

Transcript Prepared by Clerk of the Legislature Transcribers Office
Banking, Commerce and Insurance Committee February 28, 2022

WILLIAMS: Good afternoon, everyone, and 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 the 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 may come and go during the hearing. We have bills to introduce in other committees and are sometimes called away. It's just part of the process. It's not an indication that we are not interested in the bills being heard. To better facilitate today's proceeding, I ask that you abide by the following procedures: please silence or turn off your cell phones, move to the front row when you are ready to testify. The order of testimony will be first the introducer, followed by proponents, opponents and neutral testimony, and then a closing. Hand in your pink sheets to the committee clerk when you come up to testify. And when you begin your testimony, if you would please spell both your first and last names for the record. We ask that you be concise and limit your testimony to five minutes. The-- we use a clock or, excuse me, a light system. The light will be green during the first four minutes of your testimony. It will turn yellow at that point, and it will turn red at the end of five minutes. And at that point, we ask that you conclude your testimony. 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 part of the exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits only while oral testimony is being offered. Hand them to the page for distribution to the committee and the staff will come-- when you come up to testify and we will need ten copies. If you do not have ten copies, the pages will make those for you. To my immediate right is committee counsel, Bill Marienau; to my left at the end of the table is committee clerk, Natalie Schunk. And the committee members that are with us today will introduce themselves, starting with Senator McCollister.

McCOLLISTER: Yes. Thank you, Mr. Chairman. John McCollister, District 20, central Omaha.

SLAMA: Julie Slama, District 1: Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

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LINDSTROM: Brett Lindstrom, District 18, northwest Omaha and Bennington.

AGUILAR: Ray Aguilar, District 35, Grand Island.

FLOOD: Mike Flood, District 19, Madison and southern Pierce County.

WILLIAMS: And our pages that are with us today are Logan and Natalie. Thank you for being with us and for all your help. And that is all the remarks to get us started. Now we will open our first, first public hearing on LB1188 introduced by Senator Flood to adopt the Uniform Personal Data Protection Act. Welcome, Senator Flood.

FLOOD: Thank you, Chairman Williams, members of the Banking, Commerce and Insurance Committee. My name is Mike Flood, F-l-o-o-d, and I'm the district senator for 19, District 19, representing Madison County and southern Pierce County. I'm here to introduce LB1188. This bill is a product of the Uniform Law Commission addressing the personal-- use of personal data by commercial enterprises. I would like to commend Uniform Law Commissioner Harvey Perlman for his work leading the Commission's committee on this matter. He has long been an advocate for consumer protection. I would also say that, as Chris Abboud reminded me, the former dean of the law school, and Dean Willborn are also here, and it's my understanding they can change your grades after you leave law school. So I'm looking to get into the top tier of my law school class. When we buy goods or services, we are required to disclose information about ourselves, our names, our addresses, and other data. We also disclose things about ourselves by the purchases we make, websites we visit, loyalty programs we participate in, and whenever we post or engage on social media. The value of all this information is why we receive discounts and why most social media sites are free to use. In many ways, the use of our data is beneficial to us. At the same time, there is a risk that this data could be used to our detriment by disclosing facts about us or by changing us-- charging us a higher price because our past purchases suggest we can afford them, for example. In Europe, and now in a few states, including California and Virginia, data protection laws have been adopted, which impose significant compliance costs on businesses that collect data, require substantial governmental investment in establishing administrative enforcement mechanisms, and purport to give consumers vital control over their data by requiring their consent before the data can be used. This bill takes a different approach. It avoids elaborate requirements for seeking consumer consent through the pop-up "I agree" buttons we all confront and seldom read or the fine print consent forms we are asked to sign. It

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also incorporates long-tested, fair information practices on behalf of data subjects. It gives consumers the right to access their data held by others, and it gives consumers the right to correct their data. It also provides transparency so consumers will be able to know in advance how their data is used. Finally, it provides general enforcement power to the Nebraska Attorney General, incorporating personal data privacy into our existing Consumer Protection Act. This proposal was only approved by the Uniform Law Commission last summer and has not yet been implemented by any state. I acknowledge these issues are controversial. Larger companies prefer a federal solution. Some consumer advocates want much stricter controls, controls that might require a significant disruption in current business practices. Since this bill's introduction, please know that I have received plenty of feedback from the business community on this issue and understand there is concern with this bill. I don't anticipate it to advance from the committee this year, but I think it will start a valuable conversation. If you have any questions regarding the framework of this bill or the background of its development, I would encourage you to visit with Commissioner Perlman when he's up here. He is following me and is prepared to address any questions you may have. I thank the committee for its time and would be happy to take any questions, and I would also waive closing, Mr. Chair.

WILLIAMS: Thank you, Senator Flood. Are there questions? Seeing none, thank you. And we would invite Commissioner Perlman. Excuse me, Dean Willborn. Good afternoon and welcome.

STEVE WILLBORN: Mr. Chairman, members of the committee, I'm Steve Willborn, S-t-e-v-e W-i-l-l-b-o-r-n. I'm a professor of law at the University of Nebraska and serve on-- as a member of the Nebraska Commission on the Uniform Law, Uniform Law Commission. My testimony is on behalf of the Commission. Professor Perlman will speak in favor of the substantive provisions of LB1188. I'm here to talk about the Nebraska and the federal Uniform Law Commissions and the procedure, especially the procedure that was used to promulgate this act. The Nebraska Uniform Law Commission is our delegation to the National Uniform Law Commission. The other members of the Nebraska delegation are Harvey Perlman, Arlen Beam, Larry Ruth, Joanne Pepperl, Jim O'Connor, Marcia McClurg, and Don Swanson. The National Uniform Law Commission is composed of commissioners from every state. It establishes committees to draft laws where uniformity in law is appropriate and desirable. The ULC is over 100 years old and Nebraska has enacted about 125 of its uniform acts over the decades. The Uniform Law Commission drafts its uniform acts through a slow, careful, and very transparent process that encourages active

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participation by stakeholders and interest groups. The ULC wants all stakeholders at the table so the issues can be fully aired before its acts are forwarded to the legislatures. In this particular case, the level of care and attention to the act and stakeholder involvement in the process were both extraordinary. The drafting committee met, met 17 times over a two-year period, which is a bit unusual that it was permitted by Zoom meetings and not requiring travel, including at two annual meetings of the Uniform Law Commission where the act was read. And I mean, literally, we read these acts line by line at these meetings before all of the commissioners and then opened up for comment and debate after the reading of each section. More than 240 people representing every conceivable interest group participated in the drafting committee meetings, including people representing the American Bar Association and many individual law firms, the American Bankers Association. Financial associations-- financial institutions such as Mastercard, Quicken Loans, Sallie Mae, and JPMorgan. Major Internet companies, including Amazon and Microsoft. Federal agencies such as the FTC and the State Department. Several individual state attorney general offices, in addition to the National Association of Attorney Generals-- of Attorneys General. Several privacy organizations, such as Patient Privacy Rights, the Privacy Associates, and the World Privacy Forum. And there were many others. In sum, the process was open and extensive. All voices were heard. This is true for all ULC products, but is especially true in this case. The level of care and debate was probably only possible through an organization like the Uniform Law Commission. I hope you take that process into consideration when you consider this bill.

WILLIAMS: Thank you, Professor Willborn. Are there questions? I do have one question. Senator Flood mentioned that no other states have yet adopted this. Do you know what the process is at this point for other states looking at it?

STEVE WILLBORN: Each commissioner from each state has an obligation to forward our uniform acts to their legislatures. And so I'm sure commissioners are doing that across the country. Frankly, I don't know if it's been introduced in other states right now, Harvey, Harvey may know that.

WILLIAMS: OK, thank you. Seeing no other questions, thank you. Invite Professor Perlman.

HARVEY PERLMAN: Thank you, Mr. Chairman. Ten copies.

WILLIAMS: Good afternoon.

