[LB293 LB431 LB571]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 23, 2009, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB293, LB431, and LB571. Senators present: Rich Pahls, Chairperson; Pete Pirsch, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Beau McCoy; Dave Pankonin; and Dennis Utter. Senators absent: None. []

SENATOR PAHLS: Good afternoon. I welcome you to the Banking, Commerce and Insurance Committee hearing. My name is Rich Pahls. I'm from Omaha, and I represent District 31, which is sometimes called the Millard of Omaha. I have the pleasure of serving you as chair of this committee. The committee will take up the bills in the order posted. I will go over those a couple of times. Again, our hearing today is your public part of the process. This is your opportunity to express your opinion whether you propose, oppose, or are neutral on that. What I'm going to ask you to do today is look over at the little smaller chart over there and follow those directions. It will make things much easier. Of course, you've heard this before, please turn off your cell phones. We have reserved chairs up here, so we're asking you as we get the ball rolling that you move to those chairs. It gives me a feel of where we're at. We will first start with the introducer, proponents, opponents, neutral, and closing if the senator chooses. We're asking you to sign in. For those who are going to testify, put it in this little box up here. For those of you who do not want to testify, but want your opinions to be noted, there's a form over there for those who are not going to testify. Again, we're asking everyone to spell your name whether you've been here before or if you repeat on the bills, because we are being recorded, and they need our names to make sure that they attach the testimony with the right person. Again, I'm going to ask you to be concise. We do have a couple bills. Of the three bills, two of them have some similarities. If you are going to testify on both bills, and it's the same testimony, I still would like to have you come up, at least put your name in, and you don't have to say the testimony again unless it's different. But if you are opposing or you are an opponent of or positive feedback proponent of both bills, you do not have to repeat yourself twice. But we'd like to have you come forward so your name would be duly noted in the record. Yes, yes, yes. And we're going to ask you again to repeat your name; just makes life interesting for everyone. If you have written material that does need to be handed out, if you do not have it, we'd like to have at least ten copies. If you do not have ten copies, wave your hand, and one of the pages will make some copies for us. Do we have anybody now, so if you do? Okay, okay. To my immediate right is committee counsel, Bill Marienau, and all the way over there is...it's either Jan, Janet, or Janice Foster. I play around with her name, so she's known...her real name is Jan Foster. But every once in awhile, I slip in another initial into one of her names. I'm going to have the committee introduce themselves, starting all the way over to... []

SENATOR UTTER: I'm Dennis Utter from District 33; I live in Hastings. []

SENATOR PANKONIN: I'm Dave Pankonin, District 2; I live in Louisville. []

SENATOR PIRSCH: Pete Pirsch, represent Legislative District 4 which is west central Omaha and parts of Douglas County and Boys Town. []

SENATOR McCOY: Beau McCoy, District 39, Omaha. []

SENATOR GLOOR: Mike Gloor, District 35, Grand Island. []

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial. []

SENATOR PAHLS: And sitting down is Becky Armstrong. She's a page from Omaha. And I think Jared Weikum is here. He's probably fooling around somewhere. And for those of you who may be new to a hearing like this, senators coming and going. That means they are going to other committees to give bills...to give testimony. So that's why you see people coming and going. Okay, I think we are ready for our first bill, LB293. Senator Nantkes, we are ready. []

SENATOR NANTKES: (Exhibit 1) Good afternoon, Chairman Pahls, members of the committee. My name is Senator Danielle Nantkes. That's D-a-n-i-e-l-l-e N-a-n-t-k-e-s. I represent the "Fightin' 46 Legislative District", and I'm here today to introduce LB293. LB293 would repeal the Delayed Deposit (Services Licensing) Act and create the Short-Term Lenders Act which would be administered by the Department of Banking. This bill is based on an Ohio law that was enacted last year, and that would address what I believe is the predatory nature of businesses that target and prey upon society's most vulnerable citizens including the working poor, the elderly, and military families. Payday lenders and cash advance businesses make windfall profits while placing people in a spiraling trap of debt. It's unconscionable that these businesses are allowed to operate in our state. In fact, more and more states are either outright banning or placing severe restrictions on these types of predatory practices. LB293 does not ban these businesses outright, but rather restricts the amount of interest they can charge in a manner that is similar to what Congress has already passed on behalf of military families to a cap of 36 percent annual percentage rate instead of the 460 percent interest which Nebraska law currently allows these businesses to charge. It also creates a database to track users of these loans and the businesses themselves, places limits on the amount allowed to be borrowed, limits check collection charges, allows optional extended repayment plans, prohibits the number of loans that can be provided in one year, and sets license fees and investigation fees for licensees. LB293 additionally addresses another component by creating a financial literacy fund that would support financial literacy programs for adults. I am hopeful that if enacted, provisions in LB293 would help stem the tide of trapping vulnerable citizens in a cycle of debt. That is exactly what these types of businesses encourage. I also believe that banks and credit unions will step up to the plate and provide alternative products for individuals and families in need of addressing short-term financial crises without exacerbating or creating additional long-term financial insecurity. In fact, in the about 12 to 14 other states that have enacted similar legislation to put caps on this industry, that's exactly what happens. Community banks, credit unions, and other well-established local options have come forward with alternative products to help families meet their basic needs. There's a number of persons who wish to testify on this bill today, and they bring a variety of different viewpoints for your consideration. At this point in time, I'm happy to answer any questions the committee may have. I do have a brief handout I'd like to have the page pass around to you that just highlights exactly why the key component in this legislation which is the 36 percent annual percentage rate cap is really critical to dealing with this predatory industry. [LB293]

SENATOR PAHLS: Senator Christensen. [LB293]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Thank you, Senator. Would you typically say the people using these services are the lower income, the poorer people? [LB293]

SENATOR NANTKES: I think that information that we have, at least anecdotally about what happens in Nebraska and in other states where this industry operates in an unregulated manner, similar to how it does here in Nebraska for the most part, is that a wide variety of different income components are utilizing these services for a variety of different reasons at one time or another. I think for the most part, the folks who utilize these services are truly those who are on fixed incomes, probably members of Nebraska's working families. [LB293]

SENATOR CHRISTENSEN: I guess the thing I'm wondering about, is there a situation you could have a bad...individual has bad debt, couldn't qualify at the bank that you'd like to see, and they have no alternative? Do you see this as an issue? [LB293]

SENATOR NANTKES: Well, that's...that's something that has been brought into the dialogue on quite a few occasions about what kind of products would we need to have in the marketplace to help families who are struggling and maybe don't have an alternative product available outside of the fringe financial services that predatory lenders operate within. And for the most part, like I noted in my opening, the 14 other states that have severely limited the types of activities within this industry, have seen a rise in alternative responsible financial service products offered by credit unions, in banks and those areas, to help families who are stuck at a very difficult time in their life, have a more responsible product available rather than spiraling them deeper into debt. [LB293]

SENATOR CHRISTENSEN: Because I guess my understanding, these companies don't check credit reports, so you know, where a bank might deny them, they may not. I didn't know if we'll take away service from a bank, this is the question. [LB293]

SENATOR NANTKES: Well, and I think, Senator Christensen, thank you for highlighting one of, I think, the most concerning aspects of this industry is, as we are all very well aware, in terms of the national economic situation, we've heard a lot about what's a responsible loan and what are responsible products, and whether or not...what level of regulation we really want to have in our financial services market. And this industry, in particular, does not address the ability of potential borrowers to repay the loans they're making. And that loan-to-value ratio is something that is very critical, and that responsible lenders do look at diligently. And, in fact, this industry does not, and then that's what perpetuates that cycle of debt that either postpones or creates new and additional challenges for these families who may be at a desperate place in their lives. [LB293]

SENATOR CHRISTENSEN: Thank you. [LB293]

SENATOR PAHLS: Senator Pirsch. [LB293]

SENATOR PIRSCH: Thank you very much, Senator, for the bill. A couple of things, and you had mentioned that in Nebraska, the allowable rate was up to 460 percent per year. Is that the maximum or is that...is that the maximum? [LB293]

SENATOR NANTKES: That's correct. [LB293]

SENATOR PIRSCH: Okay. And is that what a lot of payday lenders are charging then...or some are, 460 percent maximum? [LB293]

SENATOR NANTKES: Yes. [LB293]

SENATOR PIRSCH: How do you attribute...I mean, these are...these payday lenders are in a lot of communities? Right? Throughout the state, not just the bigger communities, and even the smaller communities as well, is that correct? [LB293]

SENATOR NANTKES: Primarily, they are located in communities that have a significant population base. I think that the Department of Banking which currently regulates some of these services; on their web site, I'm just trying to go back through my initial research here. I think there's about 20 or 25 communities that these businesses operate in in Nebraska currently. [LB293]

SENATOR PIRSCH: Okay. Why hasn't at 460 percent interest, which seems like a lot, why haven't you said if you cap this at 36 percent, then what states have found of banks and credit unions enter into the market? Why couldn't banks and credit unions...why won't they or can't they enter into the market right now and say, we, you know, we feel...I mean perhaps it's a stigma. We don't want to get into payday advance is that...but why wouldn't...why couldn't they enter into the market, and say, we're entering into the market, but we'll be happy with the 36 percent return on our money every year as opposed to a 460 percent return? [LB293]

SENATOR NANTKES: A couple of things, I think in that regard. I do believe that community banks and Nebraska banks and Nebraska credit unions do a great job in helping a variety of different Nebraska consumers take care of their families' basic needs and work through points of financial crisis. So I think that there is probably a lot of that happening already. You're exactly right. I think the piece that remains beyond the free market suggestion is that without severe limitation on some of the products available currently, there's not a financial incentive for the community bankers and the credit unions to more actively market some of their responsible services to Nebraskans who are in need. And as we have seen in other states, when you do place these effective limitations on the amount of interest a business can charge a family who is looking to utilize these services, you've seen a rise in the natural marketplace for the credit unions and the banks to then be a little bit more targeted in the products that they do have available, and help get that message out even further to folks who then wouldn't be utilizing these irresponsible products. [LB293]

SENATOR PIRSCH: But let me clarify. Is it because they think that market niche has a stigma attached to it if they charge...if they say, you know, poor credit come in, and we'll work with you, and if your alternative is payday advance, then we can...or early, you know, check writing, we can save you substantial sums. But they don't want to get into that type of advertising because it has a negative connotation on the business, or is it because they think...or some other reason that...I'm trying to figure out what's prohibiting...why are they...what is it exactly that it makes them not choose to enter into the business? Or do they think they can't compete with somebody who's offering...well, they should be able to compete. You would think that that would be more attractive to the average person looking for a loan, you know, if they could say, you know, 36 percent as opposed to 400 or somewhere around there. I mean, what exactly is it? [LB293]

SENATOR NANTKES: Sure. [LB293]

SENATOR PIRSCH: I'm trying to pinpoint what the... [LB293]

SENATOR NANTKES: I think common sense really dictates the lay of the land in many regards as to where we are in Nebraska currently. Nebraska banks and credit unions, for a variety of different reasons, have not...do not engage in these practices because of a variety of different reasons, basically because...I'm only speaking anecdotally. I don't know if any banks or credit unions will be here to testify in support or to give you their perspective, but they recognize the unscrupulous nature of this type of transaction. And so their business model does not follow the types of services that are offered by the predatory lending institutions. And they instead, I think, work in a more complete way to help families meet their basic needs without exacerbating current financial crises or problems. [LB293]

SENATOR PIRSCH: But could they, if they feel that the problem is...if elements are out there that are essentially charging interest rates that are usurious in nature, couldn't they enter the market at a lower rate, and say, we'll take...I mean, you would think that there's a market there already established that would be pretty...I mean, that's where I'm kind of...that's where, and and perhaps those who testify after you can address that, is why couldn't the current, you know, and these financial institutions have some, you know, wherewithal in terms of size and...and name recognition. Could they not enter into the market and charge a rate that they felt was not usurious or would not, you know, violate con...you know...? [LB293]

SENATOR NANTKES: Right, and, Senator Pirsch, maybe I wasn't exactly clear, but I do believe that Nebraska banks and credit unions are offering programs and services that are competitive with this industry, and that are responsible, and that are at a much much lower, nonusurious interest rate... [LB293]

SENATOR PIRSCH: Okay. [LB293]

SENATOR NANTKES: That is happening, and in states that have added additional regulation to the fringe financial service market which is a part of the predatory lenders that I'm concerned about, you've seen a rise then in consumers utilizing those responsible products that do exist rather than having no place to go. They're going to our trusted neighbors, community members, and friends at those banks and credit unions. [LB293]

SENATOR PIRSCH: Um-hum, um-hum. So you're saying, part of the problem exists right now is there are the financial institution banks and credit unions can offer these people, maybe it's an awareness issue. Is that what you're saying, that you're always going to have some people who are ignorant of alternative? Is that what you're saying? [LB293]

SENATOR NANTKES: Absolutely, absolutely. And I think that, you know, that's why adding the financial literacy component to this bill is something that was really important to me, and I think that we can all find a lot of common ground on. [LB293]

SENATOR PIRSCH: Thank you. [LB293]

SENATOR PAHLS: Seeing no more...are you going to be here for closing? [LB293]

SENATOR NANTKES: I'm going to stay around and listen to the testimony, and if we need to clear anything up or address any additional questions at closing, I'll make myself available to the committee. [LB293]

SENATOR PAHLS: Okay, okay, thank you, Senator. Now we are ready for the proponents, and just to give me a feel...could I just have the hands of the proponents on this bill? Two, three, four, five, six, seven. Okay. Those are the people that I'm assuming are going to speak, to testify. Okay, again, I'm going to ask you to move to the front. It will just help me out, okay? We are ready for the proponents. Just come right on up. [LB293]

CRAIG GROAT: I guess I can go ahead. [LB293]

SENATOR PAHLS: Yes, you may. [LB293]

CRAIG GROAT: (Exhibit 3) My name is Craig Groat, G-ro-a-t. I think this aligns with some of Senator Pirsch's concerns. This is from the FDIC, the Federal Deposit Insurance Corporation, payday lending, January 29, 2003. "Payday lending--among the highest risk subsets of subprime lending--is characterized by small-dollars, short-term, unsecured lending to borrowers typically experiencing cash flow difficulties. Some insured depository institutions have failed to properly assess and control the risks associated with their payday lending programs. The consequences of deficiency and risk management practices for payday lending programs can be severe. The risks of payday lending are challenging for bankers and merit the continuing attention of depository institution supervisors. Conclusion, payday lending presents insured depository institutions with significant risks...deficiencies in assessing and controlling the risks of payday lending can have serious consequences. Such deficiencies have surfaced at a number of insured institutions." This is one of the reasons why we are having bank failures at this time. This is from Consumers Union. They quote Donald E. Powell, chairman of the Federal Deposit Insurance Corporation at that time. "The FDIC believes that providing high cost, short-term credit on a recurring basis to customers with long-term credit needs is not responsible lending and increases banks' credit, legal, reputational, and compliance risks. The bank payday partnership was created not to serve credit needs of consumers and communities, but to evade state laws which protect consumers from abusive lending." I heard a speech by Sheila Bair on public radio. She was appointed chairman of the Federal Deposit Insurance Corporation. Her term runs from 2006 to 2011, appointed by Republicans. This is very extensive. I'll give you a copy of this, and I'm just quoting briefly from the executive summary. And this answers some of the senator's questions. "Though depository institutions have the means to offer low-cost payday loan alternatives, the proliferation of fee-based bounce protection programs represents a significant impediment to competition. Perceptions of regulatory hostility also discourage banks and credit unions from offering low-cost payday loan alternatives. Many depository institutions view regulations as hostile to payday loan alternatives, though our research shows this is a misperception. In fact, our interviews with all five federal banking and credit union regulators reveal widespread consensus that low-cost, properly structured, payday loan alternatives would be positive from a consumer standpoint and likely warrant credit under the Community Reinvestment Act." This is, again, from Consumers Union, Financial Predators Target Armed Forces Families. U.S. troops are not only under attack in Iraq and Afghanistan, they're being ambushed at home by predatory lenders in communities near Army, Air Force, and Naval bases, according to a recent study. And the military found that their people were becoming nonfunctional because of the stress of being involved in these, and also they couldn't pass security clearances, and could not go to Iraq because of this. So they passed what is known as HR5122, limitations on terms of consumer credit. I have a copy of the original bill which I will provide to you. The creditor uses a check or other methods...it's illegal for the creditor to use a check or other method of access to a deposit, savings, or other financial account maintained by the borrower or the title of a vehicle as security for obligation. Also, this sets 36 percent for all military personnel and members of their family. Our current payday lenders, predatory payday lenders in our state are governed by this 36 percent, and this should apply to all people in our state. This is from the Federal Office of Thrift Supervision that oversees this; consumer credit extended to service members and dependents. This handbook section contains background information and so forth, background and summary. Department of Defense regulations implementing the consumer protection provisions of the John Warner National Defense Authorization Act for fiscal 2007 contain limitations of requirements for certain types of consumer credit extended to active service members and their spouses, children, and other dependents. The regulation covers payday loans, vehicle title loans, and tax refund anticipation loans as defined by Department of Defense, and applies to all persons that meet the definition of creditor and so forth. For covered transactions, the DOD limits the amount that a creditor can charge including interest. Again, this is 36 percent fees and charges imposed for credit, insurance, debt cancellation, and suspension, and other credit, and so forth. Again, the primary element of this is 36 percent, and they cannot take checks. How much more time do I have? [LB293]

SENATOR PAHLS: Go ahead. [LB293]

CRAIG GROAT: Okay. This is from Businessweek, Wal-Mart, Your New Banker. Wal-Mart has been trying to get in the banking system for years. The federal government has denied it, and so forth. And they have found that they can function within this 36 percent, and the states that have passed this have left an opening for them, and they have rapidly moved into this. Wal-Mart, Your New Banker,--Wal-Mart can't be a full-fledged bank yet, but its partnerships and in-store financial services are giving the industry jitters. Already Wal-Mart customers are reaping the benefit. They can cash payroll checks for as little as $3, transfer money to Mexico for $9.46, and buy a money order for 46 cents. Some competitors charge twice as much. Financial services could open a rich new vein of profits for Wal-Mart as it seeks to remain a growth company. By one rival's estimate, the market for services that Wal-Mart already offers is worth $5 billion a year in fees, leaving plenty of room for it to slash prices while making a profit as it has with other goods. Wal-Mart will slowly collapse the price umbrella, squeezing check cashiers and wire transfer Western Union Financial Services. FDIC predicts Robert G. Markey, I guess, consultant, Bain and Company's director for financial services. Again, Wal-Mart is jumping into this as are credit unions and many others. The only thing is you have to pass these laws to limit the interest to 36 percent, prevent the check cashing, the holding of checks and so forth, to allow these reputable institutions to step in and combat the predatory lenders. Otherwise, they can't do it, and they are doing this in state after state where they are passing these laws. [LB293]

SENATOR PAHLS: Senator Langemeier. [LB293]

SENATOR LANGEMEIER: Chairman Pahls, thank you. Mr. Groat, thank you for your testimony. I didn't catch when you started to tell us your name, but who do you represent or what brings you here today? [LB293]

CRAIG GROAT: I represent myself, as usual. [LB293]

SENATOR LANGEMEIER: You're here on your own. Okay. Thank you very much. [LB293]

CRAIG GROAT: I have a great need for knowledge, and make use of it. [LB293]

SENATOR LANGEMEIER: Very good. [LB293]

SENATOR PAHLS: Senator Pirsch. [LB293]

SENATOR PIRSCH: I appreciate your coming down today and all your testimony. I guess I...and here's the thing is, the proposition is that these companies, financial institutions, banks, credit unions, and even Wal-Mart won't jump into the market unless and until their potential upside is capped at 36 percent. Why wouldn't...if Wal-Mart sees usurious practice going on, and that there is elaborate profit taking going on, and why couldn't they both be making money, and doing the right thing by jumping into the market right now of their own volition when there is...I mean, do they have that power to come in right now, and saying, we're going to jump into the market, and we're going to set our rates at 36 percent, and not only are we going to capture the entirety of the market by, you know, because pretty much Wal-Mart is ubiquitous, but also do the right thing for everybody? Is that... [LB293]

CRAIG GROAT: As the quote from Sheila Bair, because these predatory lenders are on virtually every busy corner in our city and Omaha and so forth across the state and so forth, this serves as a preventative. The use of these institutions has been compared over and over to a drug addiction. They advertise, they rope these people in, they keep the people coming back in. This prevents the reputable loan institutions and companies. Sheila Bair has a program right now that's pushing for nationally insured banks, loan institutions to very strongly step in to serve these needs. But as the FDIC has recognized, they simply can't do this because of the overabundance of these payday lenders, and the way they rope people in, and again, it has been compared to a drug addiction. They get these people coming back in and back in, and they lose a huge amount of their income. Some people end up losing their homes. It's a very bad thing, and, again, they are called predatory, and they've also been called wealth strippers. [LB293]

SENATOR PIRSCH: Just a follow-up. Can Wal-Mart from a legal perspective, are they allowed to enter the market in Nebraska doing this now? Are they... [LB293]

CRAIG GROAT: They are. I've got some more information here on Wal-Mart. They are putting in these basically banks in their stores all over the country. And they serving this function, and they, I think, some of these places are functioning at the interest rate of 17 or 18 percent, and they feel that they can finally...they can make plenty of money at that interest rate. They don't have to function at the interest rate of 36. It's just that that 36 percent stops the payday lenders, and then allows the reputable businesses, banks, credit unions, so forth to step in. [LB293]

SENATOR PIRSCH: Okay, and maybe...and I'll address that question as well to the future testifiers, too, if they had any knowledge that if Wal-Mart is not allowed to do this in the state of Nebraska. If they can comment on that one... [LB293]

CRAIG GROAT: No, they are allowed... [LB293]

SENATOR PIRSCH: Okay. [LB293]

CRAIG GROAT: ...but they just can't because of the overabundance of the predatory lenders. And I'll give you copies of this, and I would like to have them make copies for each one of you. And I would like this to...put into the official record, too. [LB293]

SENATOR PIRSCH: Okay. Thank you very much. [LB293]

CRAIG GROAT: Okay. Thank you. [LB293]

SENATOR PAHLS: Next proponent. [LB293]

