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Banking, Commerce and Insurance Committee
January 31, 2012

[LB811 LB1018 L@B1031 LB1064]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, January 31, 2012, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1018, LB1031, and LB811, and LB1064. Senators present: Rich Pahls, Chairperson; Beau McCoy, Vice Chairperson; Mark Christensen; Mike Gloor; Chris Langemeier; Pete Pirsch; Ken Schilz; and Paul Schumacher. Senators absent: None.

SENATOR PAHLS: Good afternoon. Welcome to the Banking, Commerce and Insurance Committee. My name is Rich Pahls, and I'm from Omaha, and I represent District 31. We are going to take up the bills in this order, (LB)1018, (LB)1031, (LB)811, (LB)1064. And I think we'll start off right early here and start introducing ourselves, and we'll start with Senator...I guess Senator Schilz is not here yet, so.

SENATOR SCHUMACHER: Paul Schumacher, District 22.

SENATOR LANGEMEIER: Chris Langemeier, District 23, Schuyler.

SENATOR PIRSCH: Pete Pirsch, District 4, Omaha, Douglas County.

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

SENATOR CHRISTENSEN: Mark Christensen, District 44, Imperial.

SENATOR PAHLS: And we have Bill Marienau, our legal counsel, who keeps us, like I said, legally correct. And Jan Foster, who keeps all the information going in the right direction. And I think we have Matt McNally over here as one of our pages. I'm going to have you adjust your eyes to the little board over there instead of my going over all the rules or procedures of the hearing. If you follow those, it will make things happen much faster. And also, if you are going to testify, please fill in the sheet and give it to Jan Foster. You need 10 copies. If you do not have 10 copies to hand to us, let the page know, and we will do that. I think we are ready for our first bill.

JULIA HOLMQUIST: Good afternoon, Senator Pahls, members of the Banking, Commerce and Insurance Committee. My name is Julia Holmquist. For the record, J-u-l-i-a H-o-l-m-q-u-i-s-t, here today on behalf of Senator Danielle Conrad to introduce LB1018. This bill would make changes to both the Business Corporation Act and the (Nebraska Uniform) Limited Partnership Act to bring these two acts in line with changes made in 2011 with the passage of LB888, which adopted the Nebraska Uniform Limited Liability Company Act. First, the legislation creates the necessary authorization for conversions from a corporation or a limited partnership to an LLC. Conversions are allowed in the new Uniform Limited Liability Company Act, but was not added to the

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corresponding business entity statutes, which is required before conversion can be properly enacted. Prior to the adoption of the Nebraska Uniform Limited Liability Company Act, conversions were allowed between limited partnerships and LLCs. The changes proposed by (LB)1018 would again ensure these conversions may take place. The bill would also allow mergers between corporations, limited partnerships, and other business entities and streamline voting requirements. Mergers with other business entities are allowed in the new Uniform Limited Liability Company Act so long as they are allowed in the corresponding business entity statutes, which is the change being implemented by this legislation. Business entity is defined in the bill to include a foreign corporation, a domestic or foreign partnership, a domestic or foreign limited partnership, or a domestic or foreign limited liability company. Following me is Julie Karavas, chair of the business law section of the Nebraska Bar Association, and she will answer any technical questions you might have regarding this bill. Also, the Nebraska Bar Association has a suggested amendment that they will present to the committee as well. Thank you. [LB1018]

SENATOR PAHLS: Do we have any questions? Seeing none, thank you. [LB1018]

JULIA HOLMQUIST: Thank you. [LB1018]

SENATOR PAHLS: Next proponent. [LB1018]

JULIE KARAVAS: (Exhibits 1 and 2) Thank you. Good afternoon. My name is Julie Karavas, K-a-r-a-v-a-s, and I am here today in my capacity as chair of the business law section for the State Bar. And Julia's testimony does summarize what this bill does do. I just wanted to again say that the business law section is supportive of LB1018. We have had a smaller working group within the section that has worked, well really, since before LB888 was introduced and through its passage, and that group has remained intact. And we recognize that there were some unintended results with the passage. Not that any of those are bad or have resulted in bad law, but if you recall, LB888 was modeled after the uniform act, the Uniform Limited Liability Company Act. And with a few minor administrative adjustments, things that, while working on LB888, we referred to as Nebraska fine. So that it worked along with the Secretary of State's processes, we tried not to really touch anything else. We have since found, as Julia just referred to, that there were certain things such as conversions. The acts between different entities that were allowed. Not...and now there has been question whether are not they are. Not that there's law now saying they can't happen, but rather, the LLC Act, which we had hoped, came in and was much more specific and stated specific provisions of what you can and can't do, we're now finding that some of the other acts, the Business Corporation Act, for example, when it was first put into place, didn't envision things like LLCs, so we're just needing to reconcile those. The point of this bill is not necessarily to create any new law. Does it mean all of the business entity law out there now is absolutely the way that this section wants it and you won't see us again? No, but rather,