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HARVEY PERLMAN: Good afternoon, Mr. Chairman, members of the Banking Committee. I'm Harvey Perlman, H-a-r-v-e-y P-e-r-l-m-a-n, 9101 Pioneer Court, Lincoln, Nebraska. I'm a professor of law at the University of Nebraska, but I testify here today as a member of the Nebraska Commission on Uniform State Laws. I don't know that I can improve on Senator Flood's description of the act, but I take credit for his skill and articulateness. Protection of personal data in an Internet-based economy is an important issue, both for data subjects and data users. Subjects want to be protected against the detrimental use of their personal information. Data users can provide considerable benefits, but also can represent considerable risks. Finding the right balance is the challenge. As Senator Flood said, four years ago, the European Union adopted the General Data Privacy Regulation, which has served as a model for proposals in this country. It relies heavily on the idea that a consumer must consent to any of their data. The result is that consumers are bombarded with requests for consent to terms that they seldom read. Businesses must adopt compliance protocols that keep track of these consents, and government agencies must expend considerable resources enforcing these provisions. California and Virginia have adopted similar provisions. California established a new administrative agency just to manage these regulations. LB1188 takes a different approach, as Senator Flood has indicated. As long as the use of personal data is within what consumers might reasonably expect and is beneficial to them, consent is not required. If the use is unexpected, then data subjects are allowed to opt out of that use. If particularly sensitive information such as Social Security numbers, financial information, or data about young children is used, affirmative consent is required. Uses that represent a considerable risk to consumers, such as subjecting a data subject to financial, physical, or reputational harm, are prohibited altogether. LB1188 outlines, in a nonexhaustive way, which uses fall under which category. Consumers are given the right to access to correct their personal data. Data users are obliged to publish the ways in which they use it. Enforcement is left to the Nebraska Attorney General by incorporating the existing Nebraska Consumer Protection Act. So here are the brief reasons why Nebraska should adopt this act. It applies well-tested, fair information practices for the use of consumer data. It encourages businesses to remove personally identifiable information from data sets when their use does not require it. It enhances the security of personal data. It promotes compatibility with other existing data protection laws by making compliance with similar laws sufficient for compliance in Nebraska. It reduces the need for significantly new enforcement resources. It adopts as a voluntary consent standard process to permit businesses and consumer groups to

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negotiate rules consistent with the act for unique data uses. The arguments you may hear in opposition to the act are as follows: You will hear these issues should be left to Congress. But you should know Congress has failed to act while other states are entering the field. Most Congressional proposals mimic the European model and are highly regulatory. LB1188 provides an opportunity to give Nebraska consumers protection at a reasonable cost. You will hear the act does not give clear guidance to data users. But you should know that this act emerges from the careful scrutiny of lawyers representing over 200 firms and organizations involved with data processing. It sets out clear obligation, relies on the discretion of the Nebraska Attorney General to fill in the ambiguities. You will hear the act does not go far enough to provide consumer protections, such as giving the right to have personal data deleted from data sets. But you should know that the United States Supreme Court has clearly held that the use of data is speech protected by the rigorous demands of the First Amendment. It is unlikely a general right to delete would be constitutional. You will hear opposition from large data users such as Google or Facebook. But you should know that large data users have already had to build expensive compliance protocols to participate in European markets and would thus prefer to impose a similar obligation on all of their competitors large and small. I have attached to my written testimony a recent article from Forbes. It observes that European and California statutes are small business killers. That article also notes that 30 independent assessments of the European model found staggering regulatory burden for regulators and companies, adverse impact on small and medium enterprises, increased consumer complexity with noted frustration of endless pop-ups, reduced innovation, and obstructed commerce. It's also been observed that the regulations are so complex that compliance is very low, offering consumer protection in name only. I hope that the committee will consider LB1188 as an effective alternative, one that will give Nebraska consumers appropriate protection for their personal data without producing the significant unintended consequences that increase costs, restrain innovation, and stifle competition. I'm happy to answer your questions.

WILLIAMS: Are there questions? Senator Slama.

SLAMA: Thank you, Mr. Chairman. And thank you, Professor, for being here today. I, I appreciate your note there at the end on how Google and Facebook have already put together and dealt with the more burdensome framework for Europe, California, Virginia. Could you expand on the impact LB1188 would have on those small businesses and how this approach might better serve them compared to the more burdensome frameworks?

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HARVEY PERLMAN: Right. Most all businesses use data only with respect to how consumers expect them to use it. If I give my credit card to Hy-Vee, I expect Hy-Vee to take that credit card and process it through Visa or Mastercard. I expect them to keep track of what I purchase so that my loyalty payments and my fuel saver card will get me a discount at the, at the gas station. Any business that does only what we call compatible uses, uses that consumers would expect of the data, they have no further obligations under this act.

SLAMA: OK, perfect. Just as an aside, if I'm able to drag out this line of questioning until 4:00 p.m., does that mean your 3:00 p.m. class is canceled for today?

HARVEY PERLMAN: See, this is the problem I have with, with students becoming senators.

SLAMA: We're the worst.

WILLIAMS: And some of us are still looking for that higher grade--

McCOLLISTER: Yeah.

WILLIAMS: --we could use.

HARVEY PERLMAN: Well, it'll, it'll depend on what the committee chooses to do here.

WILLIAMS: Here we go again. I think that was an intentional tort.

SLAMA: I feel personally harmed.

WILLIAMS: Any other questions? Seeing none, thank you, Commissioner Perlman.

HARVEY PERLMAN: Thank you, Mr. Chairman.

WILLIAMS: Invite the next proponent. Anyone else to testify in support? Seeing none, we'll start with opponents. We'd invite the first opponent. Seeing no one to testify in opposition, is there anyone here to testify in a neutral capacity?

RON SEDLACEK: Opposition.

WILLIAMS: Opposition, OK. We didn't get there.

RON SEDLACEK: I assume--

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WILLIAMS: Welcome.

RON SEDLACEK: --there are others here.

WILLIAMS: Yes, you're, you're ready. Welcome, Mr. Sedlacek.

RON SEDLACEK: Thank you, Mr. Chairman and members of the Banking, Commerce and Insurance Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k. I'm here today on behalf of the Nebraska Chamber of Commerce, the Greater Omaha Chamber of Commerce, the Lincoln Chamber of Commerce, the Nebraska Bankers Association, and Nebraska Grocery Industry Association, all of whom have authorized me to testify in opposition to LB1188. We just heard Professor Perlman's testimony articulating the, the rationale thought process behind LB1188 and the Uniform Act. There's a lot we can agree with. However, still, the members of our organizations have met a lot of skepticism among our respective members, the stakeholders in the business community, which has led to the recommendation of opposing the bill. While we believe that the, the Uniform Act is more business friendly, it has a regulatory framework that you find superior in comparison with the existing patchwork that we see developing among other states, particularly as mentioned, Colorado, Virginia, California. We believe that in order to achieve true uniformity, personal data protection laws should actually have some sort of federal, some federal framework, rather than continuing the promulgation of state laws in spite of the Uniform Act. And what we foresee is that as states potentially consider the Uniform Act that they will provide for variations, there's a number of consumer groups that do not feel the act goes far enough and may provide for variations in respective state laws. And that's why we emphasize and believe that a federal solution is, is best for, for those reasons. So that will conclude my testimony. The, the only other concern I have is regarding changing of grades. But then I thought about a little bit more, and I think it's a win-win for me and my clients no matter what you do. So there you go.

WILLIAMS: Thank you, Mr. Sedlacek.

RON SEDLACEK: I'll take any questions.

WILLIAMS: Are there questions? Seeing none,--

RON SEDLACEK: Thank you.

WILLIAMS: --thank you for your testimony. Invite the next opponent. Anyone else to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, we do have

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letters, we have no proponents and we have three opponent letters. And Senator Flood waived closing so that will close our hearing on LB1188. Moving on, we will open our public hearing on LB689 introduced by Senator Blood to change provisions relating to fees in the Nebraska Uniform Limited Liability Company Act. Welcome, Senator Blood.

BLOOD: Well, good afternoon.

WILLIAMS: We haven't seen you in Banking this year yet, I don't think.

BLOOD: I think that's on purpose.

WILLIAMS: From your part, I'm assuming?

BLOOD: On my part. So good afternoon, Chairman Williams and fellow senators, friends all. My name is Senator Carol Blood, which is spelled C-a-r-o-l B as in boy -l-o-o-d as in dog, and I represent District 3, which is western Bellevue and eastern Papillion, Nebraska. Thank you for the opportunity to bring forward LB689 to the esteemed Banking, Commerce and Insurance Committee. I bring forward LB689 because in the midst of the COVID-19 pandemic, our great economy, the resilient, has struggled when it comes to potential entrepreneurs. In our ongoing efforts to stimulate new businesses and encourage smaller startups, the Legislature needs to support initiatives that will spur economic growth in all business sectors of our state, and not just for big corporations. In particular, small businesses are an important part of the health of our communities and can be targeted to increase the economic stability of the areas they're located in. This is also one of the many answers to our supply chain issues. I believe one way we can do this is was LB689, which proposes lowering additional financial hurdles for small businesses by eliminating the initial annual-- annual filing fees associated with becoming an LLC for the year of 2023. You'll note that on February 3rd, I filed AM1669, which made this only a one-year program from January 2023 to December 2023, and starting in January 2024, the fees would go back to \$110 per permit. This legislation will have the biggest impact on minority-owned small businesses as they historically face the most difficulties starting a business. Consider this a welcome mat to new businesses, much like was recently done in Colorado to stimulate new growth. Small businesses are the backbone of our country. There are also many ways small businesses benefit the community. They create jobs for locals. They encourage economic growth. They lessen the environmental impact, just to name a few. When customers patronize-- patronize, not patronize-- Lancasters patronize a local business, most of the money they spend will end up circulating back into the local

