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Banking, Commerce and Insurance Committee
January 23, 2012

[LB876 LB879 LB886 LB890]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, January 23, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB876, LB879, LB886, and LB890. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Pete Pirsch; Ken Schilz; and Paul Schumacher. Senators absent: Chris Langemeier.

SENATOR PAHLS: Good afternoon. I want to welcome you to the Banking, Commerce and Insurance hearing today. My name is Rich Pahls. I'm from Omaha and I represent District 31. We are going to take the bills as posted: (LB)876, (LB)879, (LB)886, and (LB)890. Now to better facilitate today's meetings, I'd like to have you take a look at the white chart. Those are some of the rules we like to follow here, make life much easier. And if we do have opponents or proponents, we'd like to have new information, if at all possible, each time you come forth. If you have...you need to hand out information, at least have ten copies. Anybody need ten copies or are you already here with them? Thank you. Thank you. Pages, you can relax a little bit now because you don't have to worry about that. Want to introduce Bill Marienau. He is our legal counsel. He makes sure that we are, quote, legal. Over here, Jan Foster makes sure all the records are correct. She doesn't bleep anything out, intentionally anyway, that I know of. And first of all, before we get going, I'd like to...as usual, the senators introduce themselves but today I'd like to have a little bit of a shout out to our new member, newest member. Senator, welcome aboard.

SENATOR SCHILZ: Thank you.

SENATOR PAHLS: And I like to say you have three days before you're rejected. That's...you know? (Laughter)

SENATOR SCHILZ: So this is kind like a probationary period, right?

SENATOR PAHLS: Oh yeah. I knew I liked to have you on this committee because you'll just add. Okay, well, we'll let everyone introduce themselves, starting with...

SENATOR SCHILZ: Ken Schilz. I represent the 47th District. I'm from Ogallala.

SENATOR SCHUMACHER: Paul Schumacher, District 22, Columbus.

SENATOR PIRSCH: Pete Pirsch, represent Legislative District 4 in Douglas County.

SENATOR McCOY: Beau McCoy, District 39, western Douglas County.

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

SENATOR PAHLS: And I know today Senator Langemeier will not be here. And I'm sure Senator Christensen, I did see him at the lunch hour so he probably is wiping his chin or something at the moment. I think could I have the pages wave their hands once I mention your name? I think we have Michael from Lincoln, Killingsworth, and Matt McNally from Norfolk. Okay. I think we are ready to begin, starting off with the good senator.

SENATOR WALLMAN: (Exhibit 1) Good afternoon, Chairperson Pahls and members of the Banking, Commerce and Insurance Committee. For the record, my name is Norm Wallman, spelled W-a-l-l-m-a-n, and I'm here to introduce LB876. This bill simply states that after each mammogram a report provided to a patient shall include information about the patient's breast density. Where applicable, the report shall include the following notice: "If your mammogram demonstrates that you have dense breast tissue, which could hide small abnormalities, you might benefit from supplementary screening tests, which can include a breast ultrasound screening or a breast magnetic resonance imaging examination, or both, depending on your individual risk factors. A report of your mammography results, which contains information about your breast density, has been sent to your physician's office and you should contact your physician if you have any questions or concerns about this report." And I have some handouts here, so a three-page handout. First page shows examples of differing types of breast tissue and breast cancer tumors. The second page shows the difference between levels of breast density. It also gives a brief description of BI-RADS. The third page are some facts about breast cancer. BI-RADS is an acronym for Breast Imaging-Reporting and Data System. It's a quality assurance tool originally designed for use with mammography. The system is a collaborative effort of many health groups, but is published and trademarked by the American College of Radiology. Breast composition categories: (1) almost entirely fat; (2) scattered fibroglandular densities; (3) heterogeneously dense; and (4) extremely dense. So I know there's some groups that will have some concerns about putting this under the insurance statutes, and I would be more than willing to work with them in my office. Also, I know the medical community doesn't like the Legislature telling them what they have to do. But unfortunately, people with dense breast tissue are not always told they'd benefit from additional screening. Therefore, I think something has to be done. The science involving density masking tumors has been around for over 30 years. How much longer shall we wait and how many more women have to be diagnosed with later-stage cancers? The opposition stance may be that we can't legislate what a doctor needs to say to his or her patients, is one we hear again and again. Please let me assure you we could not agree more. As the necessity of the conversation is clear, it should not take legislation to make it happen. And an astounding 95 percent of women do not know their own breast density. In the chasm between what should happen and what isn't happening are the lives of unsuspecting women who will be now diagnosed with late-stage cancer: moms, wives, daughters,