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we're trying to stay very true to what our focus is and just make those necessary corrections to bring the LLC Act back to an operational standpoint the way it was prior to the passage so that it works with and allows the interaction with other business entities. And using the word business entities does show you that there is a little bit of forward looking in that we need to be more inclusive. We need to take into consideration there may be other entities in the future as well. So again, it's...we are not suggesting major substantive changes. I am not, was not planning to get into a discussion of what is a merger, what does it mean to consolidate? Those aren't changing. That is still there. It's just how can an LLC interact with those. I do have an outline of LB1018 as well as the amendments to LB1018, and the outline does provide you with a page-by-page step of where you will find these provisions within the act, and some have said that this particular bill is rather lengthy. I will remind you LB888 was what, a mere 120 pages, so this is...but it is necessary that we are involving the Business Corporation Act as well as the Limited Partnership Act. Just very briefly, the amendments, which again, the business law section is in support of, provides for just necessary cleanup. One of the big things is that if you have a conversion, that the converting entities, which would own real estate or which do own real estate at the time of conversion, would need to file a certificate of conversion with the Register of Deeds just to keep that chain of title very clear, and we are fine with that. I am happy to answer any questions you might have. Yes. [LB1018]

SENATOR PAHLS: Senator. [LB1018]

SENATOR SCHUMACHER: Thank you for testifying. Thank you, Chairman Pahls. How is the interaction then between the separate entities, the LLCs and the corporations and the general partnership act that's referenced here? Does one take on...in a merger or consolidation involving a general partnership, does the general partnership then take on corporate immunities and things like that? [LB1018]

JULIE KARAVAS: Well, and I can certainly get back to you if I don't answer your question. And from the Secretary of State's perspective, I believe that Colleen Byelick will be explaining, if you have specific filing questions, following me. But no, we are not saying that any entity is going to necessarily be able to take on the characteristics or such of another entity. What we are saying is, well specifically, where this initially came up was that there was someone who was trying to convert, I believe it was a limited partnership into an LLC, and had been able to do this in the past. Well, with the new laws, it had said that yes, that's still allowed as long as the other entity, so Limited Partnership Act, would provide for that. Well, it didn't, at the time that that earlier act was written, it didn't necessarily envision that there might be LLCs in the future, so it didn't specifically state, yes, it may do this. Where the challenge came was that the Secretary of State's office had been acting very practically in saying, yes, these things can happen. Well now, where you have two statutes that very specifically state, yes, you can do this if A, B and C are in place, and now it's not, they were saying, we need to

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have that adjustment made to that statute. So now the Limited Partnership Act will specifically state, yes, if, you know, all these other criteria are met, then yes, there may be a conversion. And so that's the kind of cleanup we did. It wasn't to say you can have these new characteristics. [LB1018]

SENATOR SCHUMACHER: So when a corporation mates with an LLC, what's the offspring? [LB1018]

JULIE KARAVAS: If it's...if there's a merger, it does allow a variety of different entities to merge. [LB1018]

SENATOR SCHUMACHER: What's the resulting entity of then? Is it what you think it to be? [LB1018]

JULIE KARAVAS: Generally, yes. [LB1018]

SENATOR SCHUMACHER: Okay, thank you. [LB1018]

JULIE KARAVAS: Um-hum. [LB1018]

SENATOR PAHLS: Seeing no more questions, thank you. [LB1018]

JULIE KARAVAS: You're welcome. [LB1018]

SENATOR PAHLS: Next proponent. If we have any more proponents, I ask you to move to the front so I can have some feel of how many we have. I see one more proponent? Okay, thank you. [LB1018]

LARRY RUTH: (Exhibit 3) Mr. Chairman and members of the Committee, my name is Larry Ruth. I'm one of Nebraska's uniform law commissioners. The Uniform Law Commission has other members, Judge C. Arlen Beam, he's from Lincoln; Jill Robb Ackerman is a new member from Omaha; Joanne Pepperl, your own Revisor of Statutes; Harvey Perlman; and Steve Willborn. Steve Willborn worked on LB888 last year, was unable to be here today, so I'm subbing for him and presenting his testimony. Uniform Law Commission does support this bill. It's fairly narrow and is a technical amendment to the uniform act that was passed last year, LB888. By its nature, the act has to interrelate with other acts, such as corporations and partnerships, and this is something that is, I would say, tinkering with the law to make sure it fits into our statutory framework. The bill authorizes conversions from one form to another. And I'm not an expert by any means in this area, but sometimes we look at bills that come in and are concerned about amendments to proposed uniform law as to whether they jeopardize uniformity, and we don't find that in this particular case. We just find that it has to make some technical amendments to make sure you can do what you could

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have done before. I would like to make one additional comment, and Julie mentioned that use of the word entity has some forward looking...has a forward-looking aspect. LB1018 addresses the issue of inter-entity conversions in a limited way sufficient for its purposes, but it is limited. There are other issues broader that we look at in conversion of other entities, and we have something called the Model Entity Transactions Act so that you can do this in one time and make sure you have entity conversions for the other business entities in the statute. We're working on that as a model act, and we think that it's got some value. We might bring it to your committee for a possible interim study. It is something that I think the bar association may be interested in. We'll let them speak for themselves, but we've also taken it to Mr. Marienau so he can begin to look at it. So, the long story short, we support the act, or the bill. [LB1018]