DEBORAH EAGAN: (Exhibits 2 and 5) Hello, Chairman Senator Rich Pahls and members of the Banking and Commerce Committee. Thank you for your time today. I'm Deborah Eagan. I'm a member of First Plymouth Church, and I chair the Economic Justice Committee for Lincoln's Religious Affinity Action Group--we call it RAAG. We're a group of 65 congregations all over Lincoln. We're all very concerned about predatory lending and the practices of payday advance lending, and how it contributes to the cycle of poverty people find themselves in. Within the last decade, payday lending has grown to a multi-billion dollar industry by aggressively offering its services to cash-strapped borrowers without access to mainstream credit. We insist that stricter state regulations are needed to protect low income, vulnerable borrowers from questionable payday lending practices which include triple digit interest rates, exorbitant rollover fees, frequent failures to disclose loan terms, and coercive collection practices. Our goal is to protect vulnerable families and individuals from predatory lenders, by supporting responsible lenders, and regulating payday lenders in our communities and rural areas across Nebraska. As you've heard earlier, there's the Military Authorization Act that currently is in place that makes it illegal for creditors to grant payday loans and car title loans to military members. We wish to have Nebraska's citizens to have similar protections from predatory lenders. With me today are many representatives from communities of faith across Lincoln, who are asking for your support to bring LB293 and (LB)431 to the floor for discussion and debate. If you're here representing RAAG, please raise your hand. Thank you. As you've heard, payday lenders charge fees equivalent to an APR of between 360 and 460 percent interest rates right here in Nebraska. The loan can become even more expensive if it's rolled over or extended. These predatory lending practices must stop. Hard-working families like the ones in your communities sometimes live one paycheck away from financial disaster due to a medical emergency, significant car repair, or some other unforeseen situation that they cannot afford. The average payday borrower pays around $800 for a $325 loan. This costs American families $3.4 billion annually. We recognize payday lending has become a grim alternative to address the needs of those without access to the world's most sophisticated financial market. To achieve our goal of protecting vulnerable families and individuals from predatory lenders, by supporting responsible lenders and regulating payday lenders, we are working on the following three objectives: to regulate predatory lenders in our community; to provide information on financial alternatives for Nebraskans who find themselves in need of short-term emergency loans; and to improve access to financial literacy programs, so people learn to budget limited dollars without payday lender support. Our coalition is examining what other options are available. Second chance banking programs and innovative projects like Bridge to Better Money program seem to be very successful around the country, but this takes time--time many people in serious financial situations do not have. That's why in addition to alternative banking and financial literacy education, states and cities are stepping up to help. Currently, 12 states and the District of Columbia prohibit payday lending. Over 15 states and many local governments have introduced legislation like LB293 and (LB)431 to significantly regulate the growth of the escalating number of payday lending offices in their cities. We will do our part of financial literacy education in developing alternatives if the Legislature will regulate the predatory nature of these businesses. We believe (LB)293 and (LB)431 are excellent examples of this and warrant discussion on the floor of the Legislature. Thank you. You know, my interest in this came from a family member who got caught up in predatory lending and couldn't get out of it--a single mother. Turns out that she got caught up in it at a bank. We think banks don't do this? Guess what? They do. I went with her to the bank, and at first, they didn't even want to talk to us. I had to insist on talking to a manager, and was willing to make it uncomfortable for them, and with me in their building until they did so. And I talked to a very nice young woman, who suggested that this was an opportunity for their customers. And I asked her, an opportunity to get into debt that you never can get out of? What kind of an opportunity is that? I asked her, what was the APR on this loan. Well, we don't have APRs. It's $15 for every $100. Can you tell me how much interest has been paid on this loan in fees since the beginning? Why, no, I can't. I can only pull it up to the last six months. This young woman had been caught in this for over six months. Of every two weeks, having to pay over and over and over. You don't actually borrow $500. They take out the fees immediately, so you are borrowing $15 less than that for every $100. So you're borrowing $85. They get the fees up front. And then when my next paycheck comes, and I don't have $500 because I have to feed my children because I get no other support, how do I get out of this mess? Well, the way she got out of it was me paying for it, because it was absolutely impossible for her to get out of it. And she didn't even recognize--she was going to a payday lender because she was at her own bank. So I have personal experience with this. It's a cycle that people cannot get out of if they don't have someone to go to to help them--a family member, because these payday lenders aren't going to get you out of it. It only gets worse. Thank you for your time. [LB293]

SENATOR PAHLS: And just for the record, would you spell your name? [LB293]

DEBORAH EAGAN: Deborah Eagan, Deborah is D-e-b-o-r-a-h. Eagan is E-a-g-a-n. [LB293]

SENATOR PAHLS: Okay. Do we have any questions? Seeing none, thank you for your testimony. [LB293]

DEBORAH EAGAN: Thank you. [LB293]

SENATOR PAHLS: Next proponent. Again, I'm asking you to spell your name. [LB293]

MARK POMEROY: Mark Pomeroy. I work with Christ for the City International. I'm also part of the Religious Affinity Group. [LB293]

SENATOR PAHLS: Would you spell your name? [LB293]

MARK POMEROY: P-o-m-e-r-o-y. [LB293]

SENATOR PAHLS: You may begin. [LB293]

MARK POMEROY: So, okay, well, thank you very much for allowing me to talk. And I'm going to make it very brief. We're doing a pilot program called Becoming a Champion with some low-income folks, and they're really trying to develop, desire motivation to set goals and to really improve their lives, and really pursue their dreams. And we've really been seeing some great outcomes with that. And I'm really concerned, unless we really cap the interest rate of the payday lenders, that these dreams that these good-hearted folks have, will be squashed, and will produce hopelessness. I mean, finances is a critical thing, and one of the things that, you know, for a lot of us, we have a budget and to be able to stay within our means can be a challenge. And when there's a temptation, when things get really tight, is to go to a payday lender for some quick cash, and, unknowingly, be caught up in the cycle that Deborah had mentioned earlier. And so, that the temptation is to really find some unhealthy strategies to get out of that cycle, you know, whether it be shoplifting or drugs, and so on. And this is a major problem that these folks have. Many of them are meth addicts, and as they're trying to set goals and change their dreams, the payday lending issue, unless we cap the interest rates, is going to be a major pitfall for them. And with Nebraska being one of the highest in the country, you know, I'm concerned that these folks, as they set budgets, deal with finances, really be able to not have this temptation and get into a cycle that they can't get out of, so thank you very much. [LB293]

SENATOR PAHLS: Any questions? Senator Christensen. [LB293]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Thank you, Mark. The last lady said the same thing, too, and I guess I'm not following the math very well. $800 to borrow $325...is it not like they'll take 15 bucks out and you get 85? [LB293]

MARK POMEROY: Right. [LB293]

SENATOR CHRISTENSEN: Okay. [LB293]

MARK POMEROY: And then, you know, through rollovers and redoing it, and I'm not a financial expert, you know, on the payday lending. But, you know, as they go back and roll over, it increases the fees and interest rate, and it compounds the problem. And as they go to different ones, it just... [LB293]

SENATOR CHRISTENSEN: And that's for a two-week period, correct? [LB293]

MARK POMEROY: Right. [LB293]

SENATOR CHRISTENSEN: Okay. That's what I wanted to know. [LB293]

MARK POMEROY: Yeah. [LB293]

SENATOR PAHLS: Senator Langemeier. [LB293]

SENATOR LANGEMEIER: Chairman Pahls, thank you, and thank you for your testimony. You did a great job. [LB293]

MARK POMEROY: Okay. Okay, thank you. [LB293]

SENATOR LANGEMEIER: The question I have is, is you talked about after they get in this cycle and trying to get out, then we're shoplifting and we're on to some other things. Let's back up a little bit. If we don't have this type of service or we cap it, and we don't end up without the service, where do you see these people going a little earlier in this process? [LB293]

MARK POMEROY: Well,... [LB293]

SENATOR LANGEMEIER: Is it not going back to shoplifting and back to where we are at the other end? [LB293]

MARK POMEROY: ...right. I mean, this is one strategy legislation. You know, you have to have other alternative services, and I think it was talked about earlier, banks and others to provide, you know, what we do with these ladies is...is really helped them understand what budgeting is, and so alternative services that through counseling has to be needed. But, you know, a number of them, you know, aren't in a banking situation right now, and so the very first thing is they're going to go to a payday lender, and that's fine if, you know, I mean, if they do offer a service. But, you know, if the interest rate is capped, and they do go to a payday lender, you know, they'll be protected for people that really...really don't have the knowledge, at this point, financially, you know, to make some good decisions. So I think we...it can be a real stumbling block, and I think we need to protect people that don't have sometimes the education and wherewithal, and really the great family growing up. I mean, one of the things my parents taught me was things I just take for granted, that you have $10 and you don't overspend. And, unfortunately, a lot of people are not in that situation, and this is a real stumbling block. [LB293]

SENATOR LANGEMEIER: One more question. I'm thinking outside the box here. Could we see churches becoming payday lenders at a lower interest rate that you talked about and draw their own constituency to their own church, and then you could educate them? [LB293]

MARK POMEROY: We're talked about that. Absolutely. I think that would be the ideal situation; it's something that I've been thinking about... [LB293]

SENATOR LANGEMEIER: But that could happen now. [LB293]

MARK POMEROY: Sure. But not everybody is in a church, and you can't really cover everyone. So it's a societal problem, but the church is definitely, I think, it's a good...it's a good thought. [LB293]

SENATOR PAHLS: Senator Pirsch. [LB293]

SENATOR PIRSCH: And I'll be brief about this, but I'm looking at it...at the situation, the loans taken from an actuarial type of standpoint, and saying, you know, if 36 percent has...if limiting to that still would allow for a margin...adequate margin of profit to entice, kind of... [LB293]

MARK POMEROY: Right. [LB293]

SENATOR PIRSCH: ...normal...and that's--you believe that, right? [LB293]

MARK POMEROY: Right. [LB293]

SENATOR PIRSCH: 36 percent that the...is there any, and I don't mean to just address it to you, but maybe to those who testify a little bit later as well, empirical type of examination of this, trying to number crunch, that is, so to speak, and look at the...I would say that these type of loans typically have a higher default rate than typical bank loans, right? They're not secure ties that is backed by some sort of hard asset that the bank or the loaner can get. [LB293]

MARK POMEROY: Right. That's been my understanding, yeah. [LB293]

SENATOR PIRSCH: And, therefore, would probably tend to be, at some point, some point, higher a type of risk. Is there any type of empirical study or looking at this? And I guess you could even look at it anecdotally in those jurisdictions that have imposed a cap, and seen...have the number of loans...has a certain segment of the population that normally otherwise would have been able to get a loan--in those jurisdictions that cap it, that go without a loan or? I don't know if you have any...if that type of (inaudible)... [LB293]

MARK POMEROY: I really don't have knowledge on that, on that question. But good question. Yeah. [LB293]

SENATOR PIRSCH: But I appreciate...that was kind of a long, disjointed rambling, so... [LB293]

MARK POMEROY: Yeah, yeah. No, it's a good question. [LB293]

SENATOR PIRSCH: ...I appreciate that, but... [LB293]

MARK POMEROY: It's a good question. I think education really has to be part...you know, part of the process, you know, in this whole issue for sure. Yeah. [LB293]

SENATOR PIRSCH: I appreciate your testimony here today. [LB293]

MARK POMEROY: Yeah. [LB293]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony, appreciate that. [LB293]

MARK POMEROY: Okay, thank you. [LB293]

SENATOR PAHLS: Next proponent? Thank you. [LB293]

LEA WROBLEWSKI: (Exhibit 4) Good afternoon. My name is Lea Wroblewski, L-e-a W-r-o-b-l-e-w-s-k-i. I'm a supervising attorney at Legal Aid of Nebraska, and my specialty is bankruptcy and consumer law. I talk to clients every day who are adversely affected by the delayed deposit servicing industry. This industry loans money to individuals who are unable to repay loans without sacrificing very basic needs. I think that the reality is that these are loans that should not be given. You know, there's a lot that goes into determining credit. Your credit score is one thing, and as I always tell my clients, your ability to repay should be considered when loans are being given. That's why the regular banking industry is not giving these loans. If someone has a monthly income of $1,100 that's not someone who should have a loan. And it's certainly not someone that should have a very short-term loan with a lump-sum repayment at an extremely high interest rate. And so the reality of these loans is that they're not short term. These are long-term loans, and that's why the annual percentage rate should be considered. These are loans that are rewritten because these are individuals that need that money. They can't repay that loan; they need it every single month. So they're rewriting loans and eventually what I see is that they're writing loans at multiple places because they continue to incur fees, and they are not able to repay these loans. And so when people come to my office, they're in crisis because they've been paying on these loans and rewriting them and rewriting them and rewriting them, so that the annual percentage rate is relevant; these are not short term. And because they are writing them at multiple places, they're completely in over their heads. I would argue that they are secured. I think they're secured by bank accounts, and they are held hostage because, particularly with federal benefits, those are automatically deposited into your bank account. The delayed deposit industry servicer who takes your check knows when your benefits are going into your account, and they will get that...if you're not walking in to pay off the loan and write a new check, they're depositing that check into your bank account. And then you're not able to pay your rent or buy medication or pay your utilities, and again, you're in crisis, and then you're writing more checks. I think that statistically, we know that these are long-term loans; my experience supports that. It's the reason that I'm here supporting this bill today. I think that this is the second year that this industry has been under fire in front of the Unicameral. I think that Senator Nantkes' bill addresses the real issues that need to be considered. It does not solve the problem of poverty. It doesn't resolve the issue of people who are living on limited budgets, but I think that it helps us...it forces the question, it makes us really look at the lending practices and this industry that we have allowed to just mushroom out of control in this state. And I think that this bill puts a very important limit on that industry. The reason that these businesses make money is because of the lending practice, because of the short-term loan model, because they're holding a check which can be taken to your bank. And that business model is successful because of those things. There's also no limits on being able to write multiple checks at multiple places, and so that also allows this business model to be very successful in this state. I have asked to have a report distributed from the Center for Responsible Lending, and on page 8 there's a table which really identifies how unrealistic these loans are. Even with an annual income of $35,000 you can't afford to pay off these types of loans. My clients are poverty level. It's very typical that I see people on federal benefits, that can't work overtime. They don't have any assets, and they're getting these payday loans. And so I think even more unrealistic would be someone on federal benefits or working minimum wage, you're just not able to pay off these loans without substantially compromising your living situation. At Legal Aid of Nebraska, we're committed to the elimination of poverty, and it's our opinion, based on the clients that we serve every day across the state, that delayed deposit services contribute to poverty in this state. They're creating a cycle of debt, our clients cannot escape them, and we very strongly support Senator Nantkes' bill. And I would welcome any questions. [LB293]

SENATOR PAHLS: Senator Pankonin. [LB293]

SENATOR PANKONIN: Thank you, Chairman Pahls. I remember your test...was it two years ago or a year ago? [LB293]

LEA WROBLEWSKI: Last year. [LB293]

SENATOR PANKONIN: Last year. And I appreciate your understanding of the problem, and I think that, you know, it is...it's a concern, but the solution. I mean, if you take this...to me, this...this, and I think we'll probably hear that testimony, but I think that 36 percent limit isn't practical because of the amounts of money involved, the length, and whatever. And I think we maybe talked about this last year. What is the alternative for these folks? Obviously, something comes up, they're not making enough money, so a car repair, a health issue, just everyday things that can happen, they need the money. [LB293]

LEA WROBLEWSKI: I don't know that I have a solution to that. [LB293]

SENATOR PANKONIN: Okay. So... [LB293]

LEA WROBLEWSKI: I don't think payday lending is it, because it's not...it can't be repaid. So I think that a long-term loan,... [LB293]

SENATOR PANKONIN: Well, if... [LB293]

LEA WROBLEWSKI: ...a lower interest rate. Those are the...you know, even, you know, but even that is difficult. I always suggest to my clients that they need to look for other alternatives. [LB293]

SENATOR PANKONIN: So when you say they can't be repaid. They're...from your experience, they don't ever get repaid? [LB293]

LEA WROBLEWSKI: Oh sure, some of them do. They get repaid because their bank...their church will pay off the payday loan or they'll get repaid because they're borrowing money from the payday lender down the street, or they're getting repaid because they're rewriting the loan. So they get paid...they pay off that loan, and then get a new one. They get paid off, because they got their income tax refund, and eventually they go back to the payday lender. It really has created...it's become a budgeting tool for people that don't have, you know, a budget (laugh). So I think that if your car breaks down, you should ideally have, you know, it's just difficult because it's such a, you know, there's so many complex layers. I don't think payday lending resolves the problem long term. I think, but as a society, addressing poverty and addressing, you know, budgeting tools and what's a realistic...as far as what you can...what type of, what your expectations are about your lifestyle, I think are, you know, significant societal issues. But I think what this bill addresses, it will essentially take care...it will take out this industry. It will...they won't be able to operate with a 36 percent interest rate. [LB293]

SENATOR PANKONIN: I would agree with that. I think what we're saying is, I mean, at least in the way it's structured now, it won't work... [LB293]

LEA WROBLEWSKI: It will eliminate it. [LB293]

SENATOR PANKONIN: ...because of the amount of the dollars, and I think you're realistic on that. I guess I'm just thinking without an alternative, not thinking this is the best one or great one, but I think that's still part of the thing that we have to consider. But we'll ask those questions as we go along, but I appreciate you coming because of your knowledge, the practical knowledge you have of not only your clients, but how the industry works and the numbers. Thank you. [LB293]

SENATOR PAHLS: Senator Pirsch. [LB293]

SENATOR PIRSCH: Thanks. And I, you know, talk...ask some questions before they're dealt with, trying to identify the problem. Is the problem one of ignorance? Other alternatives are out there if you just look hard enough that will...are better for you when you want to take out a loan, or is the problem just a lack of alternatives? Or a third thing I think you said now, is maybe that a lot of these people...and tell me if I'm wrong, if I'm misinterpreting what you said, shouldn't be taking loans given their financial percent. If you're earning $1,100 bucks a month, if that's your income, it doesn't matter if you're taking a loan at 36 percent, if you're taking a loan at 660 percent, you're not in a position where you should be taking any loans. I mean, is that...is that third thing your position? [LB293]

LEA WROBLEWSKI: Unfortunately, I think the third thing is my position. There is a great deal of paternalism in this bill. I mean, we're essentially telling people that they don't know enough to manage their own money and take care of themselves, and that we're going to make decisions about what type of loans they should have. And so I think that that's, you know, should you have the right to take out loans that you can't repay? You know, I just don't think that as a state, that's something that we want...that's not a position we should put the poor in this state in, and that's what this industry has done. [LB293]

SENATOR PIRSCH: Well, let me ask you that to...your average customer...I don't know if you've seen any empirical evidence or something. Is...I guess we've been talking about the average customer being poor. Is that true empirically? I mean, is there a certain salary or, you know, that's typical of the type of customer that would frequent this type of establishment? [LB293]

LEA WROBLEWSKI: I think that nationally, what we know is that the low income neighborhoods are targeted. We don't have a lot of data for the state of Nebraska specifically. There is some data contained in the report that I submitted. I think going back to the initial question, you know, if you have alternatives available to you which have a lower interest rate, a more reasonable repayment not, you know, every two weeks, I think you're going to obviously take those alternatives. These loans are clearly for people that don't have alternatives. [LB293]

SENATOR PIRSCH: And the reason I ask, I represent a district in west central Omaha and Boys Town, and parts of Douglas County, but in terms of ranking, I would assume that my district probably is up there towards one of the more wealthiest, as a whole, as an average, not to say that all people are. But it seems as though even in my district, that there's quite a few, a large number of these in west Omaha, payday lending type of operations. And so that's why I was just kind of wondering if anybody...if you had kind of a...is this mostly geared towards...I think there was three...the first testifier said that there's really three types of audiences here--the working poor, elderly, and military, wondering if we have empirical type of percentages of those three, and perhaps somebody who comes along... [LB293]

LEA WROBLEWSKI: I'm not familiar of any in...of specifically, of Nebraska. [LB293]

SENATOR PIRSCH: Okay, thank you so much. [LB293]

LEA WROBLEWSKI: Certainly. [LB293]

SENATOR PAHLS: Senator Pankonin. [LB293]

SENATOR PANKONIN: Chairman Pahls, just one more quick question. Your...the Center for Responsible Lending, I noticed in one of these handouts, that it's not like they were going to maybe make an attempt at the federal level? [LB293]

LEA WROBLEWSKI: Yes. [LB293]

SENATOR PANKONIN: Do you know what the status is of that? [LB293]

LEA WROBLEWSKI: I don't know the status of that. I know that's something that they continue to work on. [LB293]

SENATOR PANKONIN: To look at. Thank you. [LB293]

SENATOR PAHLS: Seeing no more questions, thank you for your... [LB293]

LEA WROBLEWSKI: Thank you. [LB293]

SENATOR PAHLS: Next proponent. Just by a show of hands, how many more proponents? Have one more. Thank you. The floor is yours. [LB293]

MIKE RILEY: (Exhibit 6) Hi. My name is Mike Riley. Last name Riley, R-i-l-e-y. I'm from Lincoln, Nebraska, and I'm a registered professional engineer in Nebraska, and I teach engineers the principles of engineering economy including interest rates and loan basics. I support LB293. Current short-term lending practices result in extremely high interest rates being charged to clients who often are financially vulnerable. I believe the practices to be morally and ethically wrong, and legislation is needed to protect vulnerable citizens. In order to understand the charges or fees, I'd like to convert them to interest rate. For example, a current rate of $17.50 per $100 which is currently charged by short-term lenders in Nebraska for a five-day period results in the following equivalent interest rates. A daily rate of 3.28 percent which then would be converted to an APR of 1197.2 percent; in addition, would be converted to the annual percentage yield to over 13 million percent. To be fair, if the period of the loan were 35 days as proposed by the legislation, this $17.50 per hundred would result in the following interest rates: a daily interest rate of .46 percent, an APR of 167.9 percent, and APY of 437.5 percent. LB293 proposes a maximum of 36 percent APR at a 35-day minimum. The resulting interest rates would be: .0986 percent as a daily rate; an APY of 43 percent. LB293 would result in a $3.50 fee per hundred for the 35 days. That would mean a $17.50 charge for a $500 loan rather than $17.50 for $100 loan. On a Web page,paydayloanindustry.com, the industry touts that those starting a payday loan business can earn equivalent fees to 480 percent to 1200 percent APR. "These returns are simply phenomenal." And I agree with the ad; those fees are certainly phenomenal. In fact, they are excessive. Think about it; $17.50 for $100; $87.50 for $500; $875 for $5,000 and that's assuming no rollovers or charges or anything. So would you pay $875 for a $5,000 loan? On the Web page, consumeraffairs.com, "The Center for Responsible Lending estimates the industry costs Americans $4.2 billion a year by charging exorbitant fees." On a Web page, paydayloanlegislation.com from Australia, with all the fees which are the nature of interest included the maximum rate of 48 percent for their short-term loans in the state of New South Wales, Australia. That's where Sydney is located. In conclusion, LB293 puts a limit on the chargeable APR and reduces the negative impacts on vulnerable citizens. The APY is the interest rate that is quoted to describe what investment yields. The APY is a yearly interest rate and its calculation is sensitive to the number of compounding periods of the loan. APY is the rate used to describe how investments are doing. If one had an investment that made 8 or 10 percent APY in today's economy, you'd be very happy. The short-term lenders currently make over 13 million percent APY on 5-day loans which is equivalent to over 437 percent APY on 35-day loans. A high APY earned by a bank or credit card balance is typically 20 percent. LB293 would limit the yield on short-term loans to a 43 percent APY which is still more than four or five times what most of us would consider a great return on our money, and more than double what a bank would earn on credit cards. In my opinion, LB293 should be enacted. Thank you. You have any questions? [LB293]

SENATOR PAHLS: I see no questions. Thank you for your testimony. Appreciate it. Next proponent. [LB293]