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community. Small businesses tend to outsource with other local businesses in this way as well. So, for example, if a local coffee shop wants to find a graphic designer to create a new logo for their business, or if a local retailer needs to invest in some renovations, those small companies are more likely to seek out another small business in their local area instead of going with a large company. Small business owners themselves tend to shop locally as well, as a way to encourage others around them to do the same. Owners of small businesses tend to eat at local restaurants and shop at local retailers and often encourage their friends and family to adopt that same attitude. The salaries they make as business owners return to the communities from which they came, encouraging again economic growth. Likewise, one of the small-- one of the ways small businesses benefit the community is the taxes wind up back in the areas they're in. Taxes paid to small businesses and the local taxes paid by small businesses end up paying for community improvements such as schools, green space, public transit and health care. Conversely, taxes paid to many big corporations or when shopping online may not stay within the local circuit. Due to the historical discriminatory practices in our country, minorities have had a harder time gaining access to the same resources their counterparts have received for centuries. For example, white Americans have been able to accumulate their wealth over several generations, while black Americans only recently gained equal ability through civil rights legislation to obtain assets relating to housing, businesses and loans. This is part of the reason why LB689 is so important and part of the costs we should give back to our minority communities. Please consider advancing this bill and help me support the heart and soul of our communities, our small businesses. I believe this bill has the ability to make a big impact on the business owners who need the most help in their communities, even if only for a small window of time.

WILLIAMS: Thank you, Senator Blood. Are there questions? Senator McCollister.

McCOLLISTER: Thank you, Mr. Chairman. Senator Blood, what was the genesis of this bill? The origin?

BLOOD: The origin of this bill? To be very frank, I follow what a lot of the more progressive states are doing to help lift up small business. And I noted most recently, Colorado, and I know other states have done this as well, actually had quite a celebration announcing that they were going to, for at least a year, have no fees when it comes to LLC for business startups. Because they want people to come to their state and they want people to start businesses, especially

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young entrepreneurs and entrepreneurs of color. So nobody brought me this bill. It was based on what I was seeing within our state that we have hurdles that we really haven't removed for small businesses, and the success of other states utilizing tools like this.

McCOLLISTER: Thank you, Senator.

WILLIAMS: Senator Blood, there's a pretty significant fiscal note.

BLOOD: There is.

WILLIAMS: Would you like to discuss that with the committee?

BLOOD: Absolutely. If that is the reason that I brought the amendment forward to only do this for one year. It was clear based on the fiscal note that we were given, which was on the original bill and not on the white copy amendment, that the fiscal note was going to be staggering. And so we're hoping that this compromise will allow them to-- well, first of all, will allow you to vote it out of committee, because I think this would be a great consent agenda bill, even though it's very late in our session. And then they would have to do a new fiscal note for the one-year period, which they wouldn't do when I adopt the amendment, because I did call them.

WILLIAMS: If I'm reading the fiscal note correct, even for one year, for the year '22-23, it's \$4.5 million.

BLOOD: Yep, that's what they say in the fiscal note.

WILLIAMS: OK. Any other questions? Seeing, none, thank you. Will you be staying to close?

BLOOD: I will stay to close.

WILLIAMS: Thank you. I'd invite the first proponent. Anyone here to testify in support? Thank you, Mr-- welcome, Mr. Sedlacek.

RON SEDLACEK: Thank you, Mr. Chairman, members of the Banking, Commerce and Insurance Committee. For the record, my name is Ron Sedlacek, R-o-n S-e-d-l-a-c-e-k, here on behalf of the Nebraska Chamber of Commerce. Senator Blood articulated reasons in regard to her intent of the legislation. Our Economic Development Council met and considered the legislation as well. Colorado and its program was brought up as a, as an example, and in particular the assistance that it might provide for new businesses, minority and women-owned businesses. For those reasons, we did take a position in favor of the

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legislation and would be happy to work with Senator Blood, as well as the committee, to advance some sort of concept or a pilot program in this regard. That concludes my testimony.

WILLIAMS: Are there questions? Seeing, none thank you--

RON SEDLACEK: Thank you.

WILLIAMS: --for your testimony. Invite the next proponent. Anyone else to testify in support? Invite then, the first opponent. Good afternoon and welcome.

COLLEEN BYELICK: Good afternoon, Chairperson Williams and members of the Banking, Commerce and Insurance Committee. My name is Colleen Byelick, its C-o-l-l-e-e-n B-y-e-l-i-c-k, I'm the general counsel and chief deputy for the Secretary of State's Office here on behalf of Secretary of State Evnen in opposition to LB689. So I have some remarks regarding the original bill and then I'll touch on the amendment as well. So LB689 removes filing fees for formation documents and biennial reports for limited liability companies. These fees are currently set at \$110 for a paper filing or \$100 for the formation document if you file it online. The biennial filing, so that's every other year in the odd years, LLCs pay \$30 if they file it via paper or \$25 if they file it online. So these fees currently fund operations for the Secretary of State's Office, as well as provide general state revenue. So 60 percent of these fees collected go to the state General Fund and 40 percent of the fees go to the Secretary of State's cash fund. For fiscal years '23 and '24, we estimate that these fees will contribute \$7.3 million in state revenue. And so if you look out to the next 10 years, if this legislation would pass, that's in estimating \$37 million in state revenue that the state would lose over a 10-year period. Further, in order to continue funding our operations at our current levels, we would have to request general funds, excuse me, in order to make up for our lost cash fund revenue. So therefore, the impact to our state General Fund is twofold. We have a loss in revenue and we have an increase in spending. This impact is noted in our fiscal note. We recently underwent a comprehensive review of all of our fees in LB910, which went into effect July 1, 2021. As part of that legislation, we removed our reliance on state General Fund for business areas of operation for her office. So if this legislation were to pass, we would have to go back in the opposite direction and now request General Fund appropriations. It appears the intent of this legislation is to encourage business growth. However, we are seeing significant growth in our seas. We're seeing a biennial growth rate of 22 percent. So in our estimation, these filing fees

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have not been an impediment to LLC growth. And finally, we're not hearing concerns about our fees, we're hearing concerns actually about our processing time. And, you know, we're facing the same staffing shortages that other employees are facing. So if we are to mentally have to cut staff as a, you know, result of this legislation, it's only going to put us further behind and further negatively impact our office. A couple of comments about the amendment. The amendment limits the removal of the fees to calendar year 2023. We estimate this would still be a \$4.7 million revenue decrease. And again, based on LLC growth, we're not seeing that this is necessary or needed to encourage LLC formation. Our concern with some sort of pilot project or some sort of limited attempt at this type of legislation is that, you know, that generally leads to further exemptions. So let's try 2023 and then let's go 2024 and 2025 and, and then we end up, you know, where we were to begin with and, and talking about a significant state revenue loss. So in conclusion, we don't believe this legislation is necessary to incentivize business growth. It's very costly for the state and could have some unintended consequences of making our filing times slower and contribute to a poorer business climate. And we respectfully ask the committee not to advance the bill out of committee. Thank you.

WILLIAMS: Thank you, Ms. Byelick.

COLLEEN BYELICK: Let me answer any questions you have.

WILLIAMS: Are there questions? I believe you said, as far as you're aware, there have not been any complaints to the department about the level of fees?

COLLEEN BYELICK: We have not received complaints about fees, no.

WILLIAMS: Do you happen to know how these fees would compare to surrounding states around Nebraska?

COLLEEN BYELICK: When we actually undertook our review of LB910, we did look at other state fees. And our fees were very comparable to other state fees. So I am not familiar with the Colorado example that Senator Blood mentioned of reducing fees, but that was something that we took into account.

WILLIAMS: Thank you. Are there any additional questions? Seeing none, thank you for your testimony.

COLLEEN BYELICK: Thank you.

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WILLIAMS: Invite the next opponent. Anyone else here to testify in opposition? Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Senator Blood, we did not receive any letters on this legislation. Welcome back.

