

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee February 10, 2020

WILLIAMS: Welcome to the Banking, Commerce and Insurance Committee hearing. My name is Matt Williams. I'm from Gothenburg and represent Legislative District 36, and I'm honored to serve as Chairman of this committee. The committee will take up the bills in the order posted. Our hearing today is your 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 bills to introduce in other committees and are sometimes called away. It is not an indication that we are not interested in the bill being heard in a committee, it's just part of the process. To better facilitate today's proceeding, I ask that you abide by the following procedures. Please silence or turn off your cell phones. Please move to the front row when you are ready to testify. The order of testimony will be the introducer first, followed by proponents, followed by opponents, then neutral testimony, and then a closing by the introducing senator. Testifiers need to sign in, hand your pink sign-in sheets to the committee clerk when you come up to testify. Please, when you begin your testimony, spell your name for the record and please be concise. It is my request that you limit your testimony to five minutes. We do use the light system. The light will be green for the first four minutes, then turning yellow for one minute, and when it reaches five minutes, a red light will come on and we will ask that you conclude your testimony at that time. 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. Please hand them to the page for distribution to the committee and staff. When you come up to testify, we need 10 copies. If you do not have 10 copies, our page can make additional copies for you. To my immediate right is committee counsel, Bill Marienau, and to my left substituting today, thank you, Katie, for being here to be our committee clerk. Natalie Schunk, our normal clerk is-- is sick today. Committee members are with us today, I will ask to introduce themselves, starting with Senator Gragert.

GRAGERT: Thank you. Good afternoon. Tim Gragert, District 40 up in northeast Nebraska.

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

La GRONE: Andrew La Grone, District 49, Gretna and northwest Sarpy County.

LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

QUICK: Dan Quick. District 35, Grand Island.

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

McCOLLISTER: John McCollister, District 20, central Omaha.

WILLIAMS: And our page today is Lorenzo, and Lorenzo is a student at UNL. And we will, therefore, open our hearing today with LB808, introduced by Senator La Grone to provide for ratification of defective corporate actions under the Nebraska Model Business Corporation Act. Welcome, Senator La Grone.

La GRONE: Thank you, Chairman Williams and members of the committee. My name is Andrew La Grone, A-n-d-r-e-w L-a G-r-o-n-e, and I represent District 49, which is Gretna in northwest Sarpy County. I'm here today to introduce LB808. The Model Business Corporation Act is a Model Act prepared and adopted by the American Bar Association and has been in existence for over 60 years. Over the last six decades, provisions, both substantial and minor, have been implemented at various times by various states. Most recent comprehensive amendments in the Model Act came in revisions made by the ABA in 2016. Nebraska adopted the Model Business Corporation Act in 2014 with the passage of LB749. Subsequent updates to the act were adopted with the passage of LB794 in 2016, and LB808 seeks to adopt one more provision of the act that will not-- that was not made final by the ABA until after LB794 was introduced in 2016. What LB808 does is it adopts chapter-- subchapter (e) of Chapter 1 of the ABA's Model Business Corporation Act to provide a process for ratification of a defective corporate action. An effective corporate action is an action that is within the power of a corporation, but is void or voidable because the action was taken without proper authorization. Members of a corporation, in whatever capacity, all take corporate actions that must comply with the process and procedures outlined in various governing documents. Failure to strictly observe these corporate formalities can sometimes result in problems that are difficult to fix at a later time. The process outlined in LB808 would provide a statutory mechanism whereby a

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corporation could remedy any such deficiency to avoid issues arising in the future. Simply put, LB808 provides a calculated and measured way of fixing technical or procedural errors a corporate-- a corporation might make. I introduce this bill at the request of the Nebraska Bar Association's business law section and a representative from the Bar is here and should be able to answer any technical questions you might have. I would note before I finish, there is a small cash fund fiscal note offered by the Secretary of State's Office for a one-time computer adjustment. However, they have indicated that that can be dealt with through existing cash funds. So that's more of just a transfer issue. That's a one-time transfer issue that they have no problem with. Thanks for your time and I'd be happy to answer any questions.

WILLIAMS: Thank you, Senator La Grone. Questions for the Senator.
Senator McCollister.

McCOLLISTER: Yeah. Thank you, Chair Williams. Can you just give us a common example of why this legislation is necessary?

La GRONE: Absolutely. Let's say that a corporation is going to issue more shares and they either vote to issue 150 shares and accidentally issue 115, or let's say they don't have minutes for the meeting where shares are issued, just a simple mistake like that, they could remedy that through the process outlined in this bill.

McCOLLISTER: But deception, things like that wouldn't be a simple mistake.

La GRONE: No, no. So anything that's criminal nature obviously wouldn't be covered.

McCOLLISTER: Thank you.

WILLIAMS: Additional questions. Seeing none, thank you. And I assume you'll be staying to close. We would invite the first proponent.
Welcome, Mr. Hruza.

