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Banking, Commerce and Insurance Committee  
February 09, 2010

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[LB818 LB931 LB959 LB1051]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 9, 2010, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB959, LB931, LB818, and LB1051. Senators present: Pete Pirsch, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Beau McCoy; Dave Pankonin; and Dennis Utter. Senators absent: Rich Pahls. []

SENATOR PIRSCH: Okay. Well, it's 1:30 so we'll get started. Welcome to the Banking, Commerce and Insurance Committee hearing. My name is Pete Pirsch. I'm from Omaha and represent the 4th Legislative District. I serve as Vice Chair of the committee. The committee will take up the bills in the order posted. Our hearing today is your public part in the legislative process. This is your opportunity to express your position on the proposed legislation before us today. To better facilitate today's proceeding, I ask that you abide by the following procedures. The information is posted on the chart to your left. Please turn off your cell phones at this point, and if you plan on testifying, if you could move to the front to the reserved chairs there, when you're ready to testify, and if...as far as the order of testimony, we'll start with the introducing senator. We'll move on to proponents of the bill; then opponents of the bill; then those testifying in a neutral capacity about the bill. And then finally, having the senator close. Testifiers, if you could sign in. There's a pink sheet on that back table there. Hand your sign-in sheet to the committee clerk, Jan Foster there, to my far left there when you come up to testify. If you could, when you take the seat to testify, spell your name for the record. That would be appreciated. If you could be concise, written materials may be distributed to committee members as exhibits only while testimony is being offered. Please hand it to one of our pages here today for distribution to the committee and staff. We're going to need ten copies. If you have written testimony, don't have ten copies just raise your hand now and one of the two pages here will come and make copies for you. To my immediate left is committee counsel, Bill Marienau, and to my left and as I mentioned, at the end of the table is committee clerk, Jan Foster. The committee members with us today...if you could introduce yourselves, I'll start at my far right, your far left. If you'd like to introduce yourself there... []

SENATOR UTTER: Dennis Utter, District 33, the Hastings area. []

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

SENATOR LANGEMEIER: Chris Langemeier, District 23. I live in Schuyler. []

SENATOR MCCOY: Beau McCoy, District 39, Elkhorn. []

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

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

SENATOR PIRSCH: Great. Our pages today are Abbie Greene from Omaha and Alex DeBrie from Scottsbluff. The committee will take up the bills today in the following order. We will start with LB959. Senator Lathrop is the introducer. LB931 then, Senator Langemeier. Then LB818 by Senator Sullivan and finally, LB1051 by Senator Christensen. That being said, we will start with LB959. Senator Lathrop, I know you're here in the hearing room; if you can take the hot seat, whenever you're ready. []

SENATOR LATHROP: Good afternoon, members of the Banking, Commerce and Insurance Committee. I don't get down here very often. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12, and I'm happy to be here today to introduce LB959. I better get my glasses or I'm going to read the wrong thing. As you know from last year, I introduced a bill on credit scoring, and I have a concern about the use of credit scores in the process of determining insurance property and casualty rates. And I sat through the hearing. I've talked to different people in the industry and, in fact, went to a seminar and spoke on the subject in Chicago. And it was interesting. I was talking about my bill, and we essentially got into a disagreement about whether or not credit scoring has an adverse effect or the effect of discriminating against certain consumers based upon their race, creed, national origin, or religion. And the difficulty with my first bill that I put in last year is I said you can't do this. Right? You can't use credit scores to determine what somebody's insurance premium should be because it has the effect of discriminating. And the industry's response was, no, it doesn't. So I think it does because probably most people who are poor have more credit problems, and they said, no, they don't. Everybody has the same problems across the spectrum of incomes, and I couldn't get them to see things my way. And they didn't come to agree with me that using credit scores adversely affects minorities, and so I thought I'd take a different approach, and instead of quibbling about whether it does or it doesn't, I'd just say, let's stop any practice that has the effect of discriminating based upon consumers' race, creed, national origin, or religion. And so we don't have to argue about whether credit scores do or don't. If they don't, then they won't run afoul of this bill, and if they do, then they're going to have to find a different way or a different calculus for determining premiums. It is an area I learned that is the subject of considerable controversy in the industry. I think you can find as many agents who sell insurance that don't like the practice as agents that do because many agents have found that they have to call their...they have to take phone calls from long-time clients who are upset with the fact that their premiums have gone up even though they've never made a claim; they've always paid their premiums on time. And so, it struck me that rather than try to argue over a practice and the effect of that practice, we'd simply prohibit anything that has the effect of any rate-setting practice that has the effect of discriminating, and we will take care of the problem or find that there never was a problem or a correlation and we'll have on the books a prohibition that is consistent with our Nebraska values which

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is, we shouldn't be discriminating against people based upon things such as race. I appreciate that there are people who have different points of view, and it is a complicated issue, and I appreciate that it is not just your credit score that is used, but portions of your credit report and, for that reason, I'll also tell you that I have other things that I'll probably prioritize besides this bill in fairness to this committee, so that you know that while it's important to me, it's not probably going to be a priority this year. And if we have a good, healthy discussion here or an interim study, that would lead us probably to the same place. So with that, I'd be happy to take questions. [LB959]

SENATOR PIRSCH: Thank you, Senator. Senator Christensen, you had a question. [LB959]

SENATOR CHRISTENSEN: Thank you, Steve. Is this going to...just basically then they'll have to challenge it in court if they feel like it's affected it? Is that the way this will be resolved then? [LB959]

SENATOR LATHROP: No. I think that the industry, if we have among our list of...of course, this is an amendment to a list of things you're not supposed to do in the insurance industry, right? So what we would simply tell them is you're not to engage in any act or practice in connection with the issuance or renewal or the rating of a policy that would have the effect of discriminating against people based on race, for example, and if...they know what they're doing. I mean, they know that if they're doing that and they're rate-setting in Nebraska, they'd have to stop. I don't think I'm inviting lawsuits or encouraging lawsuits. We're just establishing that as you set rates and renewals for policies, things that have the effect of discriminating based on race or national origin or religion, are prohibited. [LB959]

SENATOR CHRISTENSEN: Okay. Thank you. [LB959]

SENATOR PIRSCH: Thank you. Senator McCoy. [LB959]

SENATOR McCOY: Thank you, Senator Pirsch, and thank you, Senator Lathrop, for bringing this bill. I spent a lot of time in actually going over some other bills and whatnot this weekend and had a chance to go over this bill, and I appreciate you bringing it. And if you don't mind elaborating, and I think I know where your...where your heart is on this and I appreciate that, but can you go over how, and you're correct in saying that this is, you know, the long list of acts or practices...unfair trade practices in the business of insurance. How would the language that you're proposing adding to that list...how do we get from that to information for credit? I'm confused. [LB959]

SENATOR LATHROP: May be no connection whatsoever. I happen to think there is, but there may not be, and it may be that if there is no...there's a difference of opinion, Senator McCoy, on the question of whether or not using credit scores or some portion

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of a credit file has the effect of discriminating against minorities. And it requires that you follow the logic of the process. If you are using credit scores or someone's credit to decide what their insurance premiums should be, not because they paid premiums late in the past. Okay? This is happening to people who have never made a claim and who pay their insurance premiums on time because that's a priority for them. They pay the mortgage; they pay the premium on their insurance policies, right? So the question is whether or not they ought to be...whether or not this process or this approach has the effect. Let me tell you how the logic. If you take people who have poor credit, my belief is, and I will tell you, the industry does not share this point of view, and you'll probably hear this in a little bit. But my point of view would be that people who are poor, which is...is oftentimes minorities. If you take people who are poor, they're going to have greater incidences of poor credit than people who make \$200,000 a year. Right? So if they are going to...if we are going to in a state that mandates auto insurance, right, we make these people buy it. If we are going to take people who are poor and they have worse credit, now we're going to make them pay more of a premium because, not that they've ever missed a payment on their insurance but because they had hospital bills they didn't have insurance for, and they had to go through a bankruptcy, for example. Those kinds of things adversely affect the minority population, in my experience. Now, when I went to this and spoke to the folks in this industry this summer, they told me that's not the case. And rather than argue with them about whether it is or it isn't, my answer is just to say, you guys know; you're the ones that are looking at credit scores. You're in a better position, and I am not in a position to argue with you or establish that my theory is right or wrong. We'll just tell you, you can't do things that adversely affect minorities. And if credit scores don't have anything, don't have any adverse effect on minorities, then they can go ahead and do it, and this will not affect them whatsoever. Does that make sense? Kind of a long way around the barn, but I appreciate the question because it allowed me to explain kind of my thought behind it. [LB959]

SENATOR McCOY: Thank you, Senator Lathrop. [LB959]

SENATOR PIRSCH: Any other questions? Seeing none, thank you very much for your opening, Senator. And I take it you do want to close. [LB959]

SENATOR LATHROP: I will. Thanks. [LB959]

SENATOR PIRSCH: Okay, very good. We'll move on then to proponents. Is there anyone here to testify in favor of LB959? Okay. We'll move then...seeing none, we'll move on to opponents. Is there anyone here to testify in opposition to LB959? Good afternoon. [LB959]

COLEEN NIELSEN: Good afternoon, Senator Pirsch, members of the Banking, Commerce and Insurance Committee. My name is Coleen Nielsen spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Insurance Information

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Service. I appreciate the comments of Senator Lathrop, but I do want to state for the record that insurance is a business based on classifications and distinctions. And the reason that it is based on different classifications and distinctions is so that prices can become equitable and fair. Nebraska's insurance laws provide for these classifications and rating systems, and the Department of Insurance's charge to these laws with making rates that are not inadequate, excessive, or unfairly discriminatory. The insurance companies file their rating plans with the department and under section 44-7508, paragraph 9(c) of the Nebraska Revised Statutes, the department shall disapprove the filing if it proposes to discriminate between risks based on race, creed, national origin, or religion of the insured. Section 44-1525 which enumerates the Unfair Trade Practices that the business of insurance is prohibited to use including paragraph 7 which essentially prohibits unfair discrimination. Now, as Senator Lathrop described, LB959 prohibits any action in connection with insurance that has the effect of discrimination. So I would agree that this goes a bit farther than what may already be on the statutes. And as I understand it and what it seems similar to, to me is a...what is called a disparate impact theory of discrimination. Now, the disparate impact theory is not concerned with the acts of the insurance company per se, but it seeks to eliminate practices or criteria that adversely affect a greater percentage of some groups and more than other groups. Now, this is a very controversial area because although this analysis has been used in employment discrimination cases or housing cases, this theory applied to areas of law such of insurance can be very problematic. There are a lot of unintended consequences as a result of this theory, and we feel at this point that it would be worth a discussion, and we would be happy to work with Senator Lathrop over the interim to discuss the effects of this sort of legislation. And I'd be happy to answer any questions. [LB959]

SENATOR PIRSCH: Thank you very much. Senator Langemeier, did you have a question or? [LB959]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. Thanks for your testimony. [LB959]

COLEEN NIELSEN: Sure. [LB959]

SENATOR LANGEMEIER: You start off by telling us that the department is not going to allow discrimination through their current process, yet this goes farther to protect. Isn't it not a good practice to protect from discrimination? [LB959]

COLEEN NIELSEN: It is. It is a good practice to protect against unfair discrimination, yes. [LB959]

SENATOR LANGEMEIER: So this is all going back to the relevance of credit reports, so is there some question whether that's really nondiscriminant? [LB959]

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COLEEN NIELSEN: I think that there has been...I think it is an issue throughout the country as to whether or not credit scoring is unfairly discriminatory, yes. [LB959]

SENATOR LANGEMEIER: So you don't want to leave that up to the determination of the Department of Insurance to make that decision? [LB959]

COLEEN NIELSEN: Well, I think that there's a question of whether or not it's intentionally discriminatory or whether some sort of process makes it...causes it to be under the theory of disparate impact. And so here's the problem. The disparate impact theory, the reason that this makes this complex is because it's an unintentional effect, can be an unintentional effect. And whether or not there is an unintentional effect, I don't think that that's been decided yet. Whether or not credit scoring is indeed discriminatory against these classifications has not been decided. But when it is decided, if this theory is used in court, there is a balancing test that occurs, and that is if there is found to be some sort of discrimination, it has to be balanced against the legitimate business interest of that particular practice. And if you put this in statute, it's not clear whether or not that can occur, so the goal here is to be...is really fair and equitable prices for insureds out there. And we want to keep the business competitive and... [LB959]

SENATOR LANGEMEIER: So you're saying fair and equitable prices overrank a policy that we don't know whether it discriminates. We're just going to use it until there's a court case. Is that the philosophy the insurance industry wants to take? [LB959]

COLEEN NIELSEN: No, no. I think the position of the insurance industry is that it does not unfairly impact insureds, in fact, that it makes prices more fair. [LB959]

SENATOR LANGEMEIER: Okay. Thanks. [LB959]

COLEEN NIELSEN: Um-hum. [LB959]

SENATOR PIRSCH: Any other questions? Seeing none, thank you for your testimony here today, and we'll move on to other opponents. Is there anyone else who wishes to...? Can I get a show of hands, how many others intend to? Okay, thank you. Good afternoon. [LB959]

TAD FRAIZER: Good afternoon. Members of the committee, my name is Tad Fraizer, T-a-d F-r-a-i-z-e-r. I'm legal counsel for the American Insurance Association, a national organization of property and casualty insurers, appearing in opposition to LB959, at least as currently written. And I appreciate Senator Lathrop's comments that he's open to a discussion on the matter and possibly an interim study. I would echo the comments that Ms. Nielsen made, but I'd kind of like to expand beyond it. Part of our concern is that, although Senator Lathrop is obviously focused on the issue of credit scoring and

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insurance scoring, I've got some concern that the language of the bill goes beyond that and kind of opens up a door. The bill would amend section 44-1525 of the Unfair Trade Practices Act, and if you look through your green copy...if you look through the existing sections of the act in section 7, the term of art used is unfair discrimination in subsection (a), unfair discrimination in subsection (b), (c), not a pretext for unfair discrimination that's used in subsection (d). That's generally the term of art used throughout the rest of this section of the Unfair Trade Practices Act. The language that Senator Lathrop proposes to offer simply has...that has the effect of discrimination. There's no use of the term, unfair discrimination or any discussion of whether it's a pretext for unfair discrimination. And talking about engaging in any act that has the effect...well, if for some reason, insurance rates go up because of something or another and one can demonstrate that that makes insurance more expensive for people and that minority groups are possibly disproportionately affected, does that mean you can't raise insurance rates ever because it might affect people who can afford it less? That's the question that's open here, and I believe that's why, although I understand the thrust of his bill, that some engaging in dialogue, some refining of the language to make it more closely track the current language used in our insurance statutes would be of use. As Ms. Nielsen pointed out in the Property and Casualty Rate and Form Act, sections 7508, 7509, 44-7510, I think all have language that says, you cannot use anything that's based upon race, creed, national origin, or religion, a specific aim at that. In the actual model Credit Information Act, our current law that is in effect that deals with use of credit information to develop credit scores, you can't use an insurance score...this is 44-7501(1)...you can't use an insurance score that uses income, gender, address, zip code, ethnic code, religion, marital status, or nationality. So a lot of this, I believe, is already in various aspects of the insurance code which now has about 80 separate articles, so it's scattered throughout the insurance code. But I believe, and we believe that a closer examination of the actual language used and perhaps some refinement would be better to make sure it's really aimed at intentional discrimination rather than what we feel is opening up the area when you simply use, has the effect of discrimination, because so many aspects of anything can have some sort of effect. And with that, I'd be pleased to try to answer any questions you might have. [LB959]