SENATOR PAHLS: So as I read, you're telling me this is narrow and technical. [LB1018]

LARRY RUTH: Yes, it is. (Laugh). [LB1018]

SENATOR PAHLS: Okay. Senator Pirsch. [LB1018]

SENATOR PIRSCH: Thanks, Larry, for your testimony. I guess I'd like to have the benefit of your experience in your practice. Did you practice in this area in terms of conversions? [LB1018]

LARRY RUTH: No, I have not, Senator, so you're not going to get much benefit from me. (Laughter). I'm a mouthpiece today. (Laugh). [LB1018]

SENATOR PIRSCH: I'm just trying to get a sense of within terms of conversions, you know, is there a, you know, is there a trend in terms of conversions? [LB1018]

LARRY RUTH: Well, all I know there is that there is a need for flexibility so that business entities can be fashioned to meet the needs of clients, and those needs sometimes change, and you need to change the business organization to do it. It was really interesting when I went to law school...you know how old someone is by them saying, when I went to law school, but when I went to law school, you had a partnership act and a Business Corporation Act, and then you had some ideas of what else could be done. Well, those have just completely been transformed over the last 10 years. As we meet the needs of our economy and the business needs, we have to have laws which can allow for transition from one to another. And that is something that Uniform Law Commission can do very well, because we bring a lot of experts together to work on uniform acts in this area and then take it back to the states for your consideration. Not saying that it should be, has to be done, but for your consideration. [LB1018]

SENATOR PIRSCH: Is there anything about your approach, are you familiar with...you

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said you have a Model Entity Transactions Act, is that right? [LB1018]

LARRY RUTH: Yes. [LB1018]

SENATOR PIRSCH: Are you familiar with, you said it's more broader in scope? [LB1018]

LARRY RUTH: I have done some reading on it. It is broader in scope, but this fits nicely within the same principles as that, so we're not doing any violence to that model act. And it's something that we should look at to see whether it fits Nebraska. Thank you for your interest. [LB1018]

SENATOR PIRSCH: Thanks. [LB1018]

SENATOR PAHLS: Thank you for your testimony. [LB1018]

LARRY RUTH: Thank you. [LB1018]

SENATOR PAHLS: Next proponent. [LB1018]

COLLEEN BYELICK: Chairperson Pahls, members of the Committee, my name's Colleen Byelick. It's C-o-l-l-e-e-n B-y-e-l-i-c-k, general counsel for the Secretary of State's Office. Just wanted to appear before you today and indicate our support for this bill. We were consulted during the drafting of the bill, and our thoughts and concerns were integrated into the bill, so we appreciate being given that opportunity. Basically, the issues that this bill is addressing have sort of plagued our office since the Uniform Limited Liability Company Act went into place January 1 of this last year. And nothing...we have no concerns about the Uniform Limited Liability Company Act. It's a good law, and it updated our laws, as we should be doing, but there just were some consequences in terms of how it related to the other business entity law, specifically the limited partnership act (sic: Uniform Partnership Act) and the Business Corporation Act. And so we were kind of put in the awkward position of trying to interpret and read all of these laws together and figure out what filings we should be accepting or not accepting, so we appreciate this area of law sort of being cleaned up. This tends to sort of fill in some of the gaps. Specifically, in the Business Corporation Act, there's nothing right now in that act about conversions. There's very little in that act about mergers. There's nothing in the act about mergers with other entities, so it definitely fills in some of those gaps to assist with sort of these inner-species mergers, if you will. And we would just urge the committee to support the bill, and I can try to answer any questions you may have. [LB1018]

SENATOR PAHLS: Senator Pirsch. [LB1018]

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SENATOR PIRSCH: In terms of confusing or possibly even conflicting provisions that came into effect then the beginning of 2011 then with the Uniform Limited Liability Company Act, what would the major kind of heads that were butted that came into contact with the limited partnership act in business corporation? [LB1018]

COLLEEN BYELICK: Sure, well basically, the Uniform Limited Liability Company Act says that you can merge with another business entity, but that other...the governing law of that other entity has to authorize the merger. And so you had to look at whatever this governing law was for the other entity, so in the sense of a corporation, we would probably look to the Business Corporation Act. Part of the confusion is that in one of the limited partnership statutes, there was a reference to mergers with other entity types, and so some attorneys were looking at that limited partnership act and going, well, does that give us authority? The Business Corp Act is silent on this. How do we accomplish it? You know, even if we want to go through this merger, how should it be approved? What should be filed? How should it be accomplished? So there were just sort of gaps there, and specifically, the prior Limited Liability Company Act just authorized the merger. It didn't tell you specifically that you had to go look at another act. So under the prior Limited Liability Company Act, we would have accepted Articles of Merger, because that act specifically said that a limited liability company could merge with a corporation. Under this new Limited Liability Act, it said, well, you can do that if this, this, this and this. And the question was, are those things, have those things been met in the other entity acts, so it's kind of an example of where this confusion was coming from. [LB1018]

SENATOR PIRSCH: Wonderful, thank you. [LB1018]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB1018]

COLLEEN BYELICK: Thank you. [LB1018]