LIN QUENZER: (Exhibit 7) Good afternoon. My name is Lin Quenzer, L-i-n Q-u-e-n-z-e-r. I am the ombudsman for the city of Lincoln, Nebraska. Mayor Chris Beutler also submitted a letter in support of LB431 and (LB)293. I'm here today to testify in support of both bills that will regulate payday lending businesses here in Nebraska. As the ombudsman for the city of Lincoln, I hear concerns on a broad range of topics, some of which are within my jurisdiction; others of which I assist constituents with referrals to appropriate agencies. Though payday lending is not within my jurisdiction, I have taken an increasing number of concerns from people who have been affected by these businesses' practices. Typically, people contact me when they are being threatened or harassed by payday lenders in search of payment. Since I have no jurisdiction to intervene in these matters, in my role as an executive ombudsman, and I'm not an attorney or qualified to give legal advice, I generally refer people to nonprofit and helping agencies. In the case of people being harassed by payday lenders, specifically to legal assistance in the form of Volunteer Lawyers Project through the State Bar or to Legal Aid of Nebraska. I work with Lea on some of those; I send them to her. I'd like to detail for you my experiences with one lady who came to me for assistance originally when her adult daughter who is developmentally disabled was in crisis. To keep the person's confidentiality, I'll call her Jane. Jane is a 55-year-old woman who is on Social Security disability. She works part time to supplement her income. This job pays Jane about $181.50 a week gross income in addition to approximately $750 a month Social Security disability income. She is making payments on a used car that she bought for around $1,800, and she has no other assets. She lives in a one-bedroom apartment and does not receive housing assistance. Her rent is $395 a month. Jane discontinued her phone service in mid-August of 2008. Jane came to me initially for referral assistance to resolve some serious care issues her disabled daughter was having with delivery of services. I connected her with agencies to help them, but when assistance became delayed due to paperwork processing and other obstacles, Jane had to act to help her daughter in the meantime. She went to a payday lender for a loan of $200 and then got a second for a smaller amount, around $75. This happened in mid-July of 2008. The Social Security Administration found at the end of July that Jane had been working too many hours at her job, so they sanctioned her from receiving her total benefits for a period of time, and required her to reduce her hours accordingly to become fully eligible to reinstate her Social Security benefits. Jane was unable to pay back the total amount of her loans. Jane received several unsigned letters from the lenders threatening legal action because they had deposited her checks even though she had called the companies to ask them to work with her to repay the loans in installments. The companies presented the checks to her bank two or more times a week even though they knew Jane did not have the funds to repay the entire amounts for the two checks. Jane's bank began charging her $30 returned check charges for each time the checks were presented, resulting in hundreds of dollars of additional charges. The payday lenders then began a campaign of harassment that Jane related to me as it happened. I immediately referred her to Legal Aid for assistance, but I did continue to take Jane's calls to document the actions of the lenders until Legal Aid could take her case. Following is a breakdown of the collection activities that these payday lenders undertook. Bear in mind these businesses did not secure judgments on these two check loans, and had not signed letters they had sent to Jane. I used the federal Fair Debt Collection Practices Act as a guide in sorting out what Jane was reporting to me with the understanding that the act exempts paycheck lenders by definition, and in hopes that Nebraska will take action in these instances by enacting state payday lending regulations. I'm going to read very briefly the subheadings for the sections of the Fair Debt Collection Practices Act that I felt were probably applicable had they been required to comply with this. Acquisition of location information; communication in connection with debt collection; communication with third parties; harassment or abuse; false or misleading representations. Around August 1, 2008, the lender called Jane's employer and was informed by her supervisor that Jane is not allowed to take personal calls at work. The lender then informed Jane's supervisor that Jane owes them money and pressured the supervisor to talk to her. The employer told the lender to stop calling, but the lender continued to do so, sometimes multiple times a day. The lender threatened Jane's supervisor that he would take her wages and told them they should watch out for such a disreputable person under their employment, among other things. Jane was told by her supervisor that these calls must stop, and Jane had to take care of this problem or face the possibility of losing her employment. On the weekend of August 23, 2008, the lender called Jane's neighbor 21 times. They told Jane's neighbor that Jane owed them money and repeatedly asked when she comes home from work or errands. The company employee refused to leave his name, but did state the name of the company. The neighbor finally told the lender not to call and refused to report Jane's whereabouts to them. The neighbor then stopped answering the phone and documented 20 additional calls from the number that was used by the lender on that weekend. On August 27, 2008, a collector appeared at Jane's apartment at 11:45 a.m. demanding money from Jane's developmentally disabled daughter and threatening her that they will take her to court if the money isn't paid. The man at the door refused to identify himself. Jane's daughter was terrified and told the man that she wasn't Jane, but the man persisted. She closed the door on him, and hid in the bathroom until her mother came home from work. From August 1st until the time Jane's phone was shut off in the middle of the month, there were constant calls made to her from that same number which their neighbor was receiving calls. Jane had instructed her daughter not to answer the phone while Jane was at work. When Jane was at home, the lender, who still refused to identify himself, threatened to take her car, her Social Security benefits, and her wages. When she picked up the phone to ask him, please stop calling me, he told her variously that the amount she owed the lender was $1,000 to $1,200 because of interest accruing, and that they were adding charges for the return of the checks as well. From August 27, 2008, until the week of September 22, when Legal Aid was able to assist Jane by contacting the lenders in writing, ordering them to stop harassing her, Jane observed people following her, hanging in the parking lot at her apartment, watching her car, and felt physically intimidated by the man who was harassing her daughter, her employer, neighbors, and herself. Payday lenders exist to serve desperate people in desperate circumstances. Jane did not know that Social Security benefits are exempt from garnishment or that people always get the first $196.50 per week of wages after taxes is exempt. She didn't know that her used car, which was only worth $1,800, is also exempt from being taken either. The payday lender didn't care and certainly didn't feel obligated to inform her. Instead, they used harassment, intimidation against her and her family, neighbors, and employer. These practices caused harm to her employer in terms of tying up their resources; her neighbor and their invasion of privacy; the nonprofit helping agencies to assist Jane to extract herself from the situation; her daughter in terms of emotional upset of a vulnerable adult; and to Jane whose only wish was to secure her daughter's health and safety by taking out the loans and working more hours to do so. I think that it is incumbent on the state of Nebraska to fill in the gaps where the federal government has deemed that it's appropriate to do so. This is one of those cases. We need to, among the other things that you have before you that you're looking at, in regulating these agencies, is to look at how they go about trying to secure payment from people. They're causing a great deal of harm to folks and creating a great deal of work for the rest of us to try and assist them in whatever ways we may have at our disposal to do so. Thank you. [LB293]

SENATOR PAHLS: Senator Christensen. [LB293]

LIN QUENZER: Yes. [LB293]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Thanks for testifying. How many of these situations do you find a year? [LB293]

LIN QUENZER: Well, it started as just kind of a trickle of maybe, you know, one a quarter. And in the last year, it sped up to the point where I'm getting calls on probably a weekly or bi-weekly basis from people needing help. Typically, it's...for me, it's fairly simple where I will refer them, depending on what their income status is, either to Volunteer Lawyers Project or to Legal Aid. But in this particular case, the lady was very frightened by what was going on, and I will get calls from people saying, these people are following me. I'm getting all these phone calls at my work. What do I do? How do I stop this from happening to me? I don't know what I did wrong. I can't pay the bill; I called them. What do I do? [LB293]

SENATOR CHRISTENSEN: There's no rules on harassment or anything in this way? [LB293]

LIN QUENZER: It's not my understanding that there really is. From my reading of the Fair Debt Collection Practices Act, under Section 818, the exception for certain bad check enforcement programs operated by private entities under subsection 2(b), certain checks excluded. A check is described in this subsection if the check involves or is subsequently found to involve a post-dated check presented in connection with a payday loan or other similar transaction where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered. So it really is, I think, a loophole there. I'm not an attorney, but I don't think that they would probably take those kind of measures if they didn't feel fairly confident that they were legally within their rights to do so. [LB293]

SENATOR CHRISTENSEN: Thank you. [LB293]

SENATOR PAHLS: Seeing no questions, thank you. Appreciate your testimony. [LB293]

LIN QUENZER: And I'm here for the other one, too, so I'll leave this off. [LB293]

SENATOR PAHLS: Proponent? [LB293]

JULIA PLUCKER: Thank you, Mr. Chairman, members of the Banking and Insurance Committee. My name is Julia Plucker, J-u-l-i-a P-l-u-c-k-e-r. I'm a registered lobbyist and here to testify on behalf of the Nebraska Credit Union League. The league represents 96 percent of Nebraska's 73 credit unions and their 420,000 members. We appear in support today for LB293 and LB431. And the problems of payday lending I feel have been testified to and summarized quite well, so I won't go into those. But I wanted to just briefly come up here today to talk about the alternatives that credit unions can provide to these consumers. I'm not saying we can help every consumer in every situation, but we are offering and attempting to offer, a number of alternatives. Because credit unions are not-for-profit, they can make smaller loans that perhaps for-profit entities or banks will not make. Credit unions are in the business to serve their members, and a key aspect of that service is to provide financial education. For example, one credit union in south Omaha has partnered with a multi-cultural human development corporation to teach financial literacy and other life skills. Persons who complete the 13-week education program get a savings account opened for them at that credit union, and they're given $50 to start with. Some of the most unique payday lending alternatives leverage credit unions' ability to work with others as not-for-profit cooperatives. Alternatives across the country are stretch pay loans where credit unions can offer more affordable rates by pooling their loan loss reserves with others; good money program where credit unions can collaborate with Goodwill stores and an affiliated financial education provider, and also Credit Builder which a lot of consumers are finding helpful as an alternative to payday loan lenders. That's where you can be an individual without a credit history and get a small loan with a short turn-around time at a considerably lower interest rate. Many credit unions also offer to their members free-of-charge a program that helps members get out of debt, manage their budget, and repair their credit history. The credit union contracts with a third-party company called Excel who provides the member with anonymity and one-on-one help in these critical areas. The goal of credit unions is to get consumers out of the debt cycle they're in. We'd be happy to work with Senators McGill and Nantkes, and other interested parties in an effort to prevent consumers from getting caught in this downward spiral of debt. That's all I have today. I'd be happy to answer any questions. [LB293]

SENATOR PAHLS: I have one question. Are there a number of credit unions in the city of Omaha...I'm just thinking of Omaha and the city of Lincoln? [LB293]

JULIA PLUCKER: There are. [LB293]

SENATOR PAHLS: So,... [LB293]

JULIA PLUCKER: Definitely. [LB293]

SENATOR PAHLS: Okay. [LB293]

JULIA PLUCKER: And we're attempting to provide...and to get back to Senator Pirsch's question from earlier, I think it is definitely a case of awareness and education that we need to provide to consumers that these products and programs are out there at their local credit union. I know payday lending is easy. They advertise on TV. People think of them first, but we would really like to work on education awareness to tell people that these products are available. I'm not saying we can help every situation, but I think many of them we can. [LB293]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. How many more proponents? Okay. [LB293]

JIM CUNNINGHAM: Senator Pahls and members of the committee, good afternoon. My name is Jim Cunningham, and that's spelled C-u-n-n-i-n-g-h-a-m. I'm the executive director of the Nebraska Catholic Bishops Conference, and I'm testifying on behalf of the conference in support of LB293. Our governing board had an extensive discussion about this subject matter. A lot of it was anecdotal based on experiences of our social service agencies, and some of the terrible circumstances that they've seen and been responsive to as you've heard from previous testifiers. Our conclusion was that protecting those who are desperate and vulnerable from exploitation and this type of predatory lending is a noble purpose, and one that is worthy of an aggressive public policy response. It's part of pursuing the common good for the state of Nebraska. Therefore, we support these efforts on behalf of both LB293 and also LB431. Thank you. [LB293]

SENATOR PAHLS: Seeing no...thank you for your testimony. [LB293]

JIM CUNNINGHAM: Thank you. [LB293]

SENATOR PAHLS: That concludes the proponents. Again, I just want to..for those of you who want to speak on (LB)431, you do not have to come back when you come to that and give your full testimony. I'm just looking for your name, so we can get that in the record. If you so choose. Okay, now we're ready for the opponents of (LB)293. And how many testifiers do I see? One, two, three, four. Okay. [LB293]

KURT YOST: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, my name is Kurt Yost, K-u-r-t Y-o-s-t. I'm a registered lobbyist for Midwest Check Cashers, Inc., and I also appear here today on behalf and at the request of the Nebraska Chamber of Commerce and Industry in opposition to LB293. I am here today because I am what I liken as a historian, because in 1994, I was asked by my client to...and some others in the payday lending business to draft legislation, create the opportunity to bring that type of lending out of the alleys, if you will, and into the light of day. Senator Landis, then chairman of the Banking Committee, along with Mr. Marienau, legal counsel then, along with the Director of Banking, Jim Hansen, legal counsel for the banking department, Patty Herstein, and myself, and my client created a regulatory, a licensing, and an examination procedure for what was payday lending. Quite frankly, when they came to me, I hadn't even heard of payday lending, and payday lending was not what it is today. But we have come a long ways. We have created a process. The ombudsman from the city of Lincoln should have had that lady or that family that she's referencing in her testimony get a hold of the Department of Banking and Finance. Bad actors are in every industry, unfortunately. Don't care what industry it is; there are bad actors. We, the good actors in the payday lending industry, do not want bad actors any more than the department wants them or the ombudsman for the city of Lincoln. I'm quite sure she has other things to do. So following me are a series of testifiers who have a good perspective of this industry. It can, at times, become an emotional issue, but the payday lending industry does play a role in our society. And with that, I will... [LB293]

SENATOR PAHLS: Any questions? Senator Langemeier. [LB293]

SENATOR LANGEMEIER: Chairman Pahls, thank you, and thank you for your testimony. You also represent the Independent Bankers Association, correct? [LB293]

KURT YOST: I do. [LB293]

SENATOR LANGEMEIER: What is their stance on payday lending? [LB293]

KURT YOST: They don't have an official stance, Senator Langemeier, and what we're talking about is a financial instrument that is noncollateralized; it's a small dollar amount. The regulatory requirements for us to follow in the lending field make it somewhat impractical, but primarily, you're talking about a noncollateralized instrument. And the industry, it's a fee-based industry. [LB293]

SENATOR LANGEMEIER: I'm very familiar with the industry. But...so you're saying that your banking clients would say this is a need to be met by someone other than them. [LB293]

KURT YOST: No, not necessarily, but you have to look at it on an individual basis. And the industry has historically tried to meet the needs of the consumers given sound lending practices. [LB293]

SENATOR LANGEMEIER: Okay. Thank you. [LB293]

SENATOR PAHLS: Senator Pirsch. [LB293]

SENATOR PIRSCH: Do you have any empirical...I'll pose the same question...any empirical evidence as to, you know, your average type of customer, in terms of...in our finances, you know, average household income and that kind of thing that? [LB293]

KURT YOST: I do not. [LB293]

SENATOR PIRSCH: Okay. [LB293]

KURT YOST: You know, the payday lending industry has been characterized by the people that preceded me as the poor and perhaps even the unbanked, the less fortunate, and perhaps to some extent, that's true. But the payday lending industry, believe it or not, and some testifiers following me can attest to this, also serves professionals, school teachers, middle-class America who may, on a moment's notice, need $300 or $400 for a specific emergency. It is not all that are the unbanked or the impoverished, and it's kind of like dealing with a credit card. The credit card industry has made themselves available, and you have to have certain disciplines in anything you do in life. And the payday lending industry does not just necessarily, as was paraphrased, prey on a specific class of people, if you will. That's just not...that's not a fair assessment of the industry or its clientele. [LB293]

SENATOR PAHLS: Senator Utter. [LB293]

SENATOR UTTER: Thank you, Chairman Pahls. Mr. Yost, since you're kind of the father of this legislation, can you give me some idea of the regulatory environment of the...what...how are the payday lenders regulated today? Give me some sense of... [LB293]

KURT YOST: They are examined...they are examined on an annual basis by the Department of Banking and Finance. There is a division within the Department of Banking and Finance just like there is for the commercial banking industry, the credit union industry, the mutuals, and then you flip over to the mortgage side of that department. There is a division that deals strictly with the payday lending industry. They are licensed to do business, if you're legitimate. You are bonded; you are examined on an annual basis, and you are regulated just like a commercial bank would be, a state-chartered bank, Senator Utter, would be. [LB293]

SENATOR UTTER: What does that examination look for, for example? What are some of the...highlight some of the regulations. [LB293]

KURT YOST: Well, I would assume, and I don't know the particulars, but I've got to assume that they look at the internal operations; they look at the accounting of the various customers, and how they're being handled and what have you. [LB293]

SENATOR UTTER: Are there regulations as to the exact amount of fees that can be charged and that type of thing? [LB293]

KURT YOST: There is. There's a loan limit and there's a fee limit, and those numbers haven't changed since 1994. [LB293]

SENATOR UTTER: And what are they? [LB293]

KURT YOST: Fifteen dollars a hundred and a maximum of five hundred dollars. And those numbers haven't changed, Senator, since its inception. [LB293]

SENATOR UTTER: Thank you. [LB293]

SENATOR PAHLS: Senator Langemeier. [LB293]

SENATOR LANGEMEIER: One more question. Thank you, Senator Pahls. You've told us on many occasions in other testimony, we talk about the difference between credit unions and banks. We always use this word, community reinvestment, and bankers always say, we've got to do community reinvestment and credit unions don't. Do payday lenders have to do community reinvestment? [LB293]

KURT YOST: No. [LB293]

SENATOR LANGEMEIER: Thank you. [LB293]

SENATOR PAHLS: Senator Pankonin. [LB293]

SENATOR PANKONIN: Thank you, Chairman Pahls. Mr. Yost, aren't you glad you're the father of something? (Laughter) [LB293]

KURT YOST: Well, you know, 15 years ago, Senator Pankonin, I looked at this group of business people across my desk, and I said, what's a payday lender? Now the industry has grown and it's gone very similar to a lot of industries. But our...the payday lending industry comes under scrutiny. [LB293]

SENATOR PANKONIN: Yeah, and I don't mean to be (inaudible)... [LB293]

KURT YOST: And that, quite frankly, is why we created what we did back in '94... [LB293]

SENATOR PANKONIN: Yeah, and that leads into the other question about the growth. Is it growing rapidly? Is there a lot more businesses in this category, and branches or whatever? Do you see a lot? [LB293]

KURT YOST: Senator, I can't answer that specifically, but others behind me can answer that. I will tell you that in the state of Nebraska, it would be my sense that there are far more community, locally owned and operated type payday operations as opposed to the big nationals... [LB293]

SENATOR PANKONIN: The national. [LB293]

KURT YOST: ...that you do find in some larger states. That would be my take, Senator, but I'm not sure of that. [LB293]

SENATOR PANKONIN: And so why do you think that is that we have more community-owned or whatever you want to...as you classify them, I guess? [LB293]

KURT YOST: I...and, you know, I'm not sure, Senator. The individual that came to me is a community, you know, locally owned and operated situation, and the other party that was a part of that is also a locally owned and operated institution. Now, and I won't deny that...that in the subsequent 15...the past 15 years the industry has (a) changed substantially, and (b) it's grown substantially. [LB293]

SENATOR PANKONIN: Thank you. [LB293]

SENATOR PAHLS: Seeing no more questions, thank you. [LB293]

KURT YOST: Thank you, Senator. [LB293]

SENATOR PAHLS: Next proponent...opponent. [LB293]

DeMARIS JOHNSON: If Kurt's the father, I don't want to be the mother (laughter). Chairman Pahls and members of the committee, my name is DeMaris Johnson, and I'm the executive director of the Nebraska Association of Check Cashers, and I'm a registered lobbyist for them. DeMaris is spelled D-e-M-a-r-i-s and Johnson is J-o-h-n-s-o-n. All kidding aside, Kurt was here at the beginning, and worked very hard on this legislation, and has continued to. I came on board a couple of years ago, and have worked very closely with him as well as CFSA which Walt Radcliffe represents. I'm here today representing the association in opposition to this bill. The association is made up of not only the small stores which many times we call the mom and pops, but also the large stores and the national chains. There will be a number of people following me today who do represent those small stores as well as the large ones. We do have a customer, and one of the people that will be following me directly is Pat Cirillo, and Pat is a graduate of Holy Cross with a masters and a Ph.D. from Syracuse University. She's the president of Cypress Research Group which is a statistical and consulting firm in Cleveland, Ohio. And I think a lot of the questions that you have raised today, she will be able to answer, because Dr. Cirillo's research has been in the area of education, telecommunications, and financial services, specifically dealing with banks, credit unions, delayed deposit companies, check cashers, and not-for-profit advocacy groups. And I think that she will be able to talk about some of the demographics of this state as well as nationally, and to address some of the issues of what is available for product out there. I would be happy to entertain any questions at this time, but again, as Mr. Yost said, there are people following me who are a lot more knowledgeable than I am on this matter. [LB293]

SENATOR PAHLS: May I ask you a couple of questions? [LB293]

DeMARIS JOHNSON: Absolutely, Senator. [LB293]

SENATOR PAHLS: Since you are the executive director,... [LB293]

DeMARIS JOHNSON: Correct. [LB293]

SENATOR PAHLS: I was going to wait and ask this in closing the senator, but here's some things that I just...would the payday lenders be afraid of Wal-Mart? [LB293]

DeMARIS JOHNSON: No, I don't believe so. I don't...I mean... [LB293]

SENATOR PAHLS: Because Wal-Mart has really done a lot with what I call, a lot of the ma and pa's stores, so it could affect payday lenders if it really would come out. I mean, I don't see Wal-Mart being afraid of the small store owners. [LB293]

DeMARIS JOHNSON: Senator, I think with delayed deposit, a lot of times on your small stores, you find it goes to relationships. You know, they're in the neighborhood; they're people that they know. It's kind of back in the day when we used to go to the bank, and we knew who the teller was. I think we see that a lot in delayed deposit. [LB293]

SENATOR PAHLS: As the executive director, would you be afraid of the credit unions? Because it seems from some of their testimony, that they are very interested in this. [LB293]

DeMARIS JOHNSON: Well, it's interesting that they seem to want to get in this market. You know, we have developed a product. We've worked with the Legislature; we're regulated. You know, it's a conversation that we could have. I don't know that my association has specifically addressed that issue, and without them, I wouldn't want to go forward on that. [LB293]

SENATOR PAHLS: Senator Nantkes, you can thank me for asking these. Okay, here's another question that I'd like to...and Senator Langemeier. I mean, I thought he was pretty creative on this, about churches. Would you see them as a threat or to the payday lenders if they would take up this business? [LB293]

DeMARIS JOHNSON: You know what I think, there are always people that are going to be out there willing to help people out whether it's the Red Cross, whether it's a church, whatever the affiliation is. But there's a lot of people out there who are not affiliated with those groups, and this provides an avenue for them. [LB293]

SENATOR PAHLS: Okay. Another question, I heard about the bad actors. You know, some people who are really mistreating people. Does that set well with you? [LB293]

DeMARIS JOHNSON: You know, I've talked with the Department of Banking, and they have very few complaints. I mean, when I asked them, you know, are people coming to them, and I would echo what Mr. Yost said about, you know, the city of Lincoln. I mean, the Department of Banking would be where to go to. [LB293]