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sisters. This is a preventable tragedy. There's no conceivable, logical reason why this information about a woman shouldn't be shared with the woman. To deny a woman this information is to, in effect, deny her equal access to early detection. She cannot advocate for herself if she isn't aware she needs to. This enforced ignorance is at least unethical. We have women who are kept in the dark about a risk factor of this magnitude, can hardly be considered informed participants in their own health surveillance. Does responsibility to patients outweigh a doctor's resistance to being told what to do, when doctors have had the opportunity to do so and have not? This standardization of breast density reporting builds on the established precedent of the federal MQSA regulation that a lay letter be sent. Please remind all that not only is federal bill H.R. 3102 drafted, but the FDA's Mammography Quality Standards Act advisory committee has reached consensus that density should be included in the lay letter to patients. A study has just been released on the Connecticut data, as their law has been enacted since 2009. In Connecticut, the addition of screening ultrasounds in women with dense breasts found an additional 3.2 cancers per 1,000 women screened, mammograms find 5 cancers per 1,000 women screened, so an increase of 64 percent in cancers detected. This extrapolates nationally to 45,000 women a year who are told their mammograms are normal, but who actually have invasive breast cancer. They're fighting to maintain this standard of care? Breast cancer is the number two killer of woman. This disease does not only target women though. Approximately 1 percent diagnosed with breast cancer are men, and I have a good friend with that, a man. So one in eight women will develop breast cancer in their lifetime. I want to thank the Are You Dense organization. They were extremely helpful to us in providing useful information. And my office would be more than willing to provide any additional information the committee would like to see. Thank you very much. [LB876]

SENATOR PAHLS: Senator Gloor. [LB876]

SENATOR GLOOR: Thank you, Senator Pahls. And thank you, Senator Wallman. This is, obviously, an important health issue overall. Can you tell me, did you turn someplace to get this language that you're recommending? I mean did it come out of another state's statute? Was it something that was pulled from... [LB876]

SENATOR WALLMAN: The Are You Dense organization. [LB876]

SENATOR GLOOR: Provided it? Okay. Okay. We don't know whether it exists in other states' statutes elsewhere. I think my only question isn't...it's sort of a twofold issue here. One is notifying the woman that she has dense breast tissue. That's part one. But then the other part of this that may be more controversial is saying specifically these are the tests that you should ask for when you talk to a doctor, and that obviously goes a step beyond just notifying them that they have dense breast tissue. So I just wondered where it came from. Thank you. [LB876]

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SENATOR PAHLS: I have one question, Senator. What color is your tie? [LB876]

SENATOR WALLMAN: Hot pink. [LB876]

SENATOR PAHLS: That's okay. You're representing your constituents then, are you not? Okay. Okay, seeing no questions, we are ready for any proponents. Any opponents? Good afternoon. [LB876]

DAVID BUNTAIN: (Exhibit 2) Good afternoon, Senator Pahls. My name is David Buntain, B-u-n-t-a-i-n. I'm an attorney and legal counsel and registered lobbyist for the Nebraska Medical Association, and I do have a handout. I think everyone would agree with Senator Gloor's statement that this is an important health issue and we're certainly not here to dispute that in any way. We do have problems, however, with the goal of LB876. First of all, this is not an insurance bill. It's a bill that would basically create a standard of care for physicians and it's not something that should be a part of the insurance statutes, which is where it's...what it proposes to amend; that the insurance statute involves the duty to cover mammography in certain instances, but that's not what's involved here. Even assuming that it were properly placed in statutes involving medical practice, the Medical Association has always been opposed to legislation which tries to tell physicians what the standard of care is in the treatment of various conditions, and essentially what this is, is a bill that says a physician has to do certain things in connection with a mammogram. And it is...the problem with the Legislature setting a standard of care is that it's really a matter of medical judgment as far as what to do with medical information and what to tell a patient. And the standard of care is constantly changing and we do, from time to time, have legislation like this which comes from an advocacy group which says, well, the Legislature ought to tell doctors to do this or we ought to tell physicians to do that. Well, that information is out there and physicians are getting that information and responding to it all the time. That's the nature of medical practice. And it really, we think, is inappropriate for the Legislature to set a standard of care, and I think this particular legislation is illustrative of that. What I've given you is a set of talking points that are put out by the American College of Radiology, and obviously radiologists are involved, as are other family physicians, ob-gyns, in doing mammography screening, and this points out some of the problems with this type of legislation. And I'm not going to read the whole thing, but I just want to highlight a couple of points. First of all, in the introduction it explains that the issue of breast density is a very complex one, and there is limited science to provide direction for patients, their primary care providers, and breast imagers in what to do with information about density. And then as the bullet points point out, there really is still not consensus as far as a test for breast density and there is still debate over the correlation between breast density and the incidence of breast cancer. And as it states later on in the materials, in discussing direct patient notification of breast cancer with colleagues in Connecticut who have been doing this for over a year now, it has been stated that women are, in general, confused and concerned about what exactly their breast density classification

