[LB92 LB312 LB614]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 25, 2013, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB92, LB614, and LB312. Senators present: Mike Gloor, Chairperson; Mark Christensen, Vice Chairperson; Kathy Campbell; Tom Carlson; Sue Crawford; Sara Howard; Pete Pirsch; and Paul Schumacher. Senators absent: None.

SENATOR GLOOR: (Recorder malfunction)...from the 35th District and serve as chair of this committee. The committee will take up bills in the order that's been posted outside on the agenda. To better facilitate today's meeting we have rules as does every committee. Those are posted up there as committee procedures, but let me run through a few of the more important ones for you. Please, I know you think you've turned off your cell phone, but give it an extra check just to make sure that's the case. The order of the testimony will be the introducer, proponents, opponents, then those in a neutral capacity and then we'll allow the introducing senator to close. Testifiers, please do sign-in and then fill out one of the sign-in sheets and when it's your turn to testify, please hand that to the clerk. Spell your name before you testify. That's not for us, we know you've just filled one out, but it's for the transcribers who are not here and who will be listening into this, and they need to get your spelling down correctly. Be concise. We're not using a light system today, although we have one available, but I would ask folks to focus on trying to keep your comments to five minutes if at all possible. If you're not testifying today, but would still like to have your feelings on this bill known, there are sheets off to either side here that you can sign in and that way, you'll show up on the record. Written materials, we need to have ten copies so that they can be distributed to each of the committee members, and hand those out at the same time that you come up to hand in your sheet to the clerk. To my right is committee counsel, Bill Marienau, and Jan Foster is the committee clerk down at the end of the table. And with that, I'll ask the rest of the senators to introduce themselves. Senator Crawford.

SENATOR CRAWFORD: Thank you. Good afternoon, my name is Senator Sue Crawford and I serve Legislative District 45, eastern Sarpy County.

SENATOR SCHUMACHER: Senator Paul Schumacher, District 22, Platte and parts of Colfax and Stanton County.

SENATOR PIRSCH: Senator Pete Pirsch, District 4, Boys Town, parts of Douglas County and the city of Omaha.

SENATOR CAMPBELL: I'm Kathy Campbell and I serve District 25 which is east Lincoln and eastern Lancaster County.

SENATOR CARLSON: Tom Carlson, District 38, seven counties and part of an eighth, and I live in Holdrege.

SENATOR HOWARD: Sara Howard, District 9, midtown Omaha.

SENATOR GLOOR: And our pages are Will and Nathan who will be glad to help you if you need things like copies, as an example. As I said, we will take up the bills in order and we'll start with Senator Karpisek's LB92. Welcome to the Banking, Commerce and Insurance Committee, Senator.

SENATOR KARPISEK: Thank you, Senator Gloor, members of the committee. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. This bill was...I first saw when it was my first year and Speaker Flood wasn't Speaker at the time. Well, yeah he was I guess. Anyway, he was just becoming Speaker and he had this bill and I guess I didn't ever know what happened to it. And it kind of caught my attention so I thought we would talk about it again. It would prohibit an insurer from using credit information in connection with the issuance, underwriting, renewal, cancellation, or denial of insurance. The bill would also prohibit an insurer from using an insurance score that is calculated using the income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor. I just feel that even if there are studies that can connect a credit score with a probable loss, I don't know that that is really the way to go about getting a rate. I think some of those reasons why it seems like there's less claims--well, there are probably less claims--are the people who can afford it probably don't turn it into their insurance. The people who actually need the insurance have to pay more to get the insurance, and then they turn in a claim, which hurts them again, and end up paying more insurance. I guess my thought is that it really hurts the people that don't have the money that already can't afford things, we make them buy insurance, at least liability insurance, for vehicles, and it just kind of disincentivizes them to try to do things better. We all know sometimes the claims are turned in when they shouldn't be. I think a lot of that can stem back to this, too, I don't know. I just don't think it's a way that we should rate people. I think you should look back at their history. If they have a lot of claims, fine. I don't think their credit score necessarily proves that if someone else would be driving my vehicle...my 16-year-old son takes my truck and backs into something, it doesn't correlate to me. Anyway, that's kind of the reasoning behind the bill, and I'd be glad to try to answer any questions. [LB92]

SENATOR GLOOR: Thank you, Senator Karpisek. Questions? Senator Pirsch. [LB92]

SENATOR PIRSCH: And I appreciate your testimony here today. So just kind of edification since Senator Flood I think introduced it four, five years ago or something of that...I certainly think Senator Lathrop had brought an iteration of that. If...are you familiar with that one? [LB92]

SENATOR KARPISEK: I wasn't with Senator Lathrop's. I learned that after I turned it in, but I did not know that he did. [LB92]

SENATOR PIRSCH: Yeah, I think that was either last year or the year before, maybe both. Do you know the...how your bill would differ with...I mean, is it exactly as Senator Flood... [LB92]

SENATOR KARPISEK: Yes, it is. [LB92]

SENATOR PIRSCH: Okay. Do you know if it's different from the one which Lathrop did? [LB92]

SENATOR KARPISEK: I do not. [LB92]

SENATOR PIRSCH: Okay. And so just from past introduction of this bill or similar bills in past years, in talking, you don't have a problem with as the insurers use some sort of a formula that does incorporate the credit information and other factors. You're not saying that it doesn't lead to accurate outcomes in terms of when they go back afterwards and have to have payoffs or do you... [LB92]

SENATOR KARPISEK: You know, I think there is enough studies. Of course, I'm sure we can get a study to say whatever we want. But I think that there are studies that show that there probably is some correlation. I didn't dig around to try to find a study that disproved that. [LB92]

SENATOR PIRSCH: Okay. Your...and this was kind of a point that I with Senator Lathrop went over, I think. And maybe you can either say that's your position or not your position, but you don't see...but he was ceding the accuracy of the computation of the...however the formula was designed that it arrived at accurate type of results in terms of assessing the risk to insurers. But from a public-policy perspective, the types of factors that it included were objectionable to public policy. Is that fair to say? [LB92]

SENATOR KARPISEK: That is fair to say. And I guess there's a whole lot of things that can affect your credit score that may be out of your control, maybe part of your control: a divorce, a medical emergency, something medically that really hurts you that I don't think makes you a bad person or says you're going to wreck your car, necessarily, other than things happen. So my point is it might put people into a group that not necessarily would they have been in had it not been for some extraordinary circumstance. Plus the other part is, is that--again, from the public policy--the people who we want to have to pay more? I guess if it's spread out across everyone because we always hear that when we come to these sort of bills. Well, it will make everyone else's rate go up. [LB92]

SENATOR PIRSCH: Yeah. Is that generally the industry practice to use credit information right now, or do you know? [LB92]

SENATOR KARPISEK: I guess you'd have to ask them. [LB92]

SENATOR PIRSCH: Okay. [LB92]

SENATOR KARPISEK: I don't. [LB92]

SENATOR PIRSCH: Thank you. [LB92]

SENATOR GLOOR: And Senator Christensen has joined the group. Senator Carlson, you had a question. [LB92]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Karpisek, the whole concept of insurance is a sharing of risk because there's risk involved. And so I would ask, other than the credit scores you don't have a problem with companies checking the insurability of someone who applies for insurance? [LB92]

SENATOR KARPISEK: Correct. [LB92]

SENATOR CARLSON: And I'm sure that the companies will argue that this is a part of...a critical part of checking for insurance, but your basis in this bill is it's just not fair to do that. [LB92]

SENATOR KARPISEK: Correct. [LB92]

SENATOR CARLSON: Okay. Well, that's it for right now. Are you going to be here to close? [LB92]

SENATOR KARPISEK: I think I will not. I have a General Affairs Committee going on across the hall. [LB92]

SENATOR CARLSON: Okay. Thank you. [LB92]

SENATOR GLOOR: Senator Christensen. [LB92]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator. So do you feel like there's no connection between the ability to pay and credit scores or do you just think it shouldn't be used? I missed part of your opening and I apologize. [LB92]

SENATOR KARPISEK: Sure. No, I think there may be...there are studies that show that there probably are some connection to turning in claims and your credit score. My point is I don't know that that's the correct way to go about it, if it's fair to those people instead of spreading things out across everyone. The other part, probably even more, is that some people may be misclassified with their credit score because of something big that's happened in their life such as a divorce or a medical issue that's come up and you get all these bills that don't get paid by the other insurance companies on time. Your credit score goes to heck, all of a sudden your premiums go up on everything else because of it. [LB92]

SENATOR CHRISTENSEN: I guess I look at I have, personally, a very high credit score. And I don't want to pay additional costs for somebody who has messed up, I guess. So I guess I just wondered how you'd respond to that. [LB92]

SENATOR KARPISEK: I think we do it all the time anyway. If you have a very high credit score, if you have very good health you probably pay a little bit less than someone who's sick all the time, but it still gets blended in. So I just don't know that a credit score and....you can look at myself and say, oh, well, he's five pounds overweight. He's probably not a good health risk, and look back in my history. But just to look at a credit score and not look at how it got there maybe, I don't think is the right way to go about it. [LB92]

SENATOR CHRISTENSEN: So do you think they use the credit score only or do you think they blend that in with other things? [LB92]

SENATOR KARPISEK: What I've been told is that it's almost used as maybe a good student were to take a discount, thank you. Or it will take some money off. [LB92]

SENATOR CHRISTENSEN: Okay. Thank you. [LB92]

SENATOR KARPISEK: Thank you. [LB92]

SENATOR GLOOR: Other questions for Senator Karpisek? Senator Crawford. [LB92]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you for your testimony. Just to clarify for the record that we've been talking a lot about the credit score as a component of the bill, but the bill also lays out other criteria that you feel should not be used for the sake of insurance rating, insurance offering? [LB92]

SENATOR KARPISEK: Right. Ethnic groups, all those sort of things. [LB92]

SENATOR CRAWFORD: Right. Right. Are there any particular stories or concerns that you have heard raised on some of these other criteria, race, gender, address? [LB92]

SENATOR KARPISEK: I have not personally heard those. Obviously, I don't think that those should be used either. I have not heard any personal stories. I haven't had anyone come to me about those. [LB92]

SENATOR CRAWFORD: Right. Right. But being determined based on your zip code or address they might be predictive, but your point is even though it could predict risk it's not necessarily the fault of the person who lives at that zip code that they would be assigned that higher risk. [LB92]

SENATOR KARPISEK: Correct. There may be in that area more claims, but is that fair if I've had a very good credit score, I guess, to get lumped into that? Again, I saw Senator Flood bring this, I thought it was a good talking point, didn't know what happened to it, didn't know Senator Lathrop had brought it, but also going through a divorce and seeing what did happen to my credit score and kind of the flux you're in there for a while. I haven't wrecked any more or less cars while I was married and had a better credit score, so that's another reason why I brought it. I just don't think that it's the way that we should go about rating someone. [LB92]

SENATOR CRAWFORD: Thank you. I appreciate your... [LB92]

SENATOR KARPISEK: Thank you. [LB92]

SENATOR GLOOR: Senator Schumacher. [LB92]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you, Senator Karpisek for your bringing this bill today. When you see the phrases income, gender, address, zip code, ethnic group, religion, marital status, nationality, usually in that cluster there's a word "age." Is there any reason that age was left out? [LB92]

SENATOR KARPISEK: I do not. Again, we just copied this right off of Senator Flood's from 2008. [LB92]

SENATOR SCHUMACHER: Thank you, Senator. [LB92]

SENATOR GLOOR: Other questions? [LB92]

SENATOR KARPISEK: Maybe we could ask...oh, we'd better not. [LB92]

SENATOR GLOOR: Senator Howard. [LB92]

SENATOR HOWARD: Thank you, Senator Gloor. Does this impact all types of insurance? [LB92]

SENATOR KARPISEK: You know, that's another great question that someone maybe behind me can talk to more. [LB92]

SENATOR HOWARD: Okay. [LB92]

SENATOR KARPISEK: I think of it as vehicle insurance, but that's a great question. [LB92]

SENATOR HOWARD: Sure, because I know there are a lot of federal regulations in regards to health insurance, in regard to a gender rating and geographic rating, and so I would just be curious as to whether or not because this is very broad--it just says insurance--if it would impact those rules as well. [LB92]

SENATOR KARPISEK: And I'd be interested to know that, too. [LB92]

SENATOR HOWARD: Thank you. [LB92]

SENATOR KARPISEK: Thank you. [LB92]

SENATOR GLOOR: Seeing no other...are there any other questions? Seeing no other questions, thank you, Senator Karpisek. [LB92]

SENATOR KARPISEK: Thank you, and I will waive closing. Thank you for your time today. [LB92]

SENATOR GLOOR: And Senator Karpisek, I don't think you're five pounds overweight, for what it's worth. [LB92]

SENATOR KARPISEK: Thirty-five? [LB92]

SENATOR GLOOR: Perfect. [LB92]

SENATOR KARPISEK: Thank you. [LB92]

SENATOR GLOOR: (Exhibit 1) Can I see a show of hands of people who would like to testify on today's bill or on LB92, specifically? Okay. We'll start with proponents for this bill. Opponents for this bill? And as the testifier is working his way up, we have a letter here from Farmers Insurance Group in opposition and I'll have the pages pass this out to members. Good afternoon. [LB92]

ALEX HAGELI: Good afternoon, Mr. Chair, members of the committee. My name is Alex Hageli, I...Hageli, H-a-g-e-l-i, and I represent the Property Casualty Insurers Association of America, PCI for short. Our members write approximately half of the auto insurance sold in Nebraska. While not all our members use insurance scoring, which is what we refer to as the use of credit information to underwrite and rate auto insurance, we do support the right to use this underwriting tool because studies have found it to be one of the most predictive, if not the most predictive, rating factor currently available to insurance companies. A little history: companies first started using credit information on the commercial side back in the '70s, and then in the '90s FICO developed a score comparable to credit score on the insurance side. And then as companies began to implement the insurance score and they saw just how predictive it was, eventually it got to the point where it is now where pretty much every insurance company uses credit information to one extent or another. I want to emphasize that credit scores and insurance scores are two different things. Credit scores measure how much and at what rate somebody will get a loan, whereas insurance scores measure how consumers are...how they handle their risk, what the likelihood is that they'll have a claim, and what amount that claim will be for. There's been a number of studies on insurance scoring; I'm not aware of any that say it's not predictive. As far as I'm aware, all of them say that it is, in fact, predictive. I'll just quickly give you an excerpt from an FTC study issued back in 2007. Credit-based insurance scores are effective predictors of risk under automobile policies. They are predictive of the number of claims consumers file and the total cost of those claims. The use of scores is, therefore, likely to make the cost of insurance better match the risk of loss posed by the consumer. Thus on average, higher-risk consumers will pay higher premiums and lower-risk consumers will pay lower premiums like you, Senator Christensen. Regarding correlation, you know, this is one of the issues that comes up, why are insurance scores predictive? And at the end of the day, like many other rating factors, we just don't know. There's theories that people that manage their credit, are fastidious about their credit are more fastidious about other things in their life. Like I said, at the end of the day we really don't know. We don't know why marital status...why married people are a lower risk than single people. Oh, I know there's the theory that married people have more to live for. I beg to differ with that as a single guy. I think compared to some of my married friends who wish they weren't married, I'm a little..I have a little bit more to look forward to than they do. [LB92]

SENATOR GLOOR: I just want to remind you this isn't the Health and Human Services Committee before you go too far. [LB92]

ALEX HAGELI: Regarding the advantage that insurance scoring offers to consumers, the state of Arkansas which has a law very similar to Nebraska's conducts a survey every year. And every year they find about 33 percent of consumers pay less as a result of the use of credit and about 10 percent pay more. All the other consumers are generally unaffected by the use of scoring. That's pretty much it. [LB92]

SENATOR GLOOR: Mr. Hageli, let me ask. Your comment that it is...that credit ratings or credit scoring or however we want to define this, is a good predictor. So is that comment, would you say, going to be the case for every insurer? I mean, do they have a standard formula that's used that's part of the predictive model that plugs in credit scores or a credit rating for somebody when they set premium rates? [LB92]

ALEX HAGELI: I think that companies use it in a variety of ways. You know, they incorporate it into their broader product profile of the type of policyholder that they want to attract, they want to write. So it's not used homogeneously from company to company and regarding how each company specifically uses it. I don't know that I can talk about that. [LB92]

SENATOR GLOOR: But you'd say that from insurer to insurer, it's an important part of their actuarial predictor model or whatever? [LB92]

ALEX HAGELI: Absolutely. Absolutely. Absolutely. [LB92]

SENATOR GLOOR: Senator Pirsch. [LB92]