SENATOR PAHLS: Okay. As the executive director, do you know...do you have very many complaints? I'm...these are questions I... [LB293]

DeMARIS JOHNSON: No, no, I'm happy to answer that. I have to be honest with you and say no, I've never had anyone call and complain about a check casher business to me. [LB293]

SENATOR PAHLS: Are you concerned about the possible loophole that was brought up that...how maybe people are harassed...I didn't know about that. If there is a loophole, would you be willing to work...your payday lenders...would they be willing to...a loophole of harassing people? [LB293]

DeMARIS JOHNSON: You know, every year the association has a convention which we talk about, you know, new legislation. We bring in national speakers. And I mean, I think all of these people that have delayed deposit businesses, are regulated by the state of Nebraska, so I can't imagine them putting their license in jeopardy by going after people because it could result in a complaint with the department, and, you know, who knows from there? [LB293]

SENATOR PAHLS: But, apparently, it has happened. I mean, the ombudsman, I don't think would... [LB293]

DeMARIS JOHNSON: No, I don't either, and I'm not saying that, but. [LB293]

SENATOR PAHLS: I live in west Omaha, and I'm really surprised that there are a number of...I live like at 168th right across from the new hospital out there, and in that, within half a mile, there are at least three payday cash advance places out there. Now that's actually in a...for those who are not familiar, it's not that far from Village Pointe. It's a...I mean, it's a nice area. Why would you, as a payday...as executive director, why would somebody build out there or have this...? [LB293]

DeMARIS JOHNSON: Well, I mean, I think there's a need for money from all areas, so obviously, people that have looked at it have felt that, you know, they wanted to make that business available. [LB293]

SENATOR PAHLS: Any more questions? [LB293]

DeMARIS JOHNSON: Thank you. [LB293]

PATRICIA CIRILLO: Be sure I do this right. Good afternoon. My name is Patricia Cirillo, P-a-t-r-i-c-i-a C-i-r-i-l-l-o. I am president of Cypress Research Group. We are, as DeMaris mentioned, a statistical consulting group in Cleveland, Ohio. I do statistical analysis, quantitative analysis, economic behavior analysis for a whole bunch of different industries, and this is one industry that I've developed somewhat of an expertise in. My job as a market researcher and looking at the side of behavioral economics is to understand the consumer. Now I have...every question that was asked this afternoon I wrote down. I won't be able to answer all of them, but there are research studies either done by me or much more by all of the other academics and the other commercial researchers out there who are looking at this. There's a group of about 15 of us; we're a collegial group; we're constantly doing studies and looking at this issue very closely. So I have all sorts of factoids for you if you need them, and I can answer some of your direct questions this afternoon. But for the most part, I'm asked by state legislators and some federal work to give what this looks like through the eyes of the consumer. I've now done studies...I think I've collected 12,000 interviews, using various methodologies, and I've witnessed about 150 different focus groups, some organized by me, but for the most part, organized by other researchers. So I come at this from all different angles. My job is to understand the sub-prime borrower, and their mentality, and their market preferences, so that's what I'm here to talk about today. So if it's okay, I will just go in and jump in and answer some of the questions that you guys asked and weren't able to get answered. The first was the demographics. We know a great deal. There's a few researchers who have done in the past four years, a number of demographic studies, and basically, I wouldn't characterize them as middle-class, but they're certainly not in the norm, poor. There are some working poor in that category, but for the most part, the median income household income for payday borrowers or deferred deposit customers is about $45,000 to $46,000 a year. So I characterize them using the Census Bureau categorizations as lower middle-class. Yes, you have folks lower than that, and you also have folks substantially higher than that. And every lender or deferred depositor provider that I know of looks at...you know, they want to get paid back (laugh), make no mistake about it, so they do have...they don't just give you whatever money you want. You have to show as part of the process, you have to show bank statements; you have to show your most recent or perhaps the past few, your check stubs. So generally, they'll only borrow...excuse me, lend or allow deferred deposit of about 20 percent of your income. So there are some certainly underwriting standards. You asked about a church. One of my customers, if you would, is a church, and they contacted me...it happens to be in Cleveland...they contacted me because they wanted to start to provide this service for their church members. And they developed...they built a small little not-for-profit credit union, very, very tiny, and they're charging very low interest rates. But also, all of the employees are volunteers, so the only way they can break even, as was wisely pointed out earlier...36 percent is essentially prohibition. Nobody is offering the classic deferred deposit loans at that rate. I can give you lots and lots of examples of states where the storefronts left the region at that level, and the military is not getting lent to at that level either. But that's kind of a nifty little...for their little members, it's working nicely. But, again, all the employees are volunteers essentially. In terms of the...the question about growing, why has this grown? If you look at the economic analysis over time, what...the deferred deposit or payday loan establishments have grown in direct reaction to the fees, the other fees that they are...their alternatives. And that's really what my research is all about. Again, I look at the whole market. I look at their whole decision process, and basically, when a person is faced with a shortfall, a cash shortfall, and they have low credit scores which a majority of these borrowers or our customers do have. They're faced with about four different options. Their first option, which is by far the most popular, and by far the most often chosen is to be late on a bill. And the cost of being late on a classic bill whether it be rent or utilities or nowadays, all in the news, mortgages (laugh) has gone up steadily over the past ten years. And that very much mirrors how the payday loan industry has grown, and it has leveled off, by the way. Most analysts think that that industry...the industry has saturated and stabilized; the past couple of years has been pretty stable. So that's their first choice. Their second choice, if they have a credit card, is to get a cash advance on their credit card, but only about half of them have credit cards, and only about a quarter of them have a balance on their credit card. The third is to basically invoke their overdraft protection services with their banks or credit unions. And then the fourth option, and in that order of selection, by the way, that's in terms of popularity or market share, is to get a deferred deposit or a payday loan. So the payday loan is kind of a little guy in the small loan market, if you would, if we can characterize it that way. And so, the customers are real clear what their decision is. They look at their options. I'm going to..this bill's...I'm going to be late on it. It's going to cost me $38, and my credit score is going to get dinged, or I can go and get a payday loan or do these other options. They're really pretty clear and pretty astute about what their options are. All of we researchers that are working on this, we're all most concerned about the customer who does get a lot of loans in a row, and a lot of loans in a particular year. They're all of our concern. They're also the lender's concern, because they do want to get paid back. And as a borrower continues, they're less and less likely to pay the principle off, and that's not what the lender wants, and that's certainly not what the rest of us want. So we focus a lot of our attention right now on figuring out who those...trying to predict who those folks are, because you've got two people in front of you, one who's going to fall into that situation, looks just like another person who's not going to fall in that situation, and how are you going to decide who you're going to lend to unless you're just using math other than, you know, trying to use a crystal ball. So that's where the researchers really focus now, so there are...I know there were a lot of other questions, but I don't want to go over my time, so I'll stop talking and answer any other questions that you have. [LB293]

SENATOR PAHLS: Do we have any questions? Senator Pirsch. [LB293]

SENATOR PIRSCH: Just a question, do you...well, a couple of questions. First of all, I'll ask you, how come traditional financial institutions--banks, credit unions, etcetera, haven't entered into the market then? Do you have...I mean what's your statement...? [LB293]

PATRICIA CIRILLO: Yeah, because some of them are my clients also. Part of it is reputational issue. Part of it is the regulations make it difficult, because it's an unsecured loan, and they don't...it introduces...opens them up to a whole other set of regulations that they prefer to not have to deal with, given all the other regulations that they have to deal with. Banks are highly regulated. Some would argue nowadays, not regulated enough (laugh), but we won't go there. And it's also...it's just not their niche. The payday loan store, if we can call it that for now, is a small, little two to three employee store that is open until 9 or 10 o'clock at night on the weekdays. It's a very...it's really a boutique. It's a very small, little storefront. And the banks and the credit unions, they struggle, they're just not in that business. They're not structured to do that. Credit unions, I think the best example that I...well, there's two big pieces of data. If you look at...in the FDIC study, the pilot study was mentioned earlier. You know, the FDIC Sheila Bair is...she's been a researcher in this area for a long time. She published some works on it right before she became chair of the FDIC, and what...you know, to set up a pilot and very much incented the banks to pick up payday loan product, giving them CRA credits, and it's interesting to me that about 500 banks initially signed up for the pilot. Two years later, we're down to 37, so something along the way (laugh) discouraged those banks. They've hit some walls, and I don't fault them. Perhaps they've discovered it's not operationally their strength, and it doesn't make sense for them to do them. So I just look at that and scratch my head, and...but for the most part, it's reputational, and simply not being set up to offer that product and service. So, did I answer your question? Okay. [LB293]

SENATOR PIRSCH: Kind of a...I take it, kind of too small of a niche and doesn't fit in with their overall goal then. [LB293]

PATRICIA CIRILLO: Well, yeah, it's a...I mean, Sheila Bair is critical, I think overcritical of the banks, saying that they don't want to cannibalize their bounced check fees, and I actually have not found that with the banks. I've just found that operationally, they're just not set up to do this. [LB293]

SENATOR PIRSCH: Okay. And what have the...I guess the statement that I've heard made, from the statistical analysis type of perspective, that the people who are taking out these loans...typically, the loans they're taking out are to pay back prior loans that they've taken out and, you know, the idea that you're caught up in a web or a cycle. Can you talk about that? [LB293]

PATRICIA CIRILLO: Yeah. [LB293]

SENATOR PIRSCH: Your typical loan, is that taken out to, in part, pay back or in large part, prior loans? [LB293]

PATRICIA CIRILLO: Right. The statistic which is incredibly well-documented (laugh) by me and a bunch of other researchers is that the average number of loans per year is eight. And when you consider most loans being two weeks, that it...you know, it's obviously every six weeks or something like that. It seems like a constant cycle of debt or whatever you want to call it. I wouldn't characterize it as that, but what we see when we look at the data in terms of transactions, is that borrowers tend to...they'll have an event, and usually when you talk to borrowers, they can tell you precisely what the event was...a band uniform or a car broken down, or a kid, you know, needed to go to the ER or something like that. They'll have an event, and then they will require...and it was astutely pointed out, it is often difficult for folks in the lower income brackets to be able to come up with $200 to $300 principal to be paid back within two weeks. That's a justified criticism. But what we tend to see is that they'll have two or three loans within like an eight-week period, and then nothing, nothing, nothing, nothing, nothing for months, and then some other event will happen. And if you look at that eight loans per year, the critics of the industry will say, well, look it, that's a cycle of debt. There you've got it; there's the smoking gun. The industry will say that, well no, people have eight events per year (laugh). And it's really somewhere in between. A consumer study showed that generally, all of us...I've got three kids, I have a $300 surprise every week for the most (laughter)...you can probably all...if you look at your checkbook, you'll see how many $300 surprises you have. So, generally, consumers have about four to five $300 surprises a year. Studies support that borrowing behavior, so they tend to cluster.

So the answer to your question is yes and no. Yes, they tend to be borrowing two to three times in a row, but then nothing for a long time, and then...you know, there are exceptions to that. And 30 percent of borrowers borrow once and that's it, they're done. We never see them again. So...and what we also know is that, for the most part, the folks do tend to mature...I can use the word mature, because I can't think of a better word, out of using this as a product. So what we see is that about...they'll be using the product in the behavior that I just described two or three at a time in a row, long period two or three at a time. And then about 18 to 24 months, we never see them again, and the state databases are finding the same thing. I talk to the analysts down there all the time, so it's kind of a...that's a typical borrowing behavior. But now, I am not...absolutely, there are consumers who they borrow once, and then every two weeks they're back in there. That is well-documented and substantiated, and those are the people we're all worried about, and those are the people we're trying to figure out who they are ahead of time, because you either have to say no to everybody or you have to accept that some of these folks are...it was a bad choice for them. [LB293]

SENATOR PIRSCH: Thank you. [LB293]

PATRICIA CIRILLO: Did that answer your question? [LB293]

SENATOR PIRSCH: Yes. Thank you. [LB293]

PATRICIA CIRILLO: Okay. Probably more than you wanted (laugh). [LB293]

SENATOR PIRSCH: No, I appreciate it. [LB293]

SENATOR PAHLS: Well,, there still...earlier, we had a testifier on the other side, gave a lot of information. It seems like I'm hearing a mixed bag. You're saying one thing, and he was saying another. Who am I to believe? [LB293]

PATRICIA CIRILLO: (Laugh) I guess that's up to you. I mean, all I can tell you is what I do for a living. I'm a researcher, and I'm pretty agnostic when it comes to are payday loans morally good or bad or all of that? My job is just to look at the data and bring the data... [LB293]

SENATOR PAHLS: So you're not in anybody's pocket or anything. You're just... [LB293]

PATRICIA CIRILLO: No, no, uh-uh. I'm in nobody's pocket. I work for a lot of different industries. I do a lot of different studies. Many of the studies that I've done in this industry I pay for myself, because I'm a researcher; that's what I do. [LB293]

SENATOR PAHLS: Okay. [LB293]

PATRICIA CIRILLO: So, you know, my job...it's an interesting market. I'm trying to figure it out along with my brethren and we teach and we...it's a pretty collegial group of folks. Yeah. [LB293]

SENATOR PAHLS: Okay, okay, thank you. Senator Langemeier. [LB293]

SENATOR LANGEMEIER: Thank you, Chairman Pahls, and thank you for coming to Nebraska for your testimony. [LB293]

PATRICIA CIRILLO: Um-hum. [LB293]

SENATOR LANGEMEIER: You talk about your desire to research and the desire to have data, and how that we can look at this industry and prove it's good or bad or... [LB293]

PATRICIA CIRILLO: Um-hum. [LB293]

SENATOR LANGEMEIER: ...however you want to skew that information. Isn't it pretty crucial to have good data to do what you do? [LB293]

PATRICIA CIRILLO: Yeah, right. [LB293]

SENATOR LANGEMEIER: And a lot of states have databases set up which we don't. [LB293]

PATRICIA CIRILLO: Right. [LB293]

SENATOR LANGEMEIER: We're going to have a bill here in a minute. [LB293]

PATRICIA CIRILLO: Right. [LB293]

SENATOR LANGEMEIER: Would your testimony not support the need of a database? [LB293]

PATRICIA CIRILLO: The database has utility, and it's in your proposed regulation. It only has utility if there's some sort of other behavior that you want to control. And your example is to make sure somebody doesn't have more than one loan at a time. I'll tell you what my problem...is probably too strong a word. Problem with the database is, is one is that because what we're seeing in many states where a database has been enacted, it's the smaller lenders or check cashers in your state's case that go under, that we lose them, because during the transition period, they can't make it. So and your state is unusual in that two-thirds are what we call moms and pops, and one-third are national...and most states are the other way around. So you will lose, you know, a fair number of businesses in your state, because they're in the transition period. And it's interesting that in your bill, too, the company has to take the full cost of the database, $1.50 per transaction which, in other states, the borrower, basically, pays that $1 or $1.25 fee so it's a little bit different in your regulation, and I don't know about the economics of that. But the other reason that I have a problem is through the consumers' eyes again, through the "gazillion" of focus groups that I've sat through, borrowers don't like the fact that, you know, they make comments, well, you know, it's a privacy issue. It's the government collecting data, and it kind of gives them the creeps, if you would, if I can be crass for a minute. They also...they will often make a comment, well, other...you're not collecting behavioral...purchase behavior on other things, why this? But for the most part, they say, well okay, put a database in, but we can get around it, and the way we get around it is we have our sister take out the loan for us or worse, we have our kid take...we have discovered Social Security numbers from people's children. A good example of that is if you look at...we can examine the state database data, and the behavior of that data, as soon as the database came in effect, suggests that the number of borrowers went up, but the number of borrowed did not which suggests and focus group data backs it up, that a few people, consumers, are saying, well go ahead, put a database in, but if I need a loan, I'm going to find a way around it. So that's what...I don't like the idea of consumers now needing to manage another relationship for their borrowing. So that's...again, that's just through the eyes of the consumers. That's what they tell us. Did I answer your question? [LB293]

SENATOR LANGEMEIER: But if your data, your testimony today is based on databases,... [LB293]

PATRICIA CIRILLO: Um-hum. [LB293]

SENATOR LANGEMEIER: ...in other states that you just said is skewed,... [LB293]

PATRICIA CIRILLO: No. [LB293]

SENATOR LANGEMEIER: ...that would make your data skewed. [LB293]

PATRICIA CIRILLO: Well, most of my analyses is not done on state database data. [LB293]

SENATOR LANGEMEIER: Okay, how do you get your data then? [LB293]

PATRICIA CIRILLO: Yeah, very little of it. We either collect it directly from...we'll gather entire states' worth of...from the companies themselves or we'll do field studies, we'll do telephone surveys. There's myriad different ways that we collect data, every different type of methodology that's available to us, whatever the objective of the study is, whatever we're trying to figure out, we pick. You know, no research methodology is perfect, but we do the best we can. [LB293]

SENATOR LANGEMEIER: Thanks. [LB293]

SENATOR PAHLS: Senator Utter. [LB293]

SENATOR UTTER: Thank you, Chairman Pahls. You've obviously done a lot of research across the country,... [LB293]

PATRICIA CIRILLO: Yeah. [LB293]

SENATOR UTTER: ...and have obviously taken a look at this proposed legislation, and must have some feeling of our current rules and regulations... [LB293]

PATRICIA CIRILLO: Right. [LB293]

SENATOR UTTER: ...with regard to payday lenders. [LB293]

PATRICIA CIRILLO: Yeah. [LB293]

SENATOR UTTER: What...if our rules and regulations need some improvement, in what areas would you say they need improvement? [LB293]

PATRICIA CIRILLO: Well, what I think I'm hearing...what I hear concern express the most by legislators is that person who is stuck in the cycle of debt, and that's what we're all concerned about. And I know the CFSA has the best practice of allowing borrowers after a certain number of loans to extend the payment plan. So after four loans or five loans, I can't remember what it is, then the person can now pay it back over installments, so it prevents that person who just can't get their arms around the principal. And that makes sense to me. I don't think the database...because the companies have to pay for it, and you're already...I mean, you're pretty regulated state when it comes to this particular product. I mean, on a scale of one to ten, ten meaning you have no operators (laugh); one meaning it's the wild west, you're about a six or a seven, I would say, given the percentages that you have and the other regulations that I understand from your existing statutes. So you're not lightly regulated. But if...what's in vogue right now is more extended payment plans which solves that person's problem. [LB293]

SENATOR UTTER: And you alluded to earlier, the privacy issues... [LB293]

PATRICIA CIRILLO: Yes. [LB293]

SENATOR UTTER: ...with regard to the databases. [LB293]

PATRICIA CIRILLO: Right. [LB293]

SENATOR UTTER: And certainly, we've got a lot of privacy regulations... [LB293]

PATRICIA CIRILLO: Right. [LB293]

SENATOR UTTER: ...in this country today... [LB293]

PATRICIA CIRILLO: I know. [LB293]

SENATOR UTTER: ...for everybody--banks and everybody else. Does this thing...does this fly in the light of all of the database that's accessible? Does it fly in the light of all of the privacy issues? [LB293]

PATRICIA CIRILLO: Yeah, that's a good question. I would say that it's...the other privacy issues are to prevent owners of data to basically selling it and using it for commercial purposes, for other than its intent, you know, its original intent. I would assume that that would also be part of this regulation, that payday loans, users' data is not sold (laugh) or anything like that, but it's really quite different. That...what...the way economists would describe this is that these regulations are designed not...that regulation is not designed to regulate the industry. It's designed to regulate the consumer. We don't have many examples of that out there, for the most part. I mean, that's unusual to have a...you're regulating the consumers' behavior, and we're...zero in on a pretty,...you know, only 5 percent of adults ever get a payday loan. It's a pretty small niche of folks, and they're being...you know, really, their behavior is being controlled, and (inaudible) going to be...are being controlled. And we could probably argue all day long whether or not that's right or wrong or moral or immoral or constitutional or not. Right? So, I hope I answered your question. Okay. [LB293]

SENATOR UTTER: Appreciate that. Thank you very much. [LB293]

SENATOR PAHLS: So let me ask this question to you then. Credit unions, churches, and places like Wal-Mart, if they would step up, I'm saying, up to the plate, they could make a difference in payday lenders? [LB293]

PATRICIA CIRILLO: Right. They could make a difference to payday lenders, is that what you said? [LB293]

SENATOR PAHLS: Right. Because of the competition? [LB293]

PATRICIA CIRILLO: Yeah, I say, bring it on. Yeah, great. I mean, if somebody wants to come in and market and compete, and can provide the level of services and privacy and, again, that boutique kind of atmosphere which is real important to these folks. I don't know if any of you have ever been to a storefront, but it's a pretty private, you know, folks are not thrilled...they're under a lot of stress. I'm not...if I were advising any payday lender in regards to being worried about Wal-Mart, my advice would be, no, that's not who you need to worry about, because it's very counter to the traditional borrowing experience. Nothing against Wal-Mart...I hope there's no Wal-Mart people here, but their, you know, their level of service is quite different. If you witnessed the exchange that's going on with CSRs or tellers at payday loan establishments, deferred deposit establishments, it's pretty high level of service. It's quite a high level of service. [LB293]

SENATOR PAHLS: I'm just trying to figure out a way...if we would, let's say, eliminate or curtail this group, we have to have something in... [LB293]

PATRICIA CIRILLO: Yeah, I don't...right. [LB293]

SENATOR PAHLS: ...place. I'm trying to figure... [LB293]

PATRICIA CIRILLO: Right. Yeah, and I...and, you know, just personally, you know, as a nonresearcher, I do have a problem with eliminating an option for consumers without providing an alternative, a very viable alternative. And a really good example is Pennsylvania. The state of Pennsylvania, basically through statute, eliminated the traditional storefronts, and they really used taxpayer...$2 million of taxpayers' dollars to develop this fund which would basically indemnify the credit unions to minimize their risk. And I was just at a presentation from the treasurer, the assistant treasurer actually, of the state of Pennsylvania, who was talking about their program. And I was scratching my head because it's been alive for two-and-a-half years, and if you do the math on the number of credit union branches (laugh), and the number of loans they gave out in the preceding year, they're giving out 44 loans per year, per branch. That's it. So the number of loans of that kind that are being given out in the state of Pennsylvania has decreased by 95 percent since that statute went in. So there's something about it (laugh) not being inside the guts of a credit union or a bank that just isn't working. The market is not being served. I'm not saying it can't, but it's not, yeah. [LB293]

SENATOR PAHLS: Seeing...I think we are finished with that question. [LB293]

PATRICIA CIRILLO: Okay. [LB293]

SENATOR PAHLS: Thank you for your testimony. [LB293]

PATRICIA CIRILLO: Thank you. [LB293]

SENATOR PAHLS: Now the good senator could be listening to me to answer those questions. Next opponent. [LB293]