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means and many of their health providers are similarly uncertain. Notifying women directly of their breast density runs the risk of giving a false sense of security to women who are told their breast tissue is not dense. So you have both the problem as far as women with dense tissue and those that are not, and really the only way that those issues can be handled are on a case-by-case basis by the treating physicians with the information that's available to them, which evolves over time. So we would urge this committee not to advance this bill which sets a standard of care for physicians. I'd be happy to respond to any questions. [LB876]

SENATOR PAHLS: Are you telling me this is in front of the wrong committee or this is entirely too prescriptive? [LB876]

DAVID BUNTAIN: Both. It should not be in the insurance statutes. I don't think it's really within your committee's jurisdiction. But even if it were in the right committee, we would still have a problem with it for the reasons that I've outlined. I mean we...I was trying to think of other examples. We have come in, in other contexts where bills have said, you know, physicians are required to tell their patients this or required to do this test, and we don't think the Legislature should be telling the physicians how to practice medicine. [LB876]

SENATOR PAHLS: Okay. I'll start with Senator Schumacher. [LB876]

SENATOR SCHUMACHER: Your objection is that the Legislature is setting a standard of care. What is a standard of care in this regard that has currently been set by practice in the medical community? [LB876]

DAVID BUNTAIN: You'd probably have to ask the physicians that question. I'm not an expert on this. As this handout alludes to, I think the recommendation of the American College of Radiology is that physicians should talk with their patients about the issue of breast density based on the testing that they get. So that is part of the overall conversation that should occur with the woman who has a mammogram. [LB876]

SENATOR SCHUMACHER: Well, if there isn't an easily articulable standard of care in practice and there's none in law, then it seems to me that uncertainty lets any doctor be exposed to a claim by a patient, who has bad luck and is overly advised or underly advised, that they were negligent. Absent a standard of care professionally set, doesn't this in fact give doctors some protection? [LB876]

DAVID BUNTAIN: And I'm not saying that there isn't a standard. I think there is a standard of care, I would think, and the typical case would be a failure to diagnose case and the issue would be based on the test results. You know, did the physician do the right thing using those test results as far as diagnosing or, in this case, not diagnosing breast cancer? But how...I mean the tests themselves and how you interpret those tests

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is something that is constantly evolving and that's part of the point that's made in this, is we're still kind of learning about the correlation between breast density and breast cancer. [LB876]

SENATOR SCHUMACHER: Thank you. [LB876]

SENATOR PAHLS: Senator Pirsch. [LB876]

SENATOR PIRSCH: Well, actually that...and I think you kind of mentioned or responded to what would have been my question, which was, what...how developed is the correlation between breast density and cancer? And so I assume it's your...well, I'll let you speak to that. [LB876]

DAVID BUNTAIN: No, I was going to say my understanding is there is a correlation but it's not, you know, completely established. And women can have less dense breasts and still have breast cancer. And, frankly, part of the concern is with that category of people. [LB876]

SENATOR PIRSCH: Right. But I mean there is a...you said it's not that well-known and you can have it, but I mean is there a pretty significant correlation or are we pretty early in the studies and research to, you know, say that it's a pretty strong correlation that's (inaudible)? [LB876]

DAVID BUNTAIN: I am not an expert. I couldn't really give you an opinion on that. [LB876]

SENATOR PIRSCH: Sure. Okay, thank you. [LB876]

SENATOR PAHLS: Senator Christensen. [LB876]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you for appearing. I guess I read this bill as a bill of notification because it's speaking about how dense are the breasts and what we've been handed here talks about the more dense is it, more likely that the tumor could be hidden or the cancer could be hidden. And so it's notifying you that there could be some other tests that could be performed. If I'm reading this wrong, how could it be adjusted? Because I took this as a notification that if a woman has very dense breasts it may not show up on the regular mammogram; that you may want these other tests. Then I guess I'm not...don't see this as saying, well, a doctor has to do this. It's saying, you need to notify them of what is read or explain it when you're talking to them, which should be common practice, I think, but it must not be. So am I misreading this or can we not get what they're after here? [LB876]