SENATOR PIRSCH: Can you just briefly comment about how these models come about? You know, each company has its own proprietary formula, right, which it thinks it has an edge over the competition, hopefully, in identifying risk and thus putting them in a better position to actuarially address that. But how does that...what are the kind of factors or how does each of these companies reach, if you know, the way, the manner in which they incorporate credit scores? Is it...is there some sort of a background or base model that everybody uses as their starting point or am I asking too kind of abstract of a question? [LB92]

ALEX HAGELI: Yeah, a little bit. You know, I know there's a couple of vendors that a lot of our members use and then there's some of the bigger companies have their own model that they've tweaked. In terms of a starting point, I mean, I guess you'd have to start with the initial development of the score and the process that went into that. But beyond that, I really don't... [LB92]

SENATOR PIRSCH: You don't think there's a generally accepted within, you know, a framework that they're typically utilized in industrywide or it's pretty diverse the way in which it's used? [LB92]

ALEX HAGELI: Yes but, again, I would say there's vendors that sell products that multiple companies use and...but the way in which they use it, they can adjust that. So I don't know if they do. [LB92]

SENATOR PIRSCH: So is it pretty fragmented all over, the way in which they use it, the industry, if you know? [LB92]

ALEX HAGELI: You know, I'm sure there's some consistency but we try to...as a trade association, we try to stay away from how companies do so specifically... [LB92]

SENATOR PIRSCH: Uh-huh. [LB92]

ALEX HAGELI: ...in order to avoid antitrust concerns. [LB92]

SENATOR PIRSCH: Sure. And so just to talk about, if this bill were to pass and you wouldn't be able to use credit information with the issuance underwriting, what...you said that this...is this...this was one tool or the most predictive tool? [LB92]

ALEX HAGELI: It's the most predictive tool, it's one of many rating factors. I think there's...again, it depends on the company, but there can be anywhere up to 20 different rating factors. And the proportion of the impact that credit has on premium is unique to each company. [LB92]

SENATOR PIRSCH: Okay. Thank you. That's all the questions I have. [LB92]

SENATOR GLOOR: Senator Crawford. [LB92]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you. Could you speak to the other criteria that are in the bill? So you've talked about the importance of credit scores, but could you speak to income, gender, address, zip code, ethnic group, religion, marital status, nationality? [LB92]

ALEX HAGELI: I believe...doesn't that language say that the score can't consider that information? Right? [LB92]

SENATOR CRAWFORD: Right. [LB92]

ALEX HAGELI: I think half those factors are already prohibited by your state law. [LB92]

SENATOR CRAWFORD: Okay. [LB92]

ALEX HAGELI: Like ethnicity, religion...I don't even know how that would factor into a score, to tell you the truth. [LB92]

SENATOR CRAWFORD: You don't know? Right. So perhaps what might be left is zip code. [LB92]

ALEX HAGELI: You know, territorial rating, that's its whole separate underwriting factor. [LB92]

SENATOR CRAWFORD: And that is currently used? [LB92]

ALEX HAGELI: To develop a score? [LB92]

SENATOR CRAWFORD: Yes. [LB92]

ALEX HAGELI: I don't know if zip codes use it or not. To be...I don't know if the models use zip code or not, or if they just use it as a territorial factor in and of itself, where you live. [LB92]

SENATOR CRAWFORD: How else would territorial factor be defined besides zip code, if we were asking people if they were using territorial rating? [LB92]

ALEX HAGELI: No, no, no, no. Yeah. No, I meant in terms of developing the score. [LB92]

SENATOR CRAWFORD: Uh-huh. [LB92]

ALEX HAGELI: I don't know how you would use that to develop a score because it's based on the information in your credit report to develop a score. But I'm sure they're using territory as a separate rating factor, separate from the use of credit information. [LB92]

SENATOR CRAWFORD: Correct, yeah. And I think the bill...and so the bill I think is addressing credit scores in one factor and then these other factors it's also saying we shouldn't use these other factors in a score as well. Right. Right. [LB92]

ALEX HAGELI: Yeah, it's part of the score. And like I said, like half those...at least half those are already... [LB92]

SENATOR CRAWFORD: So several of those are already ruled out but zip code is perhaps one that still is used. Okay. [LB92]

ALEX HAGELI: Yeah, you know, I'm sorry, I just don't recall. I'm sorry. [LB92]

SENATOR CRAWFORD: Okay. Okay. So that would be...so that would might perhaps be a discriminatory issue if there are certain territories that are or zip codes that are being considered in a code. [LB92]

ALEX HAGELI: Uh-huh. [LB92]

SENATOR GLOOR: Senator Christensen. [LB92]

SENATOR CHRISTENSEN: Thank you, Chairman. Can you tell me how they weigh credit score versus speeding tickets versus other criteria they use? [LB92]

ALEX HAGELI: Not really. I mean, it's just...it's all, again, they have their own little secret recipe of how they develop their premium and each company, obviously, feels their secret recipe is a little bit better than the other guys'. So within that recipe, you know, it could be credit, it could be half the premium, it could be 10 percent. It's all across the board. [LB92]

SENATOR CHRISTENSEN: Because I know they love to surcharge you if you have speeding tickets; I'm known for those. And yet... [LB92]

ALEX HAGELI: Yeah. But you have a good score. [LB92]

SENATOR CHRISTENSEN: I have a great credit score and yet I've never had a wreck that's my fault other than 2 before I was age 16 on a school permit, one on a narrow bridge where I hit 2 cows and one where I lost control on the ice. I don't feel bad about that, but I paid a lot of insurance premium because of speeding and never had a wreck. I hit a lot of deer, that's a little different category. But...so I've always wondered how they correlate all this because I can feel like Senator Karpisek, you know--that having a credit score that takes a dip due to a divorce or something that way feels unreasonable--I feel the same way about speeding tickets because they say it corresponds and, knock on wood, I've not had any wrecks other than them two. Like I said, I lost one on the ice going to school and I hit on a narrow bridge that you couldn't meet two cars, I hit two cows. You know, that's the two wrecks that's my fault. And I feel like that is a pretty darned good driving record, but yet, I pay a lot of surcharges. I don't understand how they rate things because I know every insurance company I talk to says speed is an indicator of wrecks. Well, I must be the abnormal individual because I've had a lot of speeding tickets and not many wrecks, and that's why I was asking that question how that all factors in. So... [LB92]

ALEX HAGELI: It factors in, again, in how each company factors or considers those factors. It's up to each company and I can't really speak to that, although I would advise you to shop around. That's the best you could do. [LB92]

SENATOR CHRISTENSEN: Thanks. [LB92]

SENATOR GLOOR: Other questions? Senator Schumacher. [LB92]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony today. Let's talk a little bit about the philosophy of insurance. Why have insurance? [LB92]

ALEX HAGELI: In order to compensate yourself in the event of an accident or people you might have inflicted damage upon should you cause an accident or hit a cow or a deer. [LB92]

SENATOR SCHUMACHER: Isn't it to spread the risk because you don't know? [LB92]

ALEX HAGELI: Yes, to spread the risk among like risks. Absolutely. [LB92]

SENATOR SCHUMACHER: Okay. Now...so you're basically saying that right now, the industry uses what amounts to a foggy crystal ball to kind of see what the risk is for this particular client, and in that crystal ball's calculations are these various variables. Let's suppose that the crystal ball is crystal clear. A client comes in, you can see exactly this guy is not going to have a claim. You charge an administrative fee, clear profit goes in the pocket. This guy is going to have a $50,000 claim. Okay. Who's going to insure a for-sure $50,000 claim for less than $50,000 in premium because it's certain this guy is going to happen. So the more precise the predictability of the client is, the less insurance functions to spread the risk. Is that a fair statement if you're allowed to discriminate on risk? [LB92]

ALEX HAGELI: And the question is again? I'm sorry. [LB92]

SENATOR SCHUMACHER: The more predictable the situation is, the less--under the existing practice--the less the risk is spread? [LB92]

ALEX HAGELI: Right. I see. Well, if you have that clear crystal ball, first thing I'd do is tell that guy not to drive because he's going to have two accidents. [LB92]

SENATOR SCHUMACHER: That was him that had two accidents. The cows thought it was a terrible thing. [LB92]

ALEX HAGELI: I would tell them I'll give them a ride. But if you could see 100 percent into the future--and that's what we're trying to do here is predict the future which, of course, nobody can do--you would just group those individuals together and that's how you would spread the risk. But honestly, if you could see perfectly clear into the future then tell him not to drive. [LB92]

SENATOR SCHUMACHER: But the more precise you are, the more precise measuring tools that you have whether it's statistical or crystal ball, the less the risk is spread because you can narrow it down. This is the bad pool and that's the good pool and we aren't going to touch the bad pool unless we get a whole lot more premium out of the bad pool. [LB92]

ALEX HAGELI: Right. And you could segment it even more, actually. You could bring it down to people that are going to have two accidents, one accident, no accident, one accident within six months, two accidents within a year. We could break it down even more, thereby segmenting the risk more, thereby, you know, spreading the risk within a like...the similar risks are sharing the same risks and not having to pay more for a risk that they don't represent. [LB92]

SENATOR SCHUMACHER: Right. So basically, the risk is not spread outside of their tranche or their categorization which is counter to the principles of insurance. [LB92]

ALEX HAGELI: Only to the sense that, I mean, you still...as a group, you're still somewhat spreading the risk because, again, we don't know exactly what's going to happen in the future. The person that you predict is going to have two losses, maybe they don't have those two losses. So that acts to kind of...and then somebody that you predict wasn't going to have an accident, does have a loss. So there is still somewhat of an overarching spreading of the risk, but you still have the segmentation as well. [LB92]

SENATOR SCHUMACHER: There's a normal, Gaussian distribution there but, nevertheless in general terms, if you can limit...the more precise your predictability is, the less you spread the risk, the less of a function insurance has. [LB92]

ALEX HAGELI: Well, it depends on how you...how finely you tune the tranches, as you say. [LB92]

SENATOR SCHUMACHER: And you're saying, basically using all these criteria, you get a pretty fine tuning. [LB92]

ALEX HAGELI: I think insurance does a good job of rating their premium, yes. [LB92]

SENATOR SCHUMACHER: Thank you. [LB92]

SENATOR GLOOR: Other questions? Thank you, Mr. Hageli. Next opponent? [LB92]

MARK JOHNSTON: (Exhibits 2, 3, and 4) This computer age, we're supposed to have less paper. Thank you, Mr. Chairman, members of the committee. For the record, my name is Mark Johnston, M-a-r-k J-o-h-n-s-t-o-n. [LB92]

SENATOR GLOOR: Excuse me, do you want...Mr. Johnston, do you want those...okay. [LB92]

MARK JOHNSTON: Yes, please. Yes, sir. Thank you. M-a-r-k J-o-h-n-s-t-o-n, and I work for the National Association of Mutual Insurance Companies and I also have a statement on behalf of our local affiliate, the State Association of Mutual Insurance Companies, the Nebraska's farm mutuals. I'll try...I have a shorter statement. I won't re-cover some of the things that Mr. Hageli mentioned, but I did want to stress that I think one of the reasons we get hung up on this issue is that word "credit" is in there and people think of their credit score. And as Mr. Hageli said, that's whether or not maybe somebody should lend you money to buy a car. What we're looking at here is information that would be found in an insurance...that is taken from credit information that is used to make an insurance score. And I don't know the models, the models do change. But generally speaking, it's not wealth, it's not income, it's how much credit you take, how you handle it. And I have for you, again, besides the two statements, we mentioned the Arkansas Department of Insurance every year collects information from Arkansas carriers. And if you look on page 4, there's kind of a summary. It points out that as Mr. Hageli said, most people--30, 40 percent--with credit-based insurance scoring get a decrease, about 12 or 13 percent will see their premiums increase, and the remainder of people have no affect on their premium. One of the things I also want to point out is that even for people that it would seem to have a negative impact on, it still can be a very positive impact because this allowing insurance companies to underwrite more precisely has also allowed in many states for the shrinking of state residual markets, the pools...the assigned-risk pools and things like that. If a person...before credit-based insurance scoring maybe no company would want to take that person as a risk and that person went to the assigned pool or whatever the state mechanism was for drivers. With credit-based insurance scoring, more and more people now have access to private insurance and they are coming out of the pools, which is generally considered a good thing for them all who are involved. I also want to point out that these formulas and whatever you want to call them also are filed with the Department of Insurance which gets to review them. And I'm happy to take any questions. [LB92]

SENATOR GLOOR: Thank you, Mr. Johnston. Are there questions? Senator Carlson. [LB92]

SENATOR CARLSON: Thank you, Senator Gloor. If LB92 would pass then overall, what do you think the impact would be on premiums? [LB92]

MARK JOHNSTON: Actually, it would go up because, again, most people get a discount. Some people would get a benefit, but I think what then happens in insurance is that the people who are having their coverage subsidized maybe buy a little more insurance because it's been subsidized. And the people who have to pay more, have to pay a subsidy, might buy a little less so that kind of resets the average. I don't think it would be...I think across the state of Nebraska, it would not be a tremendous difference, but it would be kind of a move to a little bit more expensive. [LB92]

SENATOR CARLSON: Thank you. [LB92]

SENATOR GLOOR: Other questions? Senator Pirsch. [LB92]

SENATOR PIRSCH: I'm sorry. And when you began your testimony here today you were referencing the specifics of which, you know, certain percentages I think you were referencing that specifically illustrated what you were saying, that in general most people get a discount. Where was that taken from? [LB92]

MARK JOHNSTON: If you take a look at the large document which is from the Arkansas Department of Insurance... [LB92]

SENATOR PIRSCH: Yes. [LB92]

MARK JOHNSTON: ...on page 4, there's kind of a...I call it a summary of what it does in private passenger and what it does in homeowners and other personal lines and you look at the different bullet points. What happens is, an Arkansas insurer has to do this report if it engages in...if it uses credit-based insurance scoring. And then the department collects the data, and every year they prepare this report. [LB92]

SENATOR PIRSCH: Okay. So it's from that page then. And...well, that's the only question I have for right now. [LB92]

SENATOR GLOOR: Other questions? Senator Crawford. [LB92]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you for your testimony. [LB92]

MARK JOHNSTON: You're welcome. [LB92]

SENATOR CRAWFORD: So you mentioned that the formulas we have are all filed with the Department of Insurance. So...and is that public information if we wanted to see what all is being used in those formulas or is it just the Department of Insurance has to approve it, but it remains private? [LB92]

MARK JOHNSTON: There's a mixture. Some of it is proprietary data. [LB92]

SENATOR CRAWFORD: Uh-huh. [LB92]

MARK JOHNSTON: And I apologize. I really can't tell you which is and which isn't. And some of it is not. [LB92]

SENATOR CRAWFORD: From your understanding, how common do you think it is to use address and zip code in those formulas? [LB92]

MARK JOHNSTON: Thank you for asking that because I think that helps clarify. Actually, you know, territorial rating is a factor. I mean, think about it, you could have a house that's in a neighborhood that has modern fire services or you could have a house in a neighborhood--or in the country--that might be miles. You know, there's no hydrant or whatever, and that is clearly a relevant risk factor. I think what was intended here is if you look at the current law, it does not allow to use those factors so they aren't run through twice. You already take into account the territory. You take into account the gender so a teenaged male will probably pay more than a teenaged woman. But what happens is I guess sometimes those are also factors in credit reports. And so I think what the intention was or the intention in the current law is, let's make sure we don't run that through the wringer twice. [LB92]

SENATOR CRAWFORD: Twice. Interesting. [LB92]

MARK JOHNSTON: And I think...so it really doesn't quite fit into this bill because this bill would just abolish credit-based insurance scoring completely. But I think that's what the Senator was intending as opposed to saying that people in Omaha will pay the same for a particular coverage that maybe people in Grand Island would pay when there's different factors involved. [LB92]

SENATOR CRAWFORD: Okay. [LB92]

SENATOR GLOOR: Senator Schumacher. [LB92]

SENATOR SCHUMACHER: Thank you, Senator Gloor. And thank you for your testimony today. The...is it reasonable to say that with or without this bill, the number of--if we're talking car insurance, for example--the number of accidents won't change one way or the other? The total losses will remain the same? [LB92]

MARK JOHNSTON: If it has any effect, it has to be very small. [LB92]

SENATOR SCHUMACHER: Okay. So what we're basically saying since the total losses would be the same, what we're doing is the people who are low risk, lower risk would have to pay a little more and the people that are higher risk would have to pay a little less. [LB92]

MARK JOHNSTON: Yes, sir, pretty much. [LB92]

SENATOR SCHUMACHER: Okay. Now I'm trying to look at some consistency here because we heard other bills this year in which we were told that if we did anything that would raise the premium of the higher risk or people who couldn't afford it, that they would drop their insurance and become uninsured. And I'm trying to see the consistency between that testimony and this particular testimony because if paying...making them pay a little more to carry a little more insurance would cause them to drop it and be a bad thing as the insurance industry said a few days ago, then why is making them pay a little more under this rating mechanism a good thing? [LB92]