KEVIN BERNADT: Hi there. My name is Kevin Bernadt, K-e-v-i-n, last name B-e-r-n-a-d-t. Thank you for the opportunity today. I'm coming here as a small guy. I'm the epitome of the family-owned business. It's my brother and I, and I'm here on his behalf, our business is called Cash Solutions here in Lincoln. We have two stores. I'm going to kind of bore you with our personal story about how it all came about, and then maybe talk a little bit about my customers and their needs, and the demand for this in our market, and then answer any questions. My brother and I both attended a great institution, the University of Nebraska, graduated in '97. And we always thought we wanted to go in business together, really wasn't sure what, you know, what we wanted to do, and how to go about it. January '99, this idea had come to me from a gentleman I was talking to. He says, yeah, you know, I think this would be a good business to go into. Driving out to Grandma's one day, still remember it like it was yesterday because it was a pretty big time for my brother and I, started talking to my brother about this, and said, you know, let's do it, why not? So that was January '99, first three, four months, you know, we're working our regular jobs. Every evening, every weekend we're getting together, putting together a business plan. Pretty...well, I think we did a pretty comprehensive job at it, you know, worked really hard in our evenings and weekends. You know, figured out how we're going to get our loan and, you know, what are we going to do, where are we going to put our storefront and all this? And we did secure an SBA loan through a bank, local bank here. It was pretty difficult for a couple of young fellas to get that loan, but I think we had our documents in order that they were pretty impressed. So in September of '99, after we received our license, we had to go through the public hearing and everything, and there's quite a bit to go through (laugh), and so September '99, we opened our first store, had five customers the first day. I was just happy as heck because we took a vacation day from our regular jobs to be there. We had one employee. And a couple months down the road, all of a sudden we were running out of money because our business was growing, we were doing good, but with our start-up costs, with our operating costs and everything else, you know, we didn't take out a big enough loan to...in order to continue business. So there was one particular day, we had a few hundred bucks in our store, few hundred bucks in our store. I didn't know what we were going to do, because, you know, I wouldn't be able to serve my customers. So I had a credit card, personal credit card at that time, so I went and took a cash advance, $500 cash advance out of my credit card, so I could take 500 bucks back to my store, so I could then advance it out to any customer who came in. There was a time...obviously, that strategy wasn't going to work very well, so we went back to SBA and said, you know, we think we're doing good, we're getting a good, solid clientele base. They wouldn't give us any more money. So but what they would do is they put us on...and I can't even remember the name of the program. But what we did for it was almost five months, it was a daily loan that the bank was giving us. Every day they would advance us money into our checking account, and then at the end of the day, we'd, you know, we'd fax or e-mail in our records to them, and then they would take out their portion of it. And I can't remember what the name of it was, but for five months this was the only way my brother and I could stay afloat and operate our business, and we had a lot riding on this at the time. And so finally, we said, we can't do this anymore. You know, it's costing...literally, cost us thousands of dollars in order to do that program to keep our doors open. So, and then we went on our hands and knees to mom and dad, and got a legally signed loan through them that helped us get off that program, so we could be on our own two feet. So that's kind of the history of the first six, seven, eight, nine months of our operation in '99. In 2000, it was very touch and go, but I'm very proud of us sticking through it. And to this day, we're a small operation, two stores. We respect our clientele. We establish a relationship with them. In fact, one family whose...they've been with me for awhile. They'd get an advance for a month, then they'd do another one for another month. Then I wouldn't see them awhile. Then they'll come back. They lost...she passed at age 52, and the husband is still coming in the store. But my point to this story is, you know, I went to the visitation, went and consoled the family. I didn't know them outside of my store. We appreciate and respect our customers and develop a relationship with them as small business guys. And let me tell you a little bit about our customers. It's...you can't just say this type of person comes into our store. I've had lawyers, small business people, child care providers, teachers, state workers, federal workers. I've had factory workers. I've had just about any profession. Engineers I've had. I've had climatologists, I believe that's what he does. I've had so many customers from different walks of life. My average customer probably is making between $12 and $18 an hour. On an annual basis, you think average customers making probably between 20 and 40. I know that's kind of a big range, but around 30 to 35 is probably the average customer. Age, you know, we get all sorts of ages. My brother and I, just small business guys, we ask some questions on our application that we think are pertinent to see if this person is going to qualify. I ask for a bank statement, and I think my brother and I are pretty responsible. On that bank statement, one thing we always look for is Council Bluffs, Council Bluffs, Council Bluffs, Council Bluffs. We all know what goes on in Council Bluffs. You know, if the customer...there's a new person that's applying to get an advance, and I see a lot of that, you know, I think they might have a bigger problem. And then, you know, we would not be able to service them. So we look for things like that. You know, I've got so many stories of people. I've got a lady...she's been with me a long time; she'd been with me a long time, and then she finally says, Kevin, she came to me kind of crying. She says, I can't do it this month. I said, you know what? That's okay. Let's, you know, I've got to run the check through your bank by the state law. We're heavily regulated which I encourage, had to run the check. We set her up on a payment plan, and every month most of my customers go every month. I don't make them go every two weeks. I think every month if you want to do an advance is...I try to extend them out for them which helps them out. And, but anyway, she still tells the story. When she comes in, the first time I come in there, Kevin, I was so nervous. And she goes, all I needed was a hundred dollars. And she said, you would have thought that I just hit the lottery when you advanced me that hundred dollars, and I was able to pay my bill. I've got people coming in that they want to go buy a new TV. I've got people that says the car broke down. I've got people that say they're going on vacation. I've got people that say rent is due. I've got people that say, I just wrote four checks, and I didn't have a check coming in that I thought I was going to do, and they're going to the bank. And the bank is going to take the biggest check, say it's a $500 check. They're going to clear that one if it clears their account, and then the bank is going to go boom, boom, boom, boom and that's that fee, $35 per check of those three checks. Instead of doing that and paying the bank $105 for three bounced checks, and then the merchants...the merchants are going to charge you 35 bucks for a bounced check or 20 bucks or, you know, each merchant is a little different. You know, they'll come to us; they'll take out an advance, and they pay us the fee. When they come back, when they repay it, that's when the fee is paid. Now I've got people that use me once, and I never see them again. I'll go through my files, and I've got a customer who came in 2006. Well, you know, let's refile that one because they haven't come back which is great. But I'm also in business. I'm in business to make a profit; that's what businesses are about. You know, I'm supporting a family, and, you know, another story. Just this past week, and then I'll take questions, is a gentleman...young fella, married, got a good job. He makes $15.50 an hour, pretty good for a young guy, you know, 23 or 24 he was. Well, the wife's grandma was turning 70 in St. Louis, and when the wife tells it, you got to go to Grandma's birthday party in St. Louis, you probably better go. And he didn't get paid till the Friday. He was in on a Wednesday, and so he took out an advance. He said, thank you very much, took $200 he said, would get us to St. Louis and get us to where we need to be. And he got paid on a Friday, and then two weeks from that Friday, so he says, well, I'm leaving on Friday. Can I, you know, skip that and come back on Monday or whatever? Says well, tell you what, you know, when you get paid again, so you can extend this payday, you won't have to come back, in two weeks you can come back after that which is in the regulations. And he went to St. Louis and, of course, he hasn't come back yet because it's only been a week. But that's a typical story of my customers. I, you know, I'll open it up for questions, but like I said, we're two brothers, got one employee that supports her family with it. We work 13 out of 14 days. I'm working Sundays. It's pretty tough when your daughter's volleyball match, and you've got to leave on a Sunday right in the middle of the match because you got to get to work. I understand everybody makes sacrifices, but small business owners I think in particular, if you're not there, the days aren't open. And I'd appreciate killing this bill in committee, and take any questions. [LB293]

SENATOR PAHLS: Senator Pankonin. [LB293]

SENATOR PANKONIN: Thank you, Chairman Pahls. Thank you for coming and your testimony. A couple of questions. The previous testifier talked about, you know, a lot of statistical data, but she's indicated that one of her concerns when we asked about policies, the extended...a person borrows four times in a row. You know, I know your time period you talked about may be a little different than some. But there's a sequence of continual borrowings, and that from a policy standpoint, if at that time then, if state policy was, they have a chance to pay that off, don't get any more new money, but pay that off. How do you feel about that? [LB293]

KEVIN BERNADT: Well, I suppose I wouldn't support that mandate, but I'll tell you honestly, sir, when I've got a customer who's really struggling and they just...they don't know...and they deposit the check and it comes back NSF. You know, I'll make a nice call; this is a courteous reminder to call your check; come back, you know, give us a call when you can take care of it. Next day I'll call again, you know, this is Kevin with Cash Solutions, just give me...and then if they don't, I call them and say you know what? We can make an arrangement. And he says, if you want to make some payments on this, we'll make some payments. You know, and then a lot of times that will get this person to call back and say, you know what? I need to do payments. And that's fine, but what I do tell my customers, if everybody did payments I wouldn't be in business anymore because it wouldn't...you just don't make any money off it that way. And my brother and I aren't raking...someone said we're predators, and we're making a windfall. That's not the case. I make a nice living for myself and my family as my brother and our employee. But we already offer that option when it's...when it's the last resort, you know. Obviously, we like people to pay in full, and then if they have to rewrite, then that's fine. But if they get in a bind, they can always work out something with us. But no, I don't think I would support the state mandating that. [LB293]

SENATOR PANKONIN: Okay. Second question is, what kind of losses...you know, you've been at it now long enough, and do you have losses...I shouldn't say, do you have losses? But I assume you have losses, and to what degree? What's your experience been with losses? [LB293]

KEVIN BERNADT: Okay. I can't give you a direct percentage or a dollar amount...well, I mean, I could probably give you a dollar amount, I suppose. It's not, you know, a super secret, but we...there's a high level of default on these, especially, you know, if someone defaults on a $500 advance. That hurts the small guy pretty good. But, you know, that's why people say our fees are outrageous. Well, compared to the alternative of bouncing a check, I think our fees are very reasonable. There's no collateral. I mean, there's...if they default on our advance, you know, I'll take them to my legal collection company that I use, one out of Grand Island that they also have an office now in Lincoln. And, you know, use it...they have to have a job. For my requirements, the person has to have a job. I don't take Social Security disability income anymore. We used to till we...you know, you get smarter as you go with the industry, and we think we're going to stay away from that clientele. So, you know, I think we provide a service that people need and people demand, and compared to the alternative of bouncing a check or of paying a late fee to your credit card or paying a late fee to the merchant, that I think it's a pretty sensible solution. [LB293]

SENATOR PANKONIN: Okay. Thank you. [LB293]

SENATOR PAHLS: Seeing no more questions, we appreciate your testimony. And just for...just to help me out, how many more opponents? One, two, three. I'm just going to ask you not to repeat past testimony, if possible. [LB293]

RICH HORNER: Senator Pahls and members of the Banking Committee, thanks for giving me the opportunity to speak to you today. My name is Rich Horner, H-o-r-n-e-r, and I represent Wyoming Financial Lenders. We are a business originally founded in Nebraska in 1999, and we operate 14 stores throughout the state. So I'd consider us to be one of the medium-size lenders. Our stores do more than simply do payday loans, though. However, we're also a check cashing business, and we're also a Western Union agent, so we collect utility payments for customers, so kind of a full-service business. I'll be very brief. I just...there's just three points, you know, to not be repetitive with things that have already been presented. But, you know, I think in discussing LB293, I think it's important that we call a spade a spade, and that is that this bill is intended to kill our industry. Last year Senator Nantkes introduced legislation through the Judiciary Committee to effectively outlaw the business in the state. It did not make it out of the committee. This year, this version of that bill at a 36 percent APR would have the same effect in our opinion, at 36 percent APR or put differently, $3 per hundred advanced, which is what that would translate into; would effectively kill the payday advance business for our company. There may be others out there that can make a profit and remain in business, but you don't need a law to cap our industry at 36 percent. If there is a...in our opinion, you don't need to pass a law that caps the interest, because if...we've heard today testimony on churches, Wal-Mart, banks, credit unions, other alternatives. And really, that's the million dollar question is, is if you do away with our industry, what replaces it? And from our point of view, is if there's a way to offer a similar product to consumers at less than $15 per hundred, then someone would be doing it today. And if they could do it effectively and profitably, the free market would mean that would end our industry right there by itself because if I'm a consumer, and I can go and borrow on a short-term basis on an unsecured short-term, couple hundred dollars till payday, and pay somebody say, $5 per hundred instead of 15, well, that's where I'm going. And so...and we believe that banks and credit unions are not offering this product because it simply...it's a high transaction cost, unsecured, high-risk product. And we fill a very unique niche, and that's why we do that. The last point that I want to make is, you know, we've heard a lot of numbers flying around as to percentage rates, and what percentage rates do we charge? You know, I heard 460 percent. We've heard 390 percent. Actually, I thought...I was in the back of the room, but I thought I heard 13 million percent. I believe that's what one of the persons testifying, and it's like, if that's the case, you know wow. I mean (laugh) that's some great profit. But I can tell you, that, you know, an annual percentage rate, when discussing a payday advance, is really...it's just...it's a....it's not right to look at a payday advance at an annual percentage rate, and here's why. You know, an annual percentage rate, which is applied to a traditional bank loan implies that the money advanced accrues interest, penalties, late fees, etcetera over time. If you come to one of our stores, and you need $100, and you write me a check for a hundred bucks, I give you $85 back. I make $15 on that, and it's due in, let's say, three weeks. You come back, I've made $15. Okay? If you need it for 34 days which is the maximum allowed under the existing Nebraska law today, I make 15 bucks. If you write a check, and it's due in three weeks, and I deposit it, and it bounces, and you come back 12 months from now, I still get a hundred dollars. I don't get 360 or 460 or, you know, whatever. I'm not allowed to earn a penny more than the original one-time fee for loaning you or advancing you that money. So if your check bounces, and it's...and I end up sitting on that and holding it for a year, that's all I get back. So, you know, it's a one-time fee, you know, it's not a triple digit percentage rate. So those are my points. I'll be happy to take any questions that you might have and thanks for your time today. [LB293]

SENATOR PAHLS: Senator Utter. [LB293]

SENATOR UTTER: Thank you, Chairman Pahls. Mr. Horner, all of your stores are in Nebraska, your 14 stores? [LB293]

RICH HORNER: Yes. [LB293]

SENATOR UTTER: Is Wyoming Financial Lenders domiciled in Wyoming? [LB293]

RICHARD HORNER: Our owner, about three years ago, sold our company to a company based in Casper, so we have stores in other states now. The 14 stores that were originally started are all in Nebraska. [LB293]

SENATOR UTTER: Okay. Thank you. [LB293]

RICHARD HORNER: You bet. [LB293]

SENATOR PAHLS: Seeing no more questions, thank you. Thank you for your testimony. [LB293]

RICHARD HORNER: Thanks. [LB293]

BRENT UNDEREINER: Good afternoon. Thank you for letting me speak today. I'm a customer. My name is Brent Undereiner. Last name is spelled U-n-d-e-r-e-i-n-e-r. I'd like to begin by telling you that I take exception to people referring to these businesses as predatory lenders. As I said, I've been a customer. I don't consider these people to be loan sharks. There wasn't someone standing outside the door in a sharkskin suit with a baseball bat, saying hey buddy, you want a loan? Nothing like that. It was the choice that I made. I'm a disabled veteran. I'm on a very fixed income, and in the past, I've had circumstances where I was forced...rather, I made the choice to use the payday loan. I have no problem with it. And if the circumstances dictated again, I would do so again. There is nothing, in my opinion, that says that these people shouldn't do what they're doing. It's no different than what the banks do, in my opinion, what a credit union does. They're loaning you money. They get a profit for doing so. It's as simple as that in my eyes. And before I go any farther, I'd also like to say something (laugh) about the Wal-Mart situation. Be careful of Wal-Mart. Look at Wal-Mart's past with other businesses. Wal-Mart is Darth Vader, beware of the dark side (laughter). We don't need any more small businesses put out of business because of Wal-Mart. And to wrap up, for me, I'd also like to say that I take exception to having my personal information put on a database. For example, gentlemen, if each one of you were running a payday loan, and I went to you for a payday loan, I choose to give this gentleman my information, not to give it to you or you or you or any of the rest of you. If I choose to go to you later, that's my decision. I don't think it should be out there for everyone. Our information is out there enough as it is, and we don't need it put into anybody else's hands, as far as I can see. If you guys have any questions for me, I'd be happy to answer them (laugh). [LB293]

SENATOR PAHLS: Senator Pankonin. [LB293]

SENATOR PANKONIN: Thank you, Chairman Pahls. Thanks for coming today and testifying. Sir, the reasons that you just have used these services in the past could be...I mean, could be convenience? I mean, some of the other options may be an advance on a credit card, going to a bank or credit union. Why, in fact, did you make the choice you did? [LB293]

BRENT UNDEREINER: Well, number one, because of my fixed income, I've avoided the credit card thing altogether. When I was in the Navy, I had a credit card when my disability happened. I paid that credit card off, and that was the end of it. I made the decision that it's not a good idea to have one, because, you know, I'd rather not have something there that if I can't afford to go buy a $400 stereo, let's say, it's better that I not have a credit card there that's giving me the temptation to do it easier. The circumstances were, my car broke down, and I needed an extra amount of money to get it fixed. When I sat down and looked at my budget and looked at what I'm getting this month and what's going out, and what I'm going to have next month, I was able to go ahead, do this, pay it off, and that's it. And if it happens again or if another circumstance happened again, I could go ahead and do that. It's just a matter of keeping an eye on your numbers and doing the number crunching every month, keeping the budget in line, and doing your best to stay ahead of the game, if you will. Nobody's perfect; I'm not perfect. And I think some people don't use common sense when it comes to these things, but a lot of people do, and that's their choice. [LB293]

SENATOR PANKONIN: Thank you. [LB293]

SENATOR PAHLS: Senator. [LB293]

SENATOR GLOOR: Thank you, Chairman Pahls. And, again, thank you for coming in and thank you for your service to our country. You gave Senator Pankonin an example. Is that the only time that you've used this service? [LB293]

BRENT UNDEREINER: No. No, it's not. [LB293]

SENATOR GLOOR: Do you mind telling me, how often have you used an advance service roughly? [LB293]

BRENT UNDEREINER: I've used them quite a bit. I normally keep track. I mean, it's...if the circumstance or if the circumstances warrant, and the ability to go elsewhere isn't there, then I don't; if it is, then I do. If...just, for example, I have a checking account at a bank. My money is direct deposited into the bank. I have an account at a credit union, but (laugh) the credit union...this is strange. The only reason I made the account at the credit union was to get cheap movie tickets (laughter), and other than that, I might as well be truthful. I like to go to movies, and that made it cheaper for me to do so. I applied for a loan through the credit union last Christmas and was turned down. Oh, well. I still get the cheap movie tickets, so I guess it wasn't a bad deal (laugh). So. [LB293]

SENATOR GLOOR: Have you ever defaulted? [LB293]

BRENT UNDEREINER: No. [LB293]

SENATOR GLOOR: Okay. [LB293]

BRENT UNDEREINER: Nope. [LB293]

SENATOR GLOOR: And can I ask, why did you decide to come down and provide testimony today? Were you solicited or was this something you feel passionate about? [LB293]

BRENT UNDEREINER: A friend of mine told me about this. I was here last year, and I feel that it doesn't...in my opinion, there needs to be somebody here from the public, not just somebody that's running the business or somebody that's against it. I'm a customer, and I don't know if there's anyone else here that's a customer, but I feel like our voice needs to be heard here, too. They provide a service, and for me, it's been a handy service, and I have no problem with it. I've never walked out of a payday loan place and kicked myself, going oh, I shouldn't have done that, you know, because number one, like I said, I know what I've got coming in. I know what I've got going out. And I'm not putting myself in a position where I'm digging a hole and just digging it deeper and deeper and deeper and deeper. To me, that's not logical, and I'm not going to do that, so there you have it. Plus I think there's a misconception about payday loans in that Joe Smith comes in off the street and gets a payday loan, and two weeks or a month later, he goes in, and in order to pay the payday loan back, he has to take a loan out to pay it back. Well, just in case anybody thinks that this is the way it works, it isn't. If I go to someone to get a payday loan, at least in my experience, when I go to pay it back, I have to pay them back before they're going to do anything with me again. So it's not like I can go borrow from them to pay them back. It doesn't work that way. And both last year and today I've heard, if not said in so many words, at least implied that that happens. Not anyplace I've ever been. And there's also been some insinuations about...made today about the payday loan business taking advantage of the military. I've seen in payday loan businesses in the past, notices that if you're in the military, we can't help you which, you know, they're not taking advantage of them now because I don't know if they've been put in a position where they can't help these people for whatever reason. But that's not the case. And another thing is, these check cashing or payday loan institutions, that's not all they provide. Just this year I was in a position where I needed a money order, so I went down to my bank to get a money order, and I forget how much it was they wanted to charge me, it was like $2 or $3. Well, Lance gave it to me for ten cents at his place (laugh), so I would rather go down there and get it than deal with my bank, saves me a couple of bucks. Hey, no problem. [LB293]

SENATOR GLOOR: Thank you. [LB293]

BRENT UNDEREINER: No problem. Thank you, gentlemen. [LB293]

SENATOR PAHLS: Appreciate your testimony. I think this is our final opponent. [LB293]

REMI STONE: Good afternoon, Mr. Chairman, members of the committee. My name is Remi Stone, R-e-m-i S-t-o-n-e, last part is the easy part. Mr. Chairman, I had a whole pile of copious notes here, and they've become a whole pile of scribbled out, copious notes since most of the things that I wanted to mention to you have already been addressed. But I do want to point out a few things to you. You've heard the word, predatory lender, thrown out here a whole bunch. To put it in real clear layman's terms as to what a predatory lender is, it's a lending situation where somebody meets with a bunch of surprises. To be absolutely clear, payday lending is not predatory lending. There are no hidden fees; no hidden terms; no accrued interest; no late fees. We are what you see. A hundred bucks, we'll charge you $17.50 here in Nebraska. Doesn't matter if it's for two weeks, if it's for 31 days, or if you come back a year from now and pay us off, $17.50 a hundred, that's what it is. So I just wanted to make that absolutely clear, a better definition as to what predatory lending is. Second of all, there is some question about what the demographic is for our customer, and I will provide the committee, aggregate...national aggregate so you have a good idea of the profile. But

Ms. Cirillo was correct. On average, they're mid-forties, tend to be female, college educated, own their own home, have a checking account, have a job, and are mid-thirties to mid-forties. That's who the person is that we see nationally. Oh, and I forgot to tell you who I represent. I represent Advance America, the nation's largest payday lender. We have 24 storefronts here in Nebraska, and the question of growth came up. We're not a growth company. We were about five, ten years ago. We are fairly static, and we intend to maintain a static storefront presence here in Nebraska. The idea of lending to the military has come up. We do not lend to the military; 36 percent APR, make no mistakes, is a ban to the product. It's $1.38 per hundred. We cannot afford to make this credit option available to the military. We've denied them as policymakers that opportunity to have a reasonable financial choice. And, finally, Mr. Chairman, competition is good. We believe that regulated storefront products here in the state of Nebraska is a necessity. It's a wise thing to do. It's a smart move to maintain this product regulated in a storefront manner. And I will leave you with the idea about mandates or no mandates. I think all of you should have received a list of best practices that I mailed to you. It looks very much like this. I think you might have got it in blue, but the idea that we don't want bad apples in our industry is true. And we've coalesced through both the state association and through a national association to encourage our members and actually require our members to comply with best practices. And the two things...and we do this as an industry. We audit our own members to make sure that they're complying with these best practices. And two of the things that I want to point out to you is one, the extended payment plan. We happily, willfully do this. The other thing, and it's in regard to debt collections. Our model for our members to follow is the Fair Debt Collection Practices Act. It was an atrocity what I heard about what happened to that poor person who was hounded by a debt collector. If they were following the federal Fair Debt Collection Practices Act, that person would have had a very different experience. So I'll sit for any questions, Mr. Chair. [LB293]