DAVID BUNTAIN: Well, and I...taking the last part of your question first, whether it's

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common practice or not, I...that's a matter of standard of care and I would submit to you that the physicians who work in this area would be familiar with the literature on breast density and would be able to...and would talk with their patients about that. I think that it kind of gets to the question that Senator Schumacher asked me about and that is the way this is presented, it suggests that there's a clear correlation between breast density and the susceptibility or likelihood to breast cancer, and I don't think that that has necessarily been established. And rather than have the Legislature make that decision, we think that the physician community and the, you know, all the researchers and the accrediting bodies that deal with physicians should be dealing with that on an ongoing basis. And part of the issue you have is if the Legislature is going to require physicians to, you know, respond to this condition by sending notice, you know, what's the next condition you're going to require a physician to do? Pretty soon, you're practicing medicine by legislation and I think our tradition is for the...is to allow the professions, not just physicians but other professions as well, to evolve to deal with those issues over a period of time. And so our concern is that the Legislature clearly are not medical experts, I'm not a medical expert, but there are people who deal with these issues on a daily basis. And there are guidelines that are given to physicians as far as what they should or shouldn't do, and if they don't follow those guidelines then they're in the situation Senator Schumacher describes where they could be sued for medical liability because they haven't, you know, kept up with what the current requirements are. So the public is protected whether the Legislature passes this or not. [LB876]

SENATOR CHRISTENSEN: Because I guess I agree with you, maybe it shouldn't be in the insurance section. I didn't even think about it that direction because it's not a mandated coverage. But, you know, the notification I think is an interesting discussion that we're having and I appreciate your time. [LB876]

DAVID BUNTAIN: Sure. [LB876]

SENATOR PAHLS: Senator Gloor. [LB876]

SENATOR GLOOR: Thank you, Senator Pahls. And, Mr. Buntain, I'm not a clinician. I know you're not a clinician. But I look again, not at the notification issue but the recommendation of screenings that could be done, and I know that the most common screening is self-exam, then there's mammography, but nowadays there's an increasing use of digital mammography, which is considered a significant step up. And I'm wondering, you know, maybe if we're going to be prescriptive in this and talk about ultrasound and breast magnetic resonance, MRIs, should we also be throwing in there or maybe digital mammography if they had a routine mammo rather than one done by a digital machine. [LB876]

DAVID BUNTAIN: And you're putting your finger on the problem with putting a standard of care in the statute, and that is the whole technology is evolving over time and there

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may be another diagnostic test that's even more reliable on the horizon that you miss. And then...I mean medicine is responding to those and incorporating those on a regular basis, and that's where it should be done, rather than trying to freeze in time what, you know, what the best practice is by putting it in legislation. [LB876]

SENATOR GLOOR: Well, and that was the reason behind my question to Senator Wallman earlier about where it came from,... [LB876]

DAVID BUNTAIN: Uh-huh. [LB876]

SENATOR GLOOR: ...that if it came from some sort of industry group that stays on top of that sort of thing, it may have a greater degree of currency... [LB876]

DAVID BUNTAIN: Right. [LB876]

SENATOR GLOOR: ...as opposed to something that might have not come from a group that was aware of all the different diagnostic technology changes that are out there. [LB876]

DAVID BUNTAIN: And if it came out two years ago, it's probably behind the time. I mean that's the nature of medical practice right now, is it's changing so rapidly. [LB876]

SENATOR GLOOR: Thank you. [LB876]

SENATOR PAHLS: I have a question, so...and it's not necessarily tied to this particular bill. In the medical...in the insurance world, let's say there's an insurance company. Who makes the decision of what they're going to cover? Are those medical people or are those business people, in your estimation? [LB876]

DAVID BUNTAIN: Probably both. I mean I think in term...in kind of a gross...I mean gross in the larger sense, issues of what insurance covers is a matter...is a business matter that's negotiated. But within that, I mean, is the medical world is so complex now that individual coverage questions may well have, if not physicians, some kind of, you know, someone with some medical background who's making individual decisions. [LB876]

SENATOR PAHLS: Okay. Thank you. I see no more questions. Thank you. [LB876]

DAVID BUNTAIN: Thank you. [LB876]

SENATOR PAHLS: Any more opponents? Anyone in the neutral? Good afternoon. [LB876]