SENATOR PAHLS: Opponents? Neutral? That will close the hearing on (LB)1018. We will now get ready for LB1031. Senator Harr. [LB1018]

SENATOR HARR: Thank you, Senator Pahls and members of the Banking, Commerce and Insurance Committee. My name is Burke Harr, H-a-r-r, and I represent Legislative District 8, which encompasses Dundee and Benson and Keystone, par our neighborhoods in Omaha. I am here on behalf of LB1031. I am bringing it on behalf of the (Nebraska) Banker's Association. It's a pretty complex bill. What it says is that when you file a UCC, you not only can use your driver's license, but you may also use an identification that is submitted or produced by the Department of Motor Vehicles. And that is the extent of it, but it is...other states have adopted that, and I think it would be fair that we in Nebraska do the same. What it is...the purpose is, we want to make sure there's certainty when you file a UCC statement, and as long as it's a government entity

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that's issuing the identification, I think that's good enough. So, I am open to any questions, and I believe Mr. Hallstrom is following with any technical questions you can conceive. [LB1031]

SENATOR PAHLS: Senator Langemeier. [LB1031]

SENATOR LANGEMEIER: Chairman Pahls, Senator Harr, would you be open to amending this to allow for a REAL ID to be used? [LB1031]

SENATOR HARR: And what are REAL IDs? [LB1031]

SENATOR LANGEMEIER: If at some point we get a REAL ID structure in Nebraska, could that be used as a government-issued ID? [LB1031]

SENATOR HARR: You know, the answer is I hate answering hypotheticals, but it would depend on what it looks like, but I would definitely be open to the concept. [LB1031]

SENATOR LANGEMEIER: Okay, thank you. [LB1031]

SENATOR PAHLS: Thank you. [LB1031]

SENATOR HARR: I'm going to go ahead and waive closing at this time. [LB1031]

SENATOR PAHLS: Okay. [LB1031]

ROBERT HALLSTROM: (Exhibit 1) Chairman Pahls, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB1031. I don't think any legislative session in recent memory would be complete without a bill regarding the individual debtor's name. We've had one for about six to eight years running now. We think we're to the end of the line here. Senator Harr has noted the reason for the bill and what it will accomplish. When the uniform proposal came out, in order to provide greater certainty, we adopted what's commonly referred to as the "Only If" Approach for a perfecting security interest involving an individual debtor when you file a financing statement. The certainty comes from the fact that you can use the name as reflected on a state-issued driver's license and to be in a perfected status from filing a financing statement that reflects that name. After we passed the legislation, so far approximately 10 states have passed similar UCC Revised Article 9 provisions, and in those states that have adopted the so called "Only If" Approach, we discovered that with only one exception, they have all expanded it to include the state identification card, an expired state identification card issued by the state. As Senator Harr noted, the certainty of a driver's license applies equally to the certainty of a state ID card in the name that's reflected thereon. And the default rule, if there is not a driver's license, would be the state ID card under LB1031. If

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an individual has neither an unexpired driver's license or state ID card issued by the state, then you would use the individual name or the first name and surname of the debtor. So it's a fairly modest change, but one that in cases where someone doesn't have a driver's license but has a state-issued state identification card, will allow the secured party to perfect their security interest with greater certainty. And we would ask for the advancement of the bill to General File. I'd be happy to answer any questions. [LB1031]

SENATOR PAHLS: Seeing no questions, thank you for your testimony. [LB1031]

ROBERT HALLSTROM: Thank you. [LB1031]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? Closing has been waived. We are now ready for LB811. Senator Harr. [LB1031]

SENATOR HARR: Thank you, Senator Pahls and members of the Banking, Commerce and Insurance Committee. I am again Burke Harr, H-a-r-r. I am from Legislative District 8. I present LB811. This one is a little more unique, and it, quite frankly, to get a little texture to what's going on, as our banks get bigger and bigger and we start dealing with out-of-state entities, some attorneys have run into problems, or their clients have. And what this is is if you receive property, or excuse me, you...person A owns property and deeds or gives part of it to person B, so let's call them Jack and Jill. Jack mortgages the property and then passes away. Jill has ownership of the property, but her name is not on the mortgage, and some banks are refusing to let Jill know what the payments are, when they're due, how much equity there is in the property. So all this does is says that the banks may disclose that information to any owner of the property. And it's as simple as that, and I am open to any questions. And just quickly, I did bring this on behalf of the Bar Association, because they have a process where they look at bills, and this they thought was an important bill to bring forward. So questions, comments? [LB811]

SENATOR PAHLS: Senator Schumacher. [LB811]

SENATOR SCHUMACHER: So this is a situation basically where you have an interest in a piece of property that has a lien on it, but you're not, you didn't borrow the money, and the banks have a hard time or feel there's an impediment to them telling you about what's owed and how to take care of the lien. [LB811]

SENATOR HARR: That's exactly right. Their name is not on the lien. You said it much more eloquently than I did. [LB811]

SENATOR SCHUMACHER: Did this interact with any federal laws? Is there any federal privacy things that are still residual even if we pass this? [LB811]