BLOOD: Thank you, Chairman Williams. Just real briefly, I know because we discussed this bill in many communities of color here in Nebraska over the last few months, that there are people that would support that bill and perhaps we should have recruited them to write letters, but we were trying not to make a circus out of this. I think it's very telling when one of our state agencies comes forward against a bill not talking about the amendment that they've known about for well over six weeks until the very end of their opposition, and refusing to do any type of pilot program. If we're really going for the greater good of, of all Nebraskans and potential entrepreneurs, I would think that maybe there'd be a little wiggle room to maybe amend this in a way that it only talks to one specific tier, perhaps, of businesses. It's really unfortunate that it's either all or nothing when it comes to things like that here in Nebraska. And to say that there's 22 percent growth, I'd be curious what percentage of that was small businesses, small entrepreneurs and entrepreneurs of color. Because that really was not reflected on in the opposition. And so although I don't have high hopes for this bill to get out of committee, I do ask that the committee consider that there are options to all or nothing. And perhaps that would be just presenting a specific tier of businesses that maybe pertain to, to one or two people, it's a small business, a person of color. What could we do to maybe make things easier? And to say that we've had no complaints, that's not what I hear on the streets. So I think lots of times it's who you talk to, when it pertains to hurdles to business here in Nebraska. Because who you talk to will mean what results you get when it comes to whether people are satisfied or not. So this is not to say anything negative about this department in any fashion, because I know they work very hard, as all of our state employees do. But it is to say that sometimes you have to ask the right people the right questions to get the data that you really need.

WILLIAMS: Any questions? Senator Slama.

SLAMA: Thank you, Mr. Chairman. And thank you, Senator Blood, for interviewing this bill. I just had a quick question based on your close. Did you reach out to the Secretary of State's Office, both with the bill and the amendment?

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BLOOD: I did, actually, and I suggested that they do a new fiscal note, and I was told that they would not do that unless it was kicked out of committee, and then they would do so.

SLAMA: But you were aware of their concerns before the hearing then?

BLOOD: I was. I talked very extensively with Colleen.

SLAMA: Well, I'm glad that happened. Thank you.

WILLIAMS: Any additional questions? Seeing none, thank you.

BLOOD: Thank you.

WILLIAMS: And that will close the public hearing on LB689. Moving forward, we will now open the public hearing on LB718, introduced by Senator Morfeld, to provide requirements for cost-sharing and coverage relating to health care benefits and pharmacy benefit managers. Welcome, Senator Morfeld.

MORFELD: Thank you, Chairman Williams and members of the Banking, Commerce and Insurance Committee. For the record, my name is Adam Morfeld, that's Adam Mor- f as in Frank -eld, representing the "Fighting 46th" Legislative District here today to introduce LB718. I will note that I have the distinct pleasure of introducing four bills in committee this afternoon, so I'll probably be leaving right after this, unfortunately, and be waiving my closing. Earlier this session, the body debated the PBM bill. During that floor debate, the question of whether or not the bill would lower drug costs was asked of Senator Kolterman. Other senators asked if the bill dealt with drug rebates. While I was a big supporter of that bill, and remain a big supporter of that bill because of all the hard work that has been put into that, unfortunately, that bill did not address that issue at that time. I do want to note that I would still argue that we still have a lot to do when it comes to actually addressing the cost of the ultimate consumer and our constituents, even though that bill was a great step in the right direction. Thus, LB718 is in front of you, has two concepts to help the cost to consumers that they actually pay for their prescription medications. First, LB718 ensures that the manufacturer rebates are shared with patients, thus lowering what patients pay at the pharmacy. This is found in (2) on page 2, which requires 80 percent of the rebate to be passed on to the consumer. Secondly, LB718 would prohibit health insurers from unfairly increasing cost-sharing burdens on patients by refusing to count third-party assistance towards patients' cost-sharing contributions. As you know, most

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insurance plan use cost-sharing requirements like copays and deductibles. When they can, patients pay for the copay and meet the deductible themselves. But some or even many people cannot afford the copay or meet a deductible and turn to assistance-- and often turn to assistance from a family member, a church or coupons that come directly from the drug manufacturer. Very recently, PBMs and insurers have started restricting the use of copay coupons through mechanisms known as accumulator adjustment programs. These programs block the coupons from counting towards the patient cost-sharing requirements like deductibles and annual out-of-pocket limits. This new practice substantially increases the patient's out-of-pocket costs, increasing their financial burden and, more importantly, their health risk. Many patients who have benefited from cost-sharing assistance have no idea that health insurers and PBMs are no longer counting coupons toward their out-of-pocket limits. As a result, patients may, may face thousands of dollars in surprise out-of-pocket costs for their prescription medications because the manufacturer coupons aren't counted as if paid by the patients themselves. The importance of this issue cannot be understated. By now, the pages have passed out a letter signed by over 25 organizations in Nebraska that represent patients and consumers. They and I urge this committee to take a hard look at LB718 and advance it to General File. I will also note that I have an amendment here for your review that has already been passed out. As originally written, the bill would direct the Department of Health and Human Services to create rules and regulations regarding the bill. The amendment changes it to the Department of Insurance as intended. Thank you for your time. I'd be happy to answer any questions. And as I noted, I have three other bills to introduce this afternoon, so I'll need to head straight to the next committee.

WILLIAMS: Thank you, Senator Morfeld. Are there questions for the senator, especially knowing that he will not be here for closing?

MORFELD: I think there's somebody behind me that can explain this a little bit more in detail and answer any questions as well.

WILLIAMS: Seeing no questions, thank you.

MORFELD: Thank you.

WILLIAMS: I would invite the first proponent. Again, I would encourage testifiers to move to the front row. Good afternoon and welcome to Nebraska.

KATELIN LUCARIELLO: Thank you so much for having me on. I'm pleasantly happy to be here in person today. My name is Katelin Lucariello, it's K-a-t-e-l-i-n L-u-c-a-r-i-e-l-l-o. I'm a senior director of state policy with the Pharmaceutical Research and Manufacturers of America or PhRMA, and we're here today in support of LB718. This bill contains two commonsense approaches to lowering patients' out-of-pocket costs on their prescription medicines. First, it would require insurers to pass 80 percent of prescription drug discounts to lower the price of medicines for patients at the pharmacy counter. These discounts are increasing by tens of billions of dollars every year. In 2020, manufacturers negotiated \$187 billion worth of discounts with insurers and PBMs. That's up from \$175 billion the year before. You get the idea. These discounts, on average, are reducing the price of brand prescription medicines by 45 to 50 percent. But patients are not benefiting from these negotiations, they're being increasingly subject to plans that have high deductibles and co-insurance, which require patients to pay on the full price of the medicines, not the negotiated price. And what that means as patients are often paying more than their insurer, PBM pays for those medicines. Instead, those discounts are being used to lower premiums overall or kept by the insurer, PBM as profit. A study by Milliman showed that if instead those rebates, those discounts were shared with patients, like they are with negotiations on other health care services, premiums would increase a modest six-tenths of a percent or a couple of dollars per member per month, and some patients could save over \$1,000 per year on their prescription drug costs. West Virginia actually passed a law to pass 100 percent of negotiated discounts on, this would be 80 percent. The second issue addressed in this bill is particularly important to patients with rare and chronic diseases that rely on high-cost but highly effective medicines to treat their conditions. One of the ways that manufacturers help with these costs is through patient assistance or copay cards and coupons. Assistance can also be offered from other groups that can come from patient charities that can come from other third-party groups. But the issue is really the same. A few years ago, that assistance used to count towards patients' out-of-pocket costs and their deductibles. But today, insurers are increasingly blocking that assistance from counting towards those out-of-pocket costs or deductibles through these accumulator adjustment policies. These policies are truly at the expense of patients and the benefits of insurers. Insurers essentially get paid twice in this situation. But in one study, patients with an accumulator on their plan were four times more likely to leave their prescription medicine at the pharmacy counter, not take it at all. LB718 says that it should not matter where this assistance comes from, whether it's a manufacturer or a

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charity, or your mother, your brother. Any amount paid by or on behalf of a patient should count towards their out-of-pocket costs. There are 12 states that have passed laws to do the same, and many more considering this legislation this year. I hope the committee will see the value of this bill for lowering out-of-pocket costs for patients, and I'm very happy to take your questions today as well.

WILLIAMS: Thank you. Questions? Senator McCollister.

McCOLLISTER: Thank you, Mr. Chairman. What's to prevent Big Pharma from unilaterally lowering prices?

KATELIN LUCARIELLO: It's a, it's a very reasonable question. When we talk about the price of prescription medicines, we're often talking about the list price of a medicine. And what we're saying, especially with this bill, is that really ignores a large component of the prescription drug pricing system in the United States. And that is these negotiations on rebates and discounts. PBMs have a ton of leverage in this system. There's three PBMs that control 75 percent of prescription claims filled in the U.S., 5 control 90 percent of prescription claims filled. They use that leverage extremely effectively, to be honest with you. As I said in my testimony, they're negotiating billions of dollars of rebates year over year. But what we see is that what this means is PBMs are often favoring drugs that have higher list prices and higher rebates over medicines that have lower list prices. What it's meant for the price of drugs after rebates is that it's actually decreasing. It's decreased for five years in a row, and the net price of prescription drugs actually decreased 3 percent last year. But as I said again in my testimony, patients don't feel the benefit of that. They're being increasingly subjected to high-deductible health plans, plans with high out-of-pocket costs. And that's exactly what this bill, aside from, you know, getting rid of the rebate system entirely, what we can do in the state to address it is, is to do something like this.