SENATOR PIRSCH: Thank you. Are there any questions? Seeing none, thank you for coming down today and testifying. We'll move on to the next opponent. Good afternoon. [LB959]

KORBY GILBERTSON: Good afternoon, Vice Chairman Pirsch, members of the committee. For the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property Casualty Insurers Association of America, and PCI like the former two opponents, is also opposed to LB959. I think Mr. Fraizer did a good job of expanding on what Ms. Nielsen said, and that our primary concern is the language that says, has the effect of discrimination. Obviously, if this is a bill that is targeted after just credit scoring, simply

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we think much of this is already covered in the model act, and furthermore, we think a lot of it is covered in existing language in the statute. We would also look forward to having continued discussion with Senator Lathrop on this issue to help clarify and try to solve any issues that we can. Be happy to take any questions. [LB959]

SENATOR PIRSCH: Thank you. Any questions for Ms. Gilbertson? Seeing none, thank you. We'll move on to the next opponent. Good afternoon. [LB959]

JAN McKENZIE: Senator Pirsch, members of the committee, for the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e. I'm here testifying in opposition to LB959 on behalf of the Nebraska Insurance Federation. My only point would be to reiterate what Ms. Gilbertson said, and that's that our concern, in particular, is related to uniformity across the states. Many of our companies in Nebraska do business in multiple states. When we passed the NCOIL model in 2003, we were hoping to address these concerns about credit score in particular, and we believe it's to our best interest in the competitive market to have our laws across the states as uniform as possible. But we too welcome the opportunity to visit over these issues during an interim study if the committee sees fit. [LB959]

SENATOR PIRSCH: Thank you. Any questions? Senator Langemeier. [LB959]

SENATOR LANGEMEIER: Thank you, Senator Pirsch. I think you're the last one so I'll state my question for you. [LB959]

JAN McKENZIE: Oh, good. [LB959]

SENATOR LANGEMEIER: Here's my question. As each of the opponents has testified, they look forward to having a discussion over the interim. Can this bill be modified in a way that makes you happy or is the discussion just to hope it goes away? [LB959]

JAN McKENZIE: Well, I think what we see in this particular legislation in (LB)959 and like some of the discussions or legislations we've seen before where we're looking specifically at unfair discrimination because of a low credit score, this goes, we believe, wider into stepping into an area that also looks at possibly the way things are rated for people who are less likely to be high risk based on actuarial studies in their underwriting. So I think that everybody is looking to be as fair in terms of rewarding people who are in categories that are rated at a cheaper rate because of low incidents, and understand the other piece to the adverse effect of potentially having a bad credit score even though they've been responsible for their actions regarding their property casualty insurance. So that's kind of a long answer to your question, but I think there's room to look at what the real concerns are in a way that still allows the industry to be competitive and to make sense. [LB959]



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SENATOR LANGEMEIER: Between the previous bill that's just the credit scoring and this, do you think there is room to come up with a solution in the middle? [LB959]

JAN MCKENZIE: Since I'm merely the messenger, Senator, I would have to run that by my people to know. Sorry (laugh). I'd like to think they gave me carte blanche authority, but they don't. [LB959]

SENATOR LANGEMEIER: Thank you. You answered it. [LB959]

SENATOR PIRSCH: Yeah. Are there any other questions? Seeing none, thank you for coming down today. [LB959]

JAN MCKENZIE: Thank you. [LB959]

SENATOR PIRSCH: Are there any other opponents, LB959? Seeing none, any who wish to testify in a neutral capacity here today? Seeing none, Senator Lathrop, would you like to close? [LB959]

SENATOR LATHROP: Sure. You know, there are two things about this that trouble me, and one is that we start out with this proposition in Nebraska that we mandate insurance. Right? Everybody has to have an auto liability policy with at least \$25,000 worth of coverage. That's our law right now. So it's not like people who are being discriminated against intentionally or unintentionally have an option...they don't. They have to buy insurance because we tell them they have to. I think that makes it incumbent upon the state to make sure it's fair; that the rates are set in a way that we agree are fair. So the opponents talk about two things. One is there's already a provision that covers this. Well, if that's the case then it's belts and suspenders, right? But if that's all it were, I don't know if they would oppose the bill. The other is they said, well, we should put unfair discrimination in there and not just, has the effect of discriminating. Well, what's...if you are a person that fits in this class whether it's religion or national origin or the color of your skin, and this has the effect of discriminating against you, I believe it's going to feel unfair to you. I don't know what's fair discrimination. The concern and I'll...this isn't a secret if you've studied the issue at all. The Texas Department of Insurance says, the credit scoring has the effect of discriminating against minorities, right? So the question is whether or not we want to stop that practice or whether we want it to continue. Is there some reason why we're going to allow it to continue when those who have studied it say well, that may not be the reason they're doing it, but it certainly has that effect. And I think we owe it to people who fall into these classes. If we're going to mandate that they have insurance, right? We tell them that you have to buy a policy, and there's no other place to go. You got to go into the market, and if this is happening in the market, it's incumbent upon the Legislature, I think, to make sure that that's fair and that the practices of this industry do not have the effect of discriminating against people based upon things such as their

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race or their national origin. And I would be happy to talk about this during an interim study if you guys think that that's the approach to take with it. [LB959]

SENATOR PIRSCH: Very good. Any questions? Senator Gloor. [LB959]

SENATOR GLOOR: Thank you, Chairman Pirsch and Senator Lathrop. I'm sitting here trying to think of some of the real world scenarios that we deal with and having had two children, who not that long ago got out of college, I think they along with most college students don't come out with much of a credit rating or a credit score. And if they've made unwise choices and have signed up for the gazillion of credit card applications that you can fill out may, in fact, have themselves in trouble. So I think it's reasonable to say that a lot of college students, when they start out on their own after graduating, probably don't have great credit scores. What's to keep the system from clogging up with a number of those students who will inevitably be from minorities, protected classes and whatnot, clogging our system with complaints about this being discriminatory when, in fact, it probably relates to a whole bigger class...in this case, college students? [LB959]

SENATOR LATHROP: I don't think that the kids getting out of school...if we're talking about credit scoring, for example, in your hypothetical, I don't think that the kids getting out of school fall in any of these protected classes. So it would be difficult for them to argue that because I'm a college student with no credit, that they're picking on me because of my...I mean, they can say, because I'm young, but that's not here among the protected classes. [LB959]

SENATOR GLOOR: Well, and I'm not phrasing my question well, but within that larger class of college graduates, will be students of minorities who are recent college graduates whose scoring might be poor, not because of their...may or may not be with your argument because they're part of a specific class or race, a minority group, but because they're college students. And that may be a reality with groups of people out there that just don't merit...they don't have enough history...don't merit a good credit score. My concern is, will we end up with suits or claims that is discriminatory for the smaller class that's protected when, in fact, they're just part of a larger class of people who, overall, don't carry good credit scores, historically, for appropriate reasons. [LB959]

SENATOR LATHROP: By coincidence, they fall...let's, for example, take an African American that just graduated from college. They may have poor credit for different reasons than a larger segment of the African American community, for example, assuming that that's the case. Your question said claims, and I...this first...if this passes, the first place that the evaluation happens at is at the insurance company, okay? They can look at all of their practices and say, as we set the rates, as we decide the renewals is we determine how much we're going to charge people to buy a policy or to renew

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one. Is the practices that we're employing...and it may not just be credit scoring that we're talking about...it's the only thing I'm familiar with, but we may be talking about other practices, right? [LB959]

SENATOR GLOOR: Could be, sure. [LB959]

SENATOR LATHROP: Are we doing anything that has the effect of discriminating more in our credit practices against somebody because of their race, for example? Once they make that determination, and they're comfortable with it, I expect that if there was a claim or somebody filed suit and said, I happen to be African American, my credit score is bad, and you're engaging in this practice, there's one lawsuit. They decide it right then and there. Does this have the effect of discriminating, and if it does, and there's one lawsuit, everybody changes their conduct and stops doing it. This doesn't invite multiple claims. If it does anything, they get the first chance to make a correction, and if there is a claim, there's probably just one, and that is, the court looks at it and says, well, wait a minute, this practice has the effect...we agree with the Texas Department of Insurance that this practice has the effect of discriminating against minorities. So one thing, I'm glad you brought the question up because it doesn't invite multiple lawsuits. If anything, there won't be any because the practice will change in the first instance, but any practices that are left after the insurance company decides what they're going to continue to do or stop, there would be one claim, and it would sort out in a court whether or not the practice discriminates or has the effect of discriminating against people. [LB959]

SENATOR GLOOR: Okay. Thank you. That helps. [LB959]

SENATOR PIRSCH: Any other questions? Oh, Senator Utter, yes. [LB959]

SENATOR UTTER: Thank you, Senator Pirsch. Senator Lathrop, what other...I guess you'd call them tools...and we've talked, we've bored in here kind of on credit reports and credit scores as a potentially discriminatory tool. Do you have in the back of your mind that there are other tools that are also covered here that you might think would be discriminatory? [LB959]

SENATOR LATHROP: You know, I wouldn't even want to say them out loud because, have I heard or have people suggested that there are practices in the industry that had the effect of making it more expensive to buy insurance in different parts of Omaha? The answer to that is yes, and there's a term for it, and I don't even know the name of it. Okay? But when I suggest that it might be the proper subject of an interim study, maybe what we'll find in an interim study is it isn't just about credit scoring; there are other things. Is it more expensive to insure a home in northeast Omaha than it is in southwest Omaha? Not because of the value of the home, but because of where it's located and does that have the effect? I don't even know the answer to that, but I think it's

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something that could be explored by having some of the insurance folks come in and say, you know, tell you what we're nervous about. It's this practice, this one, and this one. And let me tell you why we're doing them, and why we think we ought to be able to continue to do them, so that we can kind of put it all out on the table and decide which of them seem to have a close relationship to risk which is, in my judgment, what we ought to be setting for. Here's another concern. If a tornado...we had a tornado come through my district two years ago, and my district...it has a...in terms of homes, there's I'd call it blue collar out on the west end, maybe white collar in the middle, and blue collar towards the east end. The tornado comes through. Does where the tornado drop and the claims that are going to follow be dependent upon somebody's insurance score? Probably not. Is it going to choose a particular part of town because of where people that have poor credit scores live? No, it doesn't have anything to do with that, but if the cost for that kind of coverage is dependent upon things other than risk...other than risk, then I think it is suspect in my judgment. [LB959]

SENATOR UTTER: Thank you. [LB959]

SENATOR LATHROP: Sure. [LB959]

SENATOR PIRSCH: Any other questions? Seeing none, thank you for your closing and... [LB959]

SENATOR LATHROP: Pleasure to be here. Thanks for the questions. [LB959]

SENATOR PIRSCH: ...yeah, you bet. We're going to...that ends our committee hearing on LB959, and we will take up the next bill, LB931. Senator Langemeier is the sponsor, and we'll wait for your opening, Senator. [LB959]

SENATOR LANGEMEIER: My name is Chris, C-h-r-i-s Langemeier, L-a-n-g-e-m-e-i-e-r. Vice Chairman Pirsch, members of the Banking, Commerce and Insurance Committee, first for disclosure. I am a certified general rural property appraiser, licensed in Nebraska. I'm also a real estate broker licensed in Nebraska, and that's what I do when we get a few moments away from the Legislature which seems to be less and less every day. The second thing I want to talk about is on the agenda today, you have LB931 which I'm about to talk about, and you have LB818 that's going to follow me. And I want to bring it to your attention that neither one have any relation to the other one. Neither one, as we typically have in this legislative body, we have one side, and then you get the next bills, the other side. You're going to see a lot of the same people testify behind me on both bills, but I just wanted to bring it to your attention...they are two totally different issues. So with that, LB931 I introduced on behalf of the Nebraska Appraiser Board. It has three components in it of subsidy. As those that's been on this committee before, in my term in the legislature, I've brought you an appraisal bill on behalf of the Appraiser Board every year that I've been here. The first component of

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LB931 is, are compliance regulations to comply with USPAP, and USPAP is updated. It used to be every year and now it's every two years we get a new USPAP book, so the first component of this legislation changes are referenced to the January 1, 2008, USPAP book to the new January 1, 2010, USPAP book. You've heard me bring that every year that I've been here since we changed the guidelines. The second component in this appraiser bill in LB931 is to deal with an education requirement that we've gotten from Washington to deal with how our providers of real estate education, appraiser education, take their own continuing ed classes, so it's a component to deal with that. The third part of it that's the more meaty part is guidelines and accountability for the regulation of appraisal management companies. Regulation is proposed requiring an appraisal management company to operate in Nebraska under Nebraska laws, and it brings into compliance with the guidelines of USPAP. Over the last few years, we see the use of appraisal management companies become higher and higher of relevance. As we saw the banking issues that we've gone through in the last two years, three years, there's been more and more of a push to make sure that you're getting higher quality work and more separation between the lender and the appraiser, so management companies have become a mandate in some ways to be that insulator. So the banker calls the management company. The management company then goes through their list of appraisers that is willing to take on the appraisal in any particular zip code, and is supposed to run through those on a random basis, not to select one or not to select one as they make those decisions. And so anyway, this particular third component would manage their process under Nebraska law, and I'm going to quit there without going into a lot more detail, but I could because there's a number of people behind us that are going to testify into the detail of (LB)931. And at this time, I would take questions if there are questions. [LB931]

SENATOR PIRSCH: Great. Thanks for that opening. Are there any questions? Seeing none, we'll move on to proponents then. And could I see a...by hands raised the number of...anyone else who's going to speak as a proponent? Okay. And opponents on the bill, are there any? Okay. Very good. Thank you. [LB931]

LESLIE SELLERS: (Exhibit 1) For the record, my name is Leslie Sellers, L-e-s-l-i-e, last name Sellers, S-e-l-l-e-r-s. Good afternoon, Chairman and members of the committee. My name is Leslie Sellers again. I am the 2010 president of the Appraisal Institute. I am here on behalf of the Appraisal Institute as well as the American Society of Appraisers, the American Society of Farm Managers and Rural Appraisers, and the National Association of Independent Fee Appraisers. We are here today in strong support of LB931 as it is introduced. Our organizations support this bill as it is introduced for two things. First of all, it updates the state appraiser law to comply with federal law, and Nebraska is one of the last states to do this. And more importantly, we would support it in the regulation of appraisal management companies operating in Nebraska. The appraisal management companies is a business entity that administers networks of independent appraisers to fulfill real estate appraisal assignments on behalf of lenders.