MARK JOHNSTON: Well, go back. Again, this is information in the score, this is not wealth and this is not income. This is that the information that they are looking at is how much credit you take. Do you take too much credit? You can be very wealthy and have too much credit. You can be very wealthy and not pay your bills on time or be disorganized and do things that give you a bad score. At the same time, people who are not wealthy are perfectly capable of managing their credit. I mean, we're not talking about extraordinary circumstances here, but we're talking about it's not a wealth measurement, it's not an income measurement. It's how you...with what resources you have for credit, it's how you handle it. [LB92]

SENATOR SCHUMACHER: Thank you. [LB92]

SENATOR GLOOR: Any questions? Seeing none, thank you Mr. Johnston. [LB92]

MARK JOHNSTON: You're welcome. [LB92]

COLEEN NIELSEN: (Exhibit 5) Good afternoon, Chairman Gloor... [LB92]

SENATOR AVERY: Good afternoon. [LB92]

COLEEN NIELSEN: ...members of the Banking, Commerce and Insurance Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Insurance Information Service. I am also speaking on behalf of Jan McKenzie who could not be present here today. She is the executive director of the Nebraska Insurance Federation and she is submitting a letter to you in opposition of LB92. Particularly what Jan stated and I guess I'm going to just reiterate is, is that I think that we put this...not only does LB92 prohibit the use of credit for rating or underwriting, but it also repeals a model law that we put into place in 2003. Insurance companies began using credit before that, and so a model law was developed that we did pass and is currently in place in our...in Nebraska statutes. We worked hard on that particular bill. There was a lot of work done on it amongst all the insurance industry, and we think that that model act that's currently in place does provide adequate protections for individuals. And I didn't make copies of the model act for you, however, I think it is cited in LB92. And I won't read it to you, but I would suggest maybe that you take a look at this and you'll see that some of the provisions including the fact that you cannot non-renew an individual simply on the basis of credit scores, that they're, as Mr. Johnston had testified, that the scoring models do have to be filed with the insurance department. So there is dispute resolution processes and other disclosures that if an adverse action has been taken by the insurance company, that the insured must be noticed. So there are a lot of protections in this particular model and we would ask that you...I guess I'm asking that you kill this particular bill and keep the current law in place. [LB92]

SENATOR GLOOR: Thank you, Ms. Nielsen. Questions? Seeing none, thank you. Good afternoon. [LB92]

TAD FRAIZER: (Exhibit 6) Good afternoon, Chairperson Gloor, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r, I'm local counsel for the American Insurance Association, a national trade association of property and casualty firms with some 300 members. I do not come before you as being an actuary or an underwriter, so I'm not in the best of position to comment in detail on how credit scoring works. But our members feel that credit scoring is a tool in the toolbox as far as rating potential insureds, and as previously noted, a credit score is not used as such. Credit information is used in developing an insurance score which is one of the many factors used in determining a rate, and we simply don't wish to lose that tool. Obviously, you might be able to get by without it, but then your rating becomes more inexact and you end up with more cross subsidies of people between people that have good records or good risks and people that have poorer records and poorer risks. And on that basis we would note as Ms. Nielsen noted, there is currently legislation in Nebraska in effect based on the NCOIL model act to address this situation that we feel adequately handles the situation and feel this legislation is, therefore, not necessary and would ask that the bill not be advanced. And I would be happy to at least attempt to answer questions you might have. [LB92]

SENATOR GLOOR: Thank you. Any questions for Mr. Fraizer? Senator Pirsch. [LB92]

SENATOR PIRSCH: Well, I think Senator Campbell was first. [LB92]

SENATOR GLOOR: Senator Campbell. [LB92]

SENATOR CAMPBELL: I just have a quick question. Do you know when the model act was put into place? [LB92]

TAD FRAIZER: I want to say around 2001 or so, 2002 roughly; the early 2000s. [LB92]

SENATOR CAMPBELL: Thank you. [LB92]

SENATOR GLOOR: Senator Pirsch. [LB92]

SENATOR PIRSCH: I'm just starting to wrap my arms around it. One of the things I've heard you and other testifiers say is that on average most people get a discount because of the methodology that is in place for credit, utilizing that insurance credit score. Is that--just so I understand--is that because without that assurance of accuracy that insurers are more likely to assume people are of a...present a higher risk than they actually might present kind of with clunkier, more obtuse tools? Is that what it is? [LB92]

TAD FRAIZER: In effect, if you don't have this tool as one of the many tools in the toolbox to more precisely refine your rates, you end up painting with a much broader brush, and so you can't perhaps drill down as much--it's my understanding--on who might be eligible for a more favorable rate because of more favorable rating characteristics. [LB92]

SENATOR PIRSCH: Is the theory there then, you err on the side of caution as the insured and more likely would require a higher premium then? [LB92]

TAD FRAIZER: Generally. Obviously part of the theory of insurance is to be cautious and you want to make sure you've got sufficient rates coming in to cover your risks. And if you can't categorize your risks as well, then you tend to perhaps overinsure, if you will. [LB92]

SENATOR PIRSCH: Okay, because that's why I was just trying to understand what you mean when the proposition is put forward that most people end up doing better with...under this type of calculation. Thanks. [LB92]

SENATOR GLOOR: Senator Crawford. [LB92]

SENATOR CRAWFORD: Thank you, Senator Gloor. I'm new on this committee so you may need to help educate me here on this issue. I want to clarify. I'm hearing people talk about formulas and scores, and so I'm just wanting to understand that terminology and how it relates to this bill itself. And is it true that in the bill we're really talking about an insurance score that is then one component of the formula? So a...we're...and the model act regarding credit information would probably be regulations about this score and the scoring and then there's a separate set of criteria that you might present to the Department of Insurance that's your formula. The score would be one part of it, but then gender--like a young male for driving in terms of auto insurance--some of those factors might be in the formula. Am I on the right track there or can you...is there a distinction between a score and the formula? [LB92]

TAD FRAIZER: Right. I'll...yeah, I'll try. First of all as I think Mr. Johnston said before, a credit score and an insurance score are not the same thing. [LB92]

SENATOR CRAWFORD: Right. [LB92]

TAD FRAIZER: A credit score is whatever one of the credit-rating agencies or something comes up with that then may be considered in creating an insurance score along with other things. Some companies generate that internally, some use--as I think Mr. Johnston noted--an outside vendor who develops information like this. That would then be factored in by each company's underwriting department according to their own underwriting criteria to develop whatever the ultimate rate or assumption of risk would be on a given person applying for insurance. Am I getting the direction you're headed? [LB92]

SENATOR CRAWFORD: Okay, so...all right. And that...what has to be presented to the Department of Insurance would be information about your scoring? [LB92]

TAD FRAIZER: Right. On the, as I understand it, on how you factor in your insurance scoring model as part of your rating model goes to the department. [LB92]

SENATOR CRAWFORD: As part...you know, so your rating models--you have a scoring model and you have a rating model. [LB92]

TAD FRAIZER: Yeah. [LB92]

SENATOR CRAWFORD: All right. [LB92]

TAD FRAIZER: That's my understanding. [LB92]

SENATOR CRAWFORD: Okay. [LB92]

SENATOR GLOOR: Seeing no further questions, thank you, Mr. Fraizer. Next opponent. [LB92]

GALEN ULLSTROM: Good afternoon, Chairman Gloor and members of the Banking, Commerce and Insurance Committee. My name is Galen Ullstrom, that's G-a-l-e-n U-l-l-s-t-r-o-m, I'm senior vice president of Mutual of Omaha Insurance Company, appearing today in opposition to LB92. I have not appeared in previous years on this bill for the primary reason that it was limited to personal lines property and casualty; we do not write personal lines property and casualty. This bill, to answer Senator Howard's question earlier, is broader and applies to all lines of insurance. The existing statute which is being repealed also only applies to personal lines of property and casualty insurance. The concern that I have is that we use financial information in the underwriting process for various products. For example, on the life side it's very common to do a financial-needs analysis with a client which would get all of his information in order to determine whether or not the amount of insurance being provided is sufficient. In the area of disability income insurance, you have to know what the person's income is so you can insure to 70 or 90 percent of his income so you don't insure 200 percent of his income. In other areas such as annuities, for example, Nebraska has a law on the books which is called the annuity suitability law which effectively requires that you get information...financial information on that person. Primarily it was set up to ensure that companies didn't take, for example, all of somebody's liquid assets, put them in an annuity that might have a surrender charge they might not be able to get at, and so they would not be able to provide for their daily needs because they tied up all their money. So you had to assure that it was prudent for them to buy that. In the same area of long-term care insurance, we're required to get income information so that we don't sell a long-term care policy to somebody who is eligible for Medicaid or would soon be able to spend down to Medicaid. So it's prudent that financial information be allowed. And, unfortunately, this bill in saying you cannot use creditings, you also can't use credit score which we don't do. But it says you shall not use credit information, and credit information means credit-related information which, to me, can have...bring in income and other financial information, so that would be the concern. Again, we have not been concerned in the past because it was limited to personal lines private auto and homeowners. But I'd be glad to answer any questions that I could. [LB92]

SENATOR GLOOR: Thank you, Mr. Ullstrom. Questions for Mr. Ullstrom? Senator Schumacher. [LB92]

SENATOR SCHUMACHER: Thank you, Senator Gloor. And thank you for your testimony today. Would...let's suppose that section 1 of the bill which talks about "shall not use credit information" were taken out. Would you have any problem with (2) under there, "shall not use...the income, gender, address, zip code, ethnic group, religion, marital status, or nationality,"...if that were left in? [LB92]

GALEN ULLSTROM: If it was related to a credit score only, we probably...we don't use a credit score, but we do use income information. So if it...if this was read to prohibit the use of income, then that would be a major factor in...for disability income insurance, for example, because we need that information in order to appropriately write the risk. [LB92]

SENATOR SCHUMACHER: What about gender, address, zip code, ethnic group, religion, marital? Some of this already is prohibited I understand. [LB92]

GALEN ULLSTROM: Some of it is but, for example, gender is a rating factor that is used in various forms of insurance. So that's...it's a common...there's very...I don't think there's a state now...there was a state that had unisex rates, but I think that was repealed. So that is something that would be used in some of the insurance types that we write. [LB92]

SENATOR SCHUMACHER: Well, how is that different from nationality? You don't get to choose your gender. [LB92]

GALEN ULLSTROM: It's just predictability of loss. You would...in the health insurance market, for example, if you're allowed to use...even in...and the same with age, age isn't on here, but there are different risk factors in different genders and different type of costs that are inherent with the risks. So that is a factor that's allowed now under Nebraska law and basically nationally. [LB92]

SENATOR SCHUMACHER: But socially things like redlining in the finance world has been found to be socially unacceptable... [LB92]

GALEN ULLSTROM: Right. [LB92]

SENATOR SCHUMACHER: ...and that correlates kind of with zip code. [LB92]

GALEN ULLSTROM: And zip code...redlining prohibitions do exist in law, in state laws. [LB92]

SENATOR SCHUMACHER: Right. And so an ethnic group does...there's some things that we say even though there is a correlation, that it's still no go. [LB92]

GALEN ULLSTROM: Correct. [LB92]

SENATOR SCHUMACHER: Gender--why is gender different from some of these other things or marital status? I mean, if you're ugly as sin, you might not be married and it's not your fault. [LB92]

GALEN ULLSTROM: It's just...it's something that is not prohibited now by federal law or state law that I know, anyplace. [LB92]

SENATOR SCHUMACHER: But if we prohibited it, then it would be prohibited by state law, so would it be okay? [LB92]

GALEN ULLSTROM: It would. And it would cause rates...rates would be more equal, but they would also change...various sectors would be...would benefit from it and certain sectors would not. [LB92]

SENATOR SCHUMACHER: Which gender, might I ask, is the most dangerous gender? [LB92]

GALEN ULLSTROM: Well, maternity-bearing women have a higher incidence of medical care than 22-year-old males. I mean, that's a family health side, anyway. [LB92]

SENATOR SCHUMACHER: Thank you. [LB92]

GALEN ULLSTROM: Sure. [LB92]

SENATOR GLOOR: Questions? Seeing none, thank you, Mr. Ullstrom. [LB92]

GALEN ULLSTROM: Thank you. [LB92]

SENATOR GLOOR: Other opponents? Anyone who would like to speak in a neutral capacity? Seeing none, Senator Karpisek has waived closing, and that will close the hearing on LB92. We will now move to LB614. Senator Schumacher. Is it any cooler up at the hearing table? I'm just curious. [LB614]

SENATOR SCHUMACHER: No. I think the hot seat is all over the room today. [LB614]

SENATOR GLOOR: Any time you're ready, Senator. [LB614]

SENATOR SCHUMACHER: Senator Gloor, members of the committee, I'm Paul Schumacher, P-a-u-l S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature, and I'm here today to introduce LB614. LB614 is one of those things where everybody agrees what we're doing now is not right. It should be an easy problem to fix, but nobody can agree quite on how to fix it. And the problem is what happens when you have a casualty, a fire, a storm take a building and leave a mess, and the party has insurance on the building? Now under some of the unique quirks of our law, somebody's got to clean it up and somebody's got to pay for it or you've got to look at the situation and just watch the building on main street or wherever deteriorate. That being the case, one would think there should be some rule that says if you've got insurance on that property, you just can't take the money and run and leave it for the city to condemn or the county to condemn the property and then put a lien on it and then wait for the lien to be foreclosed in the normal course of tax foreclosures; that if you got a check from the insurance company you should be required to take some of that check and clean up the mess before you abscond with it. And under the quirkiness of our law, you might not be personally liable for leaving a mess, particularly if you're an out-of-state situation, take the check and you run. That leaves us with a problem that cities and counties and villages face. You have a piece of property that is burned, partially burned, hit by a storm, suffered some other casualty sitting in a neighborhood or sitting on main street. The owners have gotten the insurance check and taken off. And the town board--I have some experience serving as city attorney for several small towns over the years--they look at the thing and they say, we don't want to go in there, we don't have the money to clean it up, it'd cost us $20,000 to clean it up. There might even be asbestos in there or who knows what else was in the basement when the thing come tumbling down. We don't have that money. And they're reluctant to file legal action because those darned lawyers seem to want fees. And so it sits there and it sits there. What this proposes to do is reasonably simple and, of course, you can't please everybody so Senator Chambers said this morning, you try to please as many as you can and leave it go at that. But it says that in the event it looks like it's a big loss, more than 75 percent of the value of the property has gone up in smoke, that the insurance company is authorized and required to hold back $10,000 or 10 percent, whichever is more, and to notify the city or the county of the situation. And then the city or the county has 180 days in which to take action to declare it a nuisance and basically confiscate some of that money that's withheld or put a hold on it while the legal proceedings go on. And if they don't take that action within 120...180 days, that you get the balance of your money if you're the policyholder. So it kind of puts a lien on that additional portion of the insurance, the $10,000 or 10 percent, by making that be nonpayable until the 180 days are up, until the city or county has an opportunity to try to take some action. Now the insurance industry has a bit of heartburn because they've got a contract with their client that says if it burns down, we'll pay you so much money. And this gets in the middle of that particular situation, so they're afraid they may get sued. So there is an indemnity position in there that says the insurance companies complying with this law will not suffer any civil damages. In other words, they won't be liable for being stuck in the middle of this thing. It's a difficult situation to try to figure out how to do this. There may be other routes, you may be able to say we're going to make people personally liable for the mess that they leave behind. But then again, if they're bankrupt or you have to chase them in another state, it's a little hard to run them down, a little hard to collect the money from another state. And this seems like a fairly efficient way of assuring that there is some money to do the obligation of the landowner to clean up the mess that's left behind. Unfortunately, in a lot of our smaller communities, there will be nothing that'll go into that empty lot so at least the folks won't...if it's cleaned up properly, there won't be something for the kids to get hurt on and an eyesore to look at. And there will be others behind me testifying as to some of the practical situations that they find by not having a source of funding to clean up the mess, which if they clean it up it will get taxed onto the property tax payers. So that's the situation. I'd welcome any questions of the committee. [LB614]

SENATOR GLOOR: Senator Schumacher, it's my understanding this is the same bill that's been before this committee before and was advanced out of this committee. [LB614]

SENATOR SCHUMACHER: I think that it is very similar to the one last year. This one follows--I think it's tweaked a bit--it follows the Iowa law which apparently is working. [LB614]

SENATOR GLOOR: Okay. Other questions? Senator Christensen. [LB614]