McCOLLISTER: Well, this committee advanced a, a PBM bill earlier this year. In what ways is, is your approach or this bill different?

KATELIN LUCARIELLO: Yeah, that's also an excellent question. I would say the PBM bill that advanced this year, which I think the state should be exceptionally proud of regulating PBMs in the way that they have, it really focuses on regulation of those business practices. This focuses on policies that are going to actually lower out-of-pocket costs for patients.

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McCOLLISTER: How many states have adopted similar legislation?

KATELIN LUCARIELLO: For passing negotiated discounts on to patients? West Virginia has passed a law on that. And I will say it's-- that is also something that's happening among health insurers, PBMs and pharmacy chains in the commercial market already. CVS, Express Scripts, UnitedHealth, they all have certain plans that are passing those rebates on to patients, those discounts on to patients. And then when it comes to the other provision in the bill, the Accumulator Adjustment Program ban, there are 12 states that have banned those programs so far. And I think there's probably nearly two dozen considering bills this year on that.

McCOLLISTER: Thank you.

WILLIAMS: Additional questions? Senator Pahls.

PAHLS: Thank you, Chair. This weekend, a couple days ago, my doctor prescribed a different medicine, hopefully not for a long period of time. So I went to the pharmacy and they said, that will be \$137. And I said, OK. I said-- and then I looked at-- the insurance being \$28 of it because, you know, plus \$137. And then the person said, well, you ought to try GoodRx. So I said, well, so they did. They said, well, that would be like \$70 at GoodRx. I said, well, that sounds great. But they said, well, but that won't count against your insurance, you know, the deductible. And I haven't spent that much time to see what-- what is the GoodRx compared to regular insurance? I don't understand.

KATELIN LUCARIELLO: Yeah, absolutely. So GoodRx is, is not really included in this part of the bill. What GoodRx does is they use a network of PBMs and leverage the rebates and discounts that are negotiated with them to provide you with the lowest price. Unfortunately, pharmacies often end up losing with the GoodRx program because they have to pay for the pleasure of doing business with GoodRx, but it does get at this issue of passing those rebates and discounts on to patients. And that's really kind of the spirit of that program, although it's not the best program for pharmacies because of that.

PAHLS: But they recommended it.

KATELIN LUCARIELLO: Yeah.

PAHLS: They said, you know, try-- that's why I said I didn't know that much about it. So there was, it was a significant difference, which surprised me. But he said, [INAUDIBLE]. OK, here's another question. A

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couple of years ago, my doctor changed the insulin. I'm not as sick as it sounds like, but he-- the insulin was a new insulin that came out and it was like, let's say \$200. And they gave me coupons for \$25. Are you talking about those coupons, or is that just-- well, then they just stopped it. Because there was, what so many years of doing it? Is that how that happens?

KATELIN LUCARIELLO: Well, I can't speak to that specific program. Patient assistance is often time-limited. It's intended to help you get through some of your greatest out-of-pocket burdens. But the insulin market is a perfect example of where rebate passthrough or passing these negotiated discounts on to patients would really help. The net price of insulin, on average, is reduced around 80 percent in these negotiations. And so you can see, if patients were able to benefit from 80 percent of that discount, it would be substantial for them. And that Milliman study, actually, that I mentioned in the beginning of my testimony, looked at a diff-- few different patient profiles and found that on average, a patient, depending on their plan and their out-of-pocket costs, a patient with diabetes could save over \$630 a year with rebate passthrough.

PAHLS: OK, well, then I'll just continue asking questions, because for the last 40 years I've had Blue Cross in one form or another. So I just got on Medicare because I quit working. So my, and I said this before, with the same insulin that I was paying like \$25, \$20, I mean, maybe up to \$40, now they want \$200. The same insulin. So they're making-- so would this help bring that price of that insulin down?

KATELIN LUCARIELLO: Well, it's for-- this bill is particular to state-regulated health plans, so it wouldn't apply to your Medicare plan. It's a bit difficult to know exactly if there was a formulary change or maybe a change in your benefits that raised the cost of that insulin. But again, just to show kind of the impact of how these negotiations could benefit a patient with diabetes, like yourself, after those discounts and rebates from manufacturers, the net price, the price after those discounts of insulin, is actually lower today than it was in 2007. So it just shows you how misaligned the system is when it comes to these rebates and how much patients could truly be benefiting from those negotiations.

PAHLS: OK, one more question. This is several years ago. When I was on insulin, you'd get a package, like four in a package of, you know, the ones that look, that look like pencils.

KATELIN LUCARIELLO: Uh-huh.

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PAHLS: Know what I mean? And four in a package. And all of a sudden I went-- I got that for several years and all of a sudden it stopped, I would get two. I said, well, what happened? It's the same prescription. He said, well, now we are allowed to break up a package. You were never eligible really in the past to have four, but now we can break these up and sell them to you individually. Was that a decision made by the drug-- who made that decision from four to now we can just give you one if you need it?

KATELIN LUCARIELLO: Yeah, unfortunately I really can't speak to who, who made that decision. And oftentimes some of the decisions that are made by our individual member companies are theirs alone. I represent the entire trade organization, so it's difficult for me to speak to what happened with a particular type of insulin.

PAHLS: Right.

KATELIN LUCARIELLO: So I apologize.

PAHLS: No, no, no, I was just-- but I just thought it was interesting I had been-- and of course, that was to my benefit because I didn't need that much. So I could, you know, get a couple of months. But it goes to show you, there's something happening. If it was legit, then all of a sudden it wasn't legit. I shouldn't say legit. Doable. Really makes you really wonder, maybe I spoke too fast on this bill that was here earlier, Senator Williams.

WILLIAMS: Senator McCollister.

KATELIN LUCARIELLO: Thank you.

McCOLLISTER: Yeah, as we look at the impacts of LB718, how would it impact local pharmacies and the PMBs [SIC]?

KATELIN LUCARIELLO: Yeah, I'm not sure how it would impact local pharmacies. I think that we could certainly work through legislative language to ensure that there wouldn't be any impact on their reimbursement. There isn't intended to be any negative impact on pharmacy reimbursement with these bills. The intent is truly to lower out-of-pocket costs for patients and their deductible period. But I've certainly seen language in other bills in other states that put protections for pharmacies in there in the event that it could in any way affect their reimbursement.

McCOLLISTER: PMBs [SIC] or insurance companies?

KATELIN LUCARIELLO: I'm sorry, PBMs.

McCOLLISTER: PBMs, I'm sorry.

KATELIN LUCARIELLO: Yeah, or for pharmacies in particular. Protections in the bill is for pharmacies in particular.

McCOLLISTER: Insurance companies would probably not favor of this, this bill, correct?

KATELIN LUCARIELLO: No, they would not be in favor of this bill. I think often what we hear from insurance companies is that there will be premium increases. And we have certainly surveyed patients and said, we think premiums may possibly increase by a couple of dollars per member per month. Can you tell us if you would be comfortable with that if you've saved hundreds of dollars in out-of-pocket costs a year? And what we see in those surveys as patients favor those lower out-of-pocket costs to a couple of dollars increase in premiums.

McCOLLISTER: Thanks for your interest.

WILLIAMS: Senator Pahls.

PAHLS: Thank you. Since you're my consultant, I was on a Plan G on Blue Cross. And my premium, I just got on it really, actually, this time a year ago. It was \$180, and I just got a notice from them. They don't realize I'm no longer on the plan, but this summer it will go up to \$230. I mean, so the premiums are going up no matter what. So the idea that your premiums will go up is getting a little-- thank you.

KATELIN LUCARIELLO: Thank you.

WILLIAMS: You're testifying on, on behalf of PhRMA. Can you explain to us who PhRMA actually is?

KATELIN LUCARIELLO: Yeah. PhRMA represents 34 of the country's leading biopharmaceutical research and manufacturing companies, and we advocate on behalf of that industry.

WILLIAMS: OK. I'm not sure how to ask this question, but when you were just talking about, you know, a couple of dollar increase here is going to end up putting hundreds of dollars in somebody's pocket over here, where do those hundreds of dollars come from?

KATELIN LUCARIELLO: Yeah. So that's exactly what this bill is trying to address, it's those discounts that we're offering off of the list

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price of a medicine. So as I said earlier, often patients are paying based off of the full price, the list price, not the negotiated price. And so this is really passing that negotiated price on to patients, and that's where the savings would come in.

WILLIAMS: OK. Any final questions? Seeing none, thank you for your testimony.

KATELIN LUCARIELLO: Thank you very much for having me. [INAUDIBLE].

WILLIAMS: Invite the next proponent. Good afternoon and welcome.