TIM HRUZA: Good afternoon. Chairman Williams, members of the Banking, Commerce and Insurance Committee, my name is Tim Hruza, last name is spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in support of LB808. I want to start by thanking Senator La Grone for introducing the bill. This was brought to the Bar Association by a small group of attorneys that have been working on

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the Model Business Corporation Act for a number of years in Nebraska, dating back to before 2014, when we adopted the most substantial version of the Model Act. Adjustments were made to the bill by Senator Harr's introduction of a bill in 2016. What was kind of weird about that is, is we had we had adopted in 2014, Senator Burke Harr had introduced the first bill, it had a delayed implementation date, if I understand it right, and the members of the Bar Association and I think legal counsel for the committee here had spent a bunch of time trying to sort that Model Act out so that it comports with what we do here in Nebraska. Over that year period, a second bill was then introduced to clean up those provisions. One thing that happened from the national level, the ABA readjusted and put together the 2016 revisions to the act, part of what was suggested at that time by the ABA from the national model is this ratification of defective corporate action. So again, the intent of this provision is to allow a corporation to fix issues that might have occurred either by voting or by certain processes that are either required under state law or required under the articles of incorporation or other bylaws that a corporation might have. The ABA approved this provision of the Model Act in December of 2015. The Bar Association's committee that worked on the revisions that were offered by Senator Harr in 2016 hadn't had an opportunity to review this. In the years since a number of practitioners have become aware of this provision of the act and asked us this year to have it introduced, so we went to Senator La Grone to do that. The thing I might note with regard to the Secretary of State's Office is that small one-time change because there are certain instances in which the corporate actions might require a filing with the Secretary of State's Office. So it's a small one-time programming fee to allow for a new dropbox on their electronic filing form for articles of validation that might need to be filed. With that, I'd be happy to answer any questions you have. Thank you for your time and I ask you to advance the bill to General File.

WILLIAMS: Questions for Mr. Hruza? Seeing none, thank you for your testimony. Any additional proponents? Seeing none, anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Senator La Grone.

La GRONE: In closing, I would simply note that I just learned from Mr. Hruza's testimony that my streak of introducing Burke Harr bills continues, and I hope this one has a much better fate than the last one. Thank you. [LAUGHTER]

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WILLIAMS: Well, certainly that should have a question. [LAUGHTER] Maybe that was a question. Seeing no questions, thank you. And that will close the public hearing on LB808. And we will open the public hearing on LB954, introduced by Senator Lindstrom to change insurance provisions relating to fees for dental services. Senator Lindstrom.

LINDSTROM: Good afternoon, Chairman Williams, and members of the committee. My name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 in northwest Omaha. Before you today to introduce LB954, a bill to change insurance provisions related to fees for dental services. I introduced LB954 to address two situations that were coming up for Nebraska dentists. First, some dentists were noticing that insurers were paying them with a virtual credit card. Virtual credit cards are unique credit card numbers that allow you to transact on your main credit card account without using your main credit card account number. While potentially convenient, dentists were notice-- were noticed that the access to payments from the insurer through these virtual credit cards came with processing fees. LB954 addresses this by saying that virtual credit cards cannot be the only option an insurer presents to a dentist. To be clear, dentists may still opt to receive payment through a credit card number if they wish, but LB954 would preserve the ability to choose more traditional methods if the dentist prefers to do that. The bill would also-- the bill also addresses a second situation that has come up for Nebraska dentists. Imagine you were a dentist that had contracted with insurance company A and all of a sudden patients with insurance company B coverage came to your office and claimed that you weren't-- that you were an in network provider for company B, even though you hadn't-- never signed a contract directly with company B. Surprisingly, this is happening in Nebraska today. Some insure-- some insurance companies are leasing their provider network to third party companies without the dentist ever entering into a separate contract with that third party. LB954 requires insured network leasing to be more transparent for dentists and allows dentists to opt out of this network leasing process. According to the American Dental Association, 18 states have passed law-- laws regarding network leasing transparency. There is an amendment that I have passed out with language that reflects how some other states have addressed these issues. Several of the involved parties working with this bill are close to an arrangement and just need a couple more days to work out a few minor issues. I'd be happy to answer any questions you may have.

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WILLIAMS: Thank you, Senator Lindstrom. Questions? Senator McCollister.

McCOLLISTER: Last week we heard a bill that those people that claim to be part of the network and then they would go outside and bill separately. How is this bill differently than the one we heard last week?

LINDSTROM: Well, I think with regards to last week, that was more about the patient. In this case more about the dentist and the practice and providing options for them, in the case of both the insurance companies, but then also how they receive compensation for what they're doing. So there is a little bit of a difference. But at the same point, having transparency in both cases is important and understanding the rules in which you're playing under and so this does it best.

McCOLLISTER: The examples you cited, are they happening with any kind of frequency?

LINDSTROM: Yeah, I think you'll hear behind me some folks that can touch on that, but it is happening. I do have a dentist friend who is moving back to Nebraska and has played-- paid close attention to this bill because he'll be joining a practice. He's finishing up his service in the Navy in Hawaii and was pretty-- on this bill pretty closely because he is coming back here and was engaged in this process because he hears from some of his colleagues that this is an issue.

WILLIAMS: Additional questions? Seeing none, and I'm assuming you will stay to close.

LINDSTROM: Yeah.

WILLIAMS: I invite the first proponent. Good afternoon.