SENATOR CHRISTENSEN: Thank you. Just trying to look here, it says they can reserve the money for up to 180 days. What if they clean it up within the first 20 days? [LB614]

SENATOR SCHUMACHER: Well, if it's cleaned up then the city can just release the... [LB614]

SENATOR CHRISTENSEN: But do they have to? [LB614]

SENATOR SCHUMACHER: Well, if...I think it's they no longer have a claim on it. If it's... [LB614]

SENATOR CHRISTENSEN: I understand, but I guess I want to make sure that they have to release the money immediately because you don't want to punish a business that's trying to clean up, rebuild, and go forward. [LB614]

SENATOR SCHUMACHER: They have to do it within 180 days. [LB614]

SENATOR CHRISTENSEN: But that's six months. [LB614]

SENATOR SCHUMACHER: I don't think there's specific language, and that may be something we can address--once the city is satisfied, they must immediately release it--if it's not already in here. [LB614]

SENATOR CHRISTENSEN: I guess that would be my major concern, is not to punish a good business that's wanting to rebuild and have a city, due to meetings, due to whatever, drag it out. I guess that would be one of my first concerns. [LB614]

SENATOR SCHUMACHER: And I think that's a legitimate concern that if the city is satisfied and the thing is cleaned up properly, there's no reason for hanging onto the money. So if the committee considers advancing the bill, we might put that tweak in there. [LB614]

SENATOR CHRISTENSEN: Okay. Thank you. [LB614]

SENATOR GLOOR: Senator Pirsch. [LB614]

SENATOR PIRSCH: So under the bill, it's the greater of $10,000 or 10 percent, right? [LB614]

SENATOR SCHUMACHER: Right. [LB614]

SENATOR PIRSCH: Would that...and I'm trying to look for unintended consequences. Is there a time whereby a good actor may be stymied by the fact that that first $10,000 isn't there in terms of rebuilding or removing themselves the danger, whatever it is? [LB614]

SENATOR SCHUMACHER: Well, I don't know if it... [LB92]

SENATOR PIRSCH: The first $10,000 goes to be held kind of as a lien, you said. [LB92]

SENATOR SCHUMACHER: Ten thousand goes to be held or 10 percent. I don't know if it's the first, it might be the last or the middle, but it's $10,000 is held back. And I think the way this is perceived to look is that in most situations where you have a reconstruction underway, it would be no difficulty at all to deal with the local government and say, look, I've got my building permits here, we're reconstructing it, we need the money in order to hire the bulldozer, whatever, and get the job done. [LB614]

SENATOR PIRSCH: Could you comment about the problem overall in the state of Nebraska that's necessitated this? You know, it's prevalent statewide where bad actors have...you know, is this a high percentage of the time? Is this like 1 percent of the time or like, you know, 40 percent of the time and where it's occurring and kind of...do you have kind of those... [LB614]

SENATOR SCHUMACHER: I think there's some city folks that probably have more direct things. I know that in the four towns that I was city attorney for--and they were little towns under 500 population--two of them had the problem. [LB614]

SENATOR PIRSCH: Over what period of time, do you know? [LB614]

SENATOR SCHUMACHER: Well, I think if I added them all up together, I'd have 100 years in. But basically, over a 20-year period. [LB614]

SENATOR PIRSCH: Okay. Thank you. [LB614]

SENATOR GLOOR: Other questions? Senator Carlson. [LB614]

SENATOR CARLSON: Thank you, Senator Gloor. Senator Schumacher, if there's been a couple of things come up as unintended consequences in this brief discussion...Senator Christensen brought one. You had mentioned that if the--now I kind of forget what one you talked about--if the insurance company--how was it--they would have a risk there that they didn't want to be holding money? [LB614]

SENATOR SCHUMACHER: Right, Senator. Let's say you were the insurance company and I'd bought insurance from you, okay? And the policy said if the building blows away you'll pay me $100,000. So a tornado comes, the building blows away, I come to you and say, building's gone, where's my check? And you, under this bill would say, here's a check for $90,000. I'd say, wait a minute, where's my last $10,000? I paid you for $100,000 worth of insurance. And you say, well, Senator Gloor, he's making me hold that last $10,000 so you clean up the rubble and once you get it cleaned up, you know, whatever is left over, you get the rest of that $10,000. And I say to you, hey, that's not our deal, I want my money, my deal was with you. This policy was...and that's the rub there. I think one of the tweaks if we decide to advance this particular bill, that this can only apply proactively in the future and not in the past to already deals that have been made within insurance carriers. [LB614]

SENATOR CARLSON: Well, and I think you indirectly brought up another possibility, and that is if it's a building that has a basement, we don't know what's in that basement. It's a matter of how it's cleaned up because if it's just a tractor brought in with a blade and dozed everything down the hole and dumped some dirt on top, then under this that money ought to be available. But was it done right? [LB614]

SENATOR SCHUMACHER: Yeah. That's very true. And I think the city having some resources, they've got some leverage to make sure it's done right. Otherwise, quite frankly, I might...if it was my basement filled with rubble, I might be very well tempted to come in some weekend with a tractor with a blade and cover it up and say, there, done, throw some grass seed on top of it and be happy. [LB614]

SENATOR CARLSON: Can you think of any other unintended consequences of the bill? [LB614]

SENATOR SCHUMACHER: Well, I mean, you can see situations where you have a good actor, a business that is intending on cleaning it up and wanting to have the money right away and not have to wait for that last $10,000 or 10 percent. If the city was a overly bureaucratic city or wasn't on the ball administratively, you could see a situation where they might have to wait the 180 days unjustifiably. But I think most cities at least will...they have the authority to release this particular interest and to proceed so the contractor has its money to rebuild. And most...this isn't a problem where somebody isn't rebuilding because most of them want to apply their money and get things underway. It's a problem in those situations where the lot afterwards might not have much for value, and the people may or may not even be local and they just want to get out of here and take their check; it was...the fire was a good thing. [LB614]

SENATOR CARLSON: Thank you. [LB614]

SENATOR GLOOR: Senator Pirsch. [LB614]

SENATOR PIRSCH: Thanks. And I'll just, I guess, make more clear my earlier question with respect to possible unintended consequences with regards to de minimis type of claims. So it applies to any structure, right? [LB614]

SENATOR SCHUMACHER: Uh-huh. [LB614]

SENATOR PIRSCH: There's no...so take, for instance, maybe not a $90,000 house but say...I don't know how much barns...$15,000 barn, does that sound like that could be or something... [LB614]

SENATOR SCHUMACHER: You don't get much for $15,000. [LB614]

SENATOR PIRSCH: ...some structure that would be $15,000 or something. There may be some...assuming some kind of a low kind of a...and something, a tornado or something, you know, destroys the structure, but it's of such a low value, say, $15,000. And then $10,000 of that $15,000 is held, right, by the county or whatnot. That leaves you $5,000 to, I guess, clean up. Is there ever a time where that may take so much of the proceeds from the insurance that you were counting on to help clean up after and rebuild it, you really...you're kind of in a quandary because you'd like to rebuild but you don't have the funds because they're being held as a lien. Is that possible or... [LB614]

SENATOR SCHUMACHER: Well, if you have a city or county administration that is not responsive, they've decided they're going to sit there for 180 days and make you wait, I suppose that if you assume the unreasonableness of the local government, that situation could be created. They could sit on your money and prevent you from doing anything. But what I think it envisions is a situation where if you have the intention to clean it up, and just like any other lien situation, you say, look, I need $5,000 for a bulldozer. And I think the city is perfectly in the position to say, well, we'll release $5,000 to the bulldozer. Bring us a bill. [LB614]

SENATOR PIRSCH: Okay. Thank you. [LB614]

SENATOR GLOOR: Other questions for Senator Schumacher? Seeing none, thank you, Senator Schumacher. [LB614]

SENATOR SCHUMACHER: Thank you. [LB614]

SENATOR GLOOR: Can I see a show of hands of people who would like to speak on this bill, specifically? Okay, we have about ten hands it would appear. We'll start with proponents. Good afternoon. [LB614]

LYNN REX: (Exhibit 1) Thank you. Senator Gloor and members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We appreciate Senator Schumacher introducing this measure. This committee did advance LB409 which is a bill introduced by Senator Utter in 2011, and you advanced that to General File with standing committee amendments. And one of those standing committee amendments involved reducing the amount which was in his bill from $25,000 down to the $10,000 number and so forth. But I think that there have been some good questions asked today and I would just like to answer some of those questions and kind of walk you through the bill. And we've got several city officials here today that also want to testify about what their experience has been. I can tell you in answer to your question or someone's question I believe, Senator Pirsch, how broad-based this problem is. Cities all across the state are facing this and villages, too. We've got 530 cities and villages in the state of Nebraska. The league does have a larger city legislative committee which represents all first-class cities, Lincoln and Omaha; everybody's on that. And when we discussed this, it was unanimous from that committee because not everyone, but many of them--I would say well over half of them--have had this experience; cities like Columbus, York, Hastings. And Senator Utter introduced the bill back in 2011 because Hastings had three major fires. And it wasn't just tens of thousands of dollars at risk, it was hundreds of thousands of dollars that the city would be stuck with in terms of trying to figure out...and they were stuck with in terms of trying to deal with these issues. These become nuisances, you end up with kids that want to play in some of these buildings that need to be demolished. I mean, you've got major issues here and you have to address them. So this really allows the person who is getting--and I'm not saying that they benefitted from whatever the disaster was that is now dealing with damaged property--but the reality is if they're getting an insurance check, they're doing that in order to repair and rebuild. So just very quickly if I may walk through this bill with you, and then we've got some city administrators here today and I appreciate the city administrator of Seward and I know the city administrator of Columbus is here. There may be others that I didn't see. First of all, section 1 of the bill. Section 1 of the bill makes it clear that after payment in full is made to the mortgagees under the fire and casualty insurance policy, then the insurer shall reserve, in line 4, $10,000 or 10 percent of the basic coverage. Okay? And that's going to be held, in line 6, in a demolition cost reserve, but only if all of the following apply: (a), (b), and (c). So all of the following have to apply. The real property is located within the corporate limits of the municipality or the ETZ. The damage to the real property renders it uninhabitable or unfit. In other words, we're not dealing with something that's just a minor damage. And (c) in line 16, the proof of loss is substantial and has been submitted to the policyholder. The proof of loss being submitted is for a sum in excess of 75 percent of the face value of the policy. So we're talking here about something that is significantly damaged, not something that just has a minor bit of damage to it. So number (2), you'll note that if the insurer receives proof of loss and notifies the clerk of the city, they do that with certified mail within 15 days. And then I think these are some of the protections that are built into this bill that, Senator Christensen, may respond to some of your inquiries and questions. On page 3, line 1, (3), the city, village or county shall release all interest in the demolition cost reserve within 180 days after receiving notice unless...and then it has several conditions noted here. Number one, which is on line 4, the city, county, or village has instituted legal proceedings; in other words, the city is acting on it. They're not just simply holding the money and doing nothing. Number two, or they've issued an order for the demolition of the real property or the insured structure. And three, they've notified the insurer in writing as they're required to do. And you'll note in lines 7 through 10, their failure to give that notification basically terminates the claim for them at all as a municipality. So they have certain requirements whether it's a city, village, or county that they've got to act on this. It's not just about having the money and trying to get interest income off the money or whatever it is. In other words, their mission is to try to figure out how they're going to deal with this property that needs to be demolished whether it's...because now they've got issues that may even rise to obviously a nuisance level. Then look on (4) on line 11. I think these are other protections built into the bill, and we do appreciate the fact that Senator Utter and then now, of course, Senator Schumacher, spent time negotiating with interested parties on this measure. On line 11, (4), the demolition cost reserve shall not be required at all unless any of the following is true--so if any of the following is true, you don't even have to do it: (a) The insurer has received notification from both the insured and the city and so forth that the real property or structure has been replaced, rebuilt, repairs. So in other words, it's taken care of, they did it. So it's going to be you don't even have to have the demolition cost reserve. Or (b) in line 19, the city or village has failed to provide notification--which, again, then they terminate the claim; they no longer have that claim. You'll note in line 22, (5), if the city, village, or counties institute legal proceedings, they've issued an order for demolition, they've undertaken emergency action, or is required to demolish the real property and insured structure at its expense, the city, village, or county shall present--going on to the last page here--to the insurer a report of the demolition costs. So they don't just get the money and then it's just theirs. They have to make a report incurred since the date of the damage and so forth. You'll note on line 3, upon receipt of such report the insurer shall compensate the city or the county up to the amount in the demolition cost reserve. So it's not beyond that even if it costs the city more to do it. Any amount remaining in that reserve shall be paid to the insured if the insured is entitled to any of the remaining proceeds. And I think the rest of this is also extremely important. I understand the trial attorneys at some point didn't like some of this, but let me just suggest to you, I think this is extremely important. Line 9, the insurer is not liable for any demolition costs--and you'll note what those conditions are, and these are all basically with an "or," so they're not covered under the insured's policy, it's in excess of the limits or to the extent the demolition cost reserve is needed to pay in full any interest of the mortgagee on such policy. And I think that's important along with (7) which is on lines 15 through 17, and that is basically immunity from civil liability. So what Senator Schumacher was referring to is insurance companies, and we appreciate their willingness to sit down and visit with us about this measure because the reality is that they've got a contract with the client. They've got a contract that says your house burns down, they're going to pay. But at the same token, there are issues here and who pays for that? Is it ultimately everybody living within that municipality, everybody living within that county because the person receiving the insurance proceeds isn't taking care of business, isn't taking care of their property? Maybe it's an absentee owner. Maybe the person getting the check...and we've had several cities tell us that this is the case for them where the owner is nowhere to be...I mean, they can find them obviously. The insurance company can find them and give them a check, but they have no intent of coming back and taking care of it, so we think this is extremely important. I'd be happy to answer any questions you have. We have two city administrators here, one who operated with a system very similar to this in Kansas who is here to testify, and also Joe Mangiamelli who is the city administrator for the city of Columbus, Nebraska. And, again, there may be others but I didn't look to see if there are. I'd be happy to respond to any questions you might have. [LB614]

SENATOR GLOOR: Thank you, Ms. Rex. Senator Campbell. [LB614]

SENATOR CAMPBELL: Thank you, Senator Gloor. Ms. Rex, would the cities in Nebraska have under the home rule charter the ability to effectuate this themselves? [LB614]

LYNN REX: That's a good question. I don't know the answer to that. I don't know. [LB614]

SENATOR CAMPBELL: Because I would know that the counties would not, I don't think, have that ability because they can't pass ordinances. [LB614]

LYNN REX: And my guess is, Senator, that Lincoln does not have that authority. I can't speak to Omaha, but my guess is Lincoln does not. The city of Lincoln did ask me to register them in support of this measure. The page was kind enough to hand out a letter from the city of Lincoln outlining that this is something that they have had to deal with as well, even for a city this large. So I think...I guess based on their letter, I would surmise that it is an issue for the city of Lincoln as well, and we appreciate their support also. [LB614]

SENATOR CAMPBELL: The city administrators probably have an answer for that. [LB614]

LYNN REX: I'm sure they do. [LB614]

SENATOR CAMPBELL: They may have tried it. Thank you. [LB614]

LYNN REX: Thank you, Senator. [LB614]

SENATOR GLOOR: Other questions? Senator Christensen. [LB614]

SENATOR CHRISTENSEN: Thank you. Lynn, it doesn't say how it has to be cleaned up. So say you take a building that had asbestos and burned one down, they can just move dirt in, fill it over, and be done with it then, right? [LB614]

LYNN REX: The city would be doing that? [LB614]

SENATOR CHRISTENSEN: No, the owner of the building. [LB614]

LYNN REX: Oh, the owner. [LB614]

SENATOR CHRISTENSEN: They could just come in, fill it with dirt, cover it over, abandon it, and leave. [LB614]

LYNN REX: My understanding is that that would not be the case, that there are certain requirements that they would have to meet. [LB614]

SENATOR CHRISTENSEN: Well, I know there's certain requirements we're supposed to. [LB614]

LYNN REX: And my guess is they would even have to meet that requirement based on codes that the city would have as well, Senator. [LB614]

SENATOR CHRISTENSEN: But I guess I just wondered if there's anything prohibiting them from just coming in, filling it up, and leaving--leaving the foundations or leaving asbestos or whatever. Just come in, cover it with dirt, plant grass, and leave. [LB614]

LYNN REX: My guess is that they're--and I'm pretty confident of this--that municipalities across the state have got codes that address that very situation, ordinances that address that, and so that's the point. If the property owner is not doing it right, I mean, the city wants to make sure that--and the village and the county as well--that it's being done so that you don't end up in a bigger mess just because somebody decides to do it in a haphazard way. [LB614]