SENATOR PAHLS: Seeing no questions, we thank you for your testimony. That should conclude our opponents. Anybody in the neutral? The floor is yours. [LB293]

LORI LOTHRINGER: (Exhibit 8) Good afternoon, Senator Pahls, members of the Banking, Commerce Committee. My name is Dr. Lori Lothringer. I work at Metropolitan Community College where I serve as the director of the financial planning program. Thank you for this opportunity today to detail for you the size, scope, and voracity, or lack thereof, of the payday lending institution organization and industry. Although very few payday lenders existed in the early 1990s, by 2006 there were more than 15,000 holding $25 billion in outstanding loans. This $85 billion industry has enjoyed an annualized growth rate of almost 500 percent. Charge-off rates for bad loans of less than 4 percent; gross margins estimated at 30 to 40 percent, and an ROI of almost 24 percent. This unprecedented growth can be attributed to an aggressive industry model where stores are concentrated and populated, in the areas populated by minority and low-income residents. Loans are extended at APRs of 500 percent are greater without regard for ability to repay. These are not accurately characterized as boutique or small-scale operations in most areas. When payback becomes a problem, customers are often persuaded to roll loans over with the typical loan roll, 10 to 12 times per year. Repeat business is encouraged, and customers are frequently persuaded to take out more than one loan at a time. Installment repayment is often prohibited, and payday lenders frequently deposit customers' checks with full knowledge adequate account funds do not exist, allowing for the assessment of insufficient funds fees, and bounced check charges. Other coercive collection practices include threatening customers with civil or criminal prosecution under bad check laws and improperly capturing Social Security benefits. These lenders utilize small claims courts as industry collection agencies and limit redress through the inclusion of contract arbitration clauses. There is blatant disregard for protective federal legislation including the Fair Debt Collection Practices Act, the Truth in Lending Act, and RICO. However, goodwill is created through charitable gifting and executive service on nonprofit boards. Unfortunately, these contributions are often pulled when charities support legislation intending to limit the payday loan industry. Trade organizations are represented here today, have been created for the purposes of advertising, lobbying, and these groups contribute millions of dollars each year annually to state-level candidates and ballot initiatives. To justify business practices, research from leading academic institutions is commissioned and published even though the U.S. Government Accountability Office questions the reliability and validity of such work. Industry efforts to circumvent regulation have included the creation and utilization of credit services organizations, lease payback companies, and rent-a-bank schemes. As a result of aggressive business tactics, industry profits have attracted leading institutional investors. These organizations place the stocks of payday lenders in numerous mutual funds naively held in the retirement accounts of tens of thousands of Americans, thus making us their owners. In consideration of the studies indicating a positive relationship between the use of payday lending and bankruptcy, and in the absence of empirical evidence research evidencing the effectiveness of policies meant to contain, perhaps the greatest industry success is convincing policymakers and social activists that the continued existence of the payday loan industry is in the best interest of those served. Thank you for your time. I welcome any questions, and I apologize; I didn't spell my name. It's Lori, L-o-r-i Lothringer, L-o-t-h-r-i-n-g-e-r. Thank you. [LB293]

SENATOR PAHLS: Any questions? And you're going under neutral? [LB293]

LORI LOTHRINGER: Well, you know, (laughter) we're not going to take a position on either piece. We, obviously, have certain very strong...but we want to maintain that academic perspective. [LB293]

SENATOR PAHLS: Okay, thank you. Any questions? [LB293]

SENATOR LANGEMEIER: That was my question. I (laughter)...I put you in the proponent side. I don't think you can stay neutral with that testimony, as I read it, in any form of the word. Thanks. [LB293]

SENATOR PAHLS: Seeing no questions, we do thank you for your testimony. [LB293]

LORI LOTHRINGER: Thank you. [LB293]

SENATOR PAHLS: I think we're ready for closing. [LB293]

SENATOR NANTKES: Chairman Pahls, members of the committee, I will be brief (laugh) as the hearing on this bill has been much longer than I anticipated, and you have been patient and kind in your consideration. But I think the length dictates to us the level of interest surrounding this bill as a whole. While I appreciate the fact that we all have to search out and find levity in everyday life and situations, particularly with all the different issues that...typical issues that we're asked to deal with as state legislators, I do not believe as Mr. Yost and Ms. Johnson seem to believe that this is a laughing matter, because it's not. You've heard heartfelt testimony from various nonprofit groups across the state, from citizens across the state, from consumer advocates with specific expertise in this area, from members of the faith community and churches that come to us from Nebraska and city officials as well, that predatory lending and payday lending is hurting our communities and hurting our citizens. For those very reasons, that is why the military lobbied Congress to put a 36 percent cap on the types of loans that can be provided to military families. That is why the payday lending industry is considered an inherently problematic industry by the Better Business Bureau of America. LB293 will admittedly not end poverty, but it says, here in Nebraska people cannot profit from those that are in poverty, and they cannot help to continue the debt and continue the cycle of poverty that these types of financial services do perpetrate. To clarify for the record, I did introduce legislation surrounding this issue last session. It was referred to the Judiciary Committee which I'm sure Senator Pirsch can remember our hearing on that regard. That legislation did advance out of committee, as amended, with a 36 percent cap on this industry. Thank you. [LB293]

SENATOR PAHLS: (Exhibit 9) Okay. Any questions for the senator? Thank you. That closes the hearing on LB293, and now we're ready for LB431. And, again, I want to reemphasize, for those people--proponents or opponents, you do not have to give your full detail if you have already testified. We understand where you're coming from. I think we are ready, Senator. [LB293]

SENATOR McGILL: Ready? []

SENATOR PAHLS: Yes. []

SENATOR McGILL: Okay, I'll try to keep this...well, not too long. I've got a lot of notes, obviously, after getting the chance to listen to that hearing, leading into my own since the topic is essentially the same. I'm Senator Amanda McGill. I represent the 26th District in the Legislature. I'm not going to go over all the reasons that I think payday lending is an industry that we need to be taking a closer look at. You've gotten an earful already over the next several hours. But I do want to just clarify from the get-go that it is not my goal at all to shut down the industry in Nebraska. My goal is to help stop people from getting caught in that cycle of debt. The reasons that I do not support the ban on payday lending in Nebraska or that 36 percent cap is because right now it does seem necessary. The alternatives aren't set up in Nebraska, and in many of the states where they have banned payday lending, and there's 15 now...15 and counting, because every year two or three more do ban payday lending or cap it at 36 percent. But in those states, there are questions about the number of bankruptcies going up and other problematic things happening, because there is not that outlet anymore so that's one of the reasons. The second is that right now we don't have good data on Nebraska. We don't have a database or anyone else collecting information. We don't even know how many transactions take place in a year, much less just in Douglas County or just in Lancaster County, or what the average amounts are that people are taking out; we don't know. And so I feel we can't make the case right now quantitatively anyway, that we shouldn't have payday lending in Nebraska. And third, because I do believe in a sense of personal responsibility, that I know some of the folks who come in here using payday lenders have said, you know, we do have the right to go in and use these facilities. But, again, it's my goal to just prevent people from getting caught in that cycle of debt and becoming dependent on payday lenders. I believe this new legislation is necessary because most of our laws on this were written 15 years ago before the industry started to multiply like bunnies. We started with a handful, and I consulted Senator Landis last year on this issue, because he was the chairman during that time, and he looked at me and said, I had no idea the industry was going to grow like this, none. And he helped me, let me bounce ideas off of him and thoughts as I was looking at what kind of legislation I could address. My bill primarily has the two parts, the first being the database. And with all due respect to the testifiers in the last hearing, many, many states have databases, and it hasn't hurt the industry one bit. They're still thriving in those states. Right now, there's 19 states that require data of some sort, and remember, there are 15 that don't allow payday lending at all, so then there are 19 that have databases, seven of which, for sure have the type of database that I'm proposing that is real time, and those include Florida, Oklahoma, Michigan, Illinois, North Dakota, New Mexico, and Idaho. Databases are common, and I have a whole stack of legislation that NCSL has collected that different states have introduced on payday lending just last year, and many of those included databases. Two additional ones that were added were Virginia and Kentucky, and Colorado and Kansas have also introduced legislation that includes databases because folks are seeing that we need to be collecting information on this. So this is not an unusual request. The database would be to collect the basic info, so we know how much business is going on in the state, and second, and I think this is very important is that it does...right now it is against the law for someone to take out a loan at one payday lender, and then go to another company and take out another, and go to a third and take out a loan there and bounce around. But we have no way to track that right now. They're not all interconnected, so Paycheck Advance doesn't know that someone has one out at some other location, Check and Go. So this database run by the Department of Banking, so, you know, Paycheck Advance can't see all the data on this other person's customer, but they will be flagged if that person has a loan out somewhere else. This individual's information isn't going to be shared with all these other locations like it sounded like one of the testifiers was concerned about, but it would help prevent that bouncing around which is already illegal. Right now we just have no way to enforce it, so why have this law on the books if we don't have a way to enforce it, and I think the database will do that. And, again, many other states have the database for the same reason. The second part of my legislation that I think is also very important is a waiting period in between payday advances. Right now, rollovers are illegal in Nebraska. That is one of the regulations that we have. However, if you go in, and most people pay off their loans in cash, actually, even though they leave two checks there, they usually come back into the store and pay with cash to finalize that transaction. They can just go back that same day, turn around, and say, I want to take out another one of these. I think that a person...it would be better to have the person be able to go home and consider if they really do need to take out that next loan. So we all know human beings are impulsive, and there's all kinds of things we want to buy (laugh). And I believe that having that, at least one-day waiting period...my bill calls for 72 hours, but that's negotiable in my mind. I think at least having a day to go home and consider whether they really need to take out another loan is a responsible bit of regulation that we could put in. And really that is the only new regulation in this bill, since the database isn't technically a regulation; it's just helping to enforce current regulation. Over the interim, and I know last year in this hearing, for those of you who were here before, Walt Radcliffe did testify that he had offered to give me some data on his own without a database, and was kind of critical of me for not taking him up on that. So I did, and he was able to give me some data that represents 60 percent of the industry in Nebraska. He wasn't able to get 100 percent or even in my mind, close to that. And it was self-collected data from the industry, but I do want to share some of that information with you, because I think it honestly helps make my point, that in Nebraska, from this data, the average cash advance in 2007 was $286. That is $50 in fees per transaction of that amount. The average person took out ten transactions a year, so it's almost one a month, and that means that that average person paid $500 in fees during the year. For the types of people who are taking these loans out, $500 is a lot of money. And then a fourth of those transactions, according to this data, were same day transactions where the person paid one off and took another one out right away. So a fourth which ends up...yeah, a fourth of their business is that same-day transaction. Now many of those people will still come back a day or two later because they do seriously need these loans, but I think when you see that high number of people that are just technically not rolling over a loan, but still are taking...paying in cash, possibly from another payday lender that they went and got cash from, and then take it to the one that they owed money at in the first place, and, you know, then go and take out another loan right away. It's just a cycle that I think we can help stop. And in our current economy, and the way that we've seen people get into debt and businesses get into debt, I feel like we all can step it up a little bit when it comes to being responsible for each other and ourselves. You're probably going to hear testimony that my legislation is much like Danielle's or the sky is falling, and this is going to be an end to the industry, I base this on other laws. And you'll see that even in my testimony here today or the information I'm presenting, I'm not even really using...I'm not using data from the Center for Responsible Lending, because I realize that it's an organization that really leans heavily towards the ban...you know, banning of this industry. But I would submit the same goes for the woman who testified from the Cypress Research Group. She travels the country and testifies against payday lending legislation, and yet in her own state, Ohio, they just passed the cap that Senator Nantkes' bill was modeled after. So clearly, her evidence wasn't even taken...or was not found serious enough in her own state that they still went and passed this cap. And so I would submit that maybe ruling out some of the data from either of those far sides of the eye would be appropriate and look at what other states are doing in terms of this, which is what I've done. I've looked at all the states and tried to find some new regulation or some...looking at what other states do in their regulations or requirements, and just trying to, you know, help people not get caught up in that. You know, we need in Nebraska and everywhere, to have a balance of responsible business, responsible government, and responsible individuals. And I think this bill takes all of those into account. Thank you. Any questions? [LB431]

SENATOR PAHLS: Senator Pankonin. [LB431]

SENATOR PANKONIN: Thank you, Chairman Pahls. Thank you, Senator McGill. Someone in testimony and, obviously, you were here for most of the testimony... [LB431]

SENATOR McGILL: Yeah, I was. [LB431]

SENATOR PANKONIN: ...yeah. Someone said your bill had the fees on....I'm trying to think, on the business or... [LB431]

SENATOR McGILL: They are. [LB431]

SENATOR PANKONIN: Okay. Is that different...you know, you've mentioned all these other states, and the indication was that... [LB431]

SENATOR McGILL: You know, and I don't...I don't know how they paid for theirs, and that's something I would be interested...and I would be willing to look into. Right now, my bill calls for additional $100 licensing fee for each location which I don't think that's really the problem that anybody has. It's the $1 or 50 cents on each transaction that folks are concerned about. I, of course, don't really like the idea of raising the fee on individuals, but I'd be willing to have that discussion and look into how some other states did fund it. But I know that not...from the looks of it, what I've seen, especially Oklahoma is the one that I have the most data on, it's certainly...whatever requirements they had with the database certainly didn't shut down the industry or close a lot of storefronts. It didn't, because the industry is still thriving there. In fact, some critics say that the database didn't do enough to help curb the problem. [LB431]

SENATOR PANKONIN: Okay, thank you. [LB431]

SENATOR PAHLS: (Exhibit 1) Senator Utter. [LB431]

SENATOR UTTER: Thank you, Chairman Pahls. Senator McGill, the database has a single purpose, and that's just to prevent somebody getting a loan from one payday lender to pay off the last payday lender. Is that the only purpose for the database? [LB431]

SENATOR McGILL: Well, I think it's important to collect basic data, too. [LB431]

SENATOR UTTER: And what would you do with that basic data? [LB431]

SENATOR McGILL: Well, it gives us a better birds-eye view of how the industry is impacting Nebraska. I mean, we do see this wave going across the country, and I have a map here. These are the states that are highlighted that have essentially banned payday lending, and every year it's moving this way across the country. And, I mean, we have a couple out here. Arizona is one of the new ones that next year their ban starts or their 36 percent cap. So we're seeing this wave of interest in this issue, but we don't have information here in Nebraska to prove whether we should or shouldn't... [LB431]

SENATOR UTTER: So do you have any feeling of the bouncing around that you've...and I take it that when you were using those terms, that meant using this payday lender to pay off the last one. [LB431]

SENATOR McGILL: From one location to another one and...yeah. [LB431]

SENATOR UTTER: Do you have any feeling about how much bouncing around there is? [LB431]

SENATOR McGILL: That's hard to quantify, but I have heard from individuals that they've done it, people who have admitted...and it's hard to get people to come in and testify and admit to it, because they're embarrassed that they can't manage their finances properly, or they do admittedly, you know, use them and don't mind using them, but are just ashamed to admit that they use them or do that. [LB431]

SENATOR UTTER: So the debt... [LB431]

SENATOR McGILL: And it's illegal to bounce around so (laugh)... [LB431]

SENATOR UTTER: ...the database then would...if I was a payday lender,... [LB431]

SENATOR McGILL: ...um-hum. [LB431]

SENATOR UTTER: ...and somebody come in to get a payday loan, then I would access this database at a cost of a buck or a buck-and-a-half,... [LB431]

SENATOR McGILL: Um-hum. [LB431]

SENATOR UTTER: ...and all that base would tell me as another payday lender is whether or not that person had a current outstanding loan? [LB431]

SENATOR McGILL: On your end of things, yes. I mean, it also allows the state to then collect data. [LB431]

SENATOR UTTER: But another payday lender... [LB431]

SENATOR McGILL: But the practical impact on you. [LB431]

SENATOR UTTER: ...another payday lender would only find out whether or not there's a current outstanding loan at some payday lender. [LB431]

SENATOR McGILL: Yes, yes. And I would be happy to take into any other thoughts with the committee. This piece of legislation is very important to me, and if there are other avenues you think are important to take, or that would be less controversial, I'd be very open to listening to those. But I feel these are some reasonable measures. [LB431]

SENATOR PAHLS: Senator Christensen. [LB431]

SENATOR CHRISTENSEN: Thank you, Chairman Pahls. Thank you, Senator. Looking on your fiscal note,... [LB431]

SENATOR McGILL: Um-hum. [LB431]

SENATOR CHRISTENSEN: ...you know, it's very positive, the first year here. Then 2010, 2011, they don't show any revenue, and you come down with the expenditures of 2009, 2010, 2011, do we not have...? [LB431]

SENATOR McGILL: What's happening there, Senator Christensen, is that at that point in 2010 and 2011, the money that would be generated for the database would be going directly to the vendor. So that first year, that revenue is coming back to the state to help set the database up. But then the revenue...there is revenue, but it's just going...it's not coming into the state. It's going into Vertech or whatever database company or firm that the banking department would choose to use. And then that other expenditure, I believe, is an employee through the Department of Banking or that...yeah, that expenditure you're seeing. [LB431]

SENATOR CHRISTENSEN: So we are going to have a... [LB431]

SENATOR McGILL: A small one. There is that fiscal note on the second year. The first year helps make up for it a little bit, but... [LB431]

SENATOR CHRISTENSEN: Yeah, but this is legitimate in your end of it. [LB431]

SENATOR McGILL: ...there is an employee in there. Yeah. [LB431]

SENATOR CHRISTENSEN: Okay. Thank you. [LB431]

SENATOR McGILL: And I believe the fiscal note even says, down below, I quote that "The Department of Banking and Finance estimates, with respect to the fiscal impact of LB431, generally appears to be reasonable." So the banking department is pretty content with the fiscal note. [LB431]

SENATOR CHRISTENSEN: Okay. [LB431]

SENATOR PAHLS: Senator Langemeier. [LB431]

SENATOR LANGEMEIER: One real quick question. [LB431]

SENATOR McGILL: Um-hum. [LB431]

SENATOR LANGEMEIER: And I'm trying to find in here very quickly, is the $1, $1.50 fee you want to charge, are you trying to lower their $17.50 and take it out of their cut or are you trying to add it so it's now 19 bucks? [LB431]

SENATOR McGILL: It would not be adding to it. I mean, that's something we could discuss, but it would be taking it out of their cut. And it's a dollar, and then I think it goes down to 50 cents. I don't think it's ever $1.50. I think it starts as a dollar and goes down to 50 cents, if I remember correctly. [LB431]

SENATOR LANGEMEIER: Okay. But you're thinking...but you hope to take that out of their base cut. [LB431]

SENATOR McGILL: Yes. [LB431]

SENATOR LANGEMEIER: Okay. Thank you. [LB431]

SENATOR McGILL: I would prefer that over...instead of passing it along to the customer, since I do...I do feel the fees are high, but I understand that's how they make a living. But that's something we could talk about. [LB431]

SENATOR PAHLS: Senator Utter. [LB431]

SENATOR UTTER: Just another real short question, Senator McGill. [LB431]

SENATOR McGILL: Um-hum. [LB431]

SENATOR UTTER: Since the Department of Banking is a cash-funded agency, and so somebody's got to come up with that 50-some thousand dollar shortfall in that second year. How do you propose they'd raise that money to meet that shortfall? [LB431]

SENATOR McGILL: Well, I can take a closer look at the fiscal note, and how that money is being shared. Like I said, there's that zero amount there, but that...all the money...most of that money being brought in from the industry still, I think they just assumed it would all go directly to that database operator. I imagine there's going to be more than enough money there to also go towards that. And at least for this next two years, the revenue raised in '09, '10 would cover both of those two years. [LB431]

SENATOR UTTER: But this is going to be a continuing... [LB431]

SENATOR McGILL: Yes, and that is true. [LB431]

SENATOR UTTER: Right? [LB431]

SENATOR McGILL: And that's something we can look into. [LB431]

SENATOR UTTER: Thank you. [LB431]

SENATOR PAHLS: Seeing no more questions, thank you. [LB431]

SENATOR McGILL: Thank you very much. [LB431]

SENATOR PAHLS: Proponents? I just have a show of hands. How many proponents? I see two proponents. Opponents? One, two, three, four. And neutral? Okay. Again, I'm going to say if you have testified before, you do not have to give your full spiel. Thank you. [LB431]

JULIE KALKOWSKI: (Exhibits 2 and 3) Good afternoon. My name is Julie Kalkowski, K-a-l-k-o-w-s-k-i. I'm the managing director of the Financial Stability Partnership. It's a collaborative between United Way of the Midlands and the University of Nebraska at Omaha. Last year we commissioned a study to look at payday lending in Douglas and Sarpy County. We've talked about the need for data, but we did do some...we're able to find some data. You're getting a fact sheet that also has a web site. I did not print out...my sister works for the Forest Department, said don't print out...you know, things that are a hundred pages for everybody. So if you need to go to the web site, you can check it out there. One of the things that we did find in Omaha was that we have a much higher demand for payday loans in Douglas, Sarpy County than the national average. Nationwide, there's one payday lender for every 3,500 households. In Douglas and Sarpy County, we have one payday lender for ever 2,300 households, so it indicates there's a higher demand. What our researchers also found, the researcher was George Omack (phonetic) who's an economist, Ph.D. He found that we had about 46,000 customers using payday loans in Douglas and Sarpy County, and he estimated that there was $19 million paid in excessive fees, and those were taken out...the excessive fees were paid by borrowers who took five or more payday loans last year. Over 70 percent of the borrowers repaid their payday loan with...we did a study, the Legal Aid Society, or Legal Aid of Nebraska did a survey for us, and 70 percent of the respondents said that they repaid a current payday loan with another payday loan. So there's documented evidence of multiple borrowing. In Douglas and Sarpy County, there's no local regulation. You'll also find out we just...we looked at...we did a map here. It shows the median income, shows the zip code, shows the number of payday lenders. And if you will note, more than half the payday lenders are located west of 72nd Street. Some of our...the number of folks talks about who the national,...or the average customer is; usually a woman, usually a renter with kids living at home, active bank account, poor credit history, and average income less than $50,000. So the other thing I want to talk about very quickly is that if you...a payday...people who have $500 in savings are eight times as likely to use a payday loan. And because of that, we are...it was a Financial Stability Partnership, we're really looking at, how do you create some alternatives? So tomorrow the Federal Reserve Bank is hosting a survey with...or a workshop. We're bringing in someone from North Carolina from their state employee credit union. They have had the longest-running alternative payday loans. For over eight years, they're offered payday loans. They have a savings component in it. So we're trying...and then we're also bringing in the FDIC who's going to talk about their experience. They've got a number of banks and credit unions that have done that. We have 12 banks, four credit unions that are coming to this meeting tomorrow. We're very active in looking at alternatives for this...to the payday lending. And I think that's about it. I know a lot of the stuff I was going to repeat, was talked about. But I do really want to support this bill. We need to have some hard numbers. We know that we have a higher...we have more payday loan lenders than other people. We don't know the volume. We don't know how many people are taking out loans. If we had that data, that's why we need the database for that program. And last but not least, I believe workplace financial education, we're running a program like that. We found that over the 600 graduates who have gone through this program in the past three years, none of them has taken out a payday loan. So education is important; alternatives are important; but also having the data so we can make good decisions is important. Thank you. [LB431]