DAVID O'DOHERTY: Good afternoon, Senators. My name is David O'Doherty, D-a-v-i-d O-'-D-o-h-e-r-t-y. I'm the executive director for Nebraska Dental Association, representing 70 percent of the practicing dentists in Nebraska. I'd like to thank Senator Lindstrom for introducing LB954 on our behalf. As you've heard, there are a couple issues that have risen in the dental insurance business that have risen to a level that we are asking for your help to resolve. The first issue, which we call the virtual credit card payments appearing on page 2, lines 13 through 16, the dentist submits a claim to the insurance company, the

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insurance company basically faxes back a page with the credit card number that they have to redeem to get paid. It's those processing costs that are further reducing the payment in addition to the lower fee structure that they've already agreed to. Now, those processing costs don't disappear. They have to be taken into account somewhere. Unfortunately, they hit people like me because I'm a private pay patient. So if they have to raise their fees to get-- recover that 2 to 4 percent back, it hits me because I pay private pay, I have no reduced fee schedule. As Senator said, LB954 does not say you can't make payment on a virtual credit card. It just says it can't be the only form of payment. Second issue we call silent network leasing. You asked the question, is it happening? It is happening. One of our president-elect told us two weeks ago that a patient showed up with a MetLife card and they said, we don't take MetLife, and said, yes, you do, you're on their website as a provider. And they didn't even know it had happened. No one would become a party to a contract that they didn't even consider or agree to. So the same notion would apply in this situation. You've heard this, 18 states have already passed laws addressing network leasing. I passed out the law that passed in New Jersey. I think it's Chapter 254 that we we're using to model this statute change after. We're working with the Insurance Federation on an amendment that pulls more of this language into this bill. And you might ask, how can this change happen without a dentist agreeing to it? The second thing I passed out is a letter that Ameritas sent out. This is on a different issue, but basically, it says there's a change to your provider agreement. And I highlighted the red-- the sentence in the bottom of the page. This letter does modify your PPO agreement with Ameritas. The lawyers in the room would be then looking for a signature line where you've agreed to this change, and I don't see a signature line. It says file this. If you have questions, give us a call. So there's no-- there's no negotiation. They just changed the contract. LB954 does not prohibit network policing. It merely requires the provider agreement or amendment to alert the dentist that the dental plan may lease the network to another entity and it gives the dentist the opportunity to choose not to participate. I do have a question for the committee. The New Jersey law states that the notice about network leasing must be clearly identified in the contract. What would clearly identify look like to you if you're reading a contract? Honest question, because that-- what's clear to you may not be clear to me. Some states actually put it like a 12 point font underlined, but some of these provider agreements are probably in 6 point font. I mean, they're like the classic small print. So I do-- that is an

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honest question. I'd love to hear that one, what your opinion is. But I thank you for your time and listening to this. And we-- and please look for an amendment shortly that will be acceptable to all the parties so this can be passed out of committee to General File. I'd be happy to answer any questions.

WILLIAMS: Questions for Mr. O'Doherty?

McCOLLISTER: Sorry, Mr. Chairman.

WILLIAMS: Senator McCollister.

McCOLLISTER: Thanks for being here. When I go to the dentist, I have a dental policy, but it doesn't quite cover the costs of services. I hand my dentist a credit card when that occurs. And I'm sure as the provider of service, doesn't he have to pay a 1 or 2 percent charge off of that, off of the proceeds?

DAVID O'DOHERTY: On some of those they would. But that's their decision to make whether to accept a credit card or not. Right now, they don't have that option, whether to accept it or not.

McCOLLISTER: I see. But in most cases, in fact, I think they all accept credit cards for-- for-- for services of that nature. Maybe they don't-- they don't accept to American Express because the fee is larger.

DAVID O'DOHERTY: Well, not just American Express. The type of credit card, if you have to punch in a number, it's a higher rate. If you swipe the card and have the three digit number on the back, it's a much lower rate. And that rate can-- can vary between two to three percent. Because we have a credit card endorsed product service provider that tells us all those different rates depending on how you're getting the number and typing in the numbers are one of the most expensive transactions costs.

McCOLLISTER: So, you're saying a debit card that requires you to punch an ID-code is more expensive for a dentist to process?

DAVID O'DOHERTY: More than just swiping the card so that you-- so that the processor knows that you have the card is that-- punching in the number is more expensive than swiping a card.

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McCOLLISTER: But the dentist has the option, whether to accept it or not.

DAVID O'DOHERTY: They do. And this, right now in this case, they don't have that option whether to take credit on whatever that claim is with that company, that's just asking for the option to do that.

McCOLLISTER: I see.

WILLIAMS: Senator Kolterman.

KOLTERMAN: Is it your understanding that health savings accounts are in their debit cards, is typically not associated with that.

DAVID O'DOHERTY: That there is not? I'm not aware if it is or not.

KOLTERMAN: That's just coming out of your checks--

DAVID O'DOHERTY: Well, it may be-- it may be coming out of it where ours isn't, but it's coming out of some account and how much they charge for that I don't know.

WILLIAMS: Mr. Doherty, isn't the distinction we're talking about here, though, is reimbursement from an insurance company, not the patient themselves making a payment.