DALE GIBBS: Good afternoon. Thank you, Senator Williams and members of the committee. Appreciate the opportunity to testify in support of this bill. And also thank you to Senator Morfeld for introducing it. My name is Dale Gibbs, and I'm representing the Nebraska chapter of the National Hemophilia Foundation. I'm also a board member of that chapter. The National Hemophilia Foundation is dedicated to finding cures for inheritable blood disorders and addressing and preventing the complications of these disorders through research, education and advocacy, enabling people and families to thrive. The Nebraska chapter represents individuals with hemophilia and other inherited bleeding disorders. The chapter provides education to newly diagnosed individuals, family members and others who have contact with them and assists with providing timely and effective access to medical care, therapies and services. I also have a son with hemophilia. Hemophilia is a rare genetic disease with no cure. It affects approximately 20,000 Americans by impairing one's blood from clotting properly. Without treatment, people with hemophilia bleed internally from trauma and/or as a result of normal daily activities. Internal bleeding can lead to severe joint damage, permanent disability and/or death from uncontrolled bleeds to the head, throat and abdomen. People with bleeding disorders have complex lifelong medical needs and dependent on prescription medications to treat and avoid painful, painful bleeding disorders-- episodes, I'm sorry. Without proper treatment, individuals will have advanced medical problems. Up to approximately 35 years ago, hemophiliacs relied on, relied on treatments derived from blood products to control their bleeding. And during the 1980s, thousands died in the United States from HIV and hepatitis, which had tainted the world's and the United States' blood supply. Since then, new treat-- new products to treat hemophilia have been developed that are not derived from blood. These new products are highly effective in allowing individuals to lead healthy and productive lives, but they are extremely expensive, anywhere from \$250,000 to \$1 million or more a year for a person with severe hemophilia. There are no generic

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medications for hemophilia, for controlling hemophilia. Because these medication, medications are so expensive, many individuals with a bleeding disorder rely on copay assistance programs to help with the cost. Without this assistance, those with severe hemophilia who require medication daily or every other day may reach their out-of-pocket maximum each and every year by the first month of that year. Copay assistance allow patients to remain adherent to the prescribed treatment regimen, which will preserve their long-term health and avoid complications that could increase overall health care spending. Many insurers are excluding these copay assistance programs as counting towards a person's deductible or out-of-pocket maximum. Theoretically, this incentivizes an individual to seek cheaper medications, and all of us in the bleeding disorder community understand that we must take responsibility for decreasing our cost of care. However, as stated above, there are generic-- there are no generic equivalents to the current bleeding-- blood-clotting medications for hemophilia. I will break from the-- my reading of the notes that I left out the word no. There are no generic equivalents. So if you would put that in there for the record, I would appreciate that very much. If an individual suffers financially because of no copay assistance, they will utilize their medications less frequently, which will result in more untreated bleeds and resulting complications. Additionally, when the bleed or complication continues, they may be forced to take time off work and or seek immediate care in the emergency department, which in turn drives all of our health care costs up. The Nebraska chapter of the National Hemophilia Foundation supports LB718 and urges you to vote for its passage out of the committee. Thank you very much, and I welcome any questions.

WILLIAMS: Thank you, Mr. Gibbs. Are there questions? Seeing none, thank you for your testimony.

DALE GIBBS: Thank you.

WILLIAMS: Invite the next proponent. Good afternoon and welcome.

MARK FEIT: Good afternoon, senators. Thank you for your time. My name is Mark Feit, M-a-r-k F-e-i-t. My name is Mark Feit and I live with type 1 diabetes. I require insulin to live and eat, and there are hundreds of thousands of Nebraskans who are just like me living every day with a chronic health condition with no cure. People who don't have the option to not get their medicine. We are stuck in a health care system that prioritizes profit over people, and LB718 would fix one small loophole in this system, a small change that would benefit our friends and neighbors. The drugmaker-PBM-insurance

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company-pharmacy web of confusion is very difficult to unravel, and I by no means understand it all. But as an example, if one of the four prescriptions that I fill every month to manage my nonfunctioning pancreas costs \$400, but my insurance company and PBM have negotiated a discount, so the drug only costs the insurer \$200. I pay my 25 percent coinsurance on that full \$400, not the discounted rate. I would pay \$100 instead of \$50 every month. And if I have yet to meet my \$500 deductible, I would pay the full \$400, even though my insurance company would only pay \$200. And this bill will end that practice in Nebraska, saving real people money. The insurance lobby, I'm sure in a moment, will tell you that this is administratively burdensome or that this bill will send premiums skyrocketing, when one study showed that this would increase premiums a maximum of 0.6 percent. The cost of living with a chronic illness is as much mental as it is financial, but you have an opportunity to help ordinary Nebraskans save money on their health care, and I encourage you to send this bill out of committee. Thank you very much for your time.

WILLIAMS: Thank you, Mr. Feit. Are there questions? Seeing none, thank you for your testimony. Invite the next proponent. Anyone else here to testify in support? Seeing none, we'd invite the first opponent. Welcome, Mr. Blake.

JEREMIAH BLAKE: Good afternoon, Chairman Williams and members of the Banking, Commerce and Insurance Committee. My name is Jeremiah Blake, spelled J-e-r-e-m-i-a-h B as in boy-la-k-e. I'm the government affairs associate for Blue Cross and Blue Shield of Nebraska, and I am testifying in opposition to LB718. As you've heard here today, the rising cost of health care is a concern for many Nebraskans. According to the Centers for Medicare and Medicaid Services, national health care spending is projected to grow at an average annual rate of 5.4 percent and reach \$6.2 trillion by 2028. CMS also projects that prescription drug spending will increase through 2028 due to rising drug prices, increased utilization and new drugs that come to market. This is consistent with our own projections that prescription drug spending will continue to be a significant cost-driver for our members. Instead of addressing the rising costs of prescription drugs, LB718 would impose a policy that has been banned by the federal-- in federal health care programs because it increases health care spending. Specifically, this bill would require health insurers to count prescription drug coupons towards the members' cost-sharing requirement. Reports from the federal government show that these coupon programs actually increase health care spending, thus resulting in higher profit for pharmaceutical companies. For this reason, federal anti-kickback laws prohibit the use of drug coupons in federal

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health care programs like Medicare because they encourage beneficiaries to choose more expensive brand name drugs over less expensive alternative drugs. Senator Pahls, this is why you don't get to use coupons in your Medicare plans, because it's prohibited by federal law. In 2019, the U.S. Department of Health and Human Services found that the availability of a coupon may cause physicians and beneficiaries to choose an expensive brand name drug when a less expensive and equally effective generic drug is available. The report concludes that this can distort the market and the true cost of drugs, leading to significant long-term costs in the health care system. Finally, a 2021 report from the U.S. House Committee on Oversight and Reform found that manufacturers use prescription drug coupons as public relations tool-- public relations tools to drive prescription drug sales. LB718 would also require insurers and PBMs to provide point-of-sale rebates to individuals based on the potential of a rebate from a drug manufacturer, but not the confirmed rebate from a manufacturer. This seems to assume that insurers like Blue Cross capture those rebates from manufacturers without passing them along to our members. This could not be further from the truth, as you may know. Blue Cross is a mutual insurance company organized under the Nebraska Nonprofit Corporation Act. We are owned by our policymakers and guided by acting in their best interests. Any rebates we receive are baked into the group's overall cost of care and ultimately the premium evaluation process. So while LB718 aims to provide a short term benefit to some consumers, it is a bad public policy that will result in increased health care costs for Nebraska consumers. For this reason, we oppose LB718. And if I may, just one last comment, insulin has been the point of significant discussion here. Last year, Blue Cross announced that we are going to no cost-share for our members for insulin products beginning in January of 2022. So if you're a fully insured plan member for Blue Cross, there's no cost for your insulin. So with that, I'd be happy to answer any questions you have.

WILLIAMS: Thank you, Mr. Blake. Senator McCollister.

McCOLLISTER: Thank you, Senator Williams. And thank you for the low-cost insulin.

JEREMIAH BLAKE: Yes, sir.

McCOLLISTER: The proponents of this bill would contend that it's a de minimis amount of increase. And whereas you're saying it's a significant increase, if we adopt this bill. Do you have any supporting data that would give us a clue which, which it is?

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JEREMIAH BLAKE: So I fully concede that as a member is, is, is standing at the pharmacy counter, they have a coupon that's going to give them \$20 off a prescription, that is this \$20 savings to that individual. The concern we have is that they may be spending money, or that may cause them to buy a generic drug that is more expensive to the plan writ large, as opposed to a less expensive generic drug. And so it's going to drive costs for the larger group and increase premiums over the long-term for that reason.

McCOLLISTER: The states that have adopted similar legislation, have-- in those states, have there been savings to consumers?

JEREMIAH BLAKE: I can't speak to that. Again, what I would refer you back to is the federal reports that suggest it will increase health care costs, and the fact that it's banned in the federal health care programs.