SENATOR CHRISTENSEN: And would you agree there's...if the contractor or the owner of the building came in and cleaned it up within the first 15 days, you could still hold it 180 days before you returned this money? [LB614]

LYNN REX: No. [LB614]

SENATOR CHRISTENSEN: Where does it say he has to return it? [LB614]

LYNN REX: Well, because my understanding is, is that when you have...when they've been notified that the property has been replaced--if you look on page 3, line 13, which is (4)(a)--a demolition cost reserve shall not even be required if any of the following is true. One is that the insurer and the insured in the applicable city...well, basically that the insurer--I'm sorry--has notified...has received notice from both the insured and the applicable city that the real property or insured structure has been replaced, rebuilt, repairs have been completed, and so forth, and completed in compliance with all applicable state and local laws, which I think underscores the fact... [LB614]

SENATOR CHRISTENSEN: But it doesn't say it must be returned within 5 days or 30 days or...they could literally drag it out 180 days. [LB614]

LYNN REX: Well no, because you don't even have a demolition cost reserve if this is the case. [LB614]

SENATOR CHRISTENSEN: Well, the thing is, as soon as that claim happens you file to have the insurance company hold that 10 percent or $10,000. There's nowhere in here says they have to do anything for 180 days. I disagree that they have to clean this up or return the money before 180 days. [LB614]

LYNN REX: I guess I read it differently, but if that's an issue we'd be prepared to address that, Senator. [LB614]

SENATOR CHRISTENSEN: And then... [LB614]

LYNN REX: This is not about...we are not here because we think that municipalities ought to be able to hold money for 180 days. [LB614]

SENATOR CHRISTENSEN: I agree. And I know it's probably just a bad-actor case, but I don't want to exchange one bad actor for another bad actor, I guess is what I'm looking at. [LB614]

LYNN REX: I understand. [LB614]

SENATOR CHRISTENSEN: And then next question, what is TIF funds for? [LB614]

LYNN REX: Tax increment financing? [LB614]

SENATOR CHRISTENSEN: Right. [LB614]

LYNN REX: That is for basically redevelopment areas that are substandard and blighted properties. [LB614]

SENATOR CHRISTENSEN: So this would fall under that if we didn't have this bill, there was a building burned down, you could do tax increment financing for the next person to come in and clean this up and build, correct? [LB614]

LYNN REX: Well, it depends. It depends on a lot of things. I mean, there are caps that cities have in terms of how much of the property within...and the value of property within a municipality can be used for tax increment financing. You've got to meet a number of standards for substandard and blighted. So you have to fit within the community development law. [LB614]

SENATOR CHRISTENSEN: I understand that, but it's pretty broad language. [LB614]

LYNN REX: I guess my answer is, it would depend. The answer is, it depends. And I know that's not a great answer and that's not the answer you want. [LB614]

SENATOR CHRISTENSEN: Because I could pick on Senator Carlson and say right there in the city of Holdrege they blighted a empty lot to build a couple of buildings on it. To me, that's...it happened in Harlan County, in my district. They blighted a blank lot and built on. And I think there's some tools that are being misused as well as there's tools for taking care of this and that's why I'm just bringing it all up at the same time because I think they intertwine and that's why I was bringing that up. [LB614]

LYNN REX: Well, I think when you...well, I know when you have tax incremental financing, it is not for empty lots unless that empty lot had buildings that had to be repaired. For example, one of the big issues that...which is why we're supporting LR29CA that Speaker Adams put in, is because we have municipalities that have abandoned school houses. For example, I think Whittier, Senator Campbell, here in Lincoln, Nebraska. So where the schools are sitting there boarded up. In many instances, and in fact, one of the issues that we worked on was for the buildings that are up in the Norfolk Regional Center, the Hastings Regional Center where the state of Nebraska...and universities, state colleges, all over the state because of lack of money--the 309 commission doesn't have enough money--so what happens is that you basically walk away from buildings. Those buildings, many of them, are in the core of municipalities, and those are the types of buildings that are full of asbestos, full of kinds of things that cities have to deal with. But you can't get a developer, Senator Christensen, to come in and just basically do it because it's obviously cheaper to build someplace else where you don't have to deal with asbestos than it is to build on an empty lot. I will...I can tell you tax incremental financing is not intended just to build on an empty lot unless what you've done is you've used TIF to get it ready. For example, like the Cornhusker when...one of the first projects here in Lincoln was the Cornhusker Hotel when that was imploded and basically then they cleared it out. Well, at one point it's a vacant lot. But it's a vacant lot because they spent a boatload of money tearing down the other one and getting it ready to rebuild which is what now is the Marriott. So it depends, when you say vacant lot, I don't know what stage that is. If it's just an acre of grassland that's never been developed on, that's not substandard and blighted nor is a cornfield. Corn blight is not substandard and blighted. [LB614]

SENATOR CHRISTENSEN: I would agree with you, but I think I'd give examples in multiple cities where that has happened. Thank you. [LB614]

LYNN REX: You're welcome. [LB614]

SENATOR GLOOR: Senator Carlson. [LB614]

SENATOR CARLSON: Thank you, Senator Gloor. Lynn, if you go to page 3 and the city or the village has the responsibility of notifying the insurer in writing, that's line 6 and 7? [LB614]

LYNN REX: Uh-huh. Yes. [LB614]

SENATOR CARLSON: And then the demolition cost reserve is not required if--line 19--the city or village has failed to provide notification to the insurer. [LB614]

LYNN REX: That's correct. [LB614]

SENATOR CARLSON: That's not very clear because notify the insurer in writing is just a letter and if I don't open my mail or I throw it away, I can say I wasn't notified. And I would think it would have to be a little bit better than just notify the insurer in writing. [LB614]

LYNN REX: Well, if there's something that we need to do to bolster that language to make it clearer, that it's a certified letter or something like that, we're prepared to do that. [LB614]

SENATOR CARLSON: Well, I think something that...because we've...I've experienced this where somebody claims they didn't get my letter. Well, they didn't want it. [LB614]

LYNN REX: But in...and also, Senator, it is...the notification is to the insurer; not to the insured, but to the insurer. And again, not that we shouldn't be doing something...if we need to do something more and the insurance companies believe that we need to have a stronger way of notifying them, whether it's by certified mail or something else, we're prepared to do that. [LB614]

SENATOR CARLSON: Okay. Yeah well, I think sometimes the owners of a piece of property, they don't want to be notified so they'll plead ignorance and it needs somehow to be a little stronger, I think, than that. [LB614]

LYNN REX: And we're prepared to look at that as well. [LB614]

SENATOR CARLSON: Thank you. [LB614]

LYNN REX: But my understanding, that notification is to the insurer. [LB614]

SENATOR CARLSON: Okay. [LB614]

LYNN REX: But your point is well taken for that as well. [LB614]

SENATOR GLOOR: Senator Pirsch. [LB614]

SENATOR PIRSCH: And thank you very much for your testimony again. Whatever you can provide I think the committee--and me in particular I can only speak for--about in terms of the prevalence of this occurring and the cost. So that would be helpful in the days ahead, but I wonder...so if...and I'm just looking specifically at page 3 and the first 10 lines on page 3. So how often is it that it...so it's 180 days after the institution of legal proceedings. [LB614]

LYNN REX: Well, no, Senator. What that says is that the city, village, or county, that they're going to release whatever interest they have in the demolition cost reserve within 180 days after receiving notice as provided in subsection (2) unless the city, village, or county, has one, instituted legal proceeds; two, issued an order for the demolition of the real property; or three, or insured structure and--and--has notified the insurer in writing of such proceedings or order. [LB614]

SENATOR PIRSCH: Uh-huh. Okay. So after the institution of legal proceedings you can...you have to begin the institution of legal proceedings within that 180-day window, correct? [LB614]

LYNN REX: Yes. [LB614]

SENATOR PIRSCH: To not turn it back over to the insured...to continue to hold onto...for a municipality to continue to hold onto the funds past 180-day window, you would have had to have instituted litigation, right? [LB614]

LYNN REX: The whole point here is that if you're the municipality or the county in question, you're acting on it. You're just not taking the money and holding it. [LB614]

SENATOR PIRSCH: Right. [LB614]

LYNN REX: You're acting on it, you're trying to deal with the property and get it going. [LB614]

SENATOR PIRSCH: Most of the times litigation is...I guess that's a question. Is litigation...is there a settlement generally with these types of matters in terms of cleanup costs or does it frequently get down to litigation? [LB614]

LYNN REX: I think in some instances it does. I know in some instances it does get down to litigation, but perhaps some of the city attorneys or city administrators following me can respond to that in their own cities. [LB614]

SENATOR PIRSCH: That would be good. Thank you very much. [LB614]

SENATOR GLOOR: Other questions? Senator Crawford. [LB614]

SENATOR CRAWFORD: Thank you, Senator Gloor. And thank you. I'm just trying to understand how this works in terms of, you know, a homeowner or business owner. If I understand, at the bottom of page 2, the insurer is contacting the clerk to let them know that, you know, there's been this major loss, and they're doing that within 15 days. And then, it's my understanding that sort of starts this 180 days. Now we have over here the idea that you don't have to have that reserve if...and I'm, you know, particularly interested in the situation that starts on line 13 where we're talking about the person who has the property is trying to do the right thing, right there trying to clean it up. [LB614]

LYNN REX: Exactly. [LB614]

SENATOR CRAWFORD: So my concern is what access the property owner who's trying to do the right thing has to this reserve money between day 15 and 6 months down the road. [LB614]

LYNN REX: Well, on line 11, Senator, the demolition cost reserve isn't even required if any of these would be true. So in other words...and believe me, the municipality would far rather have the individual...if it's your house, Senator Carlson, that burns down or yours, Senator Crawford, they'd much rather have you take care of it. [LB614]

SENATOR CRAWFORD: But in 15 days... [LB614]

LYNN REX: Yes. [LB614]

SENATOR CRAWFORD: ...so you have this 15 days that...it's my concern is in that first 15 days are they saying, you know, if they don't take care of it, you have this possibility or is it that first 15-day contact is starting that...is it the case that that's starting that actual cost reserve? [LB614]

LYNN REX: Well, first of all, I think if you look on page 2, line 6, that there are three condition precedents for the demolition cost reserve and you need all three of them. So it said basically that the demolition of the cost reserve is only going to happen if all three of the following apply. On line 8, the property is within the city; line 12, the damages is basically uninhabitable or unfit; and then (c), the proof of loss has been submitted by the policyholder. So you have the proof of loss being submitted by the policyholder saying okay, there's 75 percent damage here. Then that goes to the insurer. And on page 2, line 20, the insurer then getting that proof of loss then they notify the municipality within 15 days saying, okay, there's a proof of loss here. [LB614]

SENATOR CRAWFORD: Right. Right. So how do we get to...so if there's proof of loss then we have a property owner who wants to do the right thing. It looks like to me it says, there's notification that there is this cost reserve in day 15 when... [LB614]

LYNN REX: Uh-huh. [LB614]

SENATOR CRAWFORD: ...by day 15 and that's mostly just that it's been a major loss. I guess I don't see a criteria that says that the property owner has taken care of all of it. That's happening after this day 15 when the insurer has already told the municipality you've got this reserve here, if I understand it correctly. So... [LB614]

LYNN REX: Well, basically the insurer in line 20, on page 2, line 20, the insurance company is basically...they got the proof of loss from the policyholder... [LB614]

SENATOR CRAWFORD: Uh-huh. [LB614]

LYNN REX: ...they're notifying the clerk basically that that property is located within the existence of the demolition cost reserve in which the property is located. They're telling to the city, there is a demolition cost reserve, there's the existence of that. [LB614]

SENATOR CRAWFORD: Possibility. Okay. [LB614]

LYNN REX: A possibility of that and so then that kind of gets the clock ticking. And I think you're reading that correctly. [LB614]

SENATOR CRAWFORD: Okay, fifteen days. Right. Right. [LB614]

LYNN REX: That's how...yes. [LB614]

SENATOR CRAWFORD: And so if a property owner wants access to that money to clean up the property correctly, do they have to get that money released somehow from the municipality? [LB614]

LYNN REX: Well, first of all, they're already getting basically...because if you look up in (1) in section 1, it makes it clear that after making payment in full to all mortgagees on a fire and casualty insurance policy on any real property and any structure covered by the policy, the insurer shall reserve this amount of 10 percent, but basically that's the amount that's going into this reserve fund. The rest of it is going to me if it's my house that burned down. So the only notion here, Senator, is that some of that--some of that--some of those proceeds, 10 percent or $10,000 whichever is greater, is going to be set aside and it's going to be set aside based on the fact that I got the rest of the money. Now I may be in Arizona golfing, but I got the rest of the money. [LB614]

SENATOR CRAWFORD: Uh-huh. [LB614]

LYNN REX: But there's still an obligation to take care of the property. [LB614]

SENATOR CRAWFORD: And so the expectation is that there would be enough to take care of the property and still have this 10 percent left over? [LB614]

LYNN REX: Well, I mean, I think that is the expectation and I think that a couple of the individuals following me can respond to how that has actually worked in other states. [LB614]

SENATOR CRAWFORD: Okay. Thank you. [LB614]

LYNN REX: You're welcome. [LB614]

SENATOR GLOOR: Senator Carlson. [LB614]

SENATOR CARLSON: Thank you, Senator Gloor. I am just telling you I'd better read a little more carefully because I was looking at what I asked you before as notification to the insured. And it is the insurer instead, and so I don't have the same concern. [LB614]

LYNN REX: Oh, okay. Well, thank you. But we would still be prepared to do something more if you would like us to on that. [LB614]

SENATOR GLOOR: Other...Senator Christensen. [LB614]

SENATOR CHRISTENSEN: Would you address the question that was asked earlier? What percent of the time is this an issue in communities? [LB614]

LYNN REX: Well, I will tell you that when the issue came forward the first time...this was first put in actually by Senator Arnie Stuthman because Joe Mangiamelli, who is here today who is the city administrator of Columbus, they had issues that were brought forward to them by their fire chief about what's happening and what they needed to do. And so that was an issue, and I won't tell you the name of the municipality, but I will tell you that there was a first-class city that at that time thought, well, you know, I don't know that we should be doing anything like this. Whereas all the other first-class cities there, which there are 30 of them, thought that we should. Well, the next year that particular city administrator had a major burn in that city of over a block, and his view was dramatically different at that point. So it happens. It happens in city after city. So it is...I think that what you're looking at here is...in some cities, it's not happening every day, but the Hastings example...I went back and actually while I was just kind of reading in my iPad, reviewing the testimony from the previous hearings that you had on this on another bill that Senator Utter introduced, and it's in the hundreds of thousands of dollars. And frankly, cities don't have just pots of money sitting around for that purpose. But the issue, there's a time when you have to...there's a timeliness to this. You just can't let it go year after year. For example, and Senator Campbell would be familiar with this, look at the burn down that happened on O Street--huge. I mean, how do you deal with that? And so in communities, it's not just the person that is...has had...that owns that property. It's everybody else surrounding...the other businesses around them, families around them if it's in a neighborhood. So these are things that have to be addressed. And I believe Broken Bow had some major issues with fire. I mean, we hear it all the time, Senator. And so...I'm not saying each and every city has an instance every month, but when it happens, it happens and you have to be prepared to address it. [LB614]

SENATOR CHRISTENSEN: Well, I understand that, but would this happen 30 percent of the disasters that happen? Fifty percent of the disasters, 1 percent of the disasters? [LB614]

LYNN REX: Oh. I'm sorry, I don't know. [LB614]

SENATOR CHRISTENSEN: Okay. [LB614]

LYNN REX: I don't know. All I can tell you is that all the first-class cities felt very strongly about it. I can also tell you that we have a smaller cities legislative committee comprised of second-class cities and villages in the state of Nebraska. And we only have two cities in the state--one metro, one primary--30 first-class, and of the 530, the rest are all second-class cities and villages. You have 117 second-class cities and the rest are all villages in the state of Nebraska. And frankly, the villages which have very, very small budgets, for them I would submit to you it's even a more disproportionate impact on their budgets. [LB614]

SENATOR GLOOR: Senator Pirsch. [LB614]

SENATOR PIRSCH: And I'm sorry to ask you, but you have great expertise and overview on this and so I don't want to pass up the opportunity. But was the original...Senator Utter carried this, before him Senator Stuthman. [LB614]

LYNN REX: That's correct. [LB614]

SENATOR PIRSCH: Was it the same basic proposition, the same basic structure of the bill? [LB614]

LYNN REX: No. With Senator...I mean, it was the same concept. [LB614]

SENATOR PIRSCH: Okay. [LB614]

LYNN REX: Senator Stuthman's bill was the same concept. With Senator Utter, he was the one though that really, I give him great credit because he got all the parties together because of the issues that were facing Hastings. And they had three major fires, and they were big fires. And so he felt compelled to do something to assist them, and so there were major compromises made along the way. [LB614]