SENATOR PIRSCH: Thank you very much for your testimony. Are there any questions based on that? Okay, seeing none, thank you very much for coming in. Next proponent? [LB431]

ANNEMARIE FOWLER: (Exhibit 4) Good afternoon, members of the Banking Committee. Thanks for taking your time. It's been a long afternoon. I appreciate your patience in listening to all of us. My name is Annemarie Fowler. It's A-n-n-e-m-a-r-i-e F-o-w-l-e-r, and I'm here to represent the Advocacy Subcommittee of Opportunity at Work. Opportunity at Work is a statewide coalition that is dedicated to strengthening the financial stability of Nebraskans, particularly working families. We are in full support of LB431, as it highlights the need for changes to Nebraska's Delayed Deposit Services Act which includes a 72-hour waiting period for small, short-term loans, and adopts a comprehensive database in which all licensees must participate. There is consistent and strong anecdotal evidence to suggest that delayed deposit services can be harmful to a family's financial stability, particularly for those that are involved in more than one short-term loan. And there is evidence as well in the study that Julie Kalkowski referred to that might suggest some damage to the economic impact of our state as a result of fees that are incurred. Much research throughout the United States can support these claims, but at this time as we've noted here today, we've noted the shortage of data in Nebraska. And LB431 will work to overcome this shortage of data and ensure that the delayed deposit service licensees and consumers are adhering to the laws of Nebraska. A key component to LB431 is the 72-hour waiting period between entering into a new delayed deposit transaction at any licensee location. A waiting period will help guard licensees from providing loans to consumers unable to repay loans, and furthermore, this waiting period will protect the consumer by lessening the fees that can occur as a result of rollovers, repeat borrowing, and renewals. A survey of consumers in Omaha found that in Omaha that over 70 percent of the borrowers surveyed had participated in multiple loans and loan renewals, thus incurring excessive fees. To ensure the adherence of Nebraska's laws, LB431 proposes the development of a database that will be used to facilitate compliance of the waiting period as well as other regulatory measures. It is important to note that LB431 does not put any interest rate caps on delayed deposit services which could cause such businesses to fail financially. Instead, it encourages some regulation to ensure that both licensees and consumers are protected and following the laws of Nebraska. While Nebraska data could confirm that delayed deposit services as they currently exist damage the financial security of Nebraska's families and communities, it is evident from testimony today that small, short-term loan services are needed in Nebraska. With the passage of this bill, Nebraska will not only be able to secure concrete data on the impact and need of delayed deposit services, but will be given the necessary time to develop and implement alternative solutions, if need be. Just as Julie Kalkowski mentioned, several groups tomorrow will be meeting at the Federal Reserve Bank in Omaha to begin that process. The Opportunity at Work Advocacy Subcommittee is in full support of this effort, and urges the advancement of LB431. It is our hope that Nebraska would act responsibly by ensuring that delayed deposit licensees and consumers are following a law, and that such financial products are helpful, not harmful to our families in our state. Thank you. And I'll take any questions. [LB431]

SENATOR PAHLS: Senator Pirsch. [LB431]

SENATOR PIRSCH: And just to clarify, there's the database, but also second facet of the bill requires a waiting period between loans. Is that correct? [LB431]

ANNEMARIE FOWLER: That's correct. It's my understanding. [LB431]

SENATOR PIRSCH: And that's 72 hours? [LB431]

ANNEMARIE FOWLER: That's my understanding at this time. [LB431]

SENATOR PIRSCH: Is there any...was it taken from a different state. Why 72 hours, I guess is the question, or is that just kind of common sensical in the minds of the framers of this...? [LB431]

ANNEMARIE FOWLER: I can't speak to why the 72 hours was chosen. I know that for states that have enacted a waiting period, it could be anywhere from 1 to 15 days is my understanding. [LB431]

SENATOR PIRSCH: Okay. Thank you. [LB431]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB431]

ANNEMARIE FOWLER: Thank you very much. [LB431]

SENATOR PAHLS: (Exhibit 5) Any more proponents? Opponents? How many opponents? If I can just have you move to the front, that would really give me a feel. Let's see, one, two, three, four, five? The floor is yours. [LB431]

PATRICIA CIRILLO: Be very quick. Patricia Cirillo, P-a-t-r-i-c-i-a C-i-r-i-l-l-o. Just want to bring up a couple of things. When it comes to research, I'm a methodologist by definition, because I'm a statistician, and the devil is often in the details of...in the boring part that we don't want to read when we read research studies. And I just wanted to point out one thing. The study that was done for the folks in Omaha, I'm always in support of any kind of a search that's going to push the knowledge base ahead, and teach us more about this market. But the survey was of people who contacted Legal Aid. It's not of the general base of borrowers and users of the product, so I just wanted to point that out, because it's important when you're interpreting the results. And the other thing was, it was characterized, and I see this a lot. You only see the...when legislative changes are being considered, you only see the...when something is enacted. You don't see what happens when something is not enacted when it's being discussed in these sorts of states. And I'm here just because I could be here. There's lots of other researchers (laugh). Like I said, there's probably about 10 or 12 of us that can give you their names in the universities that they work at, who are studying this, and I'm here mainly because I could be. I'm not teaching today, and I could be here. But they are just as common to be in this position working with legislators as I am. And there's lots of states where this discussion gets pretty in-depth, and then nothing ever happens. The legislators decides not to make the changes, and so it's just as common as the legislative. And I am actually working on a couple of studies for the legislators where there are no loans currently allowed which are considering reversing that. So there's probably at any given time 30 or 40 states which are actively considering this, and you only see the end impact of when the legislative really changes. So I don't want to...I don't think it's a fair characterization to say that the legislative is changing, you know, a wide sweep across the country. That's just not true. There's just as many where things go the other way or things stay stable, so that's it. [LB431]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. Next. [LB431]

PATRICIA CIRILLO: You're welcome. [LB431]

KEVIN BERNADT: Hi there. Kevin Bernadt again. K-e-v-i-n B--e-r-n-a-d-t. This time I'm going to spare you the enthralling story of my life, and how I got into this business. I just want to talk about the regulatory restrictions that we already have, and how small...I think the small...I'm here with the small business guys. Just my brother and I, and, you know, I think you get scared when you see things like a central database and extra fees that we're going to have to pay because my profit margin isn't as wide as the bigger guys. And when I've been bringing this up to my customers, their eyes get about this big when you're talking about a central database, and you're going to track where I am and who I'm doing business with. They don't like it. These are the consumers; these are my clientele, the people that I work with every day. I'm in my office every day serving these people, and they're scared of that, and they don't think it's something that's necessary in order to improve upon this industry. There's room for improvement in every industry. And then the second part of it is the waiting period. I think if you do enact a waiting period, a lot of my customers do it on their own. They'll come up, give me that cash, pay the check, you know, give it back or shred it up. And they say, see you next week. Okay, you know, because they're going to be okay for a couple weeks. Maybe they don't come in next week. Maybe they'll come in two months from now. But a lot of customers would like to have that option to rewrite, once it's paid off, it's done. They're free and clear, but if they want to take that...they need that money to put in their checking account or need to go pay a bill or whatnot, they have the opportunity to do that. And I think if you put a waiting period on this, I think there's going to be the unintended consequences of a lot NSFs bounced checks at the banks. And as we demonstrated earlier, those can kill you. I've seen bank statements of people who get whapped by the banks, because they don't got the funds in there. So I just want to tell you that I think from a small business perspective, this is very scary. The examinations every year are very thorough. The department does a wonderful job in my estimation, on going through our records, making sure we're playing by the rules and playing by the books. Just an example, we had a check--we've never had this happen before. My brother and I, we had to deposit it, and when it came back to us marked nonsufficient funds, it was marked by the bank after the 35 days of the legal limit. You have to have that in there for 34 days, excuse me. And, you know, what to do, we just broke the law. So we called the department and say, hey, we've got proof that we deposited this check. It wasn't a holiday. The bank should have ran it. We don't know why they didn't, so they work with you there. We are heavily regulated, and we encourage that, because, hey, I want to play by the rules and so, but this, I think, goes a little bit far. I do appreciate the senator's willingness to set an outlaw on this or putting a 36 percent cap which would outlaw us, trying to look at creative ways to improve. But I just don't think this is the way to go. Yes, sir. [LB431]

SENATOR PAHLS: Senator Utter. [LB431]

SENATOR UTTER: Do you think there are any ways to improve? [LB431]

KEVIN BERNADT: You know, there probably are. What I would look at probably are--one, the best way probably would be through collection methods is if we could have some kind of, you know, we can't have collateral. The collateral we have is you have a job, and you have working income. So I think there might be ways to improve, perhaps, recordkeeping of once--if they have to enter into collections or a payment plan. It's very hard to say as a person in the industry, because you think, things are going great now. I think we're doing okay, and you're...so I can't give you a specific on that. [LB431]

SENATOR UTTER: Thank you. [LB431]

SENATOR PAHLS: Seeing no more, thank you for your testimony. [LB431]

RICH HORNER: Gentlemen, Rich Horner, H-o-r-n-e-r. Just two comments on this...this additional bill, LB431. In terms of the database, we do currently operate in North Dakota which enacted a database two years ago, so we do have experience in working with that. And, you know, it has its pros and cons. You know, someone earlier testified that, you know, that Nebraska is predominately mom and pop, locally-owned businesses, and speaking from our experience in North Dakota, we've been operating there for seven or eight years. And we have seen a reduction in the number of payday loan operators there, and, in fact, we acquired some locally-owned businesses because they simply struggled. They were, you know, they were on the edge, and when the database went into effect, there were fewer customers. There's only so many customers to go around, and so we had an opportunity to actually grow our business. The payday business today in North Dakota, I think, is stabilized, but there are fewer operators there. So, you know, we've heard some testimony that, you know, there's been this explosion of payday lenders. I can't speak for why there are so many. I can say that our business has been operating in Nebraska for 12 years. I've been with the company for eight years, and in the eight years that I've been with the company, we have not opened any new locations whatsoever. We have seen many, many payday lenders, you know, open up new locations, you know, in the part of town from Omaha that I'm from, roughly four years ago in a six-month span, five new businesses opened up in about a one-mile stretch along a main road that...near my neighborhood. Two of those businesses are closed today. So I do think that market forces are currently taking care of the situation. I think the payday loan industry, as a whole, was fairly young. You know, it's only been around for 15 years. I think you're starting to see the number of locations come back down, just pure economics of it. So I think the market is actually addressing the issue of too many payday loan places everywhere. Ultimately, you know, if you're not making a profit, you're going to have to close your doors. In terms of the cooling-off period, you know, there's been a lot of testimony today about, you know, what is an alternative? What's the solution, you know? Really, if you take away or you severely restrict what payday lenders or cash advance businesses can do, what's the alternative for the consumer? I don't believe a three-day cooling-off period is going to provide that alternative. You're essentially saying to the consumer, well, you needed the money, you know, but it's due now, so you got to pay it off, and now you're just going to have to sort of deal with it for the next three days. And I don't think for a lot of our customers, that that's going to be a viable alternative. I think what you're going to really do is you're going to see an increase in bounced checks which is going to incur far more fees than they would pay for a $200 advance with us, or something that no one has really talked about today. If anybody's gotten on the Internet lately and just Googled payday loans, there are hundreds of unregulated payday lenders on the Internet. And that is an alternative that I think if you force the customers into a three-day period where they cannot access money when they have to have the money, you're going to push consumers into the Internet unregulated payday lending world where they can potentially borrow more than they can in our state with who knows what sort of collection practices and other things. So, you know, that's something that's out there that's really outside the control of the Banking Committee or any state regulation today. So that's all I have and thank you. [LB431]

SENATOR PAHLS: Senator Pankonin. [LB431]

SENATOR PANKONIN: Thank you, Chairman Pahls. Sir, that comment about the Internet, payday lenders. How do they function...obviously, the storefront contact that you're used to having with customers, how do they advance the money and how does it work? [LB431]

RICH HORNER: They ACH it into your account. Basically, you provide them with basic information on an application, bank name, bank routing number, and account number. They ACH it into your account, and then on a predetermined, agreed upon time they ACH it right back out of your account. [LB431]

SENATOR PANKONIN: Take it out and sign an ACH agreement. [LB431]

RICH HORNER: Correct. [LB431]

SENATOR PANKONIN: Okay. Thank you. [LB431]

SENATOR PAHLS: Senator Pirsch. [LB431]

SENATOR PIRSCH: You're saying that's unregulated in...? [LB431]

RICH HORNER: That is not regulated by any state. [LB431]

SENATOR PIRSCH: Interesting. [LB431]

RICH HORNER: To my knowledge, it's not regulated in Nebraska so. [LB431]

SENATOR PAHLS: Seeing no more questions, thank you. [LB431]

REMI STONE: Mr. Chairman, members of the committee, my name is Remi Stone, R-e-m-i S-t-o-n-e. I represent Advance America, the nation's largest payday lender. We're based out of South Carolina. We have 24 stores here in Nebraska, and we operate in 33 states, 9 of which have a database. Nebraska is an anomaly of a state in that you have two-thirds of your payday lending operators as mom and pops. They're not like my company which are national companies. We know from experience, that when a state adopts a database, the ma and pas go out of business. Just last week, a database bill was defeated in the state of South Dakota on a vote of 11 to 1, and the primary reason why I heard policymakers discussing the defeat, was one, the concern of privacy because there are lots of data privacy breeches--government breeches data, government data breeches, business data breeches. But the other thing that really concerned legislators in a state that's really working to keep their small businesses going is that it costs on...it costs per storefront $2,500 to be able to set up that database. That's crippling to your small business. So, you know, you have the privacy concerns. You have the cost concerns. You have the concern that unlike any other product, government is choosing to mine data on people's use of one specific credit product. We're not mining data on auto loans or credit card use or bounced check fees--it's payday lending. And we come with baggage; our moniker comes with baggage, but the reality is it's a viable credit choice that's...we're being asked to treat different. So that's my piece on data practices. I did want to mention to you, however, there was a comment about the Better Business Bureau, and how the Better Business Bureau is frowning upon payday lending. They adopted a new credit-rating system; it was effective January 1. As of February 18, the Better Business Bureau removed its problematic status for payday lending, so what you heard previously about the Better Business Bureau frowning upon payday lending is not accurate. [LB431]

SENATOR PAHLS: Seeing no questions, thank you. [LB431]

REMI STONE: Thank you. [LB431]

KURT YOST: Chairman Pahls, members of the Banking, Commerce and Insurance Committee, I will be extremely brief. My name again is Kurt, K-u-r-t Yost, Y-o-s-t, the registered lobbyist for Midwest Check Cashing, Inc., and I also am here today on the authority of the Nebraska Chamber of Commerce and Industry on LB431 in opposition. I was...I get...you wanted me to be brief (laughter), so I'm really brief (laughter). I was identified earlier as the father of this (laughter), and based on the three-and-a-half hours of conversation we've had on the subject, the late deposit (laugh), we're all grandfathers on the subject, right? [LB431]

SENATOR PAHLS: We thank you for your testimony. [LB431]

KURT YOST: Thank you, Mr. Chairman (laugh). [LB431]

CRAIG GROAT: (Exhibit 6) I'm Craig Groat. There was a comment made earlier... [LB431]

SENATOR PAHLS: You're testifying in which? [LB431]

CRAIG GROAT: Against this. [LB431]

SENATOR PAHLS: Okay. [LB431]

CRAIG GROAT: The reason why is this basically codifies into law something that should be eliminated. One of the dirty secrets is, many of these payday lenders are simply fronts for banking companies. If that doesn't come through in the documentation I gave you, as always, I will provide you with overwhelming documentation to that effect with everything I do here. A individual... [LB431]

SENATOR PAHLS: Are you going to give us copies of this? [LB431]

CRAIG GROAT: Yes. [LB431]

SENATOR PAHLS: Okay. I'm going to ask you, just sort of give us a brief outline because we will...we have the information, if you'd give it to us. [LB431]

CRAIG GROAT: Well, I have found that this doesn't go in the record. I was looking for something last summer, and this does not go into the record, and also the people that are listening very much need to hear this. So it's, it's... [LB431]

SENATOR PAHLS: It is getting late, so I'm going to ask you to be... [LB431]

CRAIG GROAT: I'll be as brief as I can. [LB431]

SENATOR PAHLS: Okay, okay. [LB431]

CRAIG GROAT: I hope that I won't take more than four minutes here. An individual mentioned that the definition of predatory lending was just by you folks. This is defined as predatory lending by the federal government, and, again, I will give you far more additional documentation to that effect. Again, now this is from Consumers Union which is the overseeing company of <u>Consumer Reports</u>. Consumers Union helped defeat the payday loan industry's state legislation in Texas. This legislation would have licensed payday lenders and authorized them to charge rates of over 900 percent. Similar safe harbor legislation authorizing payday lenders to charge higher rates has been proposed all over the country and adopted in many states, most recently in Oklahoma. The industry wants legislation because federal regulators have been cracking down on rent-a-banks, banks in states without usury caps who rent their charters to payday lenders in states with usury laws. Federal law allows a bank to charge in every state the interest rates allowed in its home state. But the OCC, the Federal Reserve, and most recently, the FDIC have indicated that such practices should be curtailed because they are bad for banks as well as customers. And there's more here, and I'll provide that to you. Barack Obama, who is our current president, one of the primary elements that he ran on in his campaign, and I'll give you a copy of this, is cap outlandish interest rates on payday loans and improved disclosure. Obama supports extending a 30 percent interest cap to all Americans." This, I would say, there's about a 90 percent chance this is going to happen in the federal government. Here's another study from Consumers Union. Consumers Union urges Texas to take action, FDIC to close loopholes.

Consumers to avoid payday lenders at all costs. Payday lenders are skirting Texas rules that cap fees, charge are small and so forth, the survey release comes as federal regulators take steps to crack down on partnerships between banks and unregulated fees and check cashiers and other storefront lenders. The federal reserve has taken recent action to curb the practice and Consumers Union is urging the Federal Deposit Insurance Corporation to do the same. The working poor including the Social Security dependent elderly are targeted again by predatory payday lenders. I mentioned Sheila Bair earlier. Sheila Bair's term is...this is from the Risk Management Association. They represent the financial services industry. Sheila C. Bair's term as chairman of the Federal Deposit Insurance Corporation began June 27, 2006, and continues to 2011. Her background and so forth, it goes on again there. And it's headed, she's back, we're glad. An interview with FDIC Chairman Sheila Bair and more recently, it states, and I've given you an executive brief on this. More recently, her report, "Low Cost Payday Loans: Opportunities and Obstacles" have indicated the banks and credit unions offer their low- and middle-income customers lower cost alternatives to high-cost payday loans. Here is a article in the Wall Street Journal, "Beyond Payday Loans." It was written by William J. Clinton and Arnold Schwarzenegger. "The American dream is founded on the belief that people who work hard and play by the rules will be able to earn a good living, raise a family in comfort and retire with dignity. But that dream is harder to achieve for millions of Americans because they spend too much of their hard-earned money on fees to cash their paychecks or pay off high-priced loans meant to carry them over until they get paid at work. Here is one initiative that can unite progressives and conservatives as well as business leaders and community activists: helping the 'unbanked' enter the financial mainstream by opening checking and savings accounts, and working collaboratively with financial institutions and community groups to develop and market products that work for this untapped market. This will put money in the pockets of individuals and grow the economy." The dirty story is, this is money...these individuals are spending every penny they have, and that money that they are paying to interest would be going into our economy, and it's being taken out which is one of the problems we have right now. "Imagine the economic and social benefits of putting $8 billion in the hands of low- and middle-income Americans. This is the amount millions of people now spend each year at check-cashing outlets, payday lenders and pawnshops on basic financial services that most Americans receive for free--or very little cost--at their local bank or credit union. Over a lifetime, the average full-time, unbanked worker will spend more than $40,000 just to turn his or her salary into cash." Full-time workers who own a checking account typically pay $40 on average to cash their paychecks and payday lenders will sell in addition $40 billion in expensive small dollar loans each year that carry 30 times the average credit card rate. And it goes on. It quotes Brookings Institution report, "as much as $360,000 in pretax wealth could be created in the average full-time, unbanked worker invested in the stock market, what he'll spend over his lifetime paying to cash paychecks." Again, here. Here's an article from Arizona Republic newspaper, "Payday Loan Ties Dropped." Basically what this says, and I'll let you read it, they were sending people to these predatory payday lenders to pay their utility bills, and this was a tool that led into huge problems with their becoming involved in predatory payday loans, and they outlawed this. So I'll give that to you. Here's Arkansas, I'll provide you with a documentation of the federal law lending 36 percent to military people and their dependents. Arkansas went beyond that with implementation of a 17 percent interest limit on payday loans to members of the military and their families in Arkansas. The cash cow may be drying up for lenders who target the military. And, again, I had mentioned Wal-Mart earlier. Many communities now have more payday loan stores than McDonald restaurants. Between the combination of activists, AAA PO (phonetic), and so much has been happening at the market over the past five or six years with Wal-Mart getting in the business, how can anybody compete with that? This is one of the predatory payday lenders. Clint Klein (phonetic) said, Wal-Mart is not only cashing checks, but putting money centers in 1,000 stores, part of what Businessweek magazine called the Retailing Giants Relentless Push into Financial Services. The retail giant already offers money transfer and check cashing. I have an article here by the AARP. I thought somebody would come here. Very briefly, overdrawn by $5 and the loan until payday, hidden bank fees, and the high rates of storefront lenders land millions of Americans in trouble. Can it happen to you? These days, a growing number of Americans at all economic levels feel that they're throwing money down holes. That's because several multi-million dollar industries have sprung up for the specific purpose of lending small amounts of money at interest rates that would make a loan shark blush, and in most cases, is perfectly legal. I also have a thank you letter from the Consumers Union and many other organizations to the Honorable Tom Udall, United States House of Representatives. He has had a bill in there to outlaw the holding of checks which would basically make these illegal. As a little bit of background, for many years I owned a foreign auto parts store, specializing in sports cars, and I had a repair shop. And at that time, people simply, if they couldn't pay their bills, they would either borrow it from a relative or they would leave the car there for a week or two, and then they would come in and pick it up. They didn't get involved in these things. I saw this first business at 27th and O when I stopped at the light, I don't remember, maybe ten years ago, and I immediately thought, this should be outlawed by the Legislature. This is not right. This is a huge burden on the public. Other people do use it that can't afford it, but it's an enormous burden on the poor, the working poor, those on Social Security and disability. It needs to be stopped. Simple, 36 percent interest fee, and as per the FDIC, others, once that's implemented and put into position, these others will come in and fulfill the need for these. But again, as I mentioned before, it's actually been compared to a drug addiction. If you look at the front windows on some of these places, they'll say, first one free. They get somebody hooked, and that's it. Thank you. [LB431]