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The AMCs are third-party brokers of appraisal services that sit between banks and other mortgage originators and licensed or certified appraisers who perform the actual real estate appraisal services. The AMC industry has experienced substantial growth as a result of the outsourcing by many financial institutions, particularly in response to the Home Value Code of Conduct which went into effect in May of 2009, and the advent of the management industry has resulted in some issues for both the appraisals and the public. One of the biggest issues is the transparency of how the AMCs fund their operations. The Federal Housing Administration has recognized this issue and has issued a new management guidance letter for mortgage lenders that requires that the AMCs charge the lenders a separate fee for appraisal management services rather than taking it from the fee paid by the consumer for the appraisal service itself. And in addition, it also required that the AMCs disclose for transparency reasons the amount actually paid to the appraiser and the amount that they charge for the management service. In addition, there have been numerous reported instances of appraisers losing their licenses by revocation and then forming a new appraisal management company and staying in the business in some other form or fashion. LB931 is enacted into law, no individual who has had their appraiser license revoked would be permitted to be involved in the ownership or management of an AMC. These are just a few of the problems that independent fee appraisers are facing from some of the management companies, but we share many of those concerns. We want to point out to the committee that all AMCs are not alike and will not be all alike unless reasonable regulatory framework is put into place. Currently, AMCs are not required to register with any government agency or not subject to any state or federal regulation. As we stand here today, six states have already enacted AMC regulation and 18 including Nebraska are considering it this year. As introduced, (LB)931 would enact a reasonable registration and regulatory structure for AMCs operating in Nebraska. We appreciate the opportunity to testify and I'm available to answer any questions that you may have. [LB931]

SENATOR PIRSCH: Thank you. Are there any questions? Seeing none, thank you very much for your testimony here today, and we'll move on to the next proponent. Good afternoon. [LB931]

LESLIE SELLERS: Thank you. [LB931]

GREGG MITCHELL: Good afternoon, Vice Chairman Pirsch and members of the Banking Committee. My name is Gregg Mitchell spelled G-r-e-g-g M-i-t-c-h-e-l-l, and I serve as chairman of the Nebraska Rural Property Appraiser Board. I'm here today on behalf of the board for the purpose of gaining your support for LB931. The changes to the statutes are to address the authority of the Appraiser Standards Board and the Appraiser Qualifications Board to establish criteria for state regulation of real property appraisers which comes through the FIRREA Act that was enacted in 1989. The proposed changes to the statute are to establish requirements for professional appraisal

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practice which includes appraisal, appraisal services, appraisal consulting, appraisal review, and the newly addressed appraisal management companies. LB931 is important to our state for a number of reasons. One is language to the existing portion of the statute is updated and adopts 2010, 2011 USPAP and some other issues raised by the appraisal subcommittee during their audit of the agency in 2009. The updated language will put the state into compliance with the standards set by the appraisal subcommittee, and that language will allow the state to retain its federal certification and allow its appraisers to continue to perform real estate appraisals involving federally related transactions. Additionally, the appraisal management company section of the act moves AMCs into the board's regulatory umbrella and brings accountability to this relatively new business model. I'm just going to go through a couple of the things in the bill just to highlight. On pages one through four, there were definitions that were updated, and to accommodate the addition of what's now 76-2251, the AMC bill. In addition to that, there's an amendment that we'd like to add to this with Senator Langemeier's blessing, some minor language change to the appraisal services definition that was submitted to us by the Nebraska Realtors Association; 2213 brings Nebraska into compliance with USPAP standards; 2220 just, you know, Nebraska is a mandatory state, and any individual entering the state must hold a valid credential to hold a real property appraiser license and individuals involved in appraisal review of properties located within the state are subject to the same qualifications. Many appraisers have had instances where review appraisers from other parts of the country have conducted reviews on their work, and the reviewers don't have the geographic competence, i.e. access to data to allow that reviewer to perform a competent appraisal review, and as a result, there have been faulty reviews done that have caused appraisers in the state, you know, quite a bit of grief and time spent to rebut that review, so to speak. So this puts those people into the same umbrella as people that are licensed here and performing work here. So in other words, if someone has done an appraisal here on a property here; someone has done a review on a property here, that they fall under the same standards. In addition, the Nebraska Realtors Association has asked us to make two minor amendments to 76-2220, and we will submit those to Senator Langemeier; 2223 brings...actually brings standardized testing or testing in line with what the appraisal qualifications board standards are, so in the past that the board would review qualifying education, and there's qualifying education and continuing education. And so for qualifying education, that has to be approved by Appraiser Qualifications Board, and so with that, it does save the board and the state some money and provides consistency for applicants if they're going from one state to the next in terms of their testing and their education requirements; 2228 move the appraiser trainee category in with the rest of the appraisers--that was just done for consistency; 2229 changes credentials for qualifying education, so that people that are taking education courses at degree awarding universities can have the opportunity to receive credit. One of the things that we really worked on for a long time is 2229 through 2232 is to adopt a matrix or upgrade standards, so that people moving from trainee to licensed or from licensed to certified residential have a clear path on what their tasks are in front of them to

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achieve that higher credential and eliminate confusion and perhaps duplicating efforts that might not qualify, so making it simpler for that applicant to move through the process. We also adopted procedures for education provider violations, and so that we're bringing accountability to the education side. And then we also made change...on 2240 we made changes to update the disciplinary process. So once the formal complaint is filed, the board extracts itself from the process and appoints a hearing officer. The rights of due process are more rigorously supported. The board retains the action to set forth the disposition, but the process is more reflective of administrative procedures. 2241--limits for fees have been eliminated. This may not be acceptable to the Legislature and may be in violation of statute, but the board made this decision because of the process. The Legislature meets annually, and is not accessible for mid-year changes. The board felt the adjustment could more readily be addressed in NAC Title 298: Rules and Regulations as opposed to the act. The act will work just as effectively under either the parameters should the Legislature require a ceiling be established within the law. And then, finally, the section was...this was the appraisal management section, and this was added to the act to regulate appraisal management companies. The appraisal management company section of the bill is designed to bring accountability to this relatively new business model. It establishes the board of regulator of all AMCs that enter Nebraska in the form of application and communication. This section attempts to establish the AMC under the accepted guidelines of accountability as required by USPAP, and statute and rule. The goal is to provide a common basis for all appraisal practice and enforcement and with the intent to promote a high level of public trust and protect the users of all appraisal services. And with that, I thank you, and I'll take...I'm open for any questions should anybody have some. [LB931]

SENATOR PIRSCH: Thank you very much for your testimony. Are there any questions? Seeing none, thank you very much for that testimony, and we'll move on to the next proponent. [LB931]

GREGG MITCHELL: Thank you. [LB931]

SENATOR PIRSCH: Good afternoon. [LB931]

RICK LIFFERTH: Good afternoon. Thank you. My name is Rick Lifferth, R-i-c-k L-i-f-f-e-r-t-h. (Vice) Chairman Pirsch, I appreciate the opportunity to be here and members of the committee. I'm from Utah. I'm not from Nebraska. I have a son-in-law who is from here. But I've been asked by some of my appraiser friends here in the state to come and share with you some of the experiences that we've had in Utah. Our national president of the Appraisal Institute, Mr. Sellers, just talked about six states that had passed AMC legislation and ours was the first. I sit on the Government Relations Committee for the Appraisal Institute and have been involved at our state level as well as the national level, so I would just like to just share a little bit of the experiences that we've had in this regard. Appraisal management companies, as Mr. Mitchell just talked



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about, is a relatively new business model, and those entities provide a very valuable service to lenders, to the appraisers, and to the public in a lot of ways, but they also are in a position of great power, and if not kept in check they can abuse that power. In Utah, for example, we had a man that I know of who was reviewed by another out-of-state appraiser and criticized, and a complaint was sent to the state on the reviewer, and the state tried to get the reviewing AMC who's an out-of-state entity to just send the documentation, so that an investigation could be held, and they simply wouldn't do it. So the state of Utah realized that they had no power or no consent to service to have that stuff subpoenaed in, so that they could do a proper investigation. And I could go on with other examples, but the state of Utah was the first to pass this law. We passed it last year, and the rules were put in place and just went into effect in early December. So far, the experience has been positive for everybody. The AMCs were concerned at first, but after they got the bill and they saw what it was, and your bill is very similar to it, they recognized that it was a legitimate process for regulation. It did not inappropriately or unfairly inhibit their ability to do business, and it really did have a lot of the elements that created a fairness in a very responsible way to conduct the business for both the state regulators, for the appraisers in the community, for the lenders, and for the AMCs. So I just wanted you to know that, at least in our case, we've had no negative experience with that other than some people who hadn't become regulated. But they've actually become rather positive in the whole thing, so I would just speak in favor of this. I think that this is a very positive thing that will help everybody involved. Take questions if there are any. [LB931]

SENATOR PIRSCH: Thank you. Senator Gloor, you had a question. [LB931]

SENATOR GLOOR: Thank you, Chairman Pirsch. I'm trying to understand exactly what an AMC is, and is an AMC a contracting agency that contracts with appraisers scattered around a particular geographic area to be part of their...for want of a better term, panel of appraisers? Or, are these appraisers that work solely for this AMC, don't have their own businesses, don't do, in fact, their own appraisal work? [LB931]

RICK LIFFERTH: That's a great question. Thanks for putting it out there. Appraisal management companies are privately-held companies. Some of them are owned by lenders. Wells Fargo has a subsidiary company that they call Rels, R-e-l-s. Countrywide has a company called LandSafe. They're, of course, all owned by Bank of America now, and there are a variety of others. And they...it's because it really kind of started in 1995 or thereabouts when the Internet came in and lending started taking place over the Internet. It used to be that those orders were taken at the local level, but now it's really a worldwide system that we're in. And so these companies were created, and they've just kind of grown over the last 15 or so years, and they aggregate appraisal orders from large lenders and distribute them to the panels, as you say, because they get appraisers approved in various areas. So it's really a very good service in a lot of ways. But there are also some very severe challenges with that. That they, for example, they

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require that the appraiser meet certain timeliness standards. Well, in order to do that as an appraiser, and I am an appraiser...been one for 35 years...I have to pretty much dedicate my life to that phone call when it comes in or that e-mail. And if I don't meet those deadlines, I can be fined; I can be taken off the panel. And what I do is I essentially exclude other business, and so I'm not really an employee. I'm a contractor in that circumstance, but they essentially control me, and so it's that control that has been abused in the past. And so these companies, like I say, really do provide a great service or can as long as they're regulated in an appropriate way. This bill does that. This bill is...it's in six states or, you know, variations of it with each state. But...does that kind of answer your question? [LB931]

SENATOR GLOOR: Well, it does, and I understand the predicament of the appraiser, but it also falls under the category of biting off more than you can chew. I mean, if you agree to be part of that panel, again, for want of a better word...if you agree to be part of that panel, you know that what comes along with it is an expectation that when the phone rings you'll respond to it. And if you've filled your calendar for the next month with appraisals and that phone rings, you have made a bad decision. I'm... [LB931]

RICK LIFFERTH: It's a business decision. [LB931]

SENATOR GLOOR: ...I'm...it's a business decision, and some people bite off more than they can chew... [LB931]

RICK LIFFERTH: Sure, sure, sure. [LB931]

SENATOR GLOOR: I can see the predicament. I'm...I'm trying to squeeze into my thought process whose responsibility it is to watch out for biting off more than you can chew so. [LB931]

RICK LIFFERTH: I don't know that that's necessarily the intent of the legislation. That certainly was not a consideration for us. What we had a problem with was it's Friday afternoon, and you get an order, and you've got five calendar days to get this done. Well, if you can't get in over the weekend, and you can't make it back then you get penalized. But that kind of a restriction is an unreasonable thing to do, and it doesn't allow the appraiser to take the time to do what he needs to do to get the job done right. And that's where we start having some real problems. They have the ability to blackball an appraiser, so if they didn't like his work they'd take him off the list, and then they'd pass that around to the others, and so they effectively run the guy right out of business. So in the law that we created, we put in a due process provision where they have to at least have some communication with that person and say, hey, here's some problems we need to solve, and there's an appeal process which was never there before, so there are those kind of things. You're right. I don't think it's intended to protect the appraisers in their business decisions. There's a line there, of course, and so. [LB931]

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SENATOR GLOOR: Okay. Thank you for the clarification. [LB931]

SENATOR PIRSCH: Thank you. Any other questions? Senator Utter. [LB931]

SENATOR UTTER: Appraisal management companies then are owned by some of the larger banks, the mortgage companies. [LB931]

RICK LIFFERTH: Some of them are, yes. [LB931]

SENATOR UTTER: Some of them are privately owned. [LB931]

RICK LIFFERTH: Correct. [LB931]

SENATOR UTTER: How are they funded? How do they make their money? [LB931]

RICK LIFFERTH: Primarily, they take a cut of the appraisal fee. [LB931]

SENATOR UTTER: So each appraiser that is a part of the covey of appraisers that has...that works under the umbrella of the management company then agrees to remit back to the management company a percentage of his fee and services they perform in finding a job for them. [LB931]

RICK LIFFERTH: Correct. I'll give you an example. An appraisal fee in our area would be typically 400 bucks, so they'll collect 400 bucks from the borrower, and of that 400 bucks, maybe 200 bucks or 225 bucks will go to the appraiser, and the management company will keep the rest. [LB931]

SENATOR UTTER: And are there...do they have such control over the appraisal business that it would be impossible for an independent appraiser to act? Has this become...do you just about have to be a member of a management company's crew of appraisers to... [LB931]

RICK LIFFERTH: To survive? [LB931]

SENATOR UTTER: ...survive? [LB931]

RICK LIFFERTH: (Laugh) There are many that have to do that. Not everybody, but yeah, it's becoming more and more difficult to live without one of these management companies. [LB931]

SENATOR UTTER: Is this primarily just for residential appraisers or is this commercial...people that specialize in commercial real estate or that may appraise

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farms and ranches also, belong to these management companies? [LB931]

RICK LIFFERTH: Primarily, it's residential, but Wells Fargo, for example, we do work for Wells Fargo in their commercial sector, but we don't go through Rels. They have another one called Retex. On the commercial side, they don't...I don't know for sure how they fund themselves there because they don't take a percentage of the fee that I know of. They ask me for a bid. I give them a price and that's what...that's the contract. On the residential side, it's pretty standard. The appraisal fees are typically...say \$300 to \$400 or \$425 on the VAs right now in our area, and so those are kind of more stable and more fixed, not in the marketplace. And they take a percentage of that, so on the commercial side it's not so much of a problem on the fee side. [LB931]

SENATOR UTTER: So in the long run, you have another mouth to feed, that of the appraisal management company. Has that had a tendency to increase the overall cost of appraisals because we have another mouth at the trough that needs fed? [LB931]

RICK LIFFERTH: I'm going to say a very qualified yes, maybe. But really what's happened is appraisers have eaten most of that. Most of...for the most part, the appraisers have just agreed to work for less. Now, there's a tendency right now to move in another direction on that. FHA, for example, recently passed regulations against these...no, not against...regarding these appraisal management companies that they cannot take their fee out of the appraisal fee, that the management companies have to pay a normal and a reasonable fee in the market area because what's happening is, because those fees have been cut in half in many cases and oftentimes more, the experienced appraisers are disappearing out of the market. And so that vacuum is being filled with people who are less qualified, less experienced, and so on, and not that they aren't licensed and so on, but yeah, there's been a flight to some degree. [LB931]

SENATOR UTTER: Are some of these management companies owned by a group of appraisers who get together and form a management company that, in essence, kind of markets their services and the appraisers that are members of the management company are the owners of also the management company? [LB931]