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SENATOR HARR: Not to the best of my knowledge. I believe, well, and the Bar Association is not here. (Laughter). That is a question I could address, but I don't believe so. Obviously if there was, federal law would have supremacy over ours. [LB811]

SENATOR SCHUMACHER: Thank you, Senator Harr. [LB811]

SENATOR PAHLS: Seeing no questions, thank you. [LB811]

SENATOR HARR: Thank you very much. [LB811]

SENATOR PAHLS: Are you going to stay, stick around? [LB811]

SENATOR HARR: Yes. [LB811]

SENATOR PAHLS: Okay. Proponents. [LB811]

SENATOR HARR: Oh, you are ready. (Laughter). She's so small, she hides. (Laughter). [LB811]

KATIE ZULKOSKI: A very secretive testimony. (Laughter). Good afternoon, Chairman Pahls, members of the Banking Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying in support today of LB811. We do want to thank Senator Harr for introducing this bill on behalf of the Bar Association. This is, as he mentioned, a bill that comes from, as most of the bills I've been talking to you this year do, come from the real estate, probate, and trust section. This is their suggestion, and other members of our legislation committee have looked at this and thought this was, as he said, an important bill. It addresses a narrow situation, but if you find yourself caught in this situation, it becomes a very important situation. Senator Harr did a good job of giving you a real-life example. My testimony that I have was the exact same example of Jack and Jill and what happens when Jill can't find out how to pay off the lien that is on the property that she owns and how...and this bill would address that situation. And I'd be happy to answer any questions. [LB811]

SENATOR PAHLS: Senator Schumacher. [LB811]

SENATOR SCHUMACHER: Thank you, Chairman Pahls. How does a person get into the position where they would have an interest in the property that they would be subject to a bank's lien that they did not help apply, or is this purely like a gift situation where they just happened to be added to a deed? [LB811]

KATIE ZULKOSKI: I think that would be true. Something for the most part, in the examples that I would have in my head would be where the deed was changed after the

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lien was put on. So if I, I use my property to secure a lien and then get married and very nicely put my husband's name on the deed, then he would not, unless I follow up with all of that, he would not also be on the lien. [LB811]

SENATOR SCHUMACHER: Thank you. [LB811]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. Next proponent? [LB811]

ROBERT HALLSTROM: (Exhibit 1) Chairman Pahls, members of the committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association to testify in support of LB811. The Bar Association had approached us last winter to discuss this particular issue and to provide another exception under section 8-1401 of the Nebraska statutes regarding the disclosure of confidential information. That particular section, as you see from the bill, applies not only to banks but to other companies with respect to information that the bank, or the corporation, for example, deems to be confidential. As you might expect, bankers diligently guard and protect confidential information of their customers, and only upon having the authorization or the direction by state statute such as provided in LB811, do we propose to allow that information to be given to third parties. Senator Schumacher, in regard to your question, I would just note there are other situations, and commonly with regard to personal property. Although this bill applies to real estate, where under federal regulation, if one individual applies for the loan and is credit worthy on their own merits, while you cannot require a second party to sign on the underlying loan, if you are necessary to have collateral for the loan or security for the loan in which more than one person owns, that would be a situation where two owners would pledge collateral to secure the loan. But the individual who applied was credit worthy in their own merit, so they would be the only one that would be liable on the underlying indebtedness. Be happy to address any questions. [LB811]

SENATOR PAHLS: Do you have any Jack and Jill scenarios? [LB811]

ROBERT HALLSTROM: Well, actually, Jack died so Jack and Jill would not go up the hill to the bank, but when Jill went (laughter) to the bank, she currently would come back without the information. This would allow her to get the information upon request. [LB811]

SENATOR PAHLS: Good thinking. Senator. [LB811]

SENATOR PIRSCH: So this happens quite a bit in terms of frequency, would you say? [LB811]

ROBERT HALLSTROM: I don't know that to be a fact, Senator. I would assume there

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are a myriad of different situations where if you have a personal representative appointed, the personal representative may be able to get that information. But if it was jointly-owned property and there wasn't a need to do an estate in a husband and wife situation with the husband passing away first and the wife as the survivor, you may not have the need to appoint a personal representative. So this would allow the co-owner to go in on their own merits without having to open an estate and get a PR appointed. [LB811]

SENATOR PAHLS: Seeing no more questions, thank you. [LB811]

ROBERT HALLSTROM: Thank you. [LB811]

SENATOR PAHLS: Any more proponents? Opponents? Neutral? Closing. [LB811]

SENATOR HARR: I will waive. Thank you very much. [LB811]

SENATOR PAHLS: The good senator waives. Thank you, Senator. All right. We are now ready for LB1064. Senator Fulton. [LB811]