SENATOR PIRSCH: Yeah. Was this...I can't believe that Nebraska is unique in having a problem like...right? There's a (inaudible) where fires happen. [LB614]

LYNN REX: Yes. [LB614]

SENATOR PIRSCH: And so are you familiar about...with the approaches in other states to address this kind of needs? Are they similar to this? Is it all over the map? Are there other approaches as well? [LB614]

LYNN REX: I can tell you that Senator Stuthman's bill was based on the Kansas law. And as Senator Schumacher indicated, this one has got a lot of components of the Iowa law. But you're right, there's nothing unique about the problem. I think it's just how it needs to be addressed. [LB614]

SENATOR PIRSCH: But they're all variations on... [LB614]

LYNN REX: Yes, there are variations. [LB614]

SENATOR PIRSCH: ...the insurance company holding a certain percentage of... [LB614]

LYNN REX: And I'm not saying every state has that either, I think. But we could do some research for you if you would like. [LB614]

SENATOR PIRSCH: Yeah. Thank you. I appreciate that. [LB614]

SENATOR GLOOR: And I would like to make sure that I heard correctly whether it was you or a previous comment, perhaps Senator Schumacher himself, that this bill would be Senator Utter's bill with the amendments rolled in, an example being reducing $25,000 to $10,000. [LB614]

LYNN REX: Yes, that actually was part of it. Now there have been changes made to that. Senator Schumacher...when Senator Schumacher agreed to introduce this--which we are very appreciative and thank him for doing that--he also deserves a great deal of credit because he got the parties together again. And so...and he could address maybe perhaps in his closing the other sorts of things...modifications that he made to this bill accordingly. [LB614]

SENATOR GLOOR: Okay. Other questions? Seeing none, thank you. [LB614]

LYNN REX: Thank you so much for your time this afternoon. [LB614]

SENATOR GLOOR: Thank you. Next proponent, please. [LB614]

JOE MANGIAMELLI: Senator Gloor and members of the committee, my name is Joe Mangiamelli, M-a-n-g-i-a-m-e-l-l-i, I am the city administrator for Columbus. And maybe I'll take a different tact and just talk about the practical implementation of this bill if it's passed. First of all in answer to some of your questions, when one of these occasions happens, if it's a fire in a neighborhood it's a major impact to that neighborhood. It's beyond an eyesore, we have problems of liability, we have problems...in our case, the house that was burned substantially was on a major route to and from the middle school with kids--probably 100 or more kids--passing by twice a day; that's an attractive nuisance for young people. The house in particular sat empty or sat in that state for over a year before we could get the owner to move on it. It was an absentee owner who decided finally that he would do it right. And what he did was, he came to us after numerous notifications that we needed to have something done, got a permit; Senator Christensen, I think this gets to your question. A permit for demolition does not allow you to just doze the property and put everything into the basement. There would have to be the appropriate inspection for asbestos. And if there was asbestos in the structure, it would have to be abated and taken to a licensed landfill. The remainder of the debris could be taken to any other landfill. So we would work with that property owner and we would want to have that property owner take the appropriate action as soon as possible to abate the nuisance...the potential nuisance that it becomes. So as far as the days, Senator, to your question when we would be notified...let me tell you, before 15 days has passed we're going to know because we put out the fire. So we're going to know what the condition of the property is, we're going to know whether it's 75 percent destroyed, 100 percent destroyed, or what the condition is. We're going to be very anxious to hear from the insurer that they have set up a reserve account. We're going to be very anxious to work with that homeowner or that property owner to identify to them what kind of permits are going to be required, what kind of action they're going to have to take in order to get a release of this money. Hopefully, that money is released within 15 days of us being notified because we've got an owner who is willing to do what's right and get the building demolished in the proper way so that they can redevelop the property. So you know, it isn't going to...I mean, I can't imagine that there's going to be any city administrator, any mayor, or any council who's going to want to have an insurance company sit on some money rather than getting an eyesore, a nuisance, a liability corrected in their neighborhood. Yes, how often does it happen? I brought it to Senator Stuthman's attention when we had the fire that occurred, and this is seven years ago, because I couldn't find anything in the statutes that allowed us to do anything. There was nothing in Nebraska law that gave a city the right to do something. I asked the question, well, what are they doing in other states? Kansas has a bill very similar to this. In Iowa, they go one step further. The property owner, after the work has been done, they can deed the property to the city if they want. You know, whether the city wants a small little lot in the middle of a neighborhood, I don't know. But I guess the city could sell that for a future redevelopment. But, again, I can't imagine any city that's going to have the insurance company sit on this money that's in reserve for the demolition of this property. We're going to want to get it cleaned up and get the property ready for development, however the owner chooses to redevelop it. I'll answer any questions you have, sir. [LB614]

SENATOR GLOOR: Thank you. Questions. Senator Christensen. [LB614]

SENATOR CHRISTENSEN: Thank you, Chairman. I guess when I look at this bill I'm afraid the affect of it's going to be minor. I guess I look at typically when this is going to happen and they don't want to clean it up, they don't want to go forward, it's going to be in the...that's why I'm asking you this question, you're a little bigger city than in my communities. But my largest community is McCook, 8,000, and Imperial, where I live is the second one, 2,000. Well, you've got a $30,000 business, you paid $30,000 for it. You might insure it for $30,000 and if it burns to the ground, an older building--may have asbestos, may have a lot of other things, a lot of cleanup--you're just going to say, fine, take the $10,000, you do it, walk away. And I'm afraid the only time that this bill is going to turn and help you is going to be at the times there's no value or very little value there. I've got a lot of little communities, there wouldn't be a $10,000 business in town, so nobody's going to have it insured for that. And so the small communities are stuck with the same scenario, all the cleanup costs. The owner of the business may not get any of his insurance, but if you know you've a business worth...this passes, you know you've got a business worth $10,000 or less so why insure it? So then now you've got nothing. So what this is telling me is if I'm in a small community like I represent, if I've got a business only worth $10,000, then don't insure it because I ain't going to get my money anyway so don't pay the premiums. How is...does this happen a lot on high-dollar businesses or does this only happen on the poorer-quality, lower-value businesses? What happened in Columbus? [LB614]

JOE MANGIAMELLI: Well, ours was a residential property and it certainly had a value higher than $10,000. I don't know of many businesses in Columbus or many other communities that have...that are operating out of businesses that are under $10,000. I just can't imagine that. You know, if you look...I recently heard about Omaha that they were initiating a new building demolition campaign and they were allocating $800,000 towards that campaign, and that was identified as a drop in the bucket. So I mean, this is something that's statewide, as Lynn said. We...$10,000...if it's $10,000, that helps the community to get rid of the eyesore, to get rid of the liability, to improve the quality of life in that neighborhood or in that community as a total. [LB614]

SENATOR CHRISTENSEN: I guess what I'm thinking about is a little town of Edison I grew up in, there's a bank and there's an elevator that's worth over $10,000. I bet you can buy any of the rest of businesses in town for $10,000. And what my fear is, all of a sudden now they're not even going to insure them businesses. Why should I insure this? Walk away from it. Unless they've got a lot of independent wealth otherwise, there's no reason to insure this; just walk away. [LB614]

JOE MANGIAMELLI: Well, I think we're talking about responsible businesses that are carrying insurance. These are the...most of the times, I think that's what we're going to have. We're going to have a homeowner who needs a little prompting perhaps, a business owner who needs a little prompting to get this building demolition completed and move on. If they want to redevelop the property, if they really want to restart the business, they'll do that. They'll use the insurance proceeds unless they were just a business that was dying anyway, you know. But a responsible property owner is not going to be negatively impacted by this bill, sir. [LB614]

SENATOR CHRISTENSEN: So okay. That's my question. Thank you. [LB614]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Mangiamelli. [LB614]

JOE MANGIAMELLI: Thank you for your time. [LB614]

BRETT BAKER: Good afternoon... [LB614]

SENATOR GLOOR: Good afternoon. [LB614]

BRETT BAKER: ...committee members, Brett, B-r-e-t-t, Baker, B-a-k-e-r. Thanks to Senator Schumacher for introducing this bill. As you've heard some history on it, it's kind of got a course of path that's been here before and it's been refined. And it's nice to see that some of the parties are coming together to maybe make some adjustments to it and see if we can advance this forward. This bill deals with...and I'm probably going to jump around a little bit. Senator Christensen, I appreciate your comments and questions that kind of screwed up my testimony line, but we'll try to answer most of them. This bill is for residential dwellings or businesses that are affected by fire casualty that people can't live in or be in it, okay? So it's not going to have your normal residential fire that you're out for a couple of days. This is major impact, this is residential structure fires that actually those families are displaced and those neighbors and those neighborhoods, as City Administrator Mangiamelli brought up, are affected and their quality of life is affected. I had the pleasure and experience years ago to end up in Kansas, and I got to take a city administrator job down there. And when I got there, I didn't do my homework very good, and I found out that I was in a county that had the highest arson rate in the state of Kansas when I arrived. I got to know this Kansas insurance bill really good because we had an individual in the county that liked to light fires, and he burned up houses, he burned up everything he could. We would, as Mr. Mangiamelli said, we were putting out fires, we knew where the houses were, you know, that had...and some of these houses were intentionally started, some of them were accidental electrical fires. But we knew where they were at because our rural fire district or city fire district responded to them. And the first time we had one of those major losses, we had to do what he said. We had public works come in, secure the property, similar to maybe the O Street situation here in Lincoln, and that's what the city's responsibility is, is to secure, you know, the attractive nuisance and barricade it and get the people back from falling walls or anything else. We did that, and it wasn't even two days after...the first structure fire we had was a residential in Kansas. The local insurance agent came in to city hall and dropped off this check, and I didn't know anything about it. I said, what's this? And the clerk said, well, this is we get a 10 percent, you know, deal and the house was...I think at that point, it might have been up in that where mine's going to be like $90,000 structure, and they brought a $9,000 check down plus give or take some cents. The clerk took that check, put it into a separate account that drew interest--and back those days they did have some pretty good interest--and so they had that separate account. And I kind of got taken aback by it and I said, well, how is this going to work? Well, she said, well, we'll have the property owner in here. It's an incentive for the property owner, the neighborhood and the insured and the insurance company to all come together to get this thing cleaned up. And sure enough, to answer your question, we did not ever go beyond--except in the winter months where we couldn't get in and actually clean something up--we never even got close to---I probably want to say--three months from date of loss till that property was cleaned up. And he's exactly right, city of Columbus, this all goes into a cycle where once the loss happens, the structure fire occurs, the check is disbursed out--the 10 percent or $10,000--the city gets it, accounts for it. Then that's when your building department comes in, your building inspector because most communities whether they're large or small have got to have a demo permit. So then, you know, compaction rates are looked at. They can't go be dumping garbage, they can't be crushing foundations through, they can't be...they have to deal with asbestos, as Mr. Mangiamelli said, by getting receipts back from registered landfills. But what we saw was a sense of ownership and a great incentive down in Kansas because all these parties came together and neighbors were helping neighbors clean up, you know, their disaster and their hardship. But there's a pretty good incentive, senators, when you have a $90,000 home or, let's say, a $150,000 home and the city...you know the city's got a $15,000 check down there. You're going to make every move you can to get that thing cleaned up. And we never did...we never kept any of those...we never had to really force any abatement nuisance actions on them because they took care of themselves because those people had that incentive out there. And their neighbors helped, the local agents did, and everything else. So we think that from a city standpoint, it helps from our budget. We...I can tell you right now, we've taken some houses down, the city of Seward. Not from fire related, but from actual nuisance abatements that those...and that process is lengthy. It takes a long time. And the last one we did last summer was $14,000 to...and our public works department did it, that's actually our time. So to get in there it's, you know, that's what it's going to cost so if you have a structure burns up, the insured gets his 100 percent of his loss, walks away, the insurance company has done their due diligence and contracted out and paid them. And if they decide to leave that residential rental in Seward, Nebraska, at Concordia University laying there, he's an absentee owner, we can tell you right now it's going to cost us probably $15,000 for our public works to go in there and abate it, check it, compact the foundation, and make that thing site ready. So we don't have the budget. Unfortunately, we're in year four right now where we have completely...I've only been there a year and a half, but prior to they were on a zero-increase budget and our mill level stayed the same and our valuation depends on what Tenneco does, but it goes up and down. So we think it's a win/win for not only the neighborhood, not only the quality of life, but we think it's a win/win for the loss--you know, the claim, the claimant. And we'd sure would ask you to support this and advance it for further consideration. Take any questions. [LB614]

SENATOR GLOOR: Thank you, Mr. Baker. Are there any questions? Senator Crawford. [LB614]

SENATOR CRAWFORD: Just to clarify. [LB614]

SENATOR GLOOR: Mr. Baker, we have one question. [LB614]

BRETT BAKER: Sorry. [LB614]

SENATOR CRAWFORD: So just to clarify, the process in Kansas then was the check went directly to the city and you were really responsible for deciding when to release it or how to release it to the homeowner? [LB614]

BRETT BAKER: Oh, good question. What happened was, is the check would come in and the ones I recollect, the local agent--it's a smaller community--the local agent usually brought it down and said, here, put that in reserve because it happened quite a bit until they caught our little fire guy. Then once the lot was cleaned up the inspection department--usually a public works director--would sign it off the basement was compacted. They'd have to do their inspections. Once that got done and the demo permit was satisfied, the conditions of the demo permit, he'd come in and tell the city clerk, this thing is cleared, here's a copy of the demo permit, we're done. And then she'd go down to the bank, withdraw the check out, then we'd have a loan officer calculate interest, and then paid it back and they signed the release. And so pretty seamless and effective. [LB614]

SENATOR CRAWFORD: All right. All right. Thank you. [LB614]

SENATOR GLOOR: Thank you, Mr. Baker. [LB614]

BRETT BAKER: Thank you, Senators. Have a good day. [LB614]

SENATOR GLOOR: And counsel points out to me that in this bill, the insurance company holds the money. [LB614]

SENATOR CRAWFORD: Right. Correct. Thank you. [LB614]

DON WESELY: Mr. Chairman, members of the committee, my name is Don Wesely. I'm here representing the city of Hastings. Just quickly, I think you've heard now... [LB614]

SENATOR GLOOR: Mr. Wesely, could I get you to spell your name, please? [LB614]

DON WESELY: W-e-s-e-l-y. You're right, I missed that. Senator Pirsch, you were asking about other states. Kansas and Iowa, neighboring states, they've got this in place, it's working. You just heard an example in Kansas. We used some language from Iowa. We think that this will work here in Nebraska. The thing I want to emphasize is, we need to deal with this problem because it's not going to go away. You've had Senator Stuthman had a bill, you had Senator Utter, now Senator Schumacher. Until this is resolved, you'll keep having bills come to you and you're probably going to get kind of tired of it. So we've got some examples, Iowa and Kansas have done this, and let's try and get this resolved. And I know there may be some details that need to be worked out, but we can do that. The Hastings situation, they did have three fires; two were house fires, one was a downtown building. It's that one that I'm most familiar with. It burned down, the individual got the check from the insurance company and headed south beyond the borders of this country and was not to be found. And there the building sat, and they tried to figure out what to do. Finally, the city of Hastings put their own money into it to clear it off because it was a nuisance, it was a problem for the community. These problems are evident across the state. You heard about Omaha and, again, the initiative in Omaha is to try and take care of all these burned down or abandoned buildings and try and clean them up. And this legislation would help Omaha, it'll help Lincoln. And Senator Campbell, it was mentioned before about O Street. And you remember--it was a couple of years ago and probably all of you remember--that adult novelty shop burned down. It was in the winter and there it sat for months. I don't even know how long it was there. And remember, one lane or more were shut down because the building could have collapsed. It just sat there forever and so the traffic was all tied up and it was just a mess and nothing was being done. You've got...as was mentioned, with this you've got some incentive. Hold back some money. Do something, clean it up, tear it down, move forward on it. Now I know the vast majority of folks...you'll hear some opposition to this from people who are good property owners and they don't like the legislation. And we understand, and if they clean up as is mentioned here, they'll get their money, they'll move forward, they'll want to do it quickly, it won't hopefully be a hassle for them. But there are some bad property owners out there. We've seen examples, I just mentioned some. They'll be coming in the future as well, and we just need to do something about it. Let me also emphasize, a lot of times people say, well, the city just will sit on it--bureaucracy and all that. In this case, there's every incentive to move quickly. They want to clean it up. Like on O Street, it just sat there, a lane was shut down, it was a hazard to the public, the sidewalk was shut down, you couldn't walk by it. The city is going to want to get this resolved, tear it down, do something, move forward. So the likelihood of it sitting on there and not doing anything, it's not in their best interest to do that. So again, the city of Hastings and others are very interested in supporting the bill and hope we can work with you on it. Thank you. [LB614]