DAVID O'DOHERTY: Correct.

WILLIAMS: Just the dentist can choose to do or not do?

DAVID O'DOHERTY: That's correct.

WILLIAMS: What we're talking about here is a payment that's coming from the reimbursement that's coming in a form that is in-- with some companies evidently, the only choice that that company is presently giving, is that correct?

DAVID O'DOHERTY: That is correct. The ADA has been working, trying to work with some of the larger insurance companies. This has been going on for quite a while to voluntarily give dentists that choice, but it's not happening. So that's why-- that's why we're here on this piece.

WILLIAMS: And LB954 just requires the company to give options.

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DAVID O'DOHERTY: Just another option.

WILLIAMS: The second part, how-- how prevalent is the leasing of networks now?

DAVID O'DOHERTY: We're seeing it more and more of-- a lot of the things that start on the coasts end up here. So this has been going on on the coast for quite a while. We're just starting to see it show up here more and more.

WILLIAMS: And what you're asking in the legislation then is having the provider again have an option with that. Is that-- how to describe that.

DAVID O'DOHERTY: Just-- right, just to have a notice that it could happen. And if it does happen, do you want to be part of that? If you don't, then tell us, you don't, that's all.

WILLIAMS: Because at times dentists make a decision, I'm sure, like other providers do. I want to be in this network or do I not want to be in this network?

DAVID O'DOHERTY: Well, any business has to-- has to determine what their costs would be, and what group of patients are insurers at 30 percent, is it 80 percent. If all of a sudden, you're planning on 30 percent and you double that load because of this leasing going on, that kind of messes up your business plan. And actually, if they don't have the chance to opt out, contractually, their only option is terminate the contract. So now they've not only gained more, they've lost their existing base they may have been treating for years.

WILLIAMS: Thank you. Additional questions? Seeing none, thank you for your testimony.

DAVID O'DOHERTY: Thank you very much.

WILLIAMS: Invite the next proponent. Seeing none, is there anyone here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Welcome, Mr. Bell.

ROBERT BELL: Good afternoon. Chairman Williams and members of the Banking, Commerce and Insurance Committee, my name is Robert Bell. Last name is spelled B-e-l-l and I'm the executive director and registered lobbyist for the Nebraska Insurance Federation, the state

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trade association of insurers that are either domiciled or have a significant economic presence in Nebraska. I am testifying neutrally on LB954 and I have written a fair number but it's really a surprising number of federation members write dental insurance of my 29 members. My understanding is that the legislation before you today has been passed in a number of states and in those states, the insurers and dental associations for the most part have worked out-- have worked together to negotiate the final details of the legislation. I'm happy to tell you today that the same story of insurance companies and dentists living in harmony is also the story here in Nebraska, so far. However, the details still need to be ironed out on a few issues. Last week, the insurers provided the dentists with a white copy amendment, which I believe is the amendment that's before you, with suggested changes and has come back with some additional edits. All that we need is a little bit of time. And then I think we can have an agreement. Because of this good faith effort to negotiate the terms of the legislation, the federation is neutral today despite some initial misgivings. And I look forward to further discussions on the legislation. Once the agreement is finalized, we'll be certain to communicate that to the committee. And I appreciate the dental associations and Senator Lindstrom's willingness to negotiate LB954 and I'd be happy to answer any questions from the committee. Thank you.

WILLIAMS: Thank you, Mr. Bell. Questions?

ROBERT BELL: I'm almost disappointed, Senator. [LAUGHTER]

WILLIAMS: Just look this way. Seeing no questions, thank you for your testimony.

ROBERT BELL: You're welcome.

WILLIAMS: Any additional neutral testimony? Seeing none, Senator Lindstrom.

LINDSTROM: Thank you, Chairman Williams. I'm actually running out of bills to go from opposition, neutral and then, you know, proponents. I don't know if I'll get that opportunity this year. Again, it's-- it all comes down to options and I just wanted to get up to close to say I appreciate Mr. Bell's willingness to work with us on this bill and we'll continue to do so over the next week. And I would imagine then we could take that up at some point here once we get everything ironed

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out. And with that, I will be happy to answer any final questions.
Thank you.

WILLIAMS: Any questions for Senator Lindstrom? Seeing none, that will close our public hearing on LB954 and we will open our public hearing on LB988, with Senator Hilgers to provide restrictions on business entity ownership with respect to certain professional services. Welcome, Senator Hilgers.