SENATOR FULTON: (Exhibit 1) Okay. Thank you, Mr. Chairman. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29. This is AM1790 that you are getting now, and that's going to become the bill LB1064. Surplus lines provide Nebraskans with the ability to be covered by needed insurance that is not available through the admitted insurance markets in our state. LB1064 is intended to include excess disability insurance as an allowed product for exporting through surplus lines, as is allowed in a majority of states, but not presently in Nebraska. The necessity for excess disability insurance through the surplus lines market is created by several factors that limit one's ability to acquire adequate disability insurance through the admitted markets such as caps on maximum benefits that leave highly-compensated professions and executives short. Ineligibility of certain individuals based on either occupation or preexisting health concerns, or limited coverage for businesses valued at more than \$2 million. Expanding the surplus lines market in Nebraska for excess disability insurance would prove beneficial to a variety of Nebraskans, including university athletes who seek to take out disability insurance against a career-ending disability that would prevent them from turning professional. A number of players can be covered with disability insurance since they bought it in their home state. However, players who are Nebraska residents are ineligible for this coverage simply because the current surplus lines regulations prevent the exportation of such coverage. Others who might be effected, university coaching staff, medical professionals, or business owners who simply cannot get the amount of coverage needed by admitted Nebraska companies. LB1064 as amended by AM1790 proposes a solution to the problem of limited or nonexistent disability coverage in the admitted Nebraska market that poses no competitive conflict with the traditional disability market, because by definition, the

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surplus lines are not allowed unless the admitted markets cannot provide the coverage a person needs. I therefore request your adoption of AM1790 and the Committee's advancement of LB1064. I'll try to answer any questions if you have any. [LB1064]

SENATOR PAHLS: We did spend a lot of time last year on surplus lines. I can assure you that, if you can recall. Seeing no questions. [LB1064]

SENATOR FULTON: Okay. Thank you. [LB1064]

SENATOR PAHLS: Proponents? Are you going to stick around, Senator? [LB1064]

SENATOR FULTON: I think so. [LB1064]

SENATOR PAHLS: Could I just have a feel, how many proponents do we have? Two? Okay. Three? Okay, I'll have the proponents. [LB1064]

JOHN RUSSO: (Exhibit 2) Thank you. Thank you, your Honor. Thank you, Senator. (Laugh). I'm used to court, sorry. Thank you for the Committee for the opportunity to be here. My name is John Russo, R-u-s-s-o. I am employed by Petersen International Underwriters who, for the last 25 years, has done surplus lines, what's called surplus lines throughout the country. And I've worked with them for the last few months working with the different states. As indicated by the Senator, about 45 states allow disability through surplus lines. We feel it's very important to Nebraskans and all different types of Nebraskans, not only the high earners that we've heard about where the percentage of income is lower than what they really can exist on if they're ever disabled. Most Nebraskans throughout the country don't even have any disability coverage, and some of them have inadequate disability coverage, and that's what we're trying to protect and give additional coverage. Many employers are not allowed to even get disability coverage for some of the employees in certain vocations, and other individuals cannot get the coverage. We have, as an example, that I believe is in the paper that was submitted, a person from Nebraska who is an engineer, but works with airplanes and does photography also with airplane, aerial photography. He's not able to get any type of insurance except through surplus lines. We want a...there's also people with different medical conditions who with the admitted insurers cannot get the coverage that they need to get and can get it through surplus lines. So it's a wide variety of individuals besides the high earners who cannot get enough insurance, but other individuals who are benefited by this surplus lines. Also, to place a surplus lines policy, you have got to go through a procedure of diligent search before you can do that. In Nebraska, it was, it's part of the law. And this just allows again that excess disability insurance can be sold through surplus lines where it was not allowed before. I would indicate that it's not just a small number, and it's not just individuals on a football team or coaches. Those people do have those types of coverages here, but it's lots of individuals throughout the state who are in areas that they cannot really get this kind of coverage, and that coverage

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comes through surplus lines. And again, a diligent search will help protect the admitted insurers here so that it's only insurance that cannot become available that is available through the surplus lines. And I welcome any questions that you would have. Yes, Senator. [LB1064]

SENATOR PIRSCH: As a practical matter, how do you document a diligent search? Is it defined somewhere then? [LB1064]

JOHN RUSSO: Generally, it's three admitted insurers who sell that type of business. Disability business would be this law. And that you have to list those three companies that are part of the admitted carriers in Nebraska that do not allow this amount of coverage or do not allow the coverage at all. [LB1064]

SENATOR PIRSCH: Thank you. [LB1064]

SENATOR PAHLS: I'm just curious. Tell me again the number of states that this is not an issue. [LB1064]

JOHN RUSSO: I am aware of it. I've gone through sort of every state in the last few months. It's approximately 45 that allow this. And there's a dispute or question in approximately five states that I'm looking at, but District of Columbia also allows it, and it's approximately 45 states. And it derives, Senator, from before disability was part of property and casualty insurance, and it was allowed everywhere, all 50 states. It then became sort of situated with life insurance or health and life insurance, and that is where some of the states there's been a problem because they just pass..you know, say we don't want this kind of coverage for whatever reason. And disability sort of got thrown in with health and medical insurance or life insurance. And years and years ago in the '20s and '30s, it was part of property and casualty insurance. [LB1064]

SENATOR PAHLS: Senator Pirsch. [LB1064]

SENATOR PIRSCH: Just to clarify. You said 45 states allow excess disability or this high-limit disability? Okay. [LB1064]

JOHN RUSSO: Yeah, and they allow a lot of other...I mean, some states allow just about anything to be, as long as there's like a diligent search. This still would not preclude...and some states allow life insurance. But those 45 all allow disability, this excess type of disability. Once you check with the admitted insurers, and they don't allow it, then they allow this type of... [LB1064]

SENATOR PIRSCH: And let me get this straight. For the five states that do not allow it, the policy rationale as you understand it for them now allowing it has to do with the historical evolution with confusing this with health and...I'm sorry life insurance?