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JAN McKENZIE: Good afternoon, Senator Pahls and members of the Banking, Commerce and Insurance Committee. Welcome to our new members. For the record, my name is Jan McKenzie, spelled J-a-n M-c-K-e-n-z-i-e, and I am executive director and registered lobbyist for the Nebraska Insurance Federation. I'm a little nervous because I never testify in a neutral capacity, so we are here today in a neutral position on LB876. We agree that we believe this is not the correct section of statute for the language to be placed. This is a provider issue, not an insurer issue. And we have expressed to Senator Wallman's office that we would try to help find a place for it, but we clearly don't believe it goes here. But I did take a quick look and I think this is the only place we have mammography in statute, so Bill Drafters probably said, looks like this is the place we could put it. So I'd answer any questions. [LB876]

SENATOR PAHLS: Okay. So then your concern is that I'm probably not Senator Campbell. [LB876]

JAN McKENZIE: (Laugh) I've sat over there and listened to the standard of care bills in Health and Human Services Committee before, so... [LB876]

SENATOR PAHLS: So you're saying this should be in front of that committee? [LB876]

JAN McKENZIE: Yes. [LB876]

SENATOR PAHLS: And then you would be off neutral? [LB876]

JAN McKENZIE: Nope, probably neutral there too. [LB876]

SENATOR PAHLS: So then it doesn't matter what committee it's in front of if you're going to stay neutral. [LB876]

JAN McKENZIE: No, it doesn't, but I never talk to you in a neutral capacity so... [LB876]

SENATOR PAHLS: I know. I'm sitting over here in awe. [LB876]

JAN McKENZIE: Oh, and to your other question, every health insurer has a medical board that advises as standards, new practices come up. New technologies, new treatments are emerging every year. All insurers have medical boards that advise for coverages, along with the physician who uses their code book to submit claims. And it's rather complicated, but generally, since mammography is mandated at the federal level, those tests that are related to it generally are covered under whatever...unless you have a very limited benefit plan, are generally covered under your plan. [LB876]

SENATOR PAHLS: Okay. Senator Gloor. [LB876]

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SENATOR GLOOR: Thank you, Senator Pahls. Jan, mammography is required to be covered in insurance plans, is that correct, in this state? [LB876]

JAN MCKENZIE: Yes, and after 50 it's one per year and before that it's one every other year. We also have a mandate in our statutes, as you can see right where we've put the language. [LB876]

SENATOR GLOOR: Yeah. Okay. Are there other types of screening exams that you know of that are mandated or is it unique to mammography? [LB876]

JAN MCKENZIE: No. Colorectal screenings are also mandated. [LB876]

SENATOR GLOOR: Okay. Thank you. [LB876]

JAN MCKENZIE: I think also some dental procedures for children. [LB876]

SENATOR GLOOR: Okay, so it's not without...I mean we have a requirement that mammography... [LB876]

JAN MCKENZIE: For coverage, yes. [LB876]

SENATOR GLOOR: For coverage. [LB876]

JAN MCKENZIE: Not...not... [LB876]

SENATOR GLOOR: If you're going to have insurance, it has to contain some level of coverage for mammography. [LB876]

JAN MCKENZIE: Right. [LB876]

SENATOR PAHLS: Just...so if that's true, then it seems to me it does have a part of a foothold in the insurance world that would be in front of our committee. [LB876]

JAN MCKENZIE: Well, we cover it. [LB876]

SENATOR PAHLS: Okay. Okay. [LB876]

JAN MCKENZIE: So... [LB876]

SENATOR PAHLS: Senator Christensen. [LB876]

SENATOR CHRISTENSEN: Thank you, Chairman. Hitting on the same thing, so basically if this said that if they found dense breasts then this should be...additional

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coverage is provided by insurance, it'd be in the right statute. [LB876]

JAN MCKENZIE: I don't think I can answer that. I'm not the legal...I'm not the attorney. I'm just the messenger. [LB876]

SENATOR CHRISTENSEN: (Laugh) Okay. Thank you. [LB876]

JAN MCKENZIE: Sorry. [LB876]

SENATOR PAHLS: Thank you. [LB876]

JAN MCKENZIE: Thank you. [LB876]

SENATOR PAHLS: Any more in the neutral? (Exhibits 3-5) Just let me add a couple that we have here: JoAnn Pushkin of Are You Dense Advocacy group, they would support this; Nancy Cappello, she is in support of this; the American Cancer Society is neutral. Senator. [LB876]