RICK LIFFERTH: I believe that there are some that are owned by appraisers. I participated in one back in '95 that failed, so it's not an easy business, but that's why I know that it does provide a good service. But yeah, these entities come from a variety of different backgrounds. Some of them are appraisers, I think, and some of them are private people, and some of them are these large corporations. First American owns eAppraiseIT, one of the largest in the country, and they have an ownership interest, I understand, Norrell's and some of the others, too. So it's a mix on ownership. [LB931]

SENATOR UTTER: Thank you very much. [LB931]

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RICK LIFFERTH: You're surely welcome. [LB931]

SENATOR UTTER: Thank you for coming all the way from Utah to... [LB931]

RICK LIFFERTH: Thank you. I wish you'd warm up your weather a little bit (laugh). [LB931]

SENATOR PIRSCH: Are there any other questions? Seeing none, thank you for your testimony. [LB931]

RICK LIFFERTH: Thank you very much. [LB931]

SENATOR PIRSCH: And we will ask for further proponents. [LB931]

JOHN CHILDEARS: Thank you very much. Appreciate the opportunity to say a few words. I'm John Childears from North Platte, Nebraska. I'm both a licensed real estate appraiser and broker. I did not intend to testify on (LB)931, but hearing some of the testimony, I wanted to add a few cents. I deal strictly in farm and ranch real estate, so we do not do residential or commercial, but have a lot of friends in the business and hear a lot of horror stories from some of them. And I think I understand where the appraisal board is going on trying to license the appraisal management companies. An appraiser in relation to the appraisal management company is not on a team or a panel or anything like that. He would be typically an independent appraiser; might be in a group of a company with three or four other appraisers or whatever. But he gets a call from somebody in New Jersey or California and says, and this is a typical call that we get...5:30 at night the phone will ring, and the guy will say in a New Jersey accent, do you do appraisals? My answer is sure. He says, okay, if you can do such and such address for \$300 and have it in my hands in five days, you'll get that assignment. What the board is worried about is unscrupulous activity by these people of unreasonable demands of time, of fees. The appraisal will be sent in, and these management companies will call back and use a hatchet to achieve the end that they're after. So I don't think it's at all the Wells Fargo companies or those kinds of big companies. In fact, we do a lot of work for Wells Fargo, and they have a...like the gentleman said, a separate branch that runs their appraisal activity--hires the appraisers and reviews the appraisals, and so forth. I don't believe it's those kind of people that the board is worried about. It's worried about the guy that lost his license as an appraiser in New Jersey two years ago and started his own appraisal management company, and is now not guided by anybody in the state of Nebraska for his conduct and activities in the state. Now, if this hearing was about an insurance company, you would be...and there were laws on the books, of course, that any insurance company from any state in the United States goes through our insurance industry, gets licensed and is subject to certain conduct and so forth. I think what the board is asking you for is the same kind of criteria for an appraisal management company that comes into the state via the telephone, e-mail,

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faxes, etcetera, and is totally away from Nebraska. There probably are a few in Nebraska, but I'm not aware of those. But those people that are conducting business in Nebraska without any oversight by any Nebraska agency, in my opinion, need to be...need to have oversight, and I believe that's what the board is asking you for. [LB931]

SENATOR PIRSCH: Thank you, and Mr. Childears, I don't know that we got the spelling of your name. Is it...? [LB931]

JOHN CHILDEARS: My apology, sir. [LB931]

SENATOR PIRSCH: Is that J-o-h-n C-h-...? [LB931]

JOHN CHILDEARS: J-o-h-n C-h-i-l-d-e-a-r-s. [LB931]

SENATOR PIRSCH: Thanks so much. I appreciate it. Are there any questions then for Mr. Childears? Seeing none, thank you very much for your testimony. [LB931]

JOHN CHILDEARS: Thank you, appreciate it. [LB931]

SENATOR PIRSCH: Are there any other proponents of LB931? Good afternoon. If you could just start off by saying your name and spelling it for the record and then take it from there. [LB931]

KATHERINE POLICKY: Okay. My name is Katherine, K-a-t-h-e-r-i-n-e Policky, P-o-l-i-c-k-y. Good afternoon, Vice Chairman Pirsch and members of the Banking Committee. My name is Kitty Policky, and I serve as the Director of the Nebraska Real Property Appraiser Board. I testify here before you today on behalf of the Real Property Appraiser Board and the 850 appraisers we serve in support of LB931. The changes made to the act by LB931 have been reviewed by Chairman Mitchell, so I won't reiterate the information. Briefly stated, the bill is designed to adopt necessary and mandatory changes to meet federal guidelines as well as proposed legislation for oversight of the appraisal management companies. In placing legal and ethical obligations of the Uniform Standards of Professional Appraisal Practice, it is the mission of the Real Property Appraiser Board to remain in compliance with title XI, thus ensuring that education, qualifications, and experience criteria as mandated by the Appraiser Qualifications Board are adopted and guarantee that Nebraska appraisers meet the requirements to perform appraisal services for federally-related transactions. The goal of the appraiser board is to provide a common basis for all appraisal practice and enforcement with the intent to promote and maintain a high level of public trust and appraisal services as well as to protect the appraiser and the users of appraisal services. In summary, LB931 has the full support of the real property appraiser board and the appraiser community. I'd like to answer any questions you might have. [LB931]

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SENATOR PIRSCH: Thank you. Are there any questions then? Seeing none, appreciate your testimony here today and for coming down. Yeah. [LB931]

KATHERINE POLICKY: Thank you very much, Senator. [LB931]

SENATOR PIRSCH: Are there any other proponents? Seeing none, we'll move on to opponents then if the first would like to come on up. Good afternoon. [LB931]

ROBERT HALLSTROM: (Exhibit 2) Good afternoon, Mr. (Vice) Chairman, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association to testify in opposition of LB931. I was certainly pleased to hear some of the supporters of the bill bestow the merits of appraisal management companies and what they do, and the services that they provide for both lenders and consumers and appraisers alike. Attached to my testimony is a summary from the NBA compliance update regarding the Home Valuation Code of Conduct that was referred by one of the earlier witnesses which I think has given rise or enhanced the need for lenders to satisfy the independence requirements that the appraisal guidelines and the Home Valuation Code of Conduct set forth by Freddie Mac and Fannie Mae have brought about. In my testimony, without going over it in great detail, I have outlined at the bottom of page one and the top of page two some of the benefits that the appraiser community, the lenders and consumers alike realize from appraisal management company operations. I do want to suggest from the outset that the NBA does not oppose the registration of appraisal management companies and believes that responsible and reasonable legislation and regulation can benefit both consumers and market participants in the mortgage lending industry. We have previously shared with Senator Langemeier some of the specific concerns of the industry. We have actually provided him with some amendatory language that could be considered to address some of the concerns that we have with LB931 as introduced. I would note that (LB)931 is patterned after a uniform act. It's my understanding that that was not necessarily one that the appraisal management companies or the lending industry were intimately engaged in the crafting and drafting of nor were we intimately involved in the drafting of the specific provisions of LB931, so perhaps additional time will allow us to put our heads together and come up with some consensus on amendments to address the areas of concern. I have set forth, and will go through these quickly in my testimony, beginning at page three. We do have a particular issue with regard to registration versus licensing which, as I understand, may ultimately boil down to semantics, but with regard to specific issues on LB931, there's a reference on page three and four which I believe implies that compliance with title XI of FIRREA is predicated upon the regulation of appraisal management companies. I don't know that to be the case. If it's not, I'm not sure it should be part of the intent, purpose, and objectives portion of the bill. Secondly, the exclusions of the law, we think, are not broad enough or are too broad in terms of not excluding those companies that only employ

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individuals as opposed to those that may employ both individuals and independent contractors. We believe that any company that's doing the appraisal review types of services that AMCs conduct, should be covered by whatever requirements are put into law. There's a provision on pages 50 and 51 dealing with the definition of a controlling person and requires them to be an appraiser. Our suggestion is that we doubt that there's any evidence other than anecdotal that would suggest that an attorney, an MBA, or a CPA would be any less qualified to serve in this capacity, so we don't know if that requirement should be retained. Also, you've heard other witnesses talk about those who have lost their appraisal licenses in other states. There's an outright restriction on any employment of such individuals in an appraisal management company. We think if there are services that are not related to appraisal or review services, some type of technical, clerical, administrative services...perhaps that exclusion could be too broad. There are prohibitions against requesting an appraiser to perform work not in compliance with USPAP on page 52. This is maybe a technical one. We certainly don't think anybody should be required to do that. That would be a violation of law, but with regard to a request there may be some inadvertent mentions in some type of document that neither of the interested parties have seen that gets out of the office, that perhaps is a little bit too broad in its application. We would also suggest deletion of the requirement to disclose the appraisal fee schedule as required on page 53. The department would not or the agency would not be authorized to dictate AMC fees and, as a result, we're not sure what purpose the disclosure of those fees would serve, and there's an array of different services, depending upon location, geographic complexity, and so forth that may require differentiation of fees from case to case. Finally, item G on page four, we believe that the deletion of the provisions prohibiting an AMC from entering into an indemnification agreement would be eliminated. It's in the public's best interest that the appraiser have a vested interest in the products they're providing and to prohibit them from entering into an indemnification agreement might run counter to that particular goal and objective, and that is particularly found on page 55. Again, in closing with those comments, I think there's room for discussions between the appraiser community, Senator Langemeier, the committee that we can work on some amendments, but we respectfully request that the committee hold the bill to allow time for those discussions to take place. Be happy to address any questions of the committee. [LB931]

SENATOR PIRSCH: Thank you for your testimony. Are there any questions? Seeing none, we'll move on to the next opponent, LB931. [LB931]

ROBERT HALLSTROM: Thank you. [LB931]

SENATOR PIRSCH: Seeing none, are there any who care to testify in a neutral capacity here today? Good afternoon. [LB931]

KORBY GILBERTSON: Good afternoon, Vice Chairman Pirsch, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y



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G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association. I've been in three different positions since this morning when I've talked to some of you (laugh) out in the rotunda. So let me give you a little background. The realtors do not have any issues with the ideas covered in this bill and actually supports the underlying issues. We do have one issue with section 6 and clarifying some language, and you'll hear about more of this in the next bill, the CMA and BPO issue. We want to make sure that things that the realtors are currently doing legally are not somehow drug underneath this statute, and we have an agreement, and I believe Mr. Mitchell talked about offering an amendment to clarify that issue to clarify that opinions of value are not CMAs or BPOs for this purpose. And if that amendment is adopted, we would then support the bill. Be happy to answer any questions. [LB931]

SENATOR PIRSCH: Thank you. Are there any questions based on that testimony? Seeing none, thank you for your neutral testimony here today. [LB931]

KORBY GILBERTSON: Thank you. [LB931]

SENATOR PIRSCH: Are there others here to testify in a neutral capacity? Seeing none, Senator Langemeier, would you like to close? [LB931]

SENATOR LANGEMEIER: Vice Chairman Pirsch and members of the committee, I'd like to thank everybody that came to testify. Many came from a lot of places--D.C., Tennessee, Utah. I want to thank them for that. As far as the amendments, I am aware that there are amendments going to be offered on behalf of the Realtors and Appraiser Board from the Appraiser Board, and we'll work with that. I also want to thank Mr. Hallstrom for providing his bullet points to me a few days ago prior to today. We appreciate that opportunity to look at those ahead of time. Let me give you a little example of how an AMC works. As I stated earlier, I am a certified general real property appraiser in Nebraska. One of my local banks that I've been doing business with since I've been licensed, notified me on Monday that if I want to keep doing business with them, I have to go through their AMC to continue that. So I sat down last night at 8:00 and I downloaded all the regulations that they want, and so 38 pages of reading later, I decided I'm no longer going to do business for that bank anymore. Nowhere in that AMC agreement does it talk about what I'm going to get paid nor does it say I can submit what I want to get paid for a project. The focus of it is that I just have it done in five days, and the other focus in it is that I meet value. What happens in these companies on the blackball side and not...now let me exclude this. The bank-owned ones we've had good luck with; it's the privately-held ones that we've had luck with, and in the appraisal world our job is to put a value on a property. Don't really care what the banker thinks the value is; don't really care what the homeowner thinks the value is. I'm hired to come up with an independent value. In our industry, if you don't hit that value, then they start nitpicking at it, and if you argue with them then they turn you into the Appraiser Board. I would suggest that if you want just a value, there's other options out

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there. So to look at the regulation over (LB)931 would allow you some recourse to have some ability to know that people on the other side know what they're doing as they scrutinize your work as well. So with that, I'd ask for the adoption of and the moving and the advancement of the amendments that we'll bring you and the advancement of LB931. [LB931]

SENATOR PIRSCH: Senator Pankonin, you had a question. [LB931]

SENATOR PANKONIN: Thank you, Senator Pirsch. Senator Langemeier, thank you for bringing this bill and, obviously, there's a lot of moving parts to it, but you mentioned that you got the bullet points from Mr. Hallstrom earlier in the week or last week or whatever, and from looking at that, do you see...he has asked for further discussions. Do you see a possibility of that? [LB931]

SENATOR LANGEMEIER: I think there's some possibility to address a number of those points that he has provided, yes. [LB931]

SENATOR PANKONIN: Okay. And you could bring him to some resolution on several of them? [LB931]

SENATOR LANGEMEIER: We'll try as many as we can, yes. [LB931]

SENATOR PANKONIN: Okay. Thank you. [LB931]

SENATOR PIRSCH: Any other questions? Seeing none, that will end the hearing on LB931, and we will move on to the next...our third bill of the day, LB818. I see Senator Sullivan is here and is, hopefully, ready to go forward. Good afternoon, Senator Sullivan. [LB931]

SENATOR SULLIVAN: (Exhibit 1) Good afternoon, Senator Pirsch, Mr. (Vice) Chairman, members of the Banking, Commerce and Insurance Committee. My name is Kate Sullivan representing the 41st Legislative District. That's K-a-t-e S-u-l-l-i-v-a-n. LB818 would expand the permissible use of a Broker's Price Opinion (BPO), or a Comparative Market Analysis (CMA), to include utilization of the opinion or analysis by lenders or borrowers or prospective lenders or borrowers in obtaining or extending financing in a transaction other than a federally-related real estate transaction. I became interested in introducing this bill after I read a January 2009 letter authored by the Nebraska Real Property Appraiser Board, suggesting that lenders would be referred to the Attorney General and to the Department of Banking for violations of law involving the use of BPOs for lending purposes. I believe a copy of that letter has been circulated, but I do have one for you if the pages could come and get this. Thank you. Pursuant to the provisions of the Financial Institution Reform, Recovery and Enforcement Act, or FIRREA of 1989 and its implementing regulations, financial institutions are required to