SENATOR GLOOR: Thank you, Senator Wesely. Are there questions? Senator Campbell. [LB614]

SENATOR CAMPBELL: Mr. Wesely, I'm going to go back to my original question because I figured you'd know the answer to this having been a mayor. You can't do this by home rule charter? [LB614]

DON WESELY: You know when you asked that, immediately I thought I should have thought of that when I was mayor because it would seem, you know, some authorization might be there. But again, these first-class cities don't have that authority so, you know, we're going to have to do something anyway. [LB614]

SENATOR CAMPBELL: Got it. [LB614]

DON WESELY: I will follow up on another question. I'm sorry, Senator Christensen, you asked about TIF. And having worked with TIF I can tell you, that is way too slow a process. You have to do a blight study, you've got to designate...unless it's actually already in a TIF district. Then you would have an ability to move fairly quickly. But you'd have to have a project that would have to be approved by the city council that would replace the burned-out property to generate the tax revenue that would come back to pay for it. So even then it'd be tough, but TIF is just not a very good tool and slow and painful. So... [LB614]

SENATOR CAMPBELL: I just want to follow up. So you're saying that only cities of the metropolitan and primary class have home rule charters? [LB614]

DON WESELY: Home rule--well, Lincoln and Omaha come to mind. I don't know if there's any... [LB614]

SENATOR CAMPBELL: Just Lincoln and Omaha? [LB614]

DON WESELY: Yeah. That's all I have ever... [LB614]

SENATOR CAMPBELL: So just those two classes would. [LB614]

DON WESELY: Yeah. So the first-class cities like Hastings and Columbus and, you know... [LB614]

SENATOR CAMPBELL: Does...this law would not apply to just the abandoned house, would it? [LB614]

DON WESELY: No. [LB614]

SENATOR CAMPBELL: I mean if...we have so much difficulty sometimes in Lincoln with people who don't take care of a house and just let it go to waste. [LB614]

DON WESELY: Yeah, so this isn't going to help with that. But a very specific situation, a fire occurs, over 75 percent damage, and one of the questions the insurance companies had was, well, how are we supposed to know to hold the money? Well, it's clear in here, the property owner requests over 75 percent of the value of the insurance policy. That's what triggers it, it's simple, they won't have to calculate it, it'll be clear when they make the request. But very specific cases, not dozens, not hundreds, but there's enough that it's just a pain when it does happen. [LB614]

SENATOR CAMPBELL: Thanks, Senator. [LB614]

SENATOR GLOOR: Other...Senator Pirsch. [LB614]

SENATOR PIRSCH: Just a...in this conceptualization in LB614, it would be the insurance companies that would hold the money, right, during the six months or... [LB614]

DON WESELY: That's...yeah, uh-huh. Yeah. So it's different than Kansas. [LB614]

SENATOR PIRSCH: ...180 days so a little bit different. He had mentioned...yeah, and so during the time...and if litigation comes along, that might extend the duration under which the insurance company is holding...and litigation may be a long time. But what happens as times runs on and the insurance company is holding that with respect to the interest then? Or any...is the float then...is that held by the insurance company as a kind of a payment for going out of their way to kind of administer this account? [LB614]

DON WESELY: Hmm. They would keep the money and keep the interest? I don't know the answer to that, I apologize. [LB614]

SENATOR PIRSCH: Okay. Thank you. [LB614]

SENATOR GLOOR: Other questions? Seeing none, thank you, Senator Wesely. [LB614]

DON WESELY: Thank you. [LB614]

SENATOR GLOOR: Other proponents? Good afternoon. [LB614]

ALAN THELEN: Mr. Chairman, council or committee members, good afternoon. I'm Alan Thelen, T-h-e-l-e-n, I'm with the Omaha city attorney's office, and I'm representing the city of Omaha today. Omaha does support LB614. In Omaha we do have a problem with dilapidated and neglected buildings catching fire and becoming dangerous to our communities. Frequently in such cases the owner does fail to take responsibility under the law and the city has to step in, use it's public money to remove the nuisance; in other words, demolish the structure as required by law. In these cases, the city is left holding the bag for the costs on those demolitions. So I'm just here today to give you the city of Omaha's position that we are in favor of LB614. We feel that this would make the situation fairer for the taxpayer and spread that cost or focus that cost on the party responsible for it. I'll take any questions. [LB614]

SENATOR GLOOR: Thank you, Mr. Thelen. [LB614]

ALAN THELEN: Thank you. [LB614]

SENATOR GLOOR: Senator Pirsch. [LB614]

SENATOR PIRSCH: Are there...I was just going to ask you a quick one. Can you help quantify...I mean, obviously there is a lot of buildings in disrepair and in...but with respect to...these are not just buildings in disrepair, right? These are ones that the disrepair is caused by some sort of...is the way that this is constructed, is it...it's not just through abandonment and...right? Or is it, it has to be something specific like a fire or a flood or a...some sort of insurable event, not just, you know, an aged, decrepit structure? Is that right? Or... [LB614]

ALAN THELEN: Yes, it has to be...it's much narrower than that. It has to be an incident that triggers some type of a payment by a fire and casualty insurance company for some incident that's insured by that policy which is typically fires and, I don't know, floods, storms, things of that nature. So it is a narrow situation. [LB614]

SENATOR PIRSCH: Do you have any...and I don't want to put you on the spot, but just in terms of giving us a quantity or kind of an understanding of how prevalent these type of things occur in the city of Omaha for instance, do you know? [LB614]

ALAN THELEN: I don't have an exact number. I know that our code enforcement department has a backlog of maybe about 1,000 cases that's all dilapidated properties. Some percentage of those are subject to a demolition order. I guess I would feel comfortable in telling you that on an annual basis the number of dollars that the city spends to demolish buildings is a large number, and the amount of dollars that the city recoups to cover those costs is a small number. And if the committee would like, I can see if our planning department can get those figures and transmit those to you. [LB614]

SENATOR PIRSCH: Yes, if you can. And if you have a breakdown of...obviously there's dilapidated buildings somewhere not due to an insurable event, but if there's any way to get an understanding of just, you know, whatever hint that you can that it's a major expenditure for the city. [LB614]

ALAN THELEN: Sure. [LB614]

SENATOR PIRSCH: So thanks. [LB614]

SENATOR GLOOR: Senator Campbell. [LB614]

SENATOR CAMPBELL: Thank you, Senator Gloor. In the cases that you've worked with in the city of Omaha, have any of those owners just let the insurance lapse? It sort of follows up on an earlier question by Senator Christensen. I mean, are they lapsed so you wouldn't get anything? Do you have any idea? [LB614]

ALAN THELEN: I don't have any anecdotal information about any such case. I suppose it's possible that that could happen. [LB614]

SENATOR CAMPBELL: But you think that... [LB614]

ALAN THELEN: But it's not any trend that I think that we've seen. [LB614]

SENATOR CAMPBELL: Okay. Thank you. [LB614]

ALAN THELEN: Uh-huh. [LB614]

SENATOR GLOOR: Other questions? Seeing none, thank you for your testimony. [LB614]

ALAN THELEN: Thank you. [LB614]

SENATOR GLOOR: Any other proponents? Can I see a show of hands of those who are here to speak in opposition? And those to speak in a neutral capacity? So we have about a half dozen people. Okay. We'll start with those in opposition. Good afternoon. [LB614]

JOHN CHATELAIN: Good afternoon, folks. My name is John Chatelain, J-o-h-n C-h-a-t-e-l-a-i-n, and I'm president of the Metropolitan Omaha Property Owners Association and also the Statewide Property Owners' Association. Our association has about 700 members. We work with the Real Estate Owners and Managers Association in Lincoln and the Gage County Property Owners in Beatrice. We have probably 700 members. Unlike the Apartment Association, we are the small property owners. That doesn't mean that our owners are small in terms of the size of their business, it's just that we're smaller than the big corporate companies that own large apartment complexes. Our members might have as many as several hundred units or they might have just one rental property, but they all participate in our association. And our association opposes this bill. I think it was interesting from some of the testimony of proponents that they talked to the different parties involved. Well, it looks like they cut a deal with the Bankers Association and they made some kind of an arrangement with the insurance industry, but I don't recall them ever talking to the property owners. The property owners are taxpayers as well, and I'm concerned about making bad legislation that is going to affect 99 percent of the people who are good operators and good managers to get out the 1 percent who is the bad operator or the bad manager. I realize there's a problem and the testimony of the proponents has been very clear and we certainly sympathize with the situation. However, it would seem that a more appropriate way to address the problem would be to target those so-called bad actors in some way. Prosecute them, go after them, but don't make more requirements and more regulations and more expense on those people who are operating good operations. There has been testimony about what's working in Kansas and what's working in Iowa. I have never really been one to just endorse what other states or other cities are doing because you can probably find as many other states that aren't following the Kansas model or the Iowa model. To pile more burden and expense on the property owner is going to have a counterproductive effect, I'm afraid. We have a problem here, and we're told that the only solution to that problem is to withhold 10 percent or $10,000--the greater of--in order to address that problem. What if you have a $100,000 rental property and there's a $90,000 mortgage to the bank? I believe the legislation lets the $90,000 out; the bank recovers their money. Now the city can claim 10 percent or $10,000--in that scenario, it would be the same amount--but they could claim the $10,000 leaving the property owner with nothing. And the comment was made that this assumes that you don't have a city that's overly bureaucratic. I mean, in my humble opinion, the city of Omaha has a problem of being overly bureaucratic. They recently imposed a contractor licensing ordinance which dictates who you can hire and who you can't hire to fix a property. Does the city have a built-in conflict of interest or an interest in keeping the money? Would they find ways through regulations and through bureaucracy to keep you from ever getting the money? The possibility is very strong it appears to me. Also, this program by itself would create a bureaucracy. It would require people in the city planning department to administer this program, to watch for fires and windstorms, to notify the insurance companies, to make sure that those funds are withheld. Once the type of legislation is installed, could the $10,000 be increased back to $25,000 because that's what the municipalities wanted originally? Could other restrictions be placed on the funds to make it more difficult for the property owner to get their funds? My concern is that the city will have an incentive to make sure that the property owner never complies with the regulations that are always increasing and becoming more complex in order to keep that money. How much red tape would be required of the property owner to get the money back? It seems to me that it's an open question. A lot of our property owners are not making very much money as it is. With the regulations and the taxes that are already imposed on our industry, in many cases it's sort of a break-even proposition. What I could foresee happening is on those lower-end properties that the property owners would simply self insure, and they wouldn't have fire insurance and wind insurance. They would have liability insurance, but if this law were to become...if this were to become law, the incentive would be to either underinsure or not insure at all and self insure, replace the property with your own money or not replace it at all. You know, another thing that has occurred to me that is a potential problem here is that the city has a conflict of interest; they also in many cases run the fire department. Would there be an incentive to not put out the fire knowing that the city would get $10,000 on a building that, you know, that wouldn't be replaced? I don't know. There might be some cases of that. The unintended consequences are always a concern. You know, the people here speaking in favor of the bill are all on the city taxpayers' expense to come today, and they present a compelling argument for why this law should go into effect. But you need to be concerned about the unintended consequences and the impact that it would have on the property owners. So I would entertain any questions that any of you might have. [LB614]

SENATOR GLOOR: Mr. Chatelain, did you or your association provide testimony in opposition to the previous two bills that were before this committee? [LB614]

JOHN CHATELAIN: We did not because we were not involved in that process. No one has invited our participation in this process either. We simply found out about it this year and decided to oppose it and that's why I'm here testifying today. [LB614]

SENATOR GLOOR: Okay. Questions? Senator Christensen. [LB614]

SENATOR CHRISTENSEN: Thank you, Chairman. Guess I'll play devil's advocate. I've been on the other side so if you're a good actor, what does it matter. If you're going to clean up anyway and you're going to rebuild anyway, what does it matter if 10 percent is held until you get it done? [LB614]

JOHN CHATELAIN: Well, we are already dealing with a lot of regulations. We have regulations from the EPA, from the OSHA, from the city code enforcement regulations.

This is just one more brick on the load, if you will, to make it more difficult to do business. I would submit that maybe cities and small towns across the state should be glad that someone wants to invest in their city rather than putting up roadblocks and piling on more regulations trying to get more of the money from the Property Owners Association or from the property owners. They should be glad that someone is willing to invest in their city and own property there. [LB614]

SENATOR CHRISTENSEN: I guess I disagree with your explanation from the standpoint none of us buy a business, and I've owned several businesses, with the thought that they're ever going to burn down or be a disaster. That's...don't enter into my mind when I'm buying a business or starting a business, and I've done both. But so I don't know if I agree with your last explanation there, but I understand bureaucracy and some of your earlier arguments on if the city actually does start hiring somebody to make sure they're turning in claims and following where the fire trucks and different things went, then I would be concerned. But anyway, I just wanted to...you know, the good actors, I don't see a problem. That's why I kept trying to ask of the other side what percent. I can't legislate for 1 percent of the people. [LB614]

JOHN CHATELAIN: If I may just respond to that. [LB614]

SENATOR CHRISTENSEN: Sure. [LB614]

JOHN CHATELAIN: It seems to me that is how we are getting all of this regulation is because somebody finds a bad case someplace and then they make bad law. To get at that one bad actor, they will paint with a broad brush everybody in the industry. And so just on general principles, we would oppose more regulation and more expense in order to do business in the state. [LB614]

SENATOR CHRISTENSEN: Thank you. [LB614]

SENATOR GLOOR: Senator Carlson. [LB614]

SENATOR CARLSON: Thank you, Senator Gloor. I'm not opposed to what you're saying here, but I listened to the others and I can see a problem. And I'm from rural Nebraska and I see these...well, I see some buildings that are about half or three-quarter burned down and they just sit there. I see other buildings that are dilapidated and ought to be condemned, and it's an eyesore. And you can go back, well, the city council ought to be stronger than that and they ought to do something about it. I think you can see that regardless of how small you may think the problem is, there is a problem here. What would be your suggestion to solve the problem? [LB614]

JOHN CHATELAIN: My suggestion would be that you prosecute that person that doesn't fix up their property. Target that individual that lets the building burn and then doesn't take care of it. Also, the city should budget some funds for those demolition and cleanup projects. What we have here is the city wanting more money. They can never have enough revenue because they don't control their expenses, so this is a grab for more revenue from a different source. What city should be doing is budgeting for those situations so that the city could clean up those properties that have had fires or windstorms. Now the argument may be made that that is unfair to the taxpayers. But the taxpayers are all property owners, too, so we're speaking on behalf of property owners here who, unfortunately, were left out of any deliberation on this...the drafting the legislation. So I would say cities should budget for those cleanup costs, which apparently they're not doing. They need to live within their means, not try to grab more revenue. And then target those bad actors and prosecute them. [LB614]

SENATOR CARLSON: Well, then I think what you're saying is that if they plan well and build a fund to take care of this that's going to be increased property taxes to do that. So it's going to be those that have good property that are asked to do more so that we can build a fund to take care of the people that don't want to take care of theirs. I don't see how that's a whole lot different than withholding something until a piece of property is taken care of. That's not asking for additional taxes. When you say they're wanting money, well they're wanting money from the person who caused the problem. And I think you're saying, well, that's okay. But why don't you just take that person to court and prosecute them that way? And that can turn out to be a lengthy, lengthy process and expensive. [LB614]

JOHN CHATELAIN: Yeah, my disposition would be to target that 1 percent that's causing the problem rather than piling on more regulations for the 90 percent or the 99 percent that are otherwise responsible. [LB614]

SENATOR CARLSON: Okay. Thank you. [LB614]

SENATOR GLOOR: Other questions? Seeing none, thank you, Mr. Chatelain. Other opponents? Good afternoon. [LB614]