HILGERS: Thank you. Chairman Williams and members of the Banking, Commerce and Insurance Committee, my name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s. I represent District 21, which is northwest Lincoln and Lancaster County, and I am very pleased to open on LB988, which deals with a fairly esoteric, but I think very important area of the law relating to ESOP. So I'm going to talk-- this is what I intend to do. I intend to talk briefly just about what an ESOP is. It's a very complex, nuanced area, and I won't go into-- I won't bore you all to tears, but I do want to explain what an ESOP is. I want to explain a little bit to the committee the importance and impact that ESOPs have had around the country. And I'll talk a little bit about what LB988 does in the context of that and talk about some of the opposition that has arisen. So what is an ESOP? An ESOP is-- it's an actual-- it's an-- it stands for Employee Stock Ownership Plan and it's created under federal law. And I'm being at a very 10,000 foot level, I'm happy to dive into the extent the committee would like, but it essentially is a separate-- it's similar to a profit owner's-- a profit plan. But what it is, is it's a separate entity that's run by a trustee. That trustees then can purchase any amount of the-- of the stock or shares or membership units of a particular corporation anywhere from point 1 percent to 100 percent. The trustee that-- the trust itself, the ESOP plan is then actually has-- isn't owned by the employees and it has-- it's subject to a number of nondiscrimination rules and it allows the employees to get-- it's a vehicle for the employees to get ownership to the company. Now, so I say all that, but the ESOPs have been incredibly powerful for those companies that have actually adopted ESOPs and they're-- and they really it's not just a win-win-win for the-- for the employees and the employers, it's a win-win-win-win for the community as well. And I'll walk through some stats which are summarized from some of the articles that I've given you, but if you just do some research on ESOPs, this will quickly become clear. So ESOPs are good for employees. So generally speaking, companies that have ESOPs pay their employees more. Employees stay longer, they have fewer layoffs, and employees build more wealth. So

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there are stories of ESOPs. I was reading an article the other day about a trucking company that was an ESOP and some of the trucking companies, the employees, some of the drivers had over a million dollars in built-up wealth in the ESOP itself. So the employees win under ESOPs. The employee-- the companies themselves, they win under ESOPs. They tend to be more profitable. They tend to have more sales. They tend to last longer. They tend to be more durable, so they win. The communities in which ESOPs are located win because the ESOPs, the data show that ESOPs tend to stay longer in their community. We have problems with companies moving from community to community, state to state, ESOPs tend to be-- have much deeper roots in their communities. They tend to move less and actually the owners of companies win under ESOPs. And so one of the advantages, ESOPs have a number of different advantages. One of them are significant tax advantages. But one advantage in particular is the ability to create a market for-- for an owner of a company of a certain size that otherwise might not exist. So if you think about the baby boomer, there's a huge transition of wealth from baby boomers right now who have built up companies over their lifetime that would like to transition that. For a lot of areas-- for a lot of companies, there's no ready market for that. I'm not talking about publicly traded companies that have a liquid market on the stock exchange, but it's much smaller companies that are harder to find buyers for that-- for the company. ESOPs provide a vehicle for those owners to exit their company in a way that will hand it off to their employees to be able to run and have success and to see what they've built last a long time. So it creates liquidity for the owners as well. So it's win-win-win-win for all four of those stakeholders that I just mentioned. Most of the-- most of ESOPs are regulated at the federal level. There's very little, in fact, the state can do besides having some advantageous tax advantage that mirror with it, what the feds do to-- to really expand or support ESOP. I've looked at ESOPs over the summer. There's really two areas, primary areas that a state can really impact the ESOP gains as it were. The first is just to spend more money or try to bring more awareness to ESOPs, not something that I was really wanted to push, although I think having this committee hearing, some of the reasons I've talked about ESOPs in a little bit more depth is just because hopefully it builds some awareness for them. But the second is to expand it into the professional fields. So one of the restrictions that tend to exist and this was Senator Stinner, I think was a bill that came through this committee last year, which was actually, if you look at it nationwide, was one of the most impactful recent ESOP bills in any state in the

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country last year. This came through this committee was to expand ESOPs into the professional arena, specifically with CPAs. You may recall that bill last year. In that bill, we modeled the legislation, LB98 pretty closely to that bill. So without legislation at the state level, for the most part, professional-- professions do not-- they restrict ownership in those professions. So I'm an attorney and they're under the Bar rules of the Supreme Court, nonlawyers can't own law firms. This, by the way, this doesn't touch law firms. There are similar rules in-- in other professions. So, you know, maybe in dentistry or doctor's offices, etcetera, and so what that does is it at least creates an initial barrier to expanding an ESOP, because an ESOP I mentioned is a trust. Trust is not a person. It's certainly not a doctor. Trust can't practice medicine. So if you don't have some statutory vehicle to allow in the medical context, for instance, then ESOP to own a doctor's office even in part, then you can't do it at all. So the intent of LB98 was to start the conversation to how to expand ESOPs into the professional context. Now, we tried to model it, as I mentioned, off of the previous legislation from Senator Stinner. So one important piece of that-- there's two important pieces. One is the ownership of the ESOP can never be over 50 percent. So a lot of ESOPs are 100 percent owned, but not in the professional context that allows lawyers, not lawyers, but doctors, that's what whomever to retain control. So for one concern is if you allow nondoctors to own a medical practice, for instance, they don't have the same duty and care of patients. So this way you'd at least allow them-- you would ensure that the majority of the individuals were still of the profession. The second change, again, modeled after the legislation that came through this committee, was to ensure that the trustee was a member of the-- of the profession impacted. So that's-- that's the intent of the bill. That's what we've brought forward. I've spoken to a number of stakeholders here, some of whom I expect to testify in opposition today, who have brought a number of concerns. And I would-- I would sort of characterize the flavor of those concerns two ways, in two groups. One is, is potential unintended consequences of the language as drafted. So as an example, one group said, hey, under this language, potentially you could allow maybe private equity to get involved in our profession or something like that. From my perspective, that is not the intent of the bill. Those types of changes I'm absolutely open to, and this is meant to be a collaborative bill. So I will make those changes and those types of changes are, I think, will make the bill better. The other type are just ones that I found when you even discuss the concept and the

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profession I'm involved in, which is the legal profession, some professions just don't ever want to change ever for any reason. We've been doing this for 150 years, we don't want to change. This is intended to try to nudge people along and think creatively. If it ultimately can't work for certain professions, I'm open to that. This is-- I don't-- my intent is not to change the practice of medicine or totally upend how veteran-- veterinarians conduct their practice. But it's meant to give them another tool to help both their owners and their employees. And given the success we see with ESOPs, including companies in Nebraska, such as Travel and Transport, HDR, Hy-Vee, which is not a Nebraska company but has a significant presence here in the state, those are all ESOPs, ESOP-owned companies. So it's meant to give them another tool and to make them-- help, maybe allow them to think more innovatively about what it is that they're doing. So I have passed around some materials. One thing in particular is a letter from the national organization, their 501C(3). Corey Rosen is one of the individuals I worked with at that organization. I will, if it's with the permission of Chairman Williams, I would submit a signed letter we just received right before the hearing. That's an unsigned copy and they can't take a formal position in support, but they-- he goes in detail about the value of ESOPs and how they would impact in the professional sphere. So with that I'm happy to answer any questions. I am not sure that there will be any proponents behind me, but the people who would support this bill, I think, are the employees who might ultimately be able to take advantage of one of these stock plans and help them and their families.

WILLIAMS: Questions for Senator Hilgers? Seeing none, will you be staying to close?

HILGERS: Yes, sir.

WILLIAMS: Thank you. We invite the first proponent. I see no one. Is there anyone here to testify in opposition? Good afternoon.

MIKE PALLESEN: Good afternoon, Mr. Chairman, members of the committee. I need my glasses. My name is Mike Pallesen, M-i-k-e P-a-l-l-e-s-e-n. I'm a partner in the Cline, Williams law firm, and I'm here today testifying in opposition to LB988 on behalf of my client, the Nebraska Medical Association. As you may know, the NMA represents the interests of approximately 2,000 actively licensed Nebraska physicians. In summary, LB988 would change existing law to allow for nonprofessional equity interest holders in the otherwise regulated professional

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entities in which physicians practice medicine. Presently, only licensed physicians can own equity interests in the-- in the entities through which they practice. The NMA's opposition to LB988 is based in its concern over possible unintended consequences of the legislation, which you heard Senator Hilgers mention. As written, the bill goes, we think, well-beyond ESOPs into areas that are uncharted territory, which should be examined very closely before we step into that deep water. Professional entities in which physicians practice medicine are not like other businesses. Physicians practicing in these entities do not have corporate entities shield protection from personal liability like regular equity interests, owners and nonprofessional entities. The structure is rooted in the concept the corporations do not practice medicine, physicians do. How this concept is impacted by LB988 is unaddressed and unclear. Likewise, adding nonprofessionals as minority interest holders could alter the relationship that all of the equity interest holders have with one another. The Nebraska Supreme Court has long established precedent that shareholders in a closely held corporation owe each other fiduciary duties the same-- excuse me, the same fiduciary duty that is owed by one partner to another in a partnership. Partners must exercise the utmost good faith in all of their dealings with the members of the firm and must always act for the common benefit of all. How this obligation is impacted within a professional service entity when a minority interest is held by nonprofessionals is at best unclear. Under LB988, 50 percent or more of the equity interest owners could create liability for the entity by their professional acts, plus have personal liability, but the other, up to 49 percent, would not. Could the minority sue the professionals for violating their fiduciary duties in such cases? It's unclear. Perhaps most concerning to the NMA membership is that as written LB988 allows not only individual professional-- excuse me, individual nonprofessional equity interest holders in the professional entities, but other business entities as well. The structure appears to open ownership in physician practice entities to professional investors such as head-- hedge funds and private equity investors, notwithstanding that this may not be its original intent. The impact of allowing such professional investors whose sole interest is generating profit for themselves and their own investors into the practice of medicine in Nebraska is a matter requiring significant study and consideration. The NMA's concern is the possible unintended consequence of changing a professionally driven culture into a financially driven culture. Thoroughly examining the possible implications of such a change and looking at the national trends in

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this regard would be a highly advisable and of great interest to our physicians. In summary, we believe that LB988 proposes a very significant change to the ownership structure of the legal entities through which Nebraska physicians practice, and in our opinion such as see change in the law with potentially very significant implications require significant study before it is actively pursued beyond the conceptual stage. The NMA would welcome the chance to have an input into such a study. Thank you, and I'd be happy to answer questions.

WILLIAMS: Thank you, Mr. Pallesen. Questions? I have a couple questions.

MIKE PALLESEN: Yes, sir.

WILLIAMS: And you-- you were here and you heard Senator Hilgers opening, talking about employees that benefit oftentimes in some business corporations from this ownership plan.