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[LB1064]

JOHN RUSSO: Yeah. I don't know exactly what the reasoning is, but it has been a more recent, like in the last 20 years, where there was this switch, and I believe that is the reasoning. I'm not sure, you know, if some individuals are, don't want this type of insurance because of admitted insurers in the state, I'm not sure of that. But it seems to be, to be more that it was put into life and health insurance, and a lot of states did not want medical insurance and life insurance to be sold through surplus lines. And I'm sure part of it was protection of the consumer, and part of it could be perhaps protection of the admitted insurers too. [LB1064]

SENATOR PIRSCH: Is that the historical origination here in Nebraska as you know it, or do you know? [LB1064]

JOHN RUSSO: I do not know at all, and I'm not aware of that being part of it at all. [LB1064]

SENATOR PIRSCH: Thank you. [LB1064]

JOHN RUSSO: It was one through four in state law 2210 said, indicated that they could not be sold through surplus lines. And that included all life insurance, and it included this medical type of insurance, and disability was included in that. [LB1064]

SENATOR PAHLS: Senator Gloor. [LB1064]

SENATOR GLOOR: Thank you, Senator Pahls. Does the person insured have to hold the policy? [LB1064]

JOHN RUSSO: The policy, no. It's not absolutely necessary. There's employers who absolutely hold, yes, pay for it and hold the policy. It's called key-person type of insurance, and that would be included as far as disability, not life insurance. [LB1064]

SENATOR GLOOR: Okay. [LB1064]

JOHN RUSSO: But disability would be included in this as a key person where someone else, the employer would hold the policy. [LB1064]

SENATOR GLOOR: For adverse impact on their business to offset that expense. [LB1064]

JOHN RUSSO: Absolutely, and just as an example there, Senator, almost every state, the maximum you possibly can get, and I could be proven wrong, but it's just my experience, is \$2 million with something like that with a business disability, which

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sounds like a lot. But there's a lot of companies worth a lot more than \$2 million and individuals who run those companies worth a lot more than \$2 million. And this provides excess beyond that. [LB1064]

SENATOR PAHLS: I see no more questions. Thank you for your testimony. [LB1064]

JOHN RUSSO: Thank you very much for the opportunity. [LB1064]

SENATOR PAHLS: Yes, next proponent. [LB1064]

THOMAS PETERSEN: Members of the committee, good afternoon. My name is Thomas Petersen, and that's T-h-o-m-a-s, last name Petersen, P-e-t-e-r-s-e-n. And I am with Petersen International Underwriters. We are a Lloyd's of London cover holder, which designs and underwrites this type of specialty insurance coverages. We are dually licensed as surplus lines brokers here in Nebraska. And I was glad to hear the very first bill that you took up. The word gap, gap, gap, gap kept coming up, and that's exactly what this type of coverage is designed to do, fill the gaps. It is not a replacement for the admitted markets. In fact, quite the contrary. When the admitted markets are able to provide the types of security that someone is after, then this cannot be written through the surplus lines. The surplus lines process requires the diligent search which Senator Pirsch, you had asked about. The generally prima facie evidence to prove your diligent search is declinations from those admitted carriers. There may be other ways of verifying that, but if you apply and say I need \$5 million for disability buy-sell and the carrier sends back nope, sorry we can't do that; or I'm an athlete, and they say, no, we don't write that type of an occupation. That's when it is eligible for exportation through the surplus lines market. So the very nature of the process protects the admitted market, so there is no adverse impact on the admitted market in any way, shape, or form. This, excuse me, this particular bill has, I was told on Friday, is supported by the Nebraska Association of Health Underwriters. And also on Friday, I had a contact from the Nebraska chapter of the National Association of Insurance and Financial Advisors, NAIFA, who said, why would we object to something that's going to be providing additional markets and help in our state? So they didn't go forward to say they would support it, but they said they definitely were not opposed to it in any way, shape, or form. What this additional market does, is it provides markets for people who cannot obtain either, as Mr. Russo pointed out, sufficient amount of coverages. When you talk to financial experts, you generally...general rule of thumb is two-thirds of your income is what is expected to be protected through disability insurance. But in the individual disability market, as your income goes up, that percentage actually starts declining. So it is possible that you suddenly find yourself through the admitted markets, if you happen to be a high-income earner, maybe able to get, secure 40 percent of your income. Well, that's not sufficient in many cases. Also from the business side, as we pointed out, buy-sells and key people need this type of additional coverage, not to mention the different occupations that are just a flat out no from the get go. So they

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provide additional markets. They provide additional tools for the financial experts that are, that work here in Nebraska. They also, surplus line taxes provides additional revenue to the states. There is no adverse impact to the admitted markets. Our office literally receives hundreds of inquiries for proposals for people here in Nebraska that we have to turn away, hundreds. The...let's see, oh, one of the questions that came up is why do some of the states disallow disability insurance? I believe that was your question, Senator, also. One of the issues that precludes it is the way that the language is written where it says accident and health will not be exportable. They include in that realm disability insurance, since it is a benefit that pays due to an accident or an illness, but those laws when they were written, those words used were when you drill down to their beginning, you find what they were after was medical insurance. But they included accident and health insurance, and therefore, disability falls into that. So sometimes it becomes an interpretive issue by that particular Department of Insurance as to what that word specifically means. Let's see, just in my closing here, I would just like to point out that if there were any opposition to this bill, it's a real simple question to ask those who are opposing it. Do you write athletes and other occupations, and do you, are you able to provide high-income earner \$50,000 a month benefits? If they say no, I don't know why they're opposing this. But nonetheless, again, it works with the admitted markets. It does not impact it, and it does provide the additional tools that are needed here in Nebraska. Are there any questions? [LB1064]

SENATOR PAHLS: Senator Schumacher. [LB1064]

SENATOR SCHUMACHER: Thank you, Senator Pahls. Thank you for appearing here today. Who has regulatory authority then over the surplus lines writer? [LB1064]

THOMAS PETERSEN: Of, of...oh, the surplus lines writer? Department of Insurance. [LB1064]

SENATOR SCHUMACHER: The local Department of Insurance? [LB1064]

THOMAS PETERSEN: The...you have to have an eligible surplus lines writer. They have to meet minimum surplus, capital surplus in order to be eligible to write. And that's true in, I believe, almost every state with the exception of the state of Washington. The state of Washington requires that the broker provide the financial, basically the financial profile to say that this meets the criteria. But every other state is through the Department of Insurance, that I'm aware of. [LB1064]

SENATOR SCHUMACHER: Thank you. Thank you. [LB1064]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB1064]

THOMAS PETERSEN: Thank you very much. [LB1064]

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SENATOR PAHLS: How many more proponents? Seeing nobody in a front chair, so there must not be any more. Oh, yeah. (Laughter). [LB1064]

KORBY GILBERTSON: We're not front row kind of girls. Sorry. (Laughter). Good afternoon, Chairman Pahls, 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 Association of Health Underwriters. And as you just heard, we support this legislation. The members of the association think it's a good move in giving them the ability to have more options for their clientele. And I don't want to take up any more of your time, so I'd be happy to try to answer any questions if you have some. [LB1064]

SENATOR PAHLS: Senator Pirsch. [LB1064]

SENATOR PIRSCH: And the department has broad authority to set appropriate... [LB1064]

KORBY GILBERTSON: Yes. Yes. [LB1064]

SENATOR PIRSCH: ...yeah, so they'll come up with a fee structure that will help... [LB1064]

KORBY GILBERTSON: Yeah. The department itself has oversight over these lines. It's not like you'll have a huge influx of things that are unregulated coming into the state. [LB1064]

SENATOR PIRSCH: Thank you. [LB1064]

SENATOR PAHLS: Seeing no more questions, thank you for your testimony. [LB1064]

KORBY GILBERTSON: Okay, thank you. [LB1064]

SENATOR PAHLS: Next proponent. [LB1064]

JAN MCKENZIE: Senator Pahls, members of the Banking, Commerce and Insurance Committee, for the record, my name is Jan McKenzie, J-a-n M-c-K-e-n-z-i-e, testifying in support of LB1064 with AM1790. We appreciate Senator Fulton's efforts to make sure the bill was tailored specifically to solve the problem that they've presented to you today and were able to come in in support of the bill with the amendment. [LB1064]

SENATOR PAHLS: I'm just curious. Did you support the surplus lines bills from last year? [LB1064]

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JAN MCKENZIE: Generally, we don't take a position on surplus lines. However, once in awhile where it looks like it may open a new unregulated market, the health insurers in particular take a look at that, so. [LB1064]

SENATOR PAHLS: Okay. Seeing no more questions, thank you. [LB1064]

JAN MCKENZIE: Thank you. [LB1064]

SENATOR PAHLS: No more proponents? Opponents? In the neutral? Seeing none, Senator. [LB1064]

SENATOR FULTON: Thank you, Mr. Chairman. Just want to let the record reflect that when this was brought to me, we did talk to the Department of Insurance. And they didn't testify here, but I can say that they have looked over this amendment. I don't know why they didn't testify in support of it, but it's been vetted, and I think we've run all the traps. So if there are any other questions, I'd try to answer them now. Otherwise, I would just ask you to consider it. [LB1064]

SENATOR PAHLS: So you're telling me basically, it appears the Department of Insurance is okay with this, or they would be here as a proponent or as an opponent. [LB1064]

SENATOR FULTON: As an opponent. I...we have vetted this with them. We put this amendment together. I talked it over with Bruce, and I think, like I said, we've run all the traps, so. [LB1064]

SENATOR PAHLS: Seeing no questions, thank you. [LB1064]

SENATOR FULTON: Thank you. [LB1064]

SENATOR PAHLS: That will close the hearing on LB1064. [LB1064]