RANDY LENHOFF: Chairman, members of the committee, my name is Randy Lenhoff, L-e-n-h-o-f-f, and I'm CEO of Seldin Company in Omaha. We manage about 11,000 apartment units in 5 states; about 5,000 of them are here in Nebraska. And I'm here to testify in opposition to this bill. You know, I'm aware of the problems. I've been in the business since '77, started in Lincoln, Nebraska. I guess I should back up and say that. So I've managed properties that long and never had a property that we didn't fix up and put back in service. I am aware of the problem, but I do think that this legislation has some issues that I think are pretty concerning. I think Mr. Chatelain mentioned a number of them, and I'm not going to go over them again. But what bothers me...some of the things that bother me is the 180 days. I know that everybody is saying, well, 180 days. Well, you've got to think about it a little bit. Okay, I've got a property, I've got a loss. Let's say it's a $1 million property, so now I've got $100,000 just sitting, that I can't get to, that I need to put that property back in service. So where do I go to get that money because the insurance company isn't going to release it and the city doesn't have to sign off on it. The city says, well, we're not signing off on it until you get it back in service. I can't get it back in service because I don't have the $100,000. We manage for nonprofits, for instance. Nonprofits don't have that kind of money lying around, so where do we go get it? Do we go to the lender? The lender is going to say, hey, it's your problem. So I see some real problems with just how this works. I mean, it seems to me like if you're really serious about fixing this, you start talking about, okay, there's got to be some specific requirements by the city to release the money. You can't just say, well, 180 days. I do agree with Mr. Chatelain that I've dealt with the city of Omaha, have a lot of respect there, I have a lot of friends who work there. But I can also tell you that they will flat out tell you when you call them at times, well, we don't have enough staffing to do that for you. You're going to have to wait. My opinion is we probably will wait the 180 days and I'll bet you the city of Lincoln is about the same way, too, because whatever you give them, that's the day they'll release it and only on that date. So you need to keep that in mind when you start looking at this legislation because I can guarantee it's going to be a problem for us, and it's going to be a problem for homeowners and everyone else. The other thing I'll point out to you as you look at this legislation, it says: and any insured structure, I guess that's--I should have glasses--(1)(c), line 18, well, that whole paragraph (c) so it starts on 16. You've got a proof of loss and you get down to 75 percent of the face value of the policy covering the property and any insured structure. It doesn't make any sense to me. If I've got an apartment property--pick one--Regency here in Lincoln, we manage that. If I have a fire there, one building burns down, that's one structure so now all of a sudden it's triggered this. So each one of my buildings is named on the policy so now I've got a structure that they're going to hold 10 percent of my proceeds on, I've still got six other structures. I'm not walking away from that property, they know where I'm at, I'm invested in the community. Why would I possibly walk away and yet they can hold my money for six months and I can't...my last 10 percent. I've got subs that I'm not going to be able to pay. That's the other option, just don't pay the subs. Oh, wait a minute, they're going to file liens so what's going to happen then? They're not going to get paid, that affects families. So this kind of legislation does affect more than just those of us who carry the insurance. There are some parts of this bill that are not very well thought out. I do agree with Mr. Chatelain. I mean, I've been around here for years, very accessible, I've testified before this committee or other committees here, nobody has ever called me about this legislation. I agree the cities are taking care of themselves, the insurance companies are represented, we are not represented. We are looking to you to represent us because nobody else is and we're the ones who are paying the premiums. We pay hundreds of thousands of dollars every year for the best coverage we can get, including replacement costs. And yet I'm not hearing anything that they're really very concerned about us, and I guess I do find that somewhat frustrating. [LB614]

SENATOR GLOOR: Yes, Senator Christensen. [LB614]

SENATOR CHRISTENSEN: Thank you, Chairman. I guess you hit on exactly the biggest problem I have with the bill, the 180 days and no guarantee they're going to give my money back within 5 days of being complete. And I agree with you, I know city budgets are tight and they probably aren't going to get things done very quickly. [LB614]

RANDY LENHOFF: Agreed. [LB614]

SENATOR CHRISTENSEN: That seems to be what I find. And so it might be better the insurance companies are holding it because I think they do want to get things settled and done. Would your opposition go away if they had to have it upon once the lot was cleaned up they had to have the money returned within five days? The five days might be too short for the insurance company or maybe the insurance company has five days to mail the check from when they're doing it. I guess if that was taken care of, that's my biggest hang up. Would that remove your opposition? I understand the bad actors, I want the bad actors to pay instead of increase my city taxes. And I know it's a small percent we're going after here, and that's the difficult thing. [LB614]

RANDY LENHOFF: Right. [LB614]

SENATOR CHRISTENSEN: But if we had a way of turning that money faster, would that remove the objection? [LB614]

RANDY LENHOFF: Well, let me back up just a little bit. That would help a lot, but I do think the first problem you've got here is I do think it is a question of, you know, you've got a party who isn't part of the contract. I mean, there's a contract between me as a property owner and the insurance company. The city is not a party to that contract. I think you've got a constitutional question. I talked to three attorneys and they've all told me that. So I do think there's some issue there that you need to be aware of because we've got a party not of the contract who is now getting a monetary reward, and they're not part of it. So I'm not sure you can do what you're talking about anyway. But what you're saying would help a lot. I mean, I think those are things that, you know, would help cover some of the concerns. I mean, you've got...you also have...I mean, there's nothing in here that says who at the city is responsible for this. Who do I go see to get my check, to get my money out? Do I get any interest? Somebody brought up interest. I know today the interest is nothing, but I remember when interest rates were 12 percent a year. Six months, 6 percent on your money. Great deal for the insurance company because they're sitting on my money, but that's my money that I can't use for anything else and it's tied up. So there's a number of issues that I have with this. My preference is, I oppose the bill and that's what I'm here to say. On the other hand, I also recognize the problem for the cities, and I am ready to sit down and talk about that. But I think there's a significant rewrite needs to be done on this bill, and it seems like there ought to be a way to get there. The other thing I'm kind of curious about is, how do you handle on a mortgage? You know, the lenders are back--especially on single-family--doing 90, 95 percent loan to values. At least HUD is, FHA. So what happens if there is a loss because you've got a mortgage up to 90 or 95 percent, the insurance company is holding 10 percent, so what happens then? [LB614]

SENATOR CHRISTENSEN: Right. The way it reads is mortgages are paid first then there can be 10 percent held, so the bankers are whole. [LB614]

RANDY LENHOFF: Doesn't it...yeah...doesn't it make it easier for the homeowner to walk away then and just say, huh? [LB614]

SENATOR CHRISTENSEN: Well, it does, but I don't know how you don't take care of first lien holder first. And so the situation comes...my question is, if I'm going to...like I said, 180 days is a huge thing of how fast can you do it? And my problem is, how fast can you get an inspector there? I've worked in this town building homes for eight years, I have worked in two other communities where sometimes I don't get inspections very fast... [LB614]

RANDY LENHOFF: That's right. [LB614]

SENATOR CHRISTENSEN: ...especially in small towns there may not even be a list and you still can't get it done for a week, ten days. So if that takes 10 days and then they got another 5 or 10 to release it you're already 30 days behind... [LB614]

RANDY LENHOFF: That's right. [LB614]

SENATOR CHRISTENSEN: ...when the contractor has already cleaned in...finished doing the home before you get your money that you now need to pay that contractor. That's why I say I think there's a lot of situational things that could be improved in the bill, but I'm sympathetic to the issue of it. [LB614]

RANDY LENHOFF: Right, and I don't want to lose track of the fact...they mentioned the structures. I mean, it seems to me like if they're really after the building that burns down...I grew up in a small town in Nebraska, I understand. Only 60 percent of the storefronts in the small town I come from are occupied. And I understand that problem, but what I'm talking about earlier was Regency. I mean, why would you need to hold my money there? I mean, it seems to me like the language there should be changed also so you're really just going after...I mean, let's narrow this thing down to the minimum it needs to be if it's going to be passed. I mean, if the feeling is that you need to do it, I think there are some things that could be done to make this a lot fairer and actually make it easier for everyone, and that's what I'm asking for here. [LB614]

SENATOR CHRISTENSEN: Thank you. [LB614]

RANDY LENHOFF: Yeah. Any other questions? [LB614]

SENATOR GLOOR: Other questions? Senator Carlson. [LB614]

SENATOR CARLSON: Thank you, Senator Gloor. If you are managing a complex with six buildings, you used the number six, and one of them burns down, does your firm insure for replacement value? [LB614]

RANDY LENHOFF: Yes. [LB614]

SENATOR CARLSON: So you would have--we'll make the figures real round here--you got six buildings for $1 million apiece, you've insured it for more than a $1 million? [LB614]

RANDY LENHOFF: Right. [LB614]

SENATOR CARLSON: Okay and in the case of if you've got six buildings and you've got an eyesore there, you're going to take care of it or you're going to have difficulty filling the rest of those buildings. [LB614]

RANDY LENHOFF: Correct. [LB614]

SENATOR CARLSON: But that's not true across the board. What would be your solution to the problem? [LB614]

RANDY LENHOFF: Well, I think you should...it...the part about structure should be stricken. I think what it should be is the policy covering the property. I mean, when you start saying structures...I mean, it's not any different from the homeowner who has a freestanding garage. That's a structure. Now it's a $5,000 garage or a $10,000 garage. The tornado takes that garage out. I'll bet you ten times out of ten, that homeowner is going to rebuild that garage or clean it up because they're living right there. So when you say structures, it reaches down to that or if you're a farmer, it's the barn out back or the shed, you know. And so all I'm saying is, I think it should be the insurance on the overall property. Then it gets into more what I think they're trying to protect against which is somebody having a total loss like you did on O Street a few years ago where the entire property burned, the entire improved property burned. And so then apparently that individual tried to walk away with the money, although I'm not sure that's what I heard. I think he did finally fix it up, but there was some delay. I will also say, this doesn't fix delays so you understand that. First off, you've got to get a permit from the city. You've got to get your plans drawn, what you're going to do, you've got to get them through the city, get them approved, get your permit. That's probably, if it's a very big loss, it's going to be 30 to 45 days in Lincoln and Omaha. Then you've got to get, you now, you've got to let it for bid and you've got to get out there and get construction started. So you're really talking, you know...I understand, six months seems like a long time. But it takes a period of time, realistically because of all the regulations we have. And I'm not arguing that we don't need codes and that sort of thing, but all I'm saying is you've got to go through all these steps. So there's a period of time for everything. And so the idea that, gee, if we have this money it's just going to magically...this problem is going to go away. You're still going to have probably months any time you have a major loss at a major intersection or something. [LB614]

SENATOR CARLSON: Thank you. [LB614]

RANDY LENHOFF: Yes. [LB614]

SENATOR GLOOR: Senator Christensen. [LB614]

SENATOR CHRISTENSEN: Sorry. In your reflection to strike structure in here and go back to property, what if the business was owned and managed by one person and the property owned by another? Doesn't that...if we don't list structure also, don't that take it all off of the structure owner back to the property owner now? [LB614]

RANDY LENHOFF: Yeah. Well, I think that...I think it should be any property usually is owned by a...I'm not aware of any that aren't all owned by one owner in a property that we manage. So there may be multiple buildings on a site. What I'm trying to say is when I buy an insurance policy, I buy it for that entire property and all the improvements on the property, but each structure is listed individually because the insurance company wants to do it that way. And all I'm saying is that if there's some way to say all the improved property, you know, then you've got...it isn't going to trigger this. I can go out, get my permits, get it rebuilt, there's no need for somebody to hold 10 percent of my money. And I'm looking to keep the amount of bureaucracy you've got to work through to a minimum. I just don't want somebody arbitrarily holding 10 percent of my money when I'm trying to get this thing built and get the contractors paid. [LB614]

SENATOR CHRISTENSEN: I totally agree with that, but I do know of some properties that have got 99-year leases on them and the buildings are owned by other people... [LB614]

RANDY LENHOFF: Oh, I see what you're saying. [LB614]

SENATOR CHRISTENSEN: ...and I just don't want to strike one thing and move liability. [LB614]

RANDY LENHOFF: I understand. Yeah. [LB614]

SENATOR CHRISTENSEN: And that's the difficult part of this job. [LB614]

RANDY LENHOFF: Yeah. Yeah, there's probably a way to work that out. You'd need to have an attorney draft the language. [LB614]

SENATOR CHRISTENSEN: Thank you. [LB614]

RANDY LENHOFF: I'd be happy to help try and make some changes. [LB614]

SENATOR CHRISTENSEN: Okay. [LB614]

RANDY LENHOFF: I just think there are some changes that need to made if this is going to be passed. [LB614]

SENATOR GLOOR: Other questions for Mr. Lenhoff? Seeing none, thank you very much for your testimony. [LB614]

RANDY LENHOFF: Thank you. [LB614]

SENATOR GLOOR: Good afternoon. [LB614]

DAN LORING: (Exhibit 2) Good afternoon. I think if I testify any more, I'm going to start knowing you guys on a first-name basis. I'm Danforth D. Loring, D-a-n-f-o-r-t-h, first name, middle initial, D. L-o-r-i-n-g. I'm representing the Independent Insurance Agents of Nebraska today. Listening, I liked listening to all the different pros and cons. I wish I could rewrite my testimony, but I'm going to keep going with what I started, and that's to let you know a little bit about the insurance policy. An insurance policy written by the insurance service's office, which is pretty standard for all subscribing insurers, pretty much deals with the problem that it pays for full demolition costs within the policy limit. I do want to back up a little. Mr. Lenhoff brought something up that hadn't occurred to me. The way his policy works is, the policy comes out and let's assume for a moment he has ten $1 million apartment buildings. The policy then has a $10 million limit if it's written blanket which is the way most of those types of policies are written. The list that Mr. Lenhoff referred to is a statement of values for underwriting purposes. Frequently, that list is not included in the policy itself, but rather the $10 million limit. In his illustration, if one building burned to the ground and this holds 10 percent, the state has or the insurance company withholds $1 million and he's got to fix the building himself and when it's back up, he'll get his million back that's retained for demolition. So on a blanket policy, if the bill addresses the face value of the policy, that illustration he brought up could be a giant problem. I like Senator Christensen's example of small buildings. The other part that enters into this the policies--which I distributed and I tried to highlight part of them--has some extensions over and above the policy limit for exactly this purpose.

There's a small amount of money for demolition, there's a small amount of money for operation of building codes. Some of the new policies even have a little teeny sliver of pollution coverage. Now I should have brought the fine print instead of just the big print. As we talk about asbestos and cleaning up the whole, it's not likely insurance is going to pay for that. Most policies have pretty much an absolute pollution exclusion contained within the policy. So pollution cleanup is--usually asbestos--is not going to be covered by the policy. Homeowners--I did throw that in there, too, because the bill did not appear to distinguish between commercial property and homeowners--same basic approach. The demolition and cleanup and all that's included within the policy limit and there's a small extension in that one, too. Another part of the policy that's interesting, we're batting around the 180 days that the money is held in reserve. The insurance company is required by the contract to pay out in 60 days, so they'll have their money on the table within 60 days and there are still 4 months remaining. I highlighted that in there, too. One of the things that happened...one of these things was a meth lab blow up. That's an illegal activity and the insurance company can deny that one, too. So you have some things here that are kind of murky on the outside, the real world. As all of you probably know, I'm a pretty strong client advocate, consumer advocate, and I listen to all this and it's between the municipality and the insurance company. The policyholder has an expectation of getting paid, and he's not going to know about this until he wants the money. And the fella from Kansas, I don't want to be the agent dropping off 10 percent to the state and the other 90 percent to the policyholder. I don't want to be the front man on that one. I go back--I almost hate to bring this up--I've been doing this for 42 years now. In 1975 the tornado took out Westgate Elementary School in Omaha. A guy named Vaughn Phelps was the superintendent. At midnight the night the tornado hit, he was on the phone with Fred Hawkins ordering rebuilding of the school. He said, I want it open by fall. He did that in expectation of an insurance company paycheck. So the idea that he went ahead and did that...now granted, that was a long time ago, but he had the expectation and assurance he was going to get paid so he let the contract, and the school did open. The other part I want to point out is the insurance company has the policy takes care of most everything. If you're the policyholder and you don't have a place to live, if you're the policyholder and your business just was stopped dead, the last thing you want to worry about is if you're going to get paid the full amount or not. Typically, insurance is not going to cover all the expenses you face anyway. So you're going to be out of pocket something, you just don't know what it is until the smoke clears. I made so many notes, it's all blue ink on my stuff. I'm pretty much done. I would like to answer any questions anybody may have about insurance. [LB614]

SENATOR GLOOR: Questions for Mr. Loring? Senator Campbell. [LB614]

SENATOR CAMPBELL: Senator Christensen is not asking this question, so I guess I will. And that is, what would you suggest? [LB614]

DAN LORING: I was afraid Senator Carlson was going to ask me that. [LB614]

SENATOR CAMPBELL: We rotate on that question. [LB614]

DAN LORING: You know what? I do think it's a problem, I don't negate the problem. Going after the policyholder makes a lot of sense unless the policyholder moves to Switzerland. I'm dead certain I have a real solution. If you withhold the money and the guy can't rebuild that creates a different problem. I don't really have a red hot idea as to what would solve the problem. [LB614]

SENATOR GLOOR: Other questions? Thank you, Mr. Loring. [LB614]

DAN LORING: Thank you. I appreciate your time. [LB614]

SENATOR GLOOR: Other opponents? [LB614]

TAD FRAIZER: Good afternoon, Chairman Gloor, members of the committee. Again, my name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property and casualty firms. This year on this bