothing else to give. They didn't have money to give. They gave their 30-years-plus of work and now their deal is cut. And in specific response to Senator Schumacher's concern that, well, the union ought to really want to know what their status is. Courts can invalidate labor agreements as part of bankruptcy; we know that. Courts, particularly in Detroit, they did not want to invalidate the pensions, although they reduced the pensions, the bondholders took a little bit sharper cut than the pensioners did. And that is the right and moral and just thing to do and that was what the judge decided. But we're free to...we're happy to play on the playing field as it is. And if there is a bankruptcy, God forbid, then we'll go up to the court and fight on behalf of the retirees to make sure that they maintain as much of the benefit as they were promised. And if it means that they take a haircut and the bondholders take a little haircut--that's really how it has worked around the country in municipal bankruptcy situations--then we'll live with that. But to say, you can't get any money until we pay the bondholders, that is not a Nebraska judgment. That is simply giving the house away to investors over and above the sacrifices that the employees have made. And as somebody that's negotiated contracts in the state for 18 years on behalf of unions, the look on the face of the city administrator when I say to them, hey, now that we are secondary in our situation with regard to the pensioners vis-a-vis the bondholders, we want you to agree that you won't issue any bonds in the next four years while we have this contract. They're not going to do that and I can't force them to do that. I can't go to the CIR and get the CIR to say, here's your contract, here's your wages. Oh, and by the way, no bonds can be issued. So that's not something that is going to be gained in collective bargaining or given up in collective bargaining. So with those thoughts, I just ask that you seriously think about the moral stance as to how we're going to divide up monies in these situations and not guarantee anybody that they can never lose. And I'd ask you to oppose LB72. And thank you, I'd be happy to answer any questions you may have. [LB72]

SENATOR LINDSTROM: Thank you, Mr. Corrigan. Any questions? Senator Kolterman.
[LB72]

SENATOR KOLTERMAN: Thank you, Senator Lindstrom. Mr. Corrigan, you indicated at the very beginning of your testimony that it was not the obligation of the unions to worry about the retirees. [LB72]

JOHN CORRIGAN: That's not what I said. The union cannot negotiate on behalf of the retiree. Legally, the retiree is no longer in the bargaining unit the day they separate employment. And so if I said to the city, I want you to give retired firefighter Jim a better pension, they would say, you

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have no authority to negotiate on his behalf and so we're not talking about that anymore. But no, we certainly... [LB72]

SENATOR KOLTERMAN: Whose obligation is it then? [LB72]

JOHN CORRIGAN: Well, I guess it would be...the retirees, they stick up for themselves, certainly, and some of the groups that I participate with are very active, and the political leadership of the community to say that we are going to stand up and live up to the promises we have made in exchange for their years of service. [LB72]

SENATOR KOLTERMAN: Is it the obligation of the Unicameral? [LB72]

JOHN CORRIGAN: Well, I think so. I mean, I certainly think that the Unicameral has a role in it. The Unicameral has said, in first-class cities that you must, cities, provide that 50 percent death benefit or 50 percent disability benefit and they don't fund that. So that's an obligation. You know, part of the concern that we heard in negotiations of this bill over the years was, well, Omaha and Lincoln are the ones with the defined pension benefit plans. Well, those benefits in the first-class cities are defined, unfunded benefits in the event of death or disability. And that's something that the state imposes upon those cities, and rightfully so. And at the same time that you impose that obligation on those cities you'd be saying to them, oh, and by the way, you've got to pay this, city, but you can't pay that now until the bondholders get paid back if you declare bankruptcy. [LB72]

SENATOR KOLTERMAN: Was the first-class city situation negotiated? [LB72]

JOHN CORRIGAN: In 1983, the Legislature came up with the current retirement benefit system. It wasn't negotiated, meaning the union sat down with the city and each city agreed to this. There was representatives of the League, there were representatives of labor, there were representatives of the cities and had some agreement on it, but it wasn't a contract. It was a (inaudible)... [LB72]

SENATOR KOLTERMAN: I just submit to you that I believe it's the obligation of the Unicameral to take care of these pensions. And I think that this does that. We're probably never going to agree on that. But at the same time, just like Senator Schumacher indicated, when it comes time to have a bankruptcy...look, we're already being asked to take care of Beatrice, situation very similar what could occur. So thank you for your testimony. [LB72]

JOHN CORRIGAN: Thank you. [LB72]

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SENATOR LINDSTROM: Senator McCollister. [LB72]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. Thanks for appearing, Mr. Corrigan. In the case of Michigan, was there a prior organization in place when the city of Detroit went bankrupt? [LB72]

JOHN CORRIGAN: There certainly were several unions that joined together in their efforts. And then there were retiree associations that were created in order to...the retirees joined together, contributed money so that they would have an independent voice in those legal proceedings. Now whether those organizations existed before the bankruptcy was declared or not, I don't know. [LB72]

SENATOR McCOLLISTER: But the judge, in effect, voided those prior agreements and gave the labor union standing in that dispute? [LB72]