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obtain appraisals conducted according to specified standards by a certified or licensed appraiser in connection with federally-related real estate transactions. A federally-related real estate transaction is a transaction having a value of more than \$250,000 requiring an appraisal. While there are other exceptions to the appraisal requirement, the primary instance in which no appraisal is required for a transaction at or below the \$250,000 threshold level. There are three instances in which a rather formal and involved evaluation process must be conducted by financial institutions even when no appraisal is required. These include: (1) transactions at or below the \$250,000 threshold level; (2) transactions that qualify for a \$1 million or less business loan exemption; and (3) transactions that qualify for an exemption for subsequent transactions resulting from an existing extension of credit. In performing an evaluation, a financial institution must provide an estimate of value to assist the institution in assessing the soundness of the transaction. The individual conducting the evaluation must be independent of the loan and collection functions of the financial institution and have no interest, financial or otherwise, in the property or transaction. Subject to the independence requirement, a non-appraiser member of the financial institution staff can perform the evaluation. Now, an evaluation among other things must include: (a) describe the sources of information used in the analysis; (b) describe the analysis and supporting information; (c) provide an estimate of the real estate's market value with any limiting conditions; (d) include calculations, supporting assumptions and if utilized, a discussion of comparable sales. As you might expect in this financial environment of today, regulators are more closely scrutinizing every loan transaction even those in which no appraisal is required. As I previously indicated, independence is required when financial institutions perform that evaluation process. The authority to utilize a BPO or CMA, as proposed under LB818, would provide an independent third party estimate of value to supplement the other extensive steps that must be completed by a financial institution in conducting that evaluation. The ability to utilize a BPO or CMA will not in any way supplant or replace the need to compile and analyze other information by the financial institution in arriving at an estimated value in assessing the soundness of that financial transaction. Authorizing the use of BPOs and CMAs for lending purposes in transactions that do not require an appraisal is not unprecedented. A review of a summary of state laws prepared by the Appraisal Institute shows that nine states appear to place no restrictions on the purposes for which a BPO or CMA may be issued. Another 16 states allow a BPO or CMA to be used for listing purposes and in connection with non-federally-related transactions. I'm aware that the Nebraska Real Property Appraiser Board and certified appraisers oppose LB818. I'm also aware of the level of interest that is raised whenever issues involving turf protection are brought before the Legislature. However, it should be noted that in this instance, I believe there is no turf to be protected. LB818 simply allows a BPO or a CMA to be utilized as a component part of an extensive process that lenders are required to comply with, and for which no appraisal is or will be required. Mr. Bob Hallstrom will be following me, and he's been working with the Nebraska Real Property Appraiser Board and the Nebraska Real Estate Commission on possible amendments to LB818. Mr. Hallstrom will also

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answer your technical questions concerning current regulatory requirements and try to clear the air of misinformation that is currently circulating around this bill, so I hope you'll direct a lot of your technical questions to him. But I also trust that you will exercise your best judgment based on the facts about LB818 and respect the committee's decision as to its future. Thank you. [LB818]

SENATOR PIRSCH: Oh, thank you very much. Now we'll move on to questions that we have, and we apparently don't have any at this point in time, so try to change from this morning, (laugh) Senator. [LB818]

SENATOR SULLIVAN: (Laugh) Thank you very much. [LB818]

SENATOR PIRSCH: I think I've hit my quota for you (laughter). [LB818]

SENATOR SULLIVAN: Okay, thank you very much. [LB818]

SENATOR PIRSCH: We'll move on to proponents. [LB818]

MIKE JACOBSON: Hi. My name is not Bob Hallstrom, but (laughter)...and please don't mistake me for Bob Hallstrom. My name is Mike Jacobson, Mike, M-i-k-e Jacobson, J-a-c-o-b-s-o-n. I am president and CEO of Nebraskaland National Bank in North Platte. I also serve as the chairman of the Nebraska Bankers Association. My purpose for testifying today is to visit with you a little bit about this bill from a banker's perspective. Senator Sullivan, I think, did a great job of really outlining the issues here. I think the key issue, and there are two. First of all, this bill does nothing, absolutely nothing, to change the appraisal requirements that were issued by the FFIEC which is the Federal Financial Institutions Examination Council. It does nothing to change those rules. Number two, it will have no impact on whether we use an appraiser or not on transactions under the \$250,000. I could tell you that what it will impact is our ability to have access to all the information available for us to do the evaluation that was outlined in the previous testimony. When you look at our bank and I'll give it as an example...in our bank we have roughly a \$300 million bank. We have an analysis department that does not have a vote in our loan committee, is not involved in the collection process, and they are the ones who engage the appraisers. They're the ones who also evaluate all the appraisals that are done, and they're also the ones who are responsible for developing what we call a certificate of value or a value for property that falls under the guidelines of what requires an appraisal. Those individuals do an extensive evaluation. They do all the things that Senator Sullivan had outlined, but they use all available information which includes, but is certainly not limited to tax assessed values. They look at other comparable sales. They look at other loans that we might have done where we've got comparable property, but what we like to be able to have access to and what many banks have used historically is getting from the realtor a copy of their broker's price opinion which was developed for the seller when they were determining how to

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value the property. The reason we like to use that information and have it available is it also includes the comparable sales that they used at the time that this property was simply...was being listed, and we also get their input as to what their opinion is. Let me be very clear, however, that from a regulator's perspective, if I had a broker's price opinion or a CMA in my file as the sole valuation source, I will guarantee you, I would be cited for a violation. That cannot be our sole source of valuation any more than tax assessed values or any other one valuation source. The regulation is very clear, and the regulators are very keen on this issue. They're going to look at your file, and they're going to want to know how you determine value. And they're going to want to see that you've approached this from a number of different sources, and that you have all the information available to you to evaluate properly what you believe the value of that property is. Let me also make sure that it's clear that not only do the people evaluate the properties for those transactions under (\$250,000 which is largely the ones we use those valuations for...residential properties that are (\$250,000 or less. But I would also tell you that any loan that we do that does require an appraisal, these same individuals have to do an evaluation of the appraisal, and that must also be in the file, and they must go through the same process as they would if they were doing the valuation on their own. And it's not unusual that they're going to find technical errors or some problem with the appraisal, and that's no...I'm not throwing any stones at the appraisal industry; they do a great job. But I'm just telling you, these people are trained to look for any kind of technical miss: address wrong, something wrong in the boilerplate part. What their role is, is to show the regulator that they have thoroughly evaluated this transaction, and that they've come up with a value. In fact, in many cases, we might look at an appraised value, and they may come in and say, we think that's a little strong and can reduce it. They can't ever raise it above what the appraiser says it's worth, but they may, for one reason or another, set a lower value, and that's what we're limited to for lending purposes within our institution. That's the kind of things that go on from a banker's perspective, so let me just repeat. What will happen with this bill is if this bill does not pass, the net effect will be bankers will have access to less information than they have today for transactions that they're going to do without an appraisal regardless. If the bill passes, the bankers will have access to more information that will be scrutinized by their regulator. In either case, it will have no impact on whether there are more or less appraisals engaged. If the property is under and the transaction size is under the size required by the FFIEC, those evaluations are going to be done in-house, so we're not taking business away from the appraisal industry. What would happen with failure to pass this bill is we would not have access to information we think is important for us to have as part of the evaluation process. Thank you. [LB818]

SENATOR PIRSCH: Thank you very much. Are there any questions based on that testimony? Seeing none, we'll move on to the next proponent. [LB818]

MIKE JACOBSON: Thank you. [LB818]

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ROBERT HALLSTROM: (Exhibits 2 and 3) Mr. Chairman, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB818. I'm here for cleanup and to address any questions. I think Senator Sullivan has done a very nice job of outlining for the committee what the requirements are both from the appraisal guidelines perspective, those transactions for which an appraisal is required. The primary threshold or demarcation line being those that are over \$250,000 also touching on the extensive requirements that are foisted upon the banks, both in terms of their requirement to analyze and scrub down, if you will, an appraisal when one is required by the guidelines, but also similar activities that are required whenever a bank conducts or performs the evaluation that both Senator Sullivan and Mr. Jacobson referred to. I think again based on some of the comments and the input that the committee and others have received on this bill, I think it's important to highlight, once again, and emphasize from our perspective, and I think we're accurate on this, there is absolutely no impact on the livelihood of appraisers that results from this bill. As has been suggested, there are a category or a universe of transactions for which appraisals are required. Nothing, absolutely nothing will change with regard to that universe of loan transactions. For those that are under the appraisal threshold, there are certainly...one thing that hasn't been mentioned, any type of loan that is subject to a FHA guarantee, any loan that's sold on the secondary market either pursuant to the guidelines or pursuant to industry practice, appraisals will be required in those situations as well. What we're effectively talking about are those loans that are under \$250,000 that are truly going to be retained in-house. I will note for the committee, as been suggested, there are banks that for any number of reasons already request and obtain the services of an appraiser for even those transactions that they retain in-house that are under \$250,000. One reason may be if they're a small enough shop, they may not have enough personnel that can be independent of the loan determination, the loan origination decisions, and the collection functions, so that they do ship that out to an appraiser, so that business is out there for the appraisers. My mind-set is that their positions are not going to change with regard to the revisions that are contained within LB818 in any respect. So we're left with the balance of in-house transactions that are under \$250,000. I would submit for the committee's consideration that even with the use of BPOs and CMAs, that the evaluation process and the regulatory requirements are going to have those banks analyzing, criticizing, scrubbing down the CMAs and the BPOs to the same extent that Mr. Jacobson suggested that the appraisers are required to do by current regulations. In looking at some of the materials and information that the committee has received, I also want to address a couple of comments that have been made publicly with regard to the loosening of underwriting guidelines and the removal of appraisal requirements for loans in Nebraska simply by virtue of permitting the use of BPOs and CMAs as suggested by LB818. I've already indicated that by definition and regulatory fiat, we cannot change any of the transactions for which appraisals are required by the mere passage of LB818. And as Mr. Jacobson suggested, the benefits that can be derived from a BPO or CMA will be to provide greater flexibility to financial institutions in

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documenting their credit file on those smaller dollar loans and assist a financial institution in meeting its compliance obligations under federal and state laws and regulations. Finally, there's some implication that in some way or another, we would be out of compliance with the FIRREA mandates, and the appraisal guidelines certainly do not see any shred of truth in that suggestion. There are a number of other states, as Senator Sullivan has indicated, who already have specific provisions recognizing the ability of a BPO or a CMA to be utilized for non-federally-related transactions as we propose under LB818, and I'm not aware that any of those states are not deemed to be in compliance. One final item before I address any questions by the committee has to do with the fiscal note. There isn't any dollar figures, but there's some suggestions that there might be lost income, and I think there's a little bit of hyperbole involved with forcing appraisers out of business that you might see from that fiscal note. I think, again, I've made it perfectly clear that we don't see the connection between LB818's provisions and the livelihood or the fact that we're going to chase appraisers out of the business. I would note also that any suggestion of additional manpower or requirements that are intimated, is my understanding perhaps came from the Real Property Appraiser Board rather than the Nebraska Real Estate Commission who would be responsible for supervising the people who issue BPOs and CMAs. It's my understanding that the Real Estate Commission has indicated they anticipate no cost associated with this bill. I've also visited with Mr. Greg Lemon of the Nebraska Real Estate Commission, asking him specifically if he has had any significant number of complaints with regard to BPOs and CMAs that were issued in the past, and his response to me via e-mail was that they have had absolutely no complaints filed with the Real Estate Commission, going back as far, I believe, as 1997. With that, I'd be happy to address any questions that the committee might have. [LB818]

SENATOR PIRSCH: Thank you. Senator Langemeier. [LB818]

SENATOR LANGEMEIER: Thank you, (Vice) Chairman Pirsch. Mr. Hallstrom, thank you for testimony. You talked about fiscal notes and in my six years here, when fiscal notes work for us we hold them up in praise, and when they don't work for us we cuss the department that makes them. [LB818]

ROBERT HALLSTROM: And I think Attorney General's Opinions probably have a similar fate. (Laughter) [LB818]

SENATOR LANGEMEIER: I was going to get to that, but you beat me to that punch. This all started with a letter that was sent out by...this infamous letter sent out by the chairman of the Nebraska Appraiser Board. In that last sentence, the second to last paragraph, it says, further, any financial institution utilizing CMAs and BPOs for lending purpose will likely be forwarded to the State Attorney General's Office and the Department of Banking which I personally think if you'd have turned this over to them, they'd have laughed it out the door, and this all would have went away anyway because

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there's no authority in statute to make that statement. But here's my question. That statement is what brought us to (LB)818, correct? [LB818]

ROBERT HALLSTROM: I would say, Senator, in two respects. First is the threatened prosecution or referral, if you will, and secondly is then in checking with representatives of the Realtors Association and in checking with banks and determining that based on an interpretation of this existing statute, that we've had at least three different opinions as to how far and wide and broadly it can be interpreted as we've discussed in meetings that we've had. That clarification of the statute probably, in our estimation, is a prudent thing to do, but probably most significantly to circle back because of the allegations in the letter. [LB818]

SENATOR LANGEMEIER: Right, and it gets back to my first point, and you beat me to the punch on the Attorney General's...and I appreciate the discussion we've had over the last few days. Is there a need to have the Attorney General define that definition since it seems the appraisers, the bankers, and the realtors all have a different definition? [LB818]

ROBERT HALLSTROM: Certainly might be something that is at the disposal of the sponsoring senator or the committee or individual senator in the Legislature. [LB818]

SENATOR LANGEMEIER: Any of the 49 of us, yeah, exactly. Okay, that's what I wanted to know at this point. Thank you. [LB818]

ROBERT HALLSTROM: Thank you. [LB818]

SENATOR PIRSCH: Senator Pankonin. [LB818]

SENATOR PANKONIN: Thank you, Senator Pirsch. And Mr. Hallstrom, I'm going to have to leave shortly for a dental appointment in Louisville, but I wanted to ask you about the...and I just got them because the copies...we didn't have enough, and they just (inaudible). The proposed amendments that you handed out as part of your testimony to LB818, tell me a little more about how you came up on those and where we're at on that process or they're just... [LB818]

ROBERT HALLSTROM: Okay, be happy to, Senator Pankonin, and I hope the dentist is less painful than the rest of this hearing. (Laughter) But we've had some meetings with Senator Langemeier, and one of the issues that came from that particular meeting, and Mr. Moore and Ms. Policky from the Real Estate Appraisers Board were there as well. One of the issues that we discussed...when I relate back to the interpretations of the statute, it might be helpful, I think, to lay this out. The Appraiser Board has suggested that a BPO or a CMA for lending purposes is off limits completely. No purpose, whether you charge or don't charge. I've had some suggestions that that statute can be



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interpreted to provide that as long as a BPO or CMA is provided with the appropriate disclosure and no fee is charged, that perhaps that is permissible, notwithstanding the Appraiser Board interpretation. I've also had some other attorneys that have suggested that as long as the disclosure is given, a BPO or CMA can be used for any purpose irrespective of whether you charge for it or not. So therein lies the conundrum, but when we met with Senator Langemeier he had asked us to go forward and draft amendments that would clarify that the BPO or CMA could be provided for these non-federally-related transaction lending purposes, provided there was no charge for it. I have not received word back. I think Mr. Moore and I played a little bit of phone tag, but have not received word back as to whether or not the appraisers would be receptive to that or not, but I have visited with representatives of the Realtors Association, and based upon their interpretation of the statute, I suspect that could be viewed as a step backward. So it depends on which side of the ball we push in, I'm going to have somebody pushing back from the other side. So what these amendments are intended to, very similar to the amendments I drafted and submitted to Senator Langemeier, is to clarify the definition of broker's price opinion and comparative market analysis under state law to include obtaining or extending financing in a transaction other than a federally-related transaction, and then with regard to the disclosure that must be given, right now it says, and not for any other purpose including lending. We've changed that to say, or for lending purposes in a transaction other than a federally-related transaction. The other issue that we've done that is a little bit secondary to the discussion, but nonetheless significant, is the realtors have suggested...right now the statute says that their BPO or CMA must carry this disclosure. They get requests for BPOs and CMAs from outside organizations, sellers, buyers, banks, and foreclosure sales and the like that may already be on a preprinted form that doesn't give room for them to put the disclosure on the document or be carried on the document. I have language in here that would simply clarify, and at great risk I'll say I hope it's not problematic, but it clarifies that the BPO or CMA must contain or have attached thereto the required disclosure. [LB818]