McCOLLISTER: Thank you, sir.

JEREMIAH BLAKE: Uh-huh.

WILLIAMS: Senator Pahls.

PAHLS: Thank you, Chair. I have been associated with Blue Cross since in the 70s.

JEREMIAH BLAKE: Thank you.

PAHLS: I have-- I mean, in every organization I belong to at one time or another, so I have nothing but admiration for them. But when you say at a federal level, a lot of things happen because they can't negotiate the price, is my understanding. And for some reason, though, I find it awful really in-- just really interesting. A lot of the people who are in Congress and the Senate, not trying to be too negative towards them, but they end up being millionaires. So I just think there's-- I'm putting two and two together. But they cannot-- right now the, the federal government cannot negotiate, can they, with--

JEREMIAH BLAKE: We're getting a little bit afield here, but I believe that's part of the discussion in Congress right now with the "Build Back Better", some negotiation authority.

PAHLS: I'm just [INAUDIBLE].

JEREMIAH BLAKE: For the federal, yeah.

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PAHLS: But I do appreciate--

JEREMIAH BLAKE: Yeah.

PAHLS: --the Blue Cross. It sounds like a-- I'm not against you guys. Thank you.

JEREMIAH BLAKE: Thank you.

WILLIAMS: Any additional questions? Seeing none, thank you for your testimony.

JEREMIAH BLAKE: Thank you.

WILLIAMS: Invite the next opponent. Good afternoon and welcome.

ALEX SOMMER: Good afternoon, Mr. Chairman, members of the committee. My name is Alex Sommer, that's Alex Sommer, and I am appearing today on behalf of Prime Therapeutics, a pharmacy benefit manager owned and operated by 19 not-for-profit Blue Cross and Blue Shield plans across the United States, including Blue Cross and Blue Shield of Nebraska. Thus far, I think a lot of the discussion is kind of focused on really getting into the weeds of kind of how these things work or the impact and what they want. Let's take a step back real quick and talk about the context and kind of where we're talking, what rebates are and what these coupons are and kind of why they're used. Rebates are only on brand name drugs, which represent about 10 percent of prescription drugs that are dispensed. And of that, only about 3 percent of those brand name drugs have competition within that class, which means they're eligible for a rebate. Because at the end of the day, it's a way for a company to drive market share. A pharma company will negotiate a more-- a higher rebate to drive market share based on formulary placement. So with coupons, pharma companies are going to use those to again drive market share. It's an alternative way for them to do that because they shield themselves from the impact-- or the consumer by saying, your drug only costs \$25. But in fact, they're going to get paid the full amount of that drug by the insurer regardless of that coupon. So it's, the consumer thinks it's \$25, the health plan still paying the \$500 or whatever, and the pharma company is still getting paid on that full \$500. That doesn't drive any savings, that is-- again, it's savings at the point of sale. But it's putting people-- driving people to a certain product, and that's why the coupon is offered. So with that, that kind of-- that's kind of the setting of where these are. And they're both market share schemes. Both of these things have very real costs. And a point-of-sale rebate

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specifically, I think we can talk about what the cost of those are. The federal government talked-- in looking at the rebate rule and going to point-of-sale rebate said the impact would be over \$170 billion-- around \$170 billion over the course of 10 years. That is again very real money, and that's in the Medicare program. In the Medicaid program, it was around \$7 billion in increased spend. So again, while you might have a lower cost at the point of sale, the overall spend on the prescription drug benefit or the health benefit is going to be substantially greater. And that's kind of the point that, that Mr. Blake was making, that you're not talking about-- you're trading the short-term, you're trading one person, one claim getting \$20 for everybody else paying more money. And that's, that's why we are opposing this bill, is that it's, it's kind of ignoring the concept of insurance, of paying into a system to ensure your cost of care overall and trading that one, that one individual's claim for the benefit of the rest-- at the cost of everybody else. And so, you know, going back to some of the things that were said earlier, you know, like a survey from, well, one of-- the first person who spoke today talked about sort of where the patients would gladly take that discount over the increased premium. Though it's kind of a selective bias there because you've got-- you're asking patients who are on those high-cost medications about that. And of course, they're going to choose that because they are the ones that would benefit from that kind of scheme. Overall, though, again, going back to who that is, that is a very small number. That is 3 percent of the 10 percent of prescription drugs dispensed. So a very small number of people are going to be on those drugs. And now it's a real dollars and it's real impact to those people. But when you look at the whole system of buying into insurance, what your benefit is, that overall cost is going to increase. And that's going-- but again, for a select few, a benefit at the counter, detriment of the entire insurance pool. And overall on, on coupons, I think to, to get further into that, I think if manufacturers truly wanted to help the patients their-- end of the day, they have one very specific thing they can use: to lower the cost of the drug. They are the one, they alone control the price of that drug. If they can do-- provide that drug for the coupon rate, they would-- they could lower the price, or if they would offer it in the uninsured market where somebody who doesn't have insurance and they aren't going to get paid or reimbursed that full amount of the drug by the insurer and they were to offer that coupon there. And that's not what's happening. Instead, it's a coupon that's offered to insured patients, so they know they're getting paid the full amount, and yet the-- and the patient is paying a lesser amount. But the insurance company is still paying that, that higher amount of the drug. So

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again, I think-- I don't want to belabor the point because Mr. Blake hit on a lot of the kind of mechanisms of insurance and kind of problems that are with the cost there. But ultimately I just want to say that these again are-- both these rebates and coupons are ways for pharmaceutical companies to drive market share. They are things where they control the cost. And ultimately, that's the thing that we are trying to mitigate, is that higher drug spend, we are trying to drive that down. And rebates and these copay accumulator programs and things like that are ways that we can do that by driving competition and lowering the cost in that space. Thank you, and I'm happy to answer any questions.

WILLIAMS: Questions? Senator Bostar.

BOSTAR: Thank you, Chair Williams. Thank you, sir, for your testimony. So, I mean, you spoke about how effectively this statutory change would create an individual benefit at the expense of an entire group. And so, you know, I think on a basic level, when I think about insurance, I think about, you know, I'm joining a risk pool to spread around and mitigate some of the outstanding risk that I might face, right? And it's, it's being taken up by others in a group, and I'm taking up some of theirs, right? We're sharing in this. And that, to me, is what insurance is. So where philosophically do we draw the line between something that is in line with that, where we are mitigating an individual's risk and sharing it with a broader pool of individuals? Where is that OK and where is that then an undue burden to the group for the benefit of an individual? How do you sort of see this?

ALEX SOMMER: I can't-- I guess I'm not sure exactly where you're going with the question. But I think as far as in this particular instance, what we're talking about is, like we, Prime, pass through all rebates. And I think earlier on you heard that more and more PBMs are offering that full passthrough of those rebate dollars. And so those rebate dollars are going to the group to lower the overall cost. So I would say the market is working as far as how you kind of have that group spend and that, that, that group savings that these rebate dollars can be used for. And so I guess as far as how it's functioning, I think there's, that the marketplace is working in that regard. As far as like philosophically, how do you get into that, I think that's a question of state values. I mean, I can't answer what these states decide or what the insurance company wants. And I, I think to back up, I think that ends up kind of becoming a-- since it is insurer money or employer money that is paying into that insurance group, I think-- or into that insurance policy, really it has to be an individual decision

there. Because it's one thing for the state to say it when it's not the state's money. But it's another-- if you're talking about an employer saying, OK, I want to provide this benefit and these rebate dollars help me offset and provide a more robust benefit, that, that calculation changes if you require all these rebates to be applied at the point of sale.

BOSTAR: Thank you.

ALEX SOMMER: Yeah.

WILLIAMS: Additional questions? I have one. We spend a lot of time trying to worry about customer safety, you know, taking care of people there and lowering their cost. But what we oftentimes are doing is just actually talking about who's going to pay. We never actually direct our attention to how could we reduce cost? Do either rebates or coupons in themselves reduce the underlying cost of the drug?

ALEX SOMMER: So the price of the drug itself is always going to be set. So I kind, I kind of like to differentiate sometimes between the price of the drug, which is something that's completely out of our control, that's manufacturers set the price of the drug. And then there's the cost of the drug to the consumer or the plan, whoever is the actual payer, which is a combination of the patient and a plan, and that is something that we, we really can drive the cost. So rebates do reduce that cost to the plan, so their overall drug spend goes down based on rebates. And those are again very real dollars that we're talking about. I mean it was mentioned earlier by the proponents of, you know, in the hundreds of billions of dollars of rebate dollars, that's all, that's going back to plans to help them lower the cost of the drug-- or the drugs, the prescription drug benefit as a whole. And so I think that's where we kind of need to look at too, is kind of a more holistic picture of we're talking about not just, you know, one drug, that's not the benefit. The benefit is the whole, the entirety of all of the drugs taken by all of the members on that plan. And so that's, that's kind of where rebate dollars help offset that and make that more affordable.