JOHN CORRIGAN: Well, the unions certainly had standing as a creditor, because they had a contract that could be...had to be addressed for the existing employees by the bankruptcy court. The retirees were not...did not have a collective bargaining relationship. They had individual vested benefits that were contractual in nature by virtue of the terms of their pension plans and they were all individual creditors of that bankruptcy. And the court invalidated the union contracts, restructured compensation and staffing and all of these different things that they did address, but they didn't reduce the pension benefit as much as they reduced other creditors' interest when the money got divvied up. [LB72]

SENATOR McCOLLISTER: Yeah. What was the result for the pensioners, do you recall? [LB72]

JOHN CORRIGAN: I want to say anywhere from 7 percent to 10 percent reduction in their pension benefit, their monthly benefit for the rest of their life. So they did take a reduction, but there was a lot of effort, both by active employees and by the city in making sure that that was a group they didn't want to hurt as much as everybody else. They wanted to make sure that they'd have something they could live on. [LB72]

SENATOR McCOLLISTER: Thank you, Mr. Corrigan. Thank you, Mr. Chairman. [LB72]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you very much for your testimony. [LB72]

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JOHN CORRIGAN: Thanks very much. [LB72]

SENATOR LINDSTROM: Other opponents. [LB72]

LYNN REX: (Exhibit 2) Senator Lindstrom, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. And I have a letter here from the city of Lincoln. I'm not testifying on behalf of the city of Lincoln today, but I would like to refer to a few things in this letter. First and foremost, as has already been noted and underscored, LB72 makes the bondholders first. And we want to emphasize and underscore the fact that in the state of Nebraska there is only a handful of cities that are actually rated. Lincoln and Omaha, certainly, and just a handful of cities that are actually rated. And I can assure you that, as has already been noted by Paul Kratz, city attorney of Omaha, when there are municipal bonds in the state of Nebraska there is never a problem we've ever seen in terms of trying to get rid of those bonds. People buy them up because of the fact that they really are a great investment. And now that you have this letter from the city of Lincoln--again, I'm not testifying for Lincoln, just submitting this--I did want to highlight a few things that they have in here for your consideration. First of all, you'll note in their first paragraph they underscore the fact that the bill is broadly drafted, unnecessarily complex, but most importantly--and this is what I would like to underscore--unintended consequences. Unintended consequences is what this bill would do. I also think it's important to note in the boldface in paragraph two: It is important to note that even without the bondholder's protection afforded by the bill, the City of Lincoln has earned AAA ratings on its general obligation debt from Moody's and Standard and Poor's and thus enjoys the lowest costs of borrowing available in the marketplace. Thus, at this time the added protection for bondholders would appear to be of absolutely no benefit. And I would just also want to indicate that in Nebraska we have not had municipal bankruptcies. Sanitary improvement districts are deemed to be quote municipalities, and they've had issues. But certainly what you would know as Lincoln, Omaha, first-class cities, cities of the second class, and villages, the 529 municipalities in this state, five classes of municipalities, five forms of government, we have not had bankruptcies. We do not see that happening. And I realize that people refer to the Beatrice case. The mayor of Beatrice...I know Senator Baker has already probably discussed with you that it's the Gage County case--not that we don't have empathy toward them--but it's really Gage County, not the city of Beatrice that is facing that issue. And it is a serious issue for them. That being said, I just think it's important to understand what is at stake here. You'll note that in the third...fourth paragraph, it indicates that if LB72 were to pass, the Legislature would favor paying bondholders who've already been rewarded by the market for taking on risk. And I think this is what John Corrigan was trying to say. Most municipal employees, what they've done is they've committed their lifetimes, just like many have in the military or pick whatever the career is, they've dedicated their lifetimes in terms of working for the city of Omaha, the city of Grand Island, the city of Scottsbluff, any municipality in this state. That's what they've dedicated. So we think that their efforts need to be considered as well. And that's why I think, first and foremost,

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our position in opposition to this bill is that it should be what it is now, the bankruptcy judge makes that decision. You've had other bills that will be coming forth, possibly, upstairs for your consideration if they get on the floor to talk about again whether or not you give judges the flexibility, the people that are boots on the ground, the people that are looking at the defendants before them. Then in this case, the judges that are not looking at defendants, but rather looking at bondholders versus pensioners versus the ability to provide basic city services. We do know that this bill, unlike LB67 of last year, does have a couple of lines in it dealing with government operations, which we appreciate, but there still needs to be some more clarity with that. But across this country judges make those determinations. They weigh those interests depending upon what the circumstances are. And we think that's where this decision ought to be. If you go to page 2 of the Lincoln letter--and this letter is being submitted by Brandon Kauffman, the finance director for the city of Lincoln; again, not testifying for Lincoln, but just underscoring some of these issues--you'll note that he outlines four unintended consequences. I just want to focus on the second one. The bill could jeopardize current contractual arrangements by setting priorities for financings in place regardless of the contractual terms of those financings. So, in essence, what we would encourage you to do is basically not advance this bill. That being said, we are willing to continue working with Senator Schumacher. We had a meeting right before this hearing, actually, several of us, to discuss with him some potential compromises and things for your consideration. But this bill, in this form, we would have to strongly oppose. With that, I'm happy to respond to any questions that you might have. [LB72]