SENATOR PANKONIN: Okay. [LB818]

ROBERT HALLSTROM: So I don't want to make any suggestion that the appraiser community likes this or accepts it, but it's what I've come up with in terms of trying to clarify what we would like to do and address our issues and concerns. [LB818]

SENATOR PANKONIN: Thank you. [LB818]

SENATOR PIRSCH: Any other questions? Seeing none, thank you for your testimony. [LB818]

ROBERT HALLSTROM: Thank you. [LB818]

SENATOR PIRSCH: We'll move on to other proponents. [LB818]

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KORBY GILBERTSON: Good afternoon, Vice Chairman Pirsch, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association and in support of LB818. Mr. Hallstrom, I believe, passed out some amendments, and he talked to them just minutes ago with Senator Pankonin. With those amendments the realtors asked for some clarification, so that we would have a full understanding or a full definition of what CMAs and BPOs are in the statute that it would include significant language that would give a full disclosure of what they can be used for, and that they can be attached or contained in the CMA or BPO. And like Mr. Hallstrom said, one of the main concerns is that either the form that the realtor is given when they do a CMA or BPO is a preprinted form that probably has less than a half-an-inch or something at the bottom in order to try to fit a fairly lengthy disclosure on which would be pretty impossible to do in 14-point, or else it is done electronically. And so because of that, the attached thereto language is important to us. The Nebraska Realtors Association wants you to know that we do not expect that these were treated as appraisals. They're not being done when an appraisal is needed, and thus, we do not...we agree with Mr. Hallstrom and the other bank representatives saying that this should not be a turf battle, but rather a clarification of what these documents can be used for. I'd be happy to try to answer any questions. [LB818]

SENATOR PIRSCH: Thank you. Any questions? Seeing none, I appreciate your testimony here today,... [LB818]

KORBY GILBERTSON: Thank you. [LB818]

SENATOR PIRSCH: ...and we'll move on. Are there any other proponents? None? We'll move on then to opponents. Anyone here to testify in opposition? Good afternoon again. [LB818]

LESLIE SELLERS: (Exhibits 4 and 5) Hello again. Leslie Sellers, L-e-s-l-i-e S-e-l-l-e-r-s. I am the 2010 president of the Appraisal Institute. I'm here on behalf of the Appraisal Institute, the American Society of Appraisers, the American Society of Farm Managers and Rural Appraisers, and the National Association of Independent Appraisers. And to some degree, I feel as though I'm here or there for the public interests as well because all of these associations are professional associations that we are here to advance the profession, but we're also here for the public interests as well. We speak today in strong opposition of LB818, and really for two issues. Two issues involved in this legislation is (1) reasonable risk management in the public interest; and (2) is public accountability. The bill reduces transparency and unnecessarily exposes the public to consumers to bias and influences, and it removes public accountability. And I would like to respond to some of the people who might try to turn this into a turf battle that's really not the issue at hand. We currently are in one of the largest and greatest financial credit crises since

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the Great Depression. In our opinion, it's not the time to loosen collateral valuation standards. This bill would allow BPOs to be performed for loan origination and renewal purposes which have not been allowed prior. Policymakers at all levels including here in Nebraska must return to the three basics, the three C's--credit, capacity to pay, and collateral. And LB818 is simply not in the public trust and in the public interest. Existing collateral valuation standards should be maintained and should not be expanded beyond what is currently permitted under Nebraska law. As introduced, the bill would significantly expand the ability of licensed real estate brokers beyond what is currently permitted in law. LB818, if it's enacted, will place...Nebraska will be the first state to expand unqualified agents and brokers to provide opinions on which origination and extension of loans will take place. It's simply not in the public interest and the best interests of consumer protection. BPOs are largely unregulated and are performed with little or no oversight or training. They are not required to have any minimum for education, experience, testing, and there is no public accountability for their work. The two largest purchasers of mortgages in the country, Fannie Mae and Freddie Mac, and the Federal Housing Administration, have recognized the importance of having accurate and reliable valuations. This is for the secondary market. This does not apply to the property under \$250,000. However, the public trust is still served by reasonable risk management practices at that level. The Federal Reserve has issued statements that commercial BPOs do not satisfy the requirements for evaluations. Many lending institutions would like to expand their ability to order BPOs in loan origination and renewal purposes. The USPAP is required to be followed by licensed and certified appraisers, and there is no such requirement for brokers to perform their work under BPOs. The possibility exists for a broker to intentionally report a low selling price under the goal of flipping the property later on. We've actually heard instances of that type. And lastly, I would like to note that the Nebraska Realtors Association, as I understand it, is not 100 percent behind this legislation as they have voted 23 to 15 in one of their recent governing bodies to support this legislation. To summarize one of the previous comments made here today, I would respectfully submit that if this bill passes, we are going to be taking the public interests and public accountability for valuation purposes in lending back prior to 1989 and FIRREA. If it fails, the public trust and public accountability will be served. I'll be glad to answer any questions. [LB818]

SENATOR PIRSCH: Thank you. Are there any questions? Seeing none, I thank you very much, Mr. Sellers, for your testimony here today, and we will move on to the next opponent. [LB818]

LESLIE SELLERS: Thank you. [LB818]

SENATOR PIRSCH: Once again, good afternoon. [LB818]

JOHN CHILDEARS: (Exhibit 6) Good afternoon, Senators of the Banking Committee. My name is John Childears, J-o-h-n C-h-i-l-d-e-a-r-s, and I drove here from North Platte

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this morning, specifically to testify in opposition to LB818. Let me assure you that my opposition has nothing to do with appraisal fees that I might lose. My opposition has to do with right and wrong relative to our citizens of Nebraska. The spelling of my last name or the look of my face really has nothing to do with my testimony. Maybe some of the road that I've traveled to get here might have something to do with it. The Nebraska Real Estate Commission licensed me as a broker and as an appraiser in 1980. Under federally mandated requirements, the Nebraska real property appraisal law and the Appraiser Board was created in 1990, and I have been licensed as a certified general appraiser since that time under now the Appraiser Board. Governor Love appointed me to a four-year term on the very first Appraisal Board, and I served from 1990 through 1994. Previous to that, I assisted in writing the initial Nebraska appraisal law, and I was involved through the...our professional organization, the American Society of Farm Managers and Rural Appraisers in the creation of what is now the Appraisal Foundation. Located in Washington, DC, the foundation is federally funded and mandated agency responsible for the oversight of appraisal licensing and appraisal quality in all of the 50 states. The Appraisal Foundation performs a review of each state's Appraiser Board, including Nebraska board, to determine compliance with the federal requirements and has the power to decertify our Nebraska board and thereby decertify our Nebraska appraisers if they are not in compliance with all of the requirements. The Appraiser Foundation works closely with and provides appraiser and appraisal guidelines for all federally-related entities such as Fannie Mae, Freddie Mac, Farmer Mac, all the other secondary money market sources, and also with FIRREA, FDLIC, FSLIC, and any other federal financial entity or control system. As introduced, LB818 is designed to change the current appraisal law to allow real estate licensees to provide Nebraska lenders with a broker's price opinion as the foundation for certain lending practices. Real estate licensees under Nebraska's current appraisal law have been labeled to provide a BPO for many years as long as it indicates that the BPO is not an appraisal, and that is intended solely for listing or selling of real estate. The impetus that created this law was the relocation companies back in the late '80s, early '90s had so many houses they located in various other states, and they needed an eye on the ground to go by and tell them what a house might or might not be worth. So the Real Estate Commission and the Appraisal Board agreed that licensees...real estate licensees should be allowed to do that, a necessary service particularly to those relocation companies. Licensees can, in fact, charge for the BPO under current law. You are now being asked to make the BPO legal for property valuation and illegal for a lender's use in underwriting a loan. This change is asked as an accommodation to Nebraska bankers. It is, in fact, a disservice to all Nebraska citizens seeking financing. Our state owes these citizens a sound system for loan origination. Point number two, financing considerations in Nebraska are currently based on appraised value with appraisers guided by the Nebraska Real Property Board which is federally guided by the Appraisal Foundation. To become a Nebraska-certified general appraiser requires (a) 300 hours of appraisal education; (b) the equivalent of a four-year college degree; and (c) 3,000 hours of appraisal experience and, of course, you do have to pass the test that's required by the

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Appraisal Board. While you are being asked via LB818 to reduce lending practices in Nebraska, the rest of the 50 states and our federal government are working at a frenzy to stop fraudulent appraisers, brokers, lenders from taking advantage of the public. This form of fraud is prevalent throughout the United States outside of Nebraska...maybe going on in Nebraska too, I don't know. But on all the coasts of our country, this is a very prominent problem. It was the driving force behind the savings and loans collapse of the 1980s, the fraud of appraisers, lenders, and brokers, and was the driving force behind the federal mandate for national appraiser licensing in 1990. The appraiser...Appraisal Foundation publishes a USPAP bible. Now, you've all heard about USPAP, so here it is: 8-and-a-half by 11, one inch thick. That's what every appraiser in the state of Nebraska must comply with to avoid losing their license, and for Nebraska's Appraiser Board to be in compliance with federal regulations. USPAP is the Uniform Standard of Professional Appraisal Practice. This is a requirement of all federal agencies and oversight entities. Everything that they require must comply with the Appraisal Foundation's USPAP. Point number three, Nebraska banks have utilized in-house systems to establish property value for a number of years, and you've had several of the proponents tell you about that system. There are guidelines by the examiners...federal examiners, state examiners on how that has to be done, but a bank can go through a process if the property or loan is under the de minimis level of 250,000 on houses and under a million dollars on a four-plex, a cafe, a motel, a farm-ranch. They can make a loan without an appraisal as long as they have proof in their files what the valuation is of that property. Of course, it has many different names in the banking industry, according to which bank you belong to. It is allowed under federal banking guidelines, and it must be under the de minimis level. This internal system allows for documentation of property value by bank personnel. Now, as you've heard, it cannot be the loan officer making that loan, but it can be other personnel within that bank. The bank must simply establish value of the property through some form of comparable sales. Nebraska banks use this system and some appraisers, including myself, provide them with comparable sales in order to put in that file to meet bank examiner requirements. However, if there is federally-related money such as Fannie Mae, Freddie Mac, so forth, then an appraisal must be used even if it is below the de minimis level. Most banks, therefore, use this system only on properties that cannot qualify for the secondary money market. We do not want to put these property owners at risk of a BPO value, do we? I personally have more faith in the ability of the bank and the banker to establish probable value than I do for that value to be established via a real estate salesman's BPO. Point number four, as an appraiser I have absolutely no worry about losing business because of LB818, and I think you would find that almost every appraiser in Nebraska has more business than they can handle. The small dollars that would be involved in paying a real estate salesman for a BPO is nothing, and most appraisers don't have time for that anyway. They're far too busy to worry about completion of a \$50 BPO for a bank. I also believe that most real estate licensees will not occupy their time and take the risk of their license for a \$50 BPO. Here is my concern, and that is that LB818 is not of income, but rather the risk you are placing

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Nebraska citizens and borrowers at on the basis of a BPO by a licensee. Do you want your son, daughter, or mother to obtain a loan from a bank based on (a) a one-page BPO from a real estate licensee, or (b) by an internal bank valuation? LB818 has no requirements for education, experience, accuracy, or foundation of the value reported in a BPO by the real estate salesman. In fact, that licensee may have gotten his license yesterday or that licensee may be a de facto retired salesman that hasn't done anything for ten years, but he can make fifty bucks by doing a BPO. Lending in Nebraska should not be based on a BPO. I am responsible in our company for four general certified appraisers, and I'm the broker for 20 real estate salesmen. I require them to complete a marketing evaluation on every property before they can list it the same as a BPO. They cannot simply go out and list a property. They must do a BPO or marketing valuation before I allow them to list that property. I will not allow any of my salesmen to do any BPO work for lenders as they absolutely are not qualified to complete loan valuations. Several bankers in western Nebraska have indicated that they will not use BPOs, do not believe in it; they have their own internal bank system of creating those kinds of loans, but they are not in a position to go public against their fellow bankers and go against LB818. Rest assured, there's quite a few of those people. Number five, and this may be the most important part that I want you to listen to. The Nebraska Real Estate Commission requires each licensee to maintain errors and omissions insurance under the commission's statewide program. Yes, please, sir, do you have a drink of water? [LB818]

SENATOR PIRSCH: Could you bring the testifier a glass? (Laughter) [LB818]

JOHN CHILDEARS: Be grateful for it, sir. This E&O insurance is to safeguard the public for any mistakes, misrepresentations, etcetera, that might result from...thank you very much. [LB818]

ALEX DeBRIE: You're welcome. [LB818]

JOHN CHILDEARS: Let me diverge for just a second? Would you please convey to Senator Pahls my concern about his health and well-being, and each of you are dealing with that also, so please pass that on if you would. [LB818]

SENATOR PIRSCH: Thank you for your thoughtful comments. [LB818]

JOHN CHILDEARS: Back to Errors and Omissions. The Errors and Omissions insurance required by the Real Estate Commission is to safeguard the public for any mistakes, misrepresentations, etcetera, out of sales activity. I, unfortunately, have become on a first name basis with Williams Underwriting, the E&O company utilized by our real estate commission for our state's E&O. Williams Underwriting also provides E&O for many other states across the United States and are very experienced and know what's going on in the E&O world. They indicate that their E&O coverage for a real

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estate licensee in Nebraska will cover real estate sales only and will never cover any valuation product except as completed by an appraiser. And I remind you that E&O is required by the real estate commission. They, of course, quoted all of the appraisal foundation and USPAP requirements that I've indicated above. That's why they will not cover valuations except by an appraiser following USPAP. Nebraska does need real estate licensees completing BPOs that are not covered by E&O insurance. Let me start over. Nebraska does not need real estate licensees completing BPOs that are not covered by E&O insurance. I believe that Nebraska does need real estate salesmen to do BPOs for reasons of listing and selling real estate. I think that's very worthwhile and that it should be. I doubt that our real estate commission, however, will allow their licensees to conduct any work in Nebraska that is not covered by E&O, and somebody should find that out. They put the licensing requirement of E&O in effect for a specific reason. If LB818 is passed, the Appraiser Board will also be in one of those conundrums saddled with enforcement problems. As a broker, I will be legal to complete a BPO for the bank's lending purposes. However, I am held to a higher requirement as a licensed appraiser, and I cannot provide any estimate of value without in fact completing an appraisal. Now I'm in that conundrum caught between the Appraiser Board and the real estate commission, and obviously, I cannot do a BPO for lending purposes because I'm an appraiser. Thank you very much for allowing me to testify to you. I appreciate that privilege very much, and I urge you to do the correct thing and send LB818 to the cemetery. [LB818]