WILLIAMS: OK, thank you. Any additional questions? Seeing none, thank you for your testimony.

ALEX SOMMER: Thank you.

WILLIAMS: Invite the next opponent. Welcome, Mr. Bell.

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ROBERT BELL: Good afternoon, Chairman Williams and members of the Banking, Commerce and Insurance Committee. My name is Robert M. Bell. Last name is spelled B-e-l-l, I'm the executive director and registered lobbyist for the Nebraska Insurance Federation, appearing today in opposition to LB718. The Nebraska Insurance Federation is a state trade association of Nebraska insurance companies, including many companies that write-- health insurers that write in Nebraska who would be impacted by the passage of LB718. I don't plan to elaborate much more than what has been said, but I do have a couple of points that I would like to make. The health insurance industry of Nebraska is committed to financing high-quality care for Nebraskans at the most reasonable cost possible. One, one plan design future used by health plans is to keep premium down are cost-sharing utilization tools such as deductibles, copayments and coinsurance. Utilization tools are used by health insurers to share the costs and risks with consumers and encourage consumers to consider not only the health benefits of a particular treatment, drug or provider, but also to consider the financial implication as well. High-deductible plans and health savings accounts, as example, are popular with consumers who wish to take more control of their health care spending and are awarded with lower premiums. In the pharmaceutical arena, cost-sharing tools are used to encourage consumers to utilize, as an example, certain generic drugs that are safe and as effective as their name brand equivalents. I imagine members of the committee have experienced having a \$5 generic copay versus a much higher copay for the name brand variety. This is an example of a utilization tool helping to contain the cost of health care. The provisions of LB718 would effectively eliminate those tools for health insurers, effectively raising health care costs on all Nebraskans paying health insurance premium in the state. Point of sale coupons encourage consumers to choose higher priced pharmaceutical options. Health insurers do not necessarily oppose the use of these point-of-sale coupons, which can provide great savings to consumers. But the industry strongly opposes applying the savings from the coupon to the deductible, which would skew the consumer choice on downstream medical decisions. An example-- for an example, let's take Humira, a drug used to treat various autoimmune conditions. According to GoodRx, which we heard about earlier, a month's supply of Humira costs \$1,500-- or excuse me, not \$1,500, \$5,500. But if you receive a coupon card from, from-- for Humira from its manufacturer, it can cost as little as \$5 a month. Applying this point-of-sale rule of, of LB718 to Humira and presuming a \$5,000 deductible and a \$7,500 maximum out-of-pocket for the year, in two months, you would have no out-of-pocket expenses for any kind for the cost of \$10. The rest of that out-of-pocket being paid by the coupon savings and the

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pharmaceutical manufacturer. This effectively eliminates any financial incentive on the consumer in choice of care. In the extreme, patients can visit emergency rooms for minor ailments, utilize name brand drugs instead of safe generics, overutilize doctor visits, et cetera without financial consequences, increasing the cost of health care overall for all Nebraskans. This is why, in fact, as you've already heard, such coupons are outlawed-- effectively outlawed by a federal criminal anti-kickback statute for use of federal programs such as Medicare or TRICARE, et cetera. Additionally, LB718 would change application of rebates negotiated between health plans, pharmacy benefit managers and manufacturers from a more global applicability to point-of-sale, effectively negating the overall benefit and lowering premium for policyholders to the benefit of a few policyholders who would access the rebates on that point-of-sale. As I've mentioned to this committee on several other bills already this, this session, according to the Center of Medicare and Medicaid Services, health care spending accounts-- amounts to 19.7 percent of national GDP. One of my themes in speaking to the Legislature is finding ways to shrink the cost of health care and to fend off attempts by other parties who seek to limit the ability of payers of health care, whether individuals, employers or the government, to create and implement new creative ways to limit health care spending, while also-- while still providing first-class care. For these reasons, Nebraska Insurance Federation respectfully opposes the passage of LB718. I appreciate the opportunity to testify, and I think this is going to be my last time before the committee this session. So not to preview tomorrow at all, but good luck with that tomorrow, and I appreciate all the nice questions that I've gotten over the, the course of the last couple of months. And you know, the-- yeah, the opportunity to present our clients' views.

WILLIAMS: Senator Slama.

SLAMA: Thank you, Mr. Chairman. So you're telling me you won't be gracing us with your presence tomorrow?

ROBERT BELL: I may be in the room, but I do not plan on testifying. No.

SLAMA: OK, thank you.

WILLIAMS: Senator McCollister

McCOLLISTER: But you're back next year, unlike some of us, correct?

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ROBERT BELL: Excuse me?

McCOLLISTER: You'll be back next year, unlike some of us?

ROBERT BELL: Well, I hope so. It depends. I don't know what my future holds sometimes, Senator McCollister.

WILLIAMS: Any additional ques-- Senator Bostar.

BOSTAR: Thank you, Chair Williams. Mr. Bell, only because it's our last time together for a while, same question to you. Philosophically, when we think about insurance, where is the line between a policy that takes-- that provides an individual benefit and spreads out the cost to the group? When, when is that good and when is that bad?

ROBERT BELL: Well, I think in this case, you know, the ability to spread out the cost is a good thing. I mean, it's kind of like the law of large numbers, right? You, you take that, you take that, that very expensive treatment and you, you all share in it now. If there are cheaper alternatives available, you know, the, the consumer should have-- I mean, there should be some financial incentive in there, some consumer-driven decisions. And that's kind of the problem with the point-of-sale coupons, right? And I think that's why the federal government has, has banned their use on their, on their programs. Also, and I think the point was made if, you know, if it's your aunt that pays it or if it's your neighbor or your church or if it's your pharmaceutical company, there's no difference between those, those groups of people. And that is, that is very far from the truth. And I think that's why, I mean, that is a moral hazard of insurance, to have the provider of whatever service you have purchased with your insurance providing that kickback, right? So that you'll choose their drug or you'll choose that roofer or you'll choose this auto body shop if they pay the deductible for you. And in fact, I know in 2012 this Legislature passed a law to prevent roofers from paying the deductible because it was leading to, to some pretty bad-- or it was leading to inducement of, of choosing one service provider over another. And, you know, when you have competing pharmaceuticals out there, right? If, you know, are you just going-- are you going with the best coupon or are you going with the best, the best care? I don't know. I guess people are able to make their own decisions, but certainly I think my point-- I'm not getting there in a very straight line, so I apologize. But it's the downstream decision. So last year, I mean, I've talked about this ad nauseum, so I apologize. But I broke my wrist last year. I made-- I hit my cut-- out-of-pocket costs on January 5th of 2021, and it did affect my health care decisions down the road. It did. I

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mean, I was-- I am not, I'm not saying I overutilized the health care system, but I probably went to a couple of appointments and made a couple of appointments that maybe I wouldn't have otherwise because I would have been worried about the cost. And is that a good thing or a bad thing? I don't know. I've paid a lot into the system over the years, so I figured, you know, I should get some use. But anyway.

BOSTAR: So those extra visits for health care services--

ROBERT BELL: Uh-huh.

BOSTAR: I mean, obviously, you made the decision to do that--

ROBERT BELL: Right.

BOSTAR: --because you felt like there would potentially be some value to you.

ROBERT BELL: Absolutely. Absolutely. Yep.

BOSTAR: And so what we're saying then, is if you hadn't met your deductible, you wouldn't have made the decisions that would have benefited your health in the way that you otherwise would have. Is that correct?

ROBERT BELL: I think I may have made a different decision, so and I don't know that it benefited my health or not, but I know I utilized the medical-- I utilized the system a little bit more. It's kind of like, you know, making that decision of just going to see your primary care physician or going to the urgent care or going to an emergency room, there are, there are-- an insurance company will put cost points on, on all of that. And certainly, you know, if you actually go with an emergency, some, some plans may design it so that they actually waive that, that cost-sharing, but that you might have \$100, you know, copay at the emergency room versus a \$20 copay at your primary care physician or a \$50 one of your urgent care. I mean, there's reasons those exist if we're trying to push care to a more economical place so.

BOSTAR: Well, I, you know, maybe I appreciate that you broke your arm that way. You could take care of yourself a little better, that way you'll be with us long into the future. So thank you very much.

ROBERT BELL: That's true. Maybe I will be here next year, Senator Bostar.

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WILLIAMS: Any additional questions? Seeing none, thank you for your testimony.

ROBERT BELL: You're welcome.

WILLIAMS: Any additional opponents? Anyone else to testify in opposition? Anyone here to testify in a neutral capacity? Seeing none, we do have one letter from a proponent and one from an opponent. And Senator Morfeld waived closing, so that will end our public hearing on L-- [RECORDER MALFUNCTION].