SENATOR WALLMAN: Well, I want to thank you, Banking, Commerce and Insurance Committee. I think she explained why it was, Ms. McKenzie, about the mammograms covered by insurance, why it was probably put in here. And I realize this bill is probably not your usual bill you see before you. So a general practitioner brought this bill to us, not a special interest group, not an MRI group, but a general practitioner, so it was a doctor and it was not me. And so it simply allows a woman the right to know more information about what her mammogram says. So I guess if you ask women, if you ask any woman if they know how dense their breast is, I'd venture a guess, not many can answer that question. And so it comes directly from Connecticut, this, same what they have, so it says nothing about correlation. It merely states dense breasts can hide abnormalities. And the doctors maybe want to see this, but does a patient actually know that she should be able to see this if there's any question about what you have? Mammograms don't always show and even sonograms doesn't always show, and then a mammogram will definitely show there's lumps or cancer growth. So I think this is a bill. Maybe this is the wrong committee, maybe it's the right committee, I don't know, but thanks for hearing me. [LB876]

SENATOR PAHLS: Any questions? Thank you, Senator. That closes the hearing on (LB)876. The next bill is (LB)879. [LB876]

SENATOR McCOY: Thank you, Senator Pahls. Open on LB879. [LB879]

SENATOR PAHLS: Thank you, Senator McCoy and members of the committee. My name is Rich Pahls, P-a-h-l-s. I represent District 31. The length of this bill is about as long as it took me to walk up to the podium here. (LB)879 is a bill I introduced on behalf

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of the county official organization. It's very similar to a bill that I carried last year that we passed. As in last year's bill, we changed one word in the statute. The bill strikes the word "clerk" and replaces it with "treasurer." Under state law, we require security to be filed with the county clerk when the county treasurer makes a deposit. Under contemporary banking practices, the paperwork may be done by a computer. There is no longer actual paperwork. There is nothing to file with the clerk. The county treasurer is the appropriate steward of the electronic record. This bill makes the statute conform to modern banking practices. Thank you. [LB879]

SENATOR McCOY: Thank you, Senator Pahls. Any questions for the senator? Seeing none. Will now hear proponent testimony for LB879. [LB879]

BETH BAZYN FERRELL: Good afternoon, Senator McCoy, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials. I'm appearing in support of the bill. We'd like to thank Senator Pahls for introducing this bill on our behalf both this year and last year. As he said, it really just is kind of a cleanup harmonization of last year's bill, and it would really do the same thing as the bill last year. For some background, back in the day essentially, when excess deposits were placed in a bank, the county was given an actual, a set of collateral, a security document if you will. And that was something that was a little more liquid, and that may be the reason why that was placed in the county clerk's office, because the county treasurer was the one who collected the taxes and then deposited the funds into the bank. The bill last year and the bill this year would essentially say that those documents, which are now nonnegotiable receipts, could be held in the office of the county treasurer rather than having that in a separate office. It really is not a policy change. It's just a cleanup from last year. I would be happy to try to answer any questions. [LB879]

SENATOR McCOY: Any questions? Senator Schumacher. [LB879]

SENATOR SCHUMACHER: With regard to a situation where several counties have formed an interlocal agreement, and they may not have an office of treasurer, they may have a clerk though, and a chairman. Where would...and they may have funds, funds that need to be secured. Do you see this changing or requiring them to now have a treasurer? [LB879]

BETH BAZYN FERRELL: I don't think that's the intent. It's really just to clean up existing practices. If there were counties where they had formed an interlocal and the treasurer's office was eliminated, then I think we'd need to probably address that when the interlocal was created. [LB879]

SENATOR SCHUMACHER: So in that particular situation I described, and the counties were using a clerk to hold their securities, this is not intended to change that. [LB879]

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BETH BAZYN FERRELL: No, it's not. And really, the document that they get from the bank, it's a piece of paper really that says, or it's an electronic document that says, this is how much we have pledged for your security. It's not something that necessarily needs to be tied to a particular office. It's just that this would make sense to have it in the treasurer's office since they are the ones that deal with the deposits. [LB879]

SENATOR SCHUMACHER: Thank you. [LB879]

SENATOR McCOY: Any additional questions? Seeing none. Thank you. Any additional proponents for LB879? Seeing none. Any opponents? Seeing none. Any neutral testimony? Seeing none. Senator Pahls waives the closing on LB879. We'll move on to LB886. [LB879]

SENATOR PAHLS: Thank you, Senator McCoy. We are ready for (LB)886. [LB886]