SENATOR PIRSCH: Thank you very much for your testimony, Mr. Childears, and are there any questions? Thank you very much. [LB818]

JOHN CHILDEARS: Thank you very much. I appreciate it. [LB818]

SENATOR PIRSCH: Okay. Are there any other opponents here today? Good afternoon. [LB818]

LARRY SAXTON: Good afternoon, Senator Pirsch. My name is Larry Saxton. It's L-a-r-r-y S-a-x-t-o-n. I'm an appraiser from Omaha, and I am here on behalf of the Nebraska Chapter of the Appraisal Institute. Earlier, you heard testimony from Leslie Sellers who said that he was president of the Appraisal Institute. I'm president of the Nebraska Chapter of the Appraisal Institute, and the Nebraska Chapter has been in place since 1948, one of the earlier chapters. The forerunner of the Appraisal Institute was formed in 1932, so we have a long history of existence here in Nebraska. The Nebraska Chapter 23 is on record of being opposed to LB818, and I wanted to share that with you factually at first. But in listening to the testimony, I thought I should visit with you a little bit because I think that my history is somewhat relevant to this. It's somewhat similar to what you heard from John Childears just now. I first got in the real estate business in '72. I got my broker's license in '73 because, at the time, Nebraska required you to be a broker in order to do appraising. And to refresh your memory,

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Nebraska was the first state to enact an appraiser license law; that was in 1974. I know this because they wouldn't let me grandfather in like some of my older compatriots, so I had to wait five years to get my appraiser's license. And why is that important now? I think it's important to remind you that Nebraska was the first state in the union to enact an appraiser license law, and it was looked upon as sort of a role model when the savings and loans collapsed. It just so happened that I was president of the Omaha Area Board of Realtors back in '89, and when the Appraisal Institute moved away from the realtors organization, I was on the appraisal committee, the appraisal section of the National Association of Realtors, and we used Nebraska's appraiser license law as a model to help us help other states get their license laws on the books. Why is that important? Because Nebraska's appraiser license law has been a stabilizing influence in the real estate markets, and it should remain that way. And I believe that if you pass LB818, that will seriously impair consumer protections. I'll answer any questions you may have. [LB818]

SENATOR PIRSCH: Super. Thank you. Are there any questions for this testifier based on his testimony? Seeing none, I appreciate your coming down here today and giving your testimony. We'll move on to the next opponent. Good afternoon. [LB818]

ROB OGDEN: Vice Chair Pirsch,... [LB818]

SENATOR PIRSCH: Start with just your name and spelling it, that would be great. [LB818]

ROB OGDEN: My name is Rob Ogden, R-o-b O-g-d-e-n, and I am, for the record, a certified general appraiser, state of Nebraska. I happen to also be the chief deputy of Lancaster County Assessor Register of Deeds. And I am representing the Lancaster County Assessor Register of Deeds in my testimony. Our concerns are a little different than what you've heard before. We do mass appraisal of all properties in Lancaster County for valuation purposes for ad valorem taxation. And in that part of our job, we go through an informal time each year that we meet with property owners who have concerns about the values we set on their property. During that time period, they have the ability to bring in recent appraisals they might have had. A lot of times they've had it for refinancing. They may have just purchased a home, they have an appraisal for that purpose. On a rare occasion, they actually hire an appraisal for the situation of protesting their tax valuation. During that time period, obviously, we get to review those. We also receive brokers' opinions and CMAs, and in our documentation to the property owners we tell them that we will look at them, but we will give them no consideration. That's been our policy for over the eight years that I've been the chief deputy. That also fits the same schedule as what happens with the Board of Equalization, the formal protest time period which is handled by the County Board of Equalization in Lancaster County in the summer. And they hire a referee system, and the referee system is licensed appraisers in the city of Lincoln, Lancaster County area that listened to the



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property owners for the county board members which make up the Board of Equalization. In the County Board of Equalization's rules, they have set forth that they will consider and give great consideration to actual appraisals of a property that are current to the time period that we are valuing, but they do not consider CMAs or BPAs (sic: BPOs) as evidence of valuation to show that our value is incorrect. And our concern is to the taxpayer themselves. If this bill would pass, it would be confusing to the property owner, to the taxpayer that comes in and talks to us, and then during the summer talks to the Board of Equalization why a CMA or a BPO would not be accepted if it's accepted by the mortgage lenders, and that would be hard to explain. And that's already been spoken prior the reasons why we differentiate one from the other, and it's due to the educational requirements, the oversight that the appraisers have as opposed to the licensees. It's just credibility, and I'm here for any questions that you might have. [LB818]

SENATOR PIRSCH: Thank you. Senator Gloor. [LB818]

SENATOR GLOOR: Thank you, Mr. Chairman. I was tracking pretty well, and maybe I'm running out of energy, but I don't understand why if BPOs currently are already being used, the explanation you have to get to a property is going to be any different if this passes and the same explanation you would give now. [LB818]

ROB OGDEN: We don't accept BPOs. Is that...did you hear me correctly there? Okay. [LB818]

SENATOR GLOOR: Yes, and so you're saying that if this went through, you'd have to accept? Isn't that decision still in your hands? [LB818]

ROB OGDEN: I'm saying that we wouldn't necessarily have to accept them, but it would be very confusing to the property owner why we would not accept them if they're accepted as a mortgage document to accept a mortgage loan. [LB818]

SENATOR GLOOR: Okay. Thank you. I'm no long... [LB818]

ROB OGDEN: Whether you agree or disagree, that's... [LB818]

SENATOR GLOOR: Yeah, I'm no longer confused. Thank you. [LB818]

SENATOR PIRSCH: Senator Langemeier. [LB818]

SENATOR LANGEMEIER: Vice Chairman Pirsch, thank you. As we talked earlier, there's these three interpretations of what you can do with a BPO, and so you're falling under the...under the guidelines of what you do is you can't use them for evaluating for loan purposes is your understanding. So consequently, you don't use them in your

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appeal process. [LB818]

ROB OGDEN: Yes. [LB818]

SENATOR LANGEMEIER: So you fall under that definition of...or interpretation, I should say. [LB818]

ROB OGDEN: We basically use that interpretation for our use. [LB818]

SENATOR LANGEMEIER: And so your thought is, is that if this passes you've cleared that up, and your people are going to come in and say, hey, the banker used it. Why can't you? [LB818]

ROB OGDEN: Yes, in... [LB818]

SENATOR LANGEMEIER: Okay. [LB818]

ROB OGDEN: ...in that situation then, we get so many of these, and they're not...they're just...so many of these are available to people because you can go out and get one in a short time period before your hearing. And we have no knowledge of the experience of that person that produces that. And the taxpayer themselves doesn't understand the difference between a BPO, a CMA, and an appraisal. The general public person really is at the whim of...they've been charged for using these items that really don't do them any good even though they've been told that they have. It's just not good for the public to be clouded in what really is legitimate evidence. [LB818]

SENATOR LANGEMEIER: Thank you. You've brought new thoughts to this process I didn't think we'd ever hear, so I appreciate it. [LB818]

SENATOR PIRSCH: Can I ask you this? Is there another type of assessment out there that is done on property? You mentioned BPOs and CMAs and formal appraisals. Is there something else out there in the universe of things that people bring in and say, this is some sort of an assessment or should be considered by you? [LB818]

ROB OGDEN: Well, there's always the property owner's opinion which we'll listen to, and they bring in sales and so forth which is fine, and we'll consider that. [LB818]

SENATOR PIRSCH: But in terms of a third party... [LB818]

ROB OGDEN: The only other thing...the only thing that comes closest is third party is a tax rep situation where there's tax representatives are people who are hired by either individuals. Typically, it's by corporations and they're hired to represent them at the hearing for their property tax protest. [LB818]

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SENATOR PIRSCH: Are they hired in the capacity of their expertise and valuation or more in the role of kind of lawyer-like in terms of knowing the process and helping to guide... [LB818]

ROB OGDEN: Here's what the typical contract would be. It would be generally, they...they may be an appraiser from another state. Usually they're from Chicago, Kansas City is where we see most of them. A lot of times they're attorneys or they're representatives of attorneys. They know how to put together financial information on commercial buildings to show here's where the value should be. They receive their compensation by a percentage of their tax savings which is significantly different than what a property appraiser following USPAP are limited, that you cannot receive compensation based on anything other than your fee. [LB818]

SENATOR PIRSCH: Do the tax representatives who are attorneys...they're not...they're just...they could be just attorneys or even employees or agents of attorneys? [LB818]

ROB OGDEN: Yes, they could be but... [LB818]

SENATOR PIRSCH: Do they present reports that are received by your...? [LB818]

ROB OGDEN: They will...they submit reports that have financial information because generally they're on commercial properties, so they'll submit information that shows incomes and expenses; they come up with a cap rate. They'll compare properties to each other, different, similar properties. And they won't necessarily arrive at a specific number, but they'll say because of these properties, these other...the subject property is overvalued. [LB818]

SENATOR PIRSCH: I see. They won't reach a specific opinion, but rather just introduce outside evidence. [LB818]

ROB OGDEN: Right because they're somewhat aware of what they can do and what they can't do. [LB818]

SENATOR PIRSCH: Okay. Well, thank you for that, and we did have a couple of members who have another hearing, kind of conflicts with this. But thank you very much. Are there any questions for this testifier? Seeing none, appreciate your testimony here today. Are there other opponents here to testify today? [LB818]

ROB OGDEN: Thank you. [LB818]

SCOTT DiBIASIO: Vice Chairman Pirsch, Scott DiBiasio, S-c-o-t-t D-i-B-i-a-s-i-o. Hopefully, it will take me longer to spell my name than my testimony will take. Just a

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couple of points of clarification. A previous testifier mentioned that BPOs were currently allowed for loan origination purposes in a number of states. There are currently no states that specifically allow the use of BPOs for loan origination. In fact, a couple of states specifically considered the use of BPOs for loan origination and summarily rejected it. This year Illinois passed a mandatory appraiser licensing certification law. There was a push to include the use of BPOs for loan origination. Illinois decided to take just the opposite approach and enacted a requirement that BPOs could only be used for the real estate listing and sales process that is similar to what is on the books in 23 other states. Nevada, last year 2009, also considered BPO legislation. They specifically excluded loan origination from the permissible uses of BPOs, and I'll echo what other testifiers have said. Obviously, the biggest issue here is that real estate agents and brokers have absolutely no education, no training, no experience with which to be able to provide an accurate and reliable valuation of real estate. I could literally if I were an agent or broker, I could flip this piece of paper over, write Broker Price Opinion at the top, write a price down, and in some cases they in fact call it a value. Put that...give that to a lender. A lender can make a lending decision based on that. They put it in their file, and they've satisfied the safety and soundness examination folks from the FDIC or their regulator. But I just did want to take a quick second to clarify the misinformation that was provided previously that other states already allow the use of BPOs in loan origination purposes. That is not the case and, in fact, 23 other states including Nebraska specifically limit the use of Broker Price Opinions to their legitimate purpose which is to establish a listing or an offering price for real property as part of the selling or buying process. Appreciate your time, and if there are any questions of the committee members, I'll be more than happy to answer them. [LB818]

SENATOR PIRSCH: Any questions? [LB818]

SENATOR UTTER: I think I have a question. [LB818]

SENATOR PIRSCH: Yes, Senator Utter. [LB818]

SENATOR UTTER: Senator Pirsch, number one, can you tell me who you represent? [LB818]

SCOTT DIBIASIO: I'm sorry, I thought...Senator Utter, I apologize. I thought I mentioned that at the beginning. I am with the Appraisal Institute in Washington, DC as the manager of state and industry affairs. [LB818]

SENATOR UTTER: I have a...I guess I need to...your characterization as to how the banks are using the market opinions of the real estate people, I'm having a little difficulty with that because I thought that Senator Sullivan made it pretty clear that this is not the sole...the sole document that is needed to clear the examination requirements as far as making a real estate loan. This is just a...it seems to me like the testimony has kind of

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gathered here this afternoon that we're going to use Broker Price Opinions and the market analysis as the sole basis for making real estate loans under the federal limits. I suggest to you that the..as with some bank experience in my background, but that's just...that would be just a part of it, just another tool. So I...I...there's some misinformation floating around here, I think, and I just wanted to clear that up. Thank you. [LB818]

SENATOR PIRSCH: Are there any other questions for this testifier? Seeing none, I certainly do appreciate your testimony, and we'll move on to the next opponent. Are there...how many other opponents plan on testifying here today, if you could just raise your...? [LB818]

BRAD MOORE: I think I'm the last one. [LB818]

SENATOR PIRSCH: Last one. Okay. [LB818]

RICK LIFFERTH: One other one. [LB818]

SENATOR PIRSCH: Just wanted to...oh, one more is that right? I wanted to get an idea for scheduling time. [LB818]

BRAD MOORE: (Exhibit 7) I've got a packet of information for you that's being passed out, and that might help us a little bit. Good afternoon, Vice Chair Pirsch and members of Banking, Commerce and Insurance Committee. My name is Brad Moore, B-r-a-d M-o-o-r-e. I'm the Vice Chair of the Nebraska Real Property Appraiser Board. I've included a packet of information that might be helpful that deals with LB818. Our board is made up of people appointed from across the state. On the board, we have about 150 years of experience in appraising brokerage and also in banking. The Nebraska Real Property Appraiser Board strongly opposes amendments to the Real Property Appraiser Act as introduced in LB818. As you know, our board is responsible for administrating and enforcing the Real Property Appraiser Act. The appraiser act provides compliance with federal laws and further provides protection for Nebraska financial institutions and consumers. LB818 would allow financial institutions to loosen underwriting guidelines and remove appraisal requirements for some loans in Nebraska by permitting the use of real estate agent value opinions and these are often called Broker Price Opinions or BPOs. LB818 strips away an important safety net for borrowers and financial institutions by allowing BPOs. The current regulations and guidelines of protecting Nebraska and kept us in full compliance with federal mandates in the Financial Institutions Reform Recovery Enforcement Act of 1989, sometimes called the FIRREA act or the S&L bailout bill. LB818 would allow thousands of real estate agents to provide noncompliant appraisals to financial institutions in Nebraska without any meaningful regulatory oversight or standard of practice. LB818 removes an important layer of protection that now exists. The Nebraska Real Property Appraiser Board and the Nebraska Real