MIKE PALLESEN: Yes.

WILLIAMS: Do you see that just plain differently with a professional corporation that-- that is doctors versus their employees? Or do you see an opportunity for this to have a winning situation?

MIKE PALLESEN: It's an inviting conversation. But-- but one has to understand the purpose of the professional corporation, particularly as it impacts the practice of medicine. And the difference between what the professionals in the business do versus the nonprofessionals, the support that they provide is invaluable to the physicians. But it's different than the practice of medicine, and how those two interact and conceivably interrelate in an ESOP type of arrangement, just needs to have an open and detailed conversation.

WILLIAMS: Thank you. Any additional questions? Senator McCollister.

McCOLLISTER: Yeah. Thank you, Chairman Williams. Do you think the rationale you gave for physicians applies to lawyers as well?

MIKE PALLESEN: Lawyers are a different breed, being one myself. The Supreme Court governs what we can and cannot do. And notwithstanding what the-- what the Legislature has said, the Supreme Court prohibits lawyers from associating in law firms with nonlawyers.

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McCOLLISTER: So your answer is no.

MIKE PALLESEN: Correct.

McCOLLISTER: Thank you very much.

WILLIAMS: Thank you for your testimony. Any additional opposition?
Welcome, Ms. Zulkoski.

KATIE ZULKOSKI: Good afternoon, Chairman Williams, members of the Banking, Commerce and Insurance Committee. My name's Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm testifying today on behalf of the Nebraska Veterinary Medical Association and the Emergency Medical Services Association. Our testimony is actually very different than the testimony prior to me. We are both in opposition to the bill, but our concern on this bill is that it may limit the kinds of ownerships that are available to veterinarians and emergency service providers. We've talked to Senator Hilgers, and I want to be clear to you all that we really appreciate both his explanation of the bill, his enthusiasm for ESOPs, and-- and his willingness to work with us. We've talked through some solutions in terms of language, and we think we can get absolutely past this hurdle, but as the bill is written, we are opposed in that it may limit the way that some of our practitioners own their practices as of now. We just wanted to make sure that that was on the record as this moves forward. We're happy to work with your committee and with Senator Hilgers to come up with a way that this type of ownership could be used in these practices.

WILLIAMS: Thank you, Ms. Zulkoski. Any questions? Seeing none, thank you for your testimony. Any additional opposition? Seeing none, is there anyone here to testify in a neutral capacity? Good afternoon, Mr. McBride.

DAVE McBRIDE: Thank you, Chairman Williams, members of the committee, my name is Dave McBride, D-a-v-e M-c-B-r-i-d-e. I'm the executive director for the Nebraska Optometric Association, and I'm here on behalf of our 275 member doctors of optometry. We, in all honesty, have had a hard time understanding what the implications of this may-- bill may be for our members, which is the main reason why I'm here in a neutral capacity. The nature of many optometric practice is a little different than many other, not all other, healthcare practices in that there is a significant retail component to many optometric practices, and so sales of those practices can often be broken down to divide out

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the retail or the nonregulated assets of the profession separately from the clinical or the medical records, the regulated assets of the profession. And so there are some different ownership structures in place for optometric practices. We appreciate Senator Hilger's attempt to try to offer some different options for transition and sales of practices. It's becoming more of an issue for our pract-- for our profession too, for many of these doctors to define buyers for practices. So the intent of this legislation, we certainly support. We have some of the same concerns that you heard expressed from the-- from the medical association. Our profession has seen in Nebraska, but more so in some other states, some pretty significant implications from private equity firms coming in. In some cases, including at least one of the practices in Nebraska that sold recently, private sale to a private equity firm was really the only viable option that the practice had for continuity. We certainly don't want to be in a position with this legislation to preclude that option going forward. I'm also aware that there is some-- somewhat similar legislation to this in place in Kansas. I can't speak to how exactly how it's written compared to this bill, but the intent or the implication of legislation in Kansas is similar. And they have had, at least as it relates to the optometric profession, some pretty significant controversy and some challenges for enforcement of that legislation again because of the way optometry is structured and the workarounds that seem to be in place to get around the idea, the retail component versus the clinical component. So there are just enough moving parts of this that, as I said to begin with, we're not sure exactly how this impacts as our-- some of our members, I think would be very supportive of the nature of this bill. Some are certainly concerned and have some questions about it and so we're here in a neutral capacity, but pleased to work with the senator and the committee on how to maybe modify this and make it into something that can be beneficial.

WILLIAMS: Thank you, Mr. McBride. Questions? Seeing none, thank you for your testimony. Any additional neutral testimony? Seeing none, Senator Hilgers.