SENATOR SCHUMACHER: Thank you, Senator Pahls and members of the committee. This particular bill was introduced at the request of the Secretary of State's Office, and it deals with trademarks and trade names. Of course, a trade name is an alias under which a corporation or other business entity conducts business, and a trademark is a symbol that is associated with that business. It might be a bow tie. It might be a Coke bottle. It might be a Playboy bunny, but anyway, it's some symbol that's associated with this business. The Secretary of State's Office registers trademarks and service marks and trade names at the state level. There are currently 19,932 trade names and 2,458 active marks registered with the state. At this time, there's no authority to amend a trade name registration and only limited authority to amend a trademark registration. LB886 provides a mechanism to amend a trade name registration or mark registration and to change the registrant's name, address, date of incorporation or organization, and classification of the mark. LB886 also provides that a registrant may be required to submit documented proof of its name change. Providing the authority to amend a trade name or mark is necessary so that the records of the Secretary of State's Office are up to date, and so that consumers and others searching the records are given reliable and timely information. You will note from the fiscal note, this is one of the few cases where we actually make money if we pass this, and I'll let the Secretary of State's Office do the heavy lifting on this one. [LB886]

SENATOR PAHLS: Thank you, Senator. [LB886]

SENATOR SCHUMACHER: Thank you. [LB886]

SENATOR PAHLS: Proponents? Any opponents? Any in the neutral? Thank you. Good afternoon. []

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COLLEEN BYELICK: Good afternoon. My name's Colleen Byelick, C-o-l-l-e-e-n, B-y-e-l-i-c-k, general counsel for the Secretary of State's Office. I'd like to thank Senator Schumacher for introducing this bill on our behalf. He did a great job explaining it. It's a very simple bill that would allow us to accept amendments for trade names and trademarks and service marks. Basically, things like changing the registrant's name, changing their address, changing their state of incorporation. Currently, there really isn't authority in the trade name statutes to take any sort of amendment form. There is authority to assign a trade name to someone else, but it doesn't go into what happens if the registrant changes their address or their name and how should that be handled. So we're trying to create authority for that. We would create a form, and we would accept and file the form along with all of our other filings that we handle. As the senator mentioned, there would be a small beneficial fiscal impact, I think around \$2,400 is what we estimated per year, and we just think this is a positive change to keep our records current so that when someone comes to search and they want to be able to contact someone that owns a trade name, they have the current information to do that. And I would take any questions you might have about the bill. [LB886]

SENATOR PAHLS: Senator Pirsch. [LB886]

SENATOR PIRSCH: Thanks. I appreciate your testimony. And then the cost of \$2,400 reflects this filing fee created by... [LB886]

COLLEEN BYELICK: Right. There would be a \$10 filing fee for trade names and a \$5 filing fee for trademarks or service marks. [LB886]

SENATOR PIRSCH: Okay, and typically, the authority lacks now are, do you have people who are approaching the office and saying... [LB886]

COLLEEN BYELICK: We do, and what we do now is we just ask them to send in a letter, and we do ahead and date stamp and file the letter. [LB886]

SENATOR PIRSCH: Okay. [LB886]

COLLEEN BYELICK: Although there really isn't any current authority to do that. We've just felt that we need to keep our records accurate and up to date, so if we do get a letter, we do accept it and change our records. We think there probably needs to be a more standard practice involved. [LB886]

SENATOR PIRSCH: Yeah, and that seems commonsense. What is with the majority of the people who approach you then? They are asking to update their address or name? What's the typical request, and what is the reason why they're back there wanting to make sure that they're in touch with you. [LB886]

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COLLEEN BYELICK: Sure. Well, a trade name filing is good for 10 years, and it's a \$100 filing fee. File the application, and it's good for 10 years. So that's a long span of time. And people, you know, currently move frequently and things of that nature. So it's beneficial to allow them to change their address. There's corporate entities that may decide that well, we're tired of being a corporation, we're going to go be an LLC. They file the necessary paperwork to change their name, but they don't, and so they want to correspond...you know, they want to then update their trade name to show that now they're an LLC instead of an Inc. So it's things like that. It could be someone that gets married, a female that wants to change the trade name that they registered to now reflect their married name, so it's things like that they bring that to our attention, and currently now we are going ahead and changing it, but without clear authority to do so. [LB886]

SENATOR PIRSCH: Thank you. [LB886]

SENATOR PAHLS: Seeing no more questions. Thank you for your testimony. [LB886]

COLLEEN BYELICK: Thank you. [LB886]

SENATOR PAHLS: Senator, closing. The good senator waives closing. We are now ready for LB890. Senator Pirsch. [LB886]