SENATOR LINDSTROM: Thank you for your testimony. Any questions from the committee? Seeing none, thank you very much. [LB72]

LYNN REX: Thank you very much for your time. [LB72]

SENATOR LINDSTROM: Other opponents. If we have other opposition, if you'd move to the front so we can see who else is here. Appreciate it. Thank you. [LB72]

DARREN GARREAN: Chairman Lindstrom, members of the committee, my name is Darren Garrean, first name, D-a-r-r-e-n, last name Garrean, G-a-r-r-e-a-n, I am president of the Nebraska Professional Fire Fighters, representing approximately 1,300 members from Scottsbluff to South Sioux City and Beatrice, as well, and those in between. You've heard some testimony against LB72. And not to beat the dead horse, however, I think the necessity from the testimony earlier is more of a quote feel good. And that's just my interpretation of what was said is. There's not necessarily a need for this right now. It would be more of if something should happen. I don't think that there's a necessity for a lot of if things should happen all the time. In this scenario, the way things are now with a judge taking a look at each totality of everything in an instance of a bankruptcy allows for flexibility, allows for a look into the instance of what has happened, where

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the assets are, and where they should go, and how those should be divvied up. And I'd like to emphasize the fact that some promises that have been made to the individual employees...Senator Kolterman, in your testimony on LB30 in your closing you said that promises to those employees should be kept. And I agree with that. In this situation where a promise to those employees in the event that somebody should pay the ultimate sacrifice and a line-of-duty death benefit should be paid out, we feel that those should be kept. We understand a judge may not feel all of those things to the same letter as we look at it. But if you start going to bondholders and when those are issued, if they should get priority, when bonds are issued they are issued based upon a bond rating. So those that are purchased, they have a risk assessment knowing somebody has looked into the finances. I'm by no means a financier, but when those are purchased they know some of the risk. And those risks are somewhat calculated and that's based upon those bond ratings. Employees don't have that same opportunity. They don't have that same ability to go in and do a risk assessment on their career, do a risk assessment on those benefits and things of that nature. I think putting bondholders in a priority status would be a disservice to the employees of whatever municipality should this never happen to. But if it should happen, I think it would be a disservice to those employees. I'd be happy to answer any questions if there are any. [LB72]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you very much. [LB72]

DARREN GARREAN: Thank you. [LB72]

SENATOR LINDSTROM: (Exhibit 3) Other opponents? Seeing none, I do have one letter in opposition, Nebraska State AFL-CIO. It's a letter in opposition to LB72. We'll now move on to neutral testimony. Any neutral testifiers? Seeing none, Senator Schumacher, if you'd like to close. [LB72]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom, members of the committee. It's fitting that tomorrow is Valentine's Day because the best time to negotiate a prenuptial agreement is on Valentine's Day when love abounds. Things are easy to solve when the problem isn't there yet. And that's what we have here. The problem isn't here yet, but rational people know there could be a divorce in the future. And if there's lots and lots and lots of money at stake it's time for a prenuptial agreement. What will eventually impact interest rates is either a deteriorating situation for a major city and all of a sudden the bondholders say, whoa, we thought we were secured, but we're not. And, gee whiz, down the road a ways bondholders just got burned because they weren't secured. And then you have a cascading effect on interest. We've learned several things in this several years of pursuing a solution to this problem. One is there was suggestion that we eliminate metropolitan and primary class cities' ability to declare bankruptcy.

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If it's no problem, if it's no big deal, eliminate the right to do it. Guess who opposed that. We also tried the idea of let's make full and fair disclosure to the bondholders that, look at, we're not telling you you're number one. You may be in there in a mud slinging fight before the bankruptcy judge and have to end up rolling the dice or in a negotiating session where city officials try to cram down some settlement on all of the creditors. They didn't want that one either. If this bill is so unnecessary, if it's so improbable that this problem will ever happen, then it will never speak. And the only effect will be that a little extra comfort to the bondholders and perhaps a bit of a lesser interest rate. But the fact that the opposition is there underscores the fact that the problem exists. And it is the Legislature's obligation, not only in protection of the state's taxpayers, but to lay a groundwork for the affairs of men and women so that ultimately what we have is fair because everybody knows what hand they are being dealt; fair to the banks, fair to the cities' services, fair to the employees, fair to the citizens. What isn't fair is uncertainty where everybody expects and those expectations cannot be met. I hope that negotiations continue to come to a resolution, but that won't happen unless the heat is felt. And the way to make the heat felt is for this committee to advance this bill so we can get really serious about exactly how to carve out the provisions of the bill. And this is a very good thing to advance to start that process. We probably won't get to anything up on the floor so it may not make a difference. But, nevertheless, this is a good place to start. I'll take any questions. [LB72]

SENATOR LINDSTROM: Thank you, Senator Schumacher. Any final questions for the senator? Seeing none, thank you very much. [LB72]

SENATOR SCHUMACHER: Thank you. [LB72]

SENATOR LINDSTROM: And that will end the hearing on LB72 and that ends the hearings for today. Thank you very much for coming. We'll see you tomorrow. [LB72]