SENATOR PAHLS: Okay, any questions? [LB431]

CRAIG GROAT: And I will document everything I said further and copies made for you. Thank you. [LB431]

SENATOR PAHLS: Thank you. Thank you for your testimony. Any neutral? Senator. [LB431]

SENATOR McGILL: My turn? I'll just try to really quickly respond to some things that were said. Somebody asked where 72 hours came from. That came from what was at the time, I believe, Arizona law. At this point, they have now outlawed payday lending, but that was where we got the original 72 hours from. That is negotiable to me. If folks feel that that is too long, you know, people have expressed concerns about oh, their checks may bounce in that period of time. If we made it a day, check bouncing isn't going to be a problem then if they can come back in the next day. But it still gives them a night to go home and consider their finances, and if they really need to go and take out that loan, meaning if they're taking them out over and over and over again, that shows that they do have a serious problem in terms of managing their finances, and that one night. You know, Senator Christensen was telling me a story about how he saved some friends from debt by giving them just some good advice. And it's my hope that with so many people taking them out that same day, that if some of them go home and think about it then they may be able to start getting themselves out of that cycle. Data collection, I just really don't see the arguments against wanting to collect data about the industry. There are questions as you've heard from all the testifiers today about the industry, and how productive or not it is for America and Nebraska. You know, the last testifier was right. President Obama has said that he would support a 36 percent cap, and President Bush supported a 36 percent cap for military personnel because payday lenders were showing up right around military bases and preying on the military. That's why Congress and President Bush supported that 36 percent cap. But I believe that data collection is something good for our state. Right now people are breaking the law, and payday lenders are breaking the law by allowing somebody to take out a loan if they have one at another location. They just don't know if they have one at that other location, so having the database to make sure that they're in line with the law I think is a good thing. The Department of Banking does do a good job of auditing the industry, and they do, by and large, follow our laws very appropriately as they've said here today with the exception of that one hole that is impossible to enforce right now. But that doesn't mean that something additional wouldn't help our consumers. They have done a good job following the law, and I'm sure if we enacted a waiting period of some sort, they would continue to do a good job following the law. I reject the notion that our industry here in Nebraska is much more heavily regulated than other states; that's simply not true. I mean, I can show you the statutes from other states. If anything, we're similar, but we don't have the database; we don't have a waiting period like some states do, and so I would submit to you that we're not as heavily regulated as other states. And, in fact, in their industry magazine, one of the business owners even said that Nebraska's regulations are pretty easy in the big scheme of things. So I just don't submit...that's just...I don't believe that's true. And I would point out that my intention is not to hurt the ma and pa shops. Those are the ones that were here first. And I do feel bad about any unintended consequences that may come to them. You know, it was the national industry coming in across the state that was the one that were the ones that started showing up on every street corner in your district. On mine, there are seven within a square mile, you know, and a lot of them are the national chains. And so, my heart does go out to the ma and pa shops, and I want to do everything I can not to hurt them. They were here first, and I think that we were better off when there were just those, the few ma and pa shops around. But I don't see how enacting the database really closes some locations. Now they really...they've made that statement, but they haven't really explained why the database would close them. So I'm not quite understanding that argument that they have, so...and with that, I hope you'll seriously consider LB431, and I'd love to work with the committee to get this bill out. Thank you. [LB431]

SENATOR PAHLS: Seeing no questions, thank you for your time. [LB431]

SENATOR McGILL: Thank you very much for being patient today (laugh). [LB431]

SENATOR PAHLS: (Exhibit 7) Like to read into the record from the National Association of Social Workers, they support LB431. That concludes the hearing on (LB)431. Our next hearing, LB571. []

SENATOR PIRSCH: And, Chairman Pahls, you are the sponsor of that bill, and so whenever you are ready to... [LB571]

SENATOR PAHLS: I'll wait till all my fans leave (laughter). I mean, you guys can't leave (laughter). I shall begin? My name is Rich Pahls. I represent District 31, P-a-h-l-s. Today I bring forth to you LB571. LB571 would create a legal framework for the offering of Guaranteed Asset Protection waivers or GAP waivers for short. What is a GAP waiver? It is an agreement between a creditor and a borrower to forgive or waive the balance of a loan after the borrower's auto insurance proceeds have been applied following the total loss of a financed motor vehicle. Most typically, a car buyer elects to purchase a GAP waiver from an auto dealership as part of the finance agreement or lease for the vehicle. The bill would require that auto dealership to ensure its GAP waiver obligations under an insurance policy. The policy could be directly obtained or it may be procured by an administrator of a GAP waiver program. The GAP waiver remains a part of the financial agreement upon the assignment, sale, or transfer of the financial agreement by the lender, the lessor, or the retail seller of the motor vehicle. Now you may ask, why do people buy GAP waivers? When you buy a vehicle, it loses a significant amount of value the moment you drive off the lot. For some buyers, there is a time when the unpaid balance of the finance agreement actually exceeds the amount of insurance proceeds payable if the vehicle becomes a total loss. Under the GAP waiver, that amount would be cancelled or waivered. That obligation, in turn, is covered by the insurance policy. The bill has consumer provisions including a list of required disclosure in the GAP waiver agreement. The bill would require an agreement to have a minimum

30-day free look, cancellation period. The bill would give enforcement remedies to the Attorney General. This basically is called a birds-eye view of the bill. Now there will be proponents and opponents who will go in more detail about this particular GAP waiver. [LB571]

SENATOR PIRSCH: Thank you very much, Chairman Pahls. Are there any questions of the chairman? Senator Utter. [LB571]

SENATOR UTTER: Just one. I'm just curious as the...are you bringing this bill, are you carrying this bill for some...for the auto industry or? [LB571]

SENATOR PAHLS: Yes, yes. Yes. [LB571]

SENATOR UTTER: Okay. Just. [LB571]

SENATOR PIRSCH: Very good. Any other questions of the chair? Senator Christensen. [LB571]

SENATOR PAHLS: Yes. [LB571]

SENATOR CHRISTENSEN: Thank you. Is there ever a time when you got a loan on a vehicle, the vehicle is worth as much as your loan? I didn't know that ever worked (laughter). [LB571]

SENATOR PAHLS: Yeah, well, as soon as you drive the vehicle off the lot, it loses its value. [LB571]

SENATOR CHRISTENSEN: Well, I know. That's my point. There's never a time the loan is not more than the... [LB571]

SENATOR PAHLS: Well, this is supposed to help you if you have a total loss of that vehicle. If you wreck it, this will cover the payments of that vehicle. [LB571]

SENATOR CHRISTENSEN: The depreciation is terrible on them things. [LB571]

SENATOR PAHLS: Yeah. Well, I'll let you talk to the auto dealers about that (laughter). [LB571]

SENATOR PIRSCH: Very good. Any other questions? Seeing none (laughter), we'll move then to our first proponent of LB571. Mr. Brady, good afternoon. Good evening, I guess. [LB571]

JUSTIN BRADY: (Exhibit 1) Good afternoon (laugh). Senator Pirsch and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for Guaranteed Asset Protection Alliance in support of LB571. Guaranteed Asset Protection Alliance is a group of entities that obviously sell this product. This product is, I guess, sold or offered by multiple entities--banks, financial institutions, installment loan companies, car dealers. And currently, banks are exempt, and they are declared a waiver, and, therefore, do not fall under the Department of Insurance. The goal of this legislation is to lump everybody together and treat them the same so there's not confusion out there of some being waivers; some being called insurance. We've had multiple discussions with the Department of Insurance, and I believe continue working with them to try to come to a solution that they're satisfied with. The main goal, I understand, they're opposed to the bill as drafted. Our goal will be to try to get the language pared down so it really is talking about the two-party transaction where the lender is waiving the debt of the borrower, and some of the other provisions of the bill will...can be eliminated. And, again, I just want to say this is a waiver of the debt. This isn't an insurance policy where someone's going to go and pay the bank off. I mean, it's the lender waiving the remaining debt. And I know that the banks have expressed at least a concern that what they don't want to happen under this bill is to take away or affect their current exemption that they have through federal law, and so we would be discussing with them to make sure that anything they need to make that clear that their exemption remains, also remains. With that, I'd try to answer any questions. [LB571]

SENATOR PIRSCH: Very good. We'll start with Senator Gloor. [LB571]

SENATOR GLOOR: Thank you, Chairman Pirsch. Mr. Brady, I do need a little clarification. Are we talking about policies here that are carried by the car dealers as opposed to the lender? Is that one of the reasons we're talking about this legislatively? [LB571]

JUSTIN BRADY: No. As I understand it, they aren't really policies per se. What they are, is it would be...if you look at the car dealer, as I understand it, would be more of the facilitator. If you were purchasing a car, the deal would be between you and a financial institution. And currently, if that deal is done with the bank, and the bank were to come to you and say, Senator, for this fee you can buy this protection waiver, and if, you know, you total your car, we'll waive our loan. That's consider a waiver, and that falls out of the Department of Insurance. If it were... [LB571]

SENATOR GLOOR: It's federal...it's covered by federal law. [LB571]

JUSTIN BRADY: Right. [LB571]

SENATOR GLOOR: Okay. [LB571]

JUSTIN BRADY: If it were GMAC or an installment loan company, or a car dealer doing the loan themselves, they then...if they want to do that exact same deal, and say we want to waive your debt, it falls under as being called an insurance product. That's what this is trying to clarify to get everybody under the same classification. [LB571]

SENATOR GLOOR: That helps. Thank you. [LB571]

JUSTIN BRADY: Um-hum. [LB571]

SENATOR PIRSCH: Very good. Senator, go ahead. [LB571]

SENATOR UTTER: What's this cost? [LB571]

JUSTIN BRADY: I guess, as I've asked that, you know, obviously, it depends on what the value of the car is, but, I mean, anywhere probably from about $700 to $1,500, as I understand it. As it...again, it's all based on... [LB571]

SENATOR UTTER: And does this just apply to new vehicles or is this...used vehicles? [LB571]

JUSTIN BRADY: That would be something that (inaudible), but I believe it's mainly new or it can also be applied on leased vehicles and. [LB571]

SENATOR UTTER: So are there any tax consequences to the borrower in the event of receiving this waiver or forgiveness of the rest of this debt, or however you want to...? [LB571]

JUSTIN BRADY: Not that I'm aware of, no. [LB571]

SENATOR PIRSCH: Could you contrast the other types of products that might guard against this, right? Extended warranty, that kind of deal, if you're involved in an accident. Is that...or not extended warranty, but rather, other types of products that are...would guard against this. Is that correct or how does GAP fit into that? [LB571]

JUSTIN BRADY: I guess as far as...obviously, the extended warranty, I don't believe would, Senator, because that would kind of...if the car broke on something,... [LB571]

SENATOR PIRSCH: Right. [LB571]

JUSTIN BRADY: I'm not aware of other products. I know a representative from the car dealers is going to follow me, and he may know of some products that are there. [LB571]

SENATOR PIRSCH: More insurance type products, I would say. [LB571]

JUSTIN BRADY: Um-hum. [LB571]

SENATOR PIRSCH: Okay. Well, any other questions? Seeing none, we'll move on to the second proponent. And good evening, Mr. Todd. [LB571]

LOY TODD: Senator Pirsch, members of the committee, my name is Loy Todd. That's L-o-y T-o-d-d. I'm the president and general counsel for the Nebraska New Car and Truck Dealers Association, testifying in support of this legislation. I can tell you uniquely from my position with our 218 members, I get the question constantly about GAP coverage, dealers calling me, saying is it legal in Nebraska? What is it? There's a company that's come to me, wants me to provide it for my customers, sell it to my customers, and utilize it. And I have to tell you that at this point in time, I am in a real quandary as to what to tell them, and I was really happy to see this legislation brought to our state as a proposed...one form of a model legislation, because it will allow me to answer that question. Because I have companies come to my dealers and say, well, ours is a waiver or ours is insurance or ours is GAP coverage, whatever that might mean. And I have a heck of a time figuring it out. I know that if a bank offers it or if someone is selling it as a representative of a bank or a dealer for a bank or whatever, I know that is sort of nothing, because it's under an exemption. And so, it's not insurance when a bank sells it, but an identical coverage policy. And absolutely, four corners identical policy if it's sold by someone other than a bank, suddenly may be insurance even though the people providing it say, well, it's a waiver. So it's just confusing, and this bill really clears that up because what it does, and I think very clearly does, and I hope we can continue to work with the department to clarify this, is it is not like a warranty, or it is not like an insurance policy that comes in and pays someone. The direct obligation under this contract that is provided by this bill, is a two-party contract. That is, if the loss occurs; if that vehicle is totally destroyed, and there is more money owed to the lender than is covered by the insurance policy covering that vehicle, the debt is forgiven. There is a waiver of that debt. That's it. So whether the entity funding this whole thing, and making the bank happy to be involved with the transaction is solvent, not solvent, whatever, it doesn't matter, because the consumer is only concerned about one thing, and that is, do I have to pay off the loan? And their answer is, under this, no, I don't have to pay it off. And the reason I don't have to pay it off is because it's a contract between the lender and the borrower that says, here's how much you owe; when this event occurs, you don't have to pay it back. And so, we really welcome this legislation. If there are hiccups in it, if somebody doesn't...you know, is nervous about it or doesn't like some part of it, great, let's work it out. But we really...I really would like to have this answer to give to my people, so that the companies they do business with, and it's out there. It's like everything else. There are lenders everywhere as far as your question about other entities that do this. Some insurance policies, you know, if your private insurer that you have for your vehicle, may have this as an addendum to your policy of insurance, and it is available for new and used. You can be upside down on anything, Senator, as you have indicated, so. [LB571]

SENATOR PIRSCH: But it would involve a third party. You would more liken this to say what Hyundai has recently done. If you lose your job, we'll take the car back. Some sort of original contract between the two parties. [LB571]

LOY TODD: (Laugh) Yeah, and that's kind of a fascinating thing. I assume that's...I just don't know about that, but if you had...if Hyundai were the lender,... [LB571]

SENATOR PIRSCH: Um-hum. [LB571]

LOY TODD: ...I would understand how it would work similar to this. But I tell you what, I don't understand, Senator, about that, and I just don't know is if you...if I finance my car with a bank, and I lose my job, and Hyundai is going to come in there, I don't know how that works so I... [LB571]

SENATOR PIRSCH: Well, that's a good point. They're not necessarily finance... [LB571]

LOY TODD: ...I apologize for... [LB571]

SENATOR PIRSCH: Yeah. No, that's great. Senator Utter, did you have a question? [LB571]

SENATOR UTTER: If, in fact, that...and the reason I'm asking these questions is because this is not something that we've ever done in our particular financial institution. But a hundred percent loan, does that...is there one rate for somebody who...and I know that there have been...there are such critters out there, bad as they are, a hundred percent loan, does that get one rate from this GAP coverage? And then if you put 25 percent down or 20 percent down on a new car purchase, do you get a cheaper rate on GAP coverage? Can you help me with any of that kind of stuff? [LB571]

LOY TODD: Not very much, Senator. My experience with it has been to avoid it (laugh), because as I indicated, because I don't know. You see, and what I like about this is it does give me some answers to give to people. It's my understanding that these policies are priced based upon...like everything else, based upon risk. And so if that gap between the value of that vehicle and the loan, as that expands, I'm sure the price goes up. And as that gets smaller, I'm sure the price goes down. And so, that's the best I can do. But I assume that if someone were making a hundred percent loan on whatever valuation they chose to attribute to that, whether it be a traditional book loan value versus retail value, and you've seen the books. Whatever figure they're using, I still think the only real issue is, what's the difference between the fair market value of that vehicle at the date of the totaling versus how much that loan is going to be. And so, I'm sure you pay for the most coverage you get. [LB571]

SENATOR PIRSCH: Great. Thank you. Any other questions? Seeing none, then we'll move on to our next proponent. Are there any other proponents? [LB571]

LOY TODD: Thank you. [LB571]

SENATOR PIRSCH: Are there any other proponents? Seeing none, we'll move on to opponents. Is there anyone here in opposition? Very good, Director. [LB571]

ANN FROHMAN: (Exhibit 2) Thank you, Senator Pirsch. My name is Ann Frohman. That's A-n-n F-r-o-h-m-a-n. I'm the director of insurance, here to testify in opposition to LB571 as introduced. While I believe a two-party contract, regardless of whether the contract involves a bank or a friend, is not insurance to the extent one wants to cancel the debt. And in this scenario, we have an additional requirement that a vehicle be totaled before it triggers cancellation of the debt for a fee. In that scenario as well, we do not view that as insurance. We have no problem with the intentions of the bill, as we've heard today from the proponents in that they are simply seeking clarification of that and to provide guidance in the law in terms of the ability to cancel a loan in the event of a total loss to the extent the financing party or the creditor on that loan chooses to do so. But I do have significant concerns about the proposal as it's drafted, because it does deregulate an insurance product. And that insurance product is, as we call GAP, the Guaranteed Asset Protection insurance product. And I understand in our discussions that proponents will be seeking amendments to the bill, and I'm hopeful that we can get to a resolution that can be agreed to to the extent it doesn't deregulate the insurance product. As I said earlier, if the transaction remains a two-party transaction in which the twin obligations, the obligation to repay a loan, and the waiver or cancelling of the repayment are tied together, that's not insurance. And the bill clarifies that on page 5 in lines 12 through 14, but with that said, there's a great deal of creativity in the bill for financial products that are associated with automobile financing. And they raise serious concerns, and, in particular, it appears that much of the bill is geared to specifying that while they seek to pull GAP products out of the insurance line, they turn around and seek in this bill to back them by insurance, so that there can be an appearance that there's a regulated product involved when, in actuality, the product being marketed is not a regulated insurance product, and that scenario, we have concerns with. So the language is not necessary to what appears to be the central purpose of the bill, giving lenders regulatory certainty about the treatment of these transactions. I think we would need to clean that area up. The requirements on the insurance piece are not particularly stringent, and they provide limited consumer protection, because it creates a relationship between the dealership and an insurance company. But perhaps it's not a dealership at all, but it's a third-party administrator, an entity that we have no nexus to whatsoever. It allows the parties, however, selling this product, marketing the product to the dealerships, the appearance of regulatory requirements to which the products really aren't subject. And it speaks to insurance to cover a creditor or retail seller's obligation. This could be problematic because what it's doing is, on one provision of the bill, saying they're wedding the obligation to repay and cancel that debt, and then in another provision, they're going to peel it off and send it to a third party. That is the gap piece, so although there's a pricing component of that, where that ends up, and whose obligation that will become, would be of concern to the dealerships and the risk management, and how they charge for the product. Nebraska had an earlier experience with financial products associated with the sale of automobiles, and that product was motor vehicle service contracts that I think Senator Pirsch alluded to earlier. Those are the auto warranties that, at one time, all auto warranties were deemed insurance in this state, and quite awhile back, they were deregulated such that auto warranties became service contracts that were not insurance, but were backed by insurance. It is the identical scheme here in the language that we see before you today. So they became products marketed by administrators to the dealerships for fee-generating purposes to provide the dealerships with additional source of revenue, taking an insurance...what would have been insurance premium, that it would have eventually ended up in reserves and parcelled it out in fees here and fees there such that you ended up with multiple organizations receiving fees, and the actual premium for the reserve to cover what would have been an insurance product fairly nonexistent. And in that instance, administrators created the program; they retained the fees that controlled the data provided to the insurance company; controlled the level and amount and type of insurance such that it wasn't in the consumer's interest, because they really didn't have coverage. And as a result of switching of the leverage between the insurance company and the administrators, the dealers in Nebraska were harmed. Consumers were harmed to the tune of over $100 million, and we do, you know, kind of have...we have lived through that experience, and we hope to work through an arrangement where we don't end up seeing another type of regulatory structure that would allow that sort of thing to, you know, permeate in this state. So I do believe that we do have a concern about potential for similar creativity under the language here, and this is why I'm here today to oppose the bill. But I do stand ready to work, and the department stands ready to work with the proponents to minimize that type of creativity with administrators. And I think in our discussions earlier, we seem to have a common understanding that we want to be able to allow, which I think is permitted today, the ability to simply allow the creditor-cancel debt, and charge a fee for doing that, and we don't have a problem with that. And I would be happy to entertain any questions anyone on the committee might have. [LB571]

SENATOR PIRSCH: Okay. Any questions? Senator Langemeier. [LB571]

SENATOR LANGEMEIER: I hate to do it at this time of night, but I have one. My wife just took a loan out because she bought a car, and I'm sure she's flip-flopped on it already as far as being in this position, because I think she paid too much for it, but that wasn't my decision (laughter). But when we signed the papers, our bank offered us this waiver, and I...they made it sound like it was insurance to me. Why would they be exempt? [LB571]

ANN FROHMAN: Well, the banks can actually purchase...they can do it one of two ways. They can charge the fee and cancel the loan; it's not insurance. They can call it insurance, and it's not insurance, or they can actually, under the risk management program, if they decide they don't want to retain the risk, it can be a fully-insured program. [LB571]

SENATOR LANGEMEIER: Okay, thanks. [LB571]

SENATOR PIRSCH: Great. Any further questions? Seeing none, thank you very much... [LB571]

ANN FROHMAN: Thank you. [LB571]

SENATOR PIRSCH: ...for your testimony. And I'll just see if there are any other opponents. No? How about neutral testimony? Very good. Mr. Hallstrom. Good evening. [LB571]

ROBERT HALLSTROM: (Exhibit 3) Senator Pirsch, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you in a neutral position on behalf of the Nebraska Bankers Association. Very briefly, I think both the supporters and the Department of Insurance have indicated that it is not the intention for financial institutions to be covered under the provisions of LB571. The only area in which I think we would be impacted indirectly is on page 5 of the bill under subsection 5, which provides that if LB571 is adopted, the Guaranteed Asset Protection waivers that are issued by nonfinancial institutions remain a part of the finance agreement notwithstanding the transfer assignment or other sale. In looking at this, the bank's general authority is pursuant to a statute that says we can do certain things that are incidental to the business of banking. The director has pointed out the two options that financial institutions have in this area, and in order to clarify that the provisions of LB571 do not impact the existing authority of banks, the amendment that you have before you would just make it clear that the Guaranteed Asset Protection waivers offered by financial institutions are not subject to the provisions of the act, and also defines the term, financial institution for those purposes, as provided under section 8-101. Be happy to address any questions that the committee may have. [LB571]

SENATOR PIRSCH: Thank you. Any questions? Seeing none,... [LB571]

ROBERT HALLSTROM: Thank you. [LB571]

SENATOR PIRSCH: ...thank you very much for your testimony. Any other parties here to testify in a neutral capacity?No. Okay, if you wanted to close, Senator Pahls. [LB571]

SENATOR PAHLS: Thank you. It is my understanding there are amendments out there to probably clear up some of the concerns and make this bill available to be tossed out on the floor if we so decide. Thank you. [LB571]

SENATOR PIRSCH: Thank you very much. And that will then close the final bill hearing for the day. [LB571]

Disposition of Bills:

LB293 - Indefinitely postponed.
LB431 - Held in committee.
LB571 - Placed on General File with amendments.

Chairperson

Committee Clerk