SENATOR PIRSCH: Chairman Pahls, members of the Banking, Commerce and Insurance Committee. I am Senator Pete Pirsch, P-i-r-s-c-h for the record, representing Legislative District 4. I bring this bill at the request of the Secretary of State's Office as well. The purpose of LB890 is to allow nonprofit corporations to more efficiently communicate with their members and others. LB890 amends the Nebraska Nonprofit Corporation Act to ensure that Nebraska nonprofit corporations are able to deliver notices to members and others electronically, and specifically provides that notices electronically transmitted to a member as part of a publication regularly sent to them constitutes written notice when electronically transmitted in a manner authorized by the member. LB890 is based on similar amendments made to the Business Corporation Act in 2009. I believe I played a role in that as well, and so this is just kind of a little update here to include, make sure that it applies also to the (Nebraska) Nonprofit Corporation Act. With that, I know that Colleen Byelick from the Secretary of State's Office, I believe, is here to testify. I'd be happy to take any questions though, if you'd like. [LB890]

SENATOR PAHLS: Seeing no questions. Thank you, Senator. Any proponents? [LB890]

COLLEEN BYELICK: For the record, my name is Colleen Byelick. It's C-o-l-l-e-e-n, B-y-e-l-i-c-k. I would like to thank Senator Pirsch for introducing this bill on behalf of the Secretary of State's Office. This bill deals with communication of notices under the

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(Nebraska) Nonprofit Corporation Act and provides that those notices may be communicated by electronic means. This was an issue that was presented to our office through phone calls from practicing attorneys questioning whether nonprofits could send notices to their members electronically, via e-mail was what was specifically mentioned, and the attorneys were looking at the changes to the Business Corporation Act that were done in 2009 and similarly wondering if they could do that for nonprofit corporations as well. And the (Nebraska) Nonprofit Corporation Act was not amended at that time, so it did not appear that they could. The notice...I just wanted to point out that the notice provisions in the (Nebraska) Nonprofit Corporation Act do act as default rules and that if there's another statute that sets forth a more specific notice requirement that specific statute governs for that situation. And the act also provides that notices requirements that are put in the individual nonprofit's articles or bylaws can also govern as long as they're not inconsistent with the act. And so our intention with this bill is to give nonprofit corporations the ability to communicate with their members and directors and others electronically. We think it would be beneficial to allow nonprofits to use more efficient technologies to communicate, and we would ask for your support, and I'd be happy to take any questions you may have. [LB890]

SENATOR PAHLS: Seeing no questions. Oh, I have one. Senator Schumacher. [LB890]

SENATOR SCHUMACHER: Just one question. It says on page 8 of the bill that a written notice of report delivered as part of the newsletter magazine or other publication regularly sent to members shall constitute a written notice of the report or notice. Number three is added, if electronically transmitted to member in a manner authorized by the member. [LB890]

COLLEEN BYELICK: Yes. [LB890]

SENATOR SCHUMACHER: Do you contemplate each member having to authorize it, or is that just something in the bylaws that the members generally authorize? [LB890]

COLLEEN BYELICK: Yeah, I would envision that it would be sort of a general authorization that in the bylaws, the bylaws would say that we're going to send our annual meeting of notice via e-mail, you know, 30 days in advance of the meeting or something to that extent. So I don't think that each individual person would need to specifically authorize that, and I would think that if you as an individual are giving the nonprofit your e-mail address and giving your consent to be contacted that way that you're authorizing that as well. [LB890]

SENATOR SCHUMACHER: A lot of times these nonprofit type organizations, and I know there are other organizations, in order to save costs, will go to some mass mailing outfit to send out their reports or mailings, and a lot of times, those same mass mailing

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outfits also do work for other people who mail things that give their source server a bad name, and thus, they are picked up by spam screens, and the message never gets through to the member because of an interception by a spam screen either that the member has in place or that their Internet provider has in place. Have you encountered that problem? Has that been a subject of discussion as to how you know these messages aren't intercepted? [LB890]

COLLEEN BYELICK: True. Well, and I think that's always a problem for any sort of mass e-mail. Any sort of lists you're on, you kind of always have to go into your spam and say no, I really want this message, and don't put it in my junk e-mail. The only thing I would say is that, you know, similar changes were made to the Business Corporation Act, and we haven't heard of any problems there. I don't know if any problems have occurred, but at least they haven't filtered down to the Secretary of State's Office. [LB890]

SENATOR SCHUMACHER: Thank you. [LB890]

SENATOR PAHLS: (Exhibit 1) Seeing no more questions, thank you. Any more proponents? Opponents? Neutral? I have one I would like to read in the Nebraska Realtors Association support for (LB)890. Senator. [LB890]

SENATOR PIRSCH: I waive. [LB890]

SENATOR PAHLS: The good senator waives closing. That finishes the hearing on (LB)890. [LB890]