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Estate Commission were not involved in the writing and development of LB818. We had nothing to do with LB818. As you know, this is coming from Nebraska Bankers Association. The appraiser act does not regulate banks in Nebraska. We do require our law that individuals that provide valuation services to Nebraska consumers and banks be ethical and competent. The state requires appraisers to have appropriate education, experience, and they are tested. The Nebraska Real Property Appraiser Board or the Real Estate Commission will have to administer oversight of the changes from LB818. The added regulatory responsibilities including new development and reporting guidelines for either agency will create additional expense in staffing requirements. Let me address enforcement issues on this for a moment with BPOs. Nebraska currently, as of December 2009, has 850 appraisers. The board has a full-time director and one staff person. We spend most of our time on enforcement issues. The complaints come from banks, property owners, and others. We're a busy board and that's when we have a law, rules, and standards to go by. Right now the Real Estate Commission does not regulate or have oversight regarding the opinions and value provided for banks. LB818 will create about 7,000 untrained sales agent appraisers overnight; 7,000 new appraisers that are not required to be competent. To become a sales agent in Nebraska, you must take two classes and pass the test. That's it. LB818 will now also make you an appraiser. There is no standard; no guide; no requirements for BPOs. For the people providing this service, there is no requirement by Nebraska that they be ethical or competent. Let me address compliance issues. Right now providing a BPO for lending purposes is against the law in Nebraska. LB818 will not only make BPO appraisals legal, but will remove the Nebraska act...our Nebraska act below the acceptable minimum appraisal requirements for FHA, VA, Fannie Mae, Freddie Mac, Farmer Mac, Sallie Mac (sic: Mae), and then probably others as well. We will have compliance issues because of LB818. And if you look with me at the letter of intent for a moment that's included with this, it states if your transaction is under (\$)250,000 a bank can be provided with and use a BPO for obtaining financing or extensions of credit. It's the last paragraph of the letter of intent on LB818. The average sale price in Nebraska as of last month is a \$150,000...\$150,000. A home is the most important financial decision our families make. If a value opinion by an appraisal is ordered by a bank under current law, we protect the homeowner and also the bank by requiring an appropriate value opinion. Under LB818, a homeowner over (\$)250,000 appears to have some protection, but under (\$)250,000 which is most of us, you would only need a BPO. I know everybody has seen one of these before. It's an appraisal; you have it on your home. Anybody in here who's ever had a home, purchased a home, you get an appraisal like this in the state of Nebraska. Several pages of analyses; several pages of preprinted portions of this. The person who prepared this report was required by Nebraska law to be impartial, independent, and competent. This report is certified and regulated by the state of Nebraska. Let me show you what a BPO is; we've been talking about BPOs all day. This is a BPO right here. This is a BPO. I haven't taken anything off of it. That's a BPO in the state of Nebraska. I covered up the person's name; it's a sales agent in the state of Nebraska. This is a BPO. This is what would be allowed. Now I

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don't know if it's good or not, frankly, because we do not have a standard for this valuation product. Now, this was not given to a bank. This was submitted to a county as part of an appeal to assessment. When you look at this BPO for a moment, though I know it doesn't matter about the value amount, it is zero on the BPO. They submitted an appeal and assessment in the state of Nebraska, and they put zero on the BPO. This is what would be in our files, in our loan files in Nebraska if we allow LB818 to go through. LB818, contrary to the letter of intent, is written to also allow BPOs for some types of transactions up to a million dollars. This creates serious compliance problems with interagency appraisal and evaluation guidelines which I have a copy of in your packets. These are the guidelines for the OCC, the FDIC, the OTS, and the FRB. Nowhere in the interagency appraisal and evaluation guidelines do they even mention a BPO. In closing, our law in Nebraska is for all of Nebraska, not just banks. This is not a bank act; this is an appraisal act. Nebraska was the first state to credential appraisers. We started that in 1973. We've been a national leader in this area long before the meltdown of financial institutions of the 1980s, long before FIRREA of 1989, long before this huge mess we've been plunged into the Great Recession. I appreciate your time and will answer any questions you have. Thank you. [LB818]

SENATOR PIRSCH: Thank you. Any questions? Seeing none, I appreciate your coming down here today and testifying,... [LB818]

BRAD MOORE: Thank you. [LB818]

SENATOR PIRSCH: ...and we'll finish with our...are there any other? [LB818]

RICK LIFFERTH: One real quick? [LB818]

SENATOR PIRSCH: Yep. [LB818]

RICK LIFFERTH: (Exhibit 8) My name is Rick Lifferth, R-i-c-k L-i-f-f-e-r-t-h, representing the Appraisal Institute. I don't know about you guys, but I'm getting tired. I'd just like to make a couple of comments. This BPO issue is not a new issue. It's not unique to Nebraska. It's a really hot issue. It's extremely emotional and controversial for the appraisal community. I think partly because...or primarily because they have such strict requirements to get licensed and certified, and realtors have a different purpose and a function, and I think they do a great job with what they do. We had this discussion in Utah in December with our realtors, and then again in January with bankers and the developers, the builders, the realtors, the mortgage brokers. Our Governor put together this little committee, and I represented the appraisers. We've had several discussions about BPOs, and we walked away from it. It's a really controversial kind of a thing. Utah is a little different than Nebraska in the sense that we've got a bunch of properties that have been foreclosed on and, apparently, you don't have quite the mess that we have. This is what I call professional drift, and I think it's kind of a significant issue. In the early

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1930s when they were trying to figure out what happened in the collapse of the...in the 1920s they determined that part of the problem was the valuation process for real estate, and they recognized that a healthy real estate market is critical to the survival and to the economic prosperity of any community in the state. And at that time, in the 1920s, there was no such thing as an appraisal profession, it didn't exist. Valuations were provided by lenders and realtors, and what they determined was that they needed to have an independent third-party person estimate the values. And that basic model stayed in place until about the mid-1990s and it kind of changed. The banks were allowed to do some things, so I see...if you look at the big picture, I see professional drift happening here. I really don't know what the answer is, but I recognize that you guys got a challenge on your hands right here. I would just suggest that the Appraisal Institute would be glad to do whatever we can do to help facilitate a solution and hope that we can do it and still like each other at the end of the day (laugh). I thank you very much, appreciate it, and wish you the best in your deliberations. Any questions?  
[LB818]

SENATOR PIRSCH: Thank you so much. Are there any... [LB818]

RICK LIFFERTH: Oh, oh. The document that I passed around as part of our discussion in Utah...I did that little research in Utah, and when I got here last night I did the same thing here. That outlines the education, experience, and testing requirements for appraisers and contrasts that to realtors. And it kind of helps show you the disparity between those two industries. One suggestion might be that over the summer, maybe you could work on getting some training for the brokers. They don't have any training on appraisals. There's none required in your state right now. In Utah, we had, I think, six hours required which is really not very much. But it's just a suggestion and just some information that may or may not be helpful to you. Anyway, thank you very much.  
[LB818]

SENATOR PIRSCH: Thank you. Any questions? Seeing none, appreciate it. Any other opponents? Seeing none, we'll move on to those who wish to testify in a neutral capacity here today. Seeing none, Senator Sullivan, if you'd like to close. [LB818]

SENATOR SULLIVAN: I will be brief in this late hour. I certainly thank the committee for your consideration of this bill. I had hoped to be able to tell you that this hearing cleared up a lot of the confusion, and...but I suspect that maybe in your minds, that might still be hanging out there, so I won't be so bold as to say that. I should also tell you, though, that, in addition to being a senator, I am connected to a community bank that tries very hard to comply with all state and federal regulations with respect to banking. I think I can say that is true for the majority of the banks in this state, and to imply that somehow LB818 will allow us to circumvent all those laws and lessen our underwriting standards is simply not the case. So I stand firm by what I believe LB818 will and won't do. It will not mean that banks use appraisers any less. What it will do is it will simply give us



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another tool in the tool chest for documenting financial transactions under \$250,000. And ultimately in my mind, that means that bankers will make better lending decisions that will impact favorably on Nebraska consumers. Thank you. [LB818]

SENATOR PIRSCH: (Exhibit 9) Thank you. Any questions for Senator Sullivan? Thank you. That will close the hearing then on this bill and...oh, is this to be read into the record? Before we close on this, I'm going to read into the record a note for the record, a letter of opposition from the State Auditor. [LB818]

BILL MARIENAU: I'm sorry. I dozed off there. [LB818]

SENATOR PIRSCH: No, that's okay. Okay, we are going to...to pick up our last bill. Oh sure, do you guys want to take a break or trudge through? I need to know if you...take a break? Okay, we're going to take a slight recess here for five minutes or so. [LB818]

BREAK []

SENATOR PIRSCH: You ready? Great, well, we are back, and we have one more bill left today which is LB1051. Senator Christensen, you are the sponsor, and I would just...whenever you're able to start with your opening, we'll go ahead and... []

SENATOR CHRISTENSEN: Thank you, Mr. Chairman and members of the Banking, Commerce and Insurance Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and here today to introduce LB1051. The Abstracters Board of Examiners brought LB1051 to me for introduction. It amends Abstracter Act to allow renewal of certificates of authority to be issued on a biennial basis to harmonize with the rest of the act. It also changes the related fee ranges from an annual to a biennial basis. The bill would also change the annual publication of the rosters of abstracters to a biennial basis and give permission to charge the public for their roster at the cost of producing it. The testifier following me will be Mardy McCullough, the director of the Abstracters Board of Examiners. I will defer to her to answer any specific questions regarding the request, but I'd be glad to try to answer your questions. [LB1051]

SENATOR PIRSCH: Thank you very much, Senator. Any questions for Senator Christensen? Seeing none, we'll move on to the first proponent then of LB1051. Thank you for coming here today. If you could just start off with your name and spell it and your title. [LB1051]

MARDY McCULLOUGH: (Exhibit 1) My name is Mardy McCullough, M-a-r-d-y, McCullough, M-c-C-u-l-l-o-u-g-h. Ten letters in McCullough. I'm director of Abstracters Board of Examiners, and I'm appearing on behalf of the board to show that the board unanimously voted to have this legislation introduced and become law. I then contacted

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my senator, Senator Christensen, and he graciously agreed to introduce the legislation and carry it for us. This bill is noncontroversial and direct. Senator Christensen kind of explained the purpose of the legislation which simply is to allow abstracting businesses to renew their certificates of authority each even-numbered year instead of annually. And it also allows the printing of the roster each even-numbered year instead of annually. The Nebraskaland Title Association, which is the trade association for abstracters voted unanimously to support this legislation. The end result of these changes would save time and resources. I would ask for an amendment to add the emergency clause. The sooner we get this passed into law, the sooner we can start saving money and time. I ask that you vote to advance LB1051 to General File with the emergency clause, the sooner, the better. Thank you for your time, and if you have any questions, I'd be happy to answer them. [LB1051]

SENATOR PIRSCH: Thank you very much. [LB1051]

BILL MARIENAU: I have a question for her. [LB1051]

SENATOR PIRSCH: Committee counsel does have a question for you. [LB1051]

MARDY McCULLOUGH: That scares me. (Laughter) [LB1051]

BILL MARIENAU: Hi, Mardy. [LB1051]

MARDY McCULLOUGH: Hi, Bill. [LB1051]

BILL MARIENAU: The bill has an operative date of January 1, 2012, and I know that the...and I haven't looked at this bill since I was reading it at my dining room table the other night. But there are provisions here with regard to expirations of certificates of authority and such on April 1 of each even-numbered year. [LB1051]

MARDY McCULLOUGH: Right. [LB1051]

BILL MARIENAU: Now the way the bill is written now, things would transition in and become operative and effective as it were then in April of 2012. Now if the E clause goes on, then the bill could...is that what you're asking for? [LB1051]

MARDY McCULLOUGH: I...yes, I'm asking to take out that 2012 and start it immediately. [LB1051]

BILL MARIENAU: So that everything would move up to this, assuming that the bill would pass, the Governor would sign, etcetera, and still in March, then you would beat that deadline,... [LB1051]

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MARDY McCULLOUGH: Right, we will. [LB1051]

BILL MARIENAU: ...and it would all happen this year... [LB1051]

MARDY McCULLOUGH: Um-hum. [LB1051]

BILL MARIENAU: ...unless the bill didn't pass until after April 1. Then everything would wait until the next April. Is that kind of the intent here? [LB1051]

MARDY McCULLOUGH: Right, and I've talked to Senator Flood, and he will put it through as fast as he can so. [LB1051]

BILL MARIENAU: Just so we have that on the record. Thank you very much. Thank you, Mr. Vice Chairman. [LB1051]

SENATOR PIRSCH: Oh, certainly. Are there other questions? Senator Gloor. [LB1051]

SENATOR GLOOR: Thank you, (Vice) Chairman Pirsch. I want to know how you can get Senator Flood to move bills through much faster. That would be very helpful (laughter) if you would share that, but we don't have to do that here right now (laughter). [LB1051]

MARDY McCULLOUGH: Because he...okay, we'll talk later (laughter). [LB1051]

SENATOR PIRSCH: And just in terms of a clarification when it says and gives permission. This is on the statement of intent--gives permission to charge the public for the roster the costs of producing it. That wouldn't be an additional cost. You wouldn't be doing that on an annual basis. You'd now be doing that biennially, is that right so there would be a...? [LB1051]

MARDY McCULLOUGH: Right now we publish the roster annually... [LB1051]

SENATOR PIRSCH: Right. [LB1051]

MARDY McCULLOUGH: ...and it's like \$1,200... [LB1051]

SENATOR PIRSCH: Okay. [LB1051]

MARDY McCULLOUGH: ...and we have maybe 10 or 12 changes...maybe 20 at max, and so we want to publish it on even-numbered years after we get the licenses in April. Then publish the roster with the new licenses in June. [LB1051]

SENATOR PIRSCH: Um-hum. And so you'd only be incurring the \$1,200 every other

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year as opposed to every year. [LB1051]

MARDY McCULLOUGH: Right. [LB1051]

SENATOR PIRSCH: So it'll be a modest amount, but it won't be...it'll be at least neutral or even saves a modest amount. [LB1051]

MARDY McCULLOUGH: Yes. Um-hum. [LB1051]

SENATOR PIRSCH: And that's the underlying intent behind this is there's no...and probably save you some effort as well, having to revise everything within two years. [LB1051]

MARDY McCULLOUGH: Right and...absolutely. [LB1051]

SENATOR PIRSCH: So the question I have then is with respect to the changes that would normally be noted and then sent out if it was an annual roster, what are we giving up? You said that there's only about 20 changes, is that right, that would normally take place? [LB1051]

MARDY McCULLOUGH: Per year. We have like maybe ten max...well, maybe more. We have like ten max that don't renew, okay? And we have maybe...we probably have 20 new ones every year...every two years. So it'd be ten every year. That's 20 a year changes. [LB1051]

SENATOR PIRSCH: Okay. So...and you don't think...now the basis...the reason that this roster is published, if you can just, you know, speak to what the abstracter's role in protecting the public or service to the state is then just in general terms, you don't think that this change would in any way compromise substantially the service that you provide to the state? [LB1051]

MARDY McCULLOUGH: Not at all, no. [LB1051]

SENATOR PIRSCH: Okay. Well, I appreciate your answers and for coming here today, and, you know,...you know, it's after 4:00 so to be commended. Thank you for that. [LB1051]

MARDY McCULLOUGH: Right. That's good. [LB1051]

SENATOR PIRSCH: I have no other questions. Are there any other questions? Seeing none, I appreciate it. [LB1051]

MARDY McCULLOUGH: Thank you. [LB1051]

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SENATOR PIRSCH: Are there any other proponents? Any opponents? Any here to testify in a neutral capacity? All right, well, do you want to close? Senator Christensen waives closing. That will conclude both LB1051's hearing as well as all the hearings scheduled for today. And we are not going to meet in exec session today. We just don't have enough people and so... [LB1051]