HILGERS: Thank you, Chairman Williams, I'll be brief, or relatively brief, I suppose. I think-- I think the fact that we-- that you had a profession who is an opposition, I guess two in opposition, one in neutral, and you heard-- but you heard different reasons for the opponents is exactly why-- I don't think the bill should move forward as drafted, but this is why we have the conversation, because this impacts different professions in different ways. So I think being able

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to get them here today and be able to talk through their issues and be able to get it on record, I think is a good foundation for how we move forward with this bill. I want to emphasize that this is a tool, right? This isn't-- this isn't mandating anything. This isn't saying that every, you know, medical office or doctor's office has to do this. They could all choose to never do this at all. So I do think by giving them the tool is something that we ought to strongly consider. Now, as to the objections, I previewed a couple of them already. I think the primary objection from the medical association sort of fell in line with what I said earlier. I do think that the private equity, the concern of overbreadth here is something that absolutely, that's not the intent of the bill. I won't want to limit it to ESOP's. I don't intend to go that way and I'm more than happy to narrow that. There is some concern about fiduciary duties and how does this work with shareholders? I think whatever the Supreme Court has said about common law, fiduciary duties with minority between various shareholders in a close-- closely held company is something this Legislature could decide differently, be a different policy decision, be a statute. But I do think that the some-- what he mentioned, the opponent mentioned regarding some of the potential implications for the practice of medicine of these others are ones that do need to be considered very carefully and closely. And certainly the goal is to provide a tool, but we don't want to be disrupting these practices in a way that harm patient outcomes, for instance. And so I'm pretty confident that there's a way to do that. And I look forward to working with the opponents on addressing their concerns. I appreciate the time and happy to answer any questions you may have.

WILLIAMS: Questions for Senator Hilgers? Senator Kolterman.

KOLTERMAN: Thank you, Senator Williams. Senator Hilgers, is there-- is there a reason that law firms wouldn't be included into this, because they're a lot of times a professional clinic?

HILGERS: So one reason they wouldn't, they're not included in the bill is in part because of the potential separation of powers issues with this branch of government dictating encroaching on the Supreme Court's authority to regulate the practice of law.

KOLTERMAN: OK.

HILGERS: I will tell you, though, Senator Kolterman, I've looked at what-- I initially got, sort of brought ESOPs were put on my radar

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because a law firm in Omaha had reached out to me on this. And so I did research into what law firms do in this space. You might not be surprised to hear that law firms pretty much do the same thing they've done for 80 or 90 years, 100 years. And I view that, the reluctance to change based on no better reason other than, this is what we've always done and no one's ever pushed us. So I think law firms, in a candid moment, I would say I think law firms should strongly look at this. And I would like to see the Supreme Court be an innovator in this space and allow this. I think there'll be-- I think there are firms around the state that would benefit from it. Did that answer your question or did I just--

WILLIAMS: Well, so in other words, that would have to come from the judiciary side of the aisle.

HILGERS: I think so. I didn't look-- I didn't vet entirely the separations of powers-- separation of powers, but in the interests of not even opening up a whole another thicket or a can of worms, we didn't include it.

KOLTERMAN: Okay. Thank you.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Chairman Williams. I want to thank you, Senator Hilger's, for bringing this legislation. It is a win-win-win type of thing that does occur. In fact, our company, 20 years ago looked at doing an ESOP and so I got to know about how-- how that works. How-- remind me, how does a trustee get selected?

HILGERS: The trustee-- that's a good question. I think mechanically it gets-- the trustee gets selected by the owners of the ESOP, I believe, I could be wrong on that.

McCOLLISTER: And that's when the discriminatory or minority interest comes into play, does it not?.

HILGERS: So the nondiscrimination occurs, you can't treat the owner-- you have to-- you have to treat the classes of owners in the ESOP the same. So no matter who they are, they have to-- so whether they're c-suite executive, or a frontline individual, they have to be the same. And there's certain rules with-- you know, when they-- when they leave the company, for instance, the ESOP has to buy back their

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shares. That-- those rules have to be the same for everyone. So that's the nondiscrimination portion.

McCOLLISTER: In the case of a law firm, how would the legal, the nonlawyers be treated in such a organizational scheme?

HILGERS: So if you had an ESOP for a law firm and let's assume that it was under 50 percent ownership of-- the lawyers controlled, had majority control of the law firm, so you'd have, let's say at a 49 percent ESOP, all the employees of the-- so the nonlegal employees would have ownership stake in that ESOP. And that ESOP, so could have significant tax advantages. So if it's an S-Corp-- so if the firm has S-Corp tax treatment or is treated as an S-Corp pass through, the ESOP for all the incomes that the ESOP would receive, it would be taxed-- it would be tax free at the federal and state level.

McCOLLISTER: Right.

HILGERS: So the employees would get the benefit of that, that increase in value of the share.

McCOLLISTER: All the employees.

HILGERS: All of the employees, that's right.

McCOLLISTER: Thank you.

HILGERS: That's right.

WILLIAMS: As you mentioned in your opening, a lot of the rules and regulations are federally taken care of now and we're looking at some narrow things for the state. Do we know what other states have done or are looking at doing in this area?

HILGERS: I-- the Kansas example was-- I was not aware of that, Chairman Williams. What I had seen candidly in the surveys that I had seen the statewide, the national survey, but the only thing in the professional space that had been done in the last several years was this committee's work last year on the CPA front. So I-- this was not modeled after another state's bill and I'm aware of no other state that's done it.

WILLIAMS: Thank you. Any additional questions? If not, thank you.

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HILGERS: Thank you.

WILLIAMS: And that will close the public hearing on LB988 and the committee will be going into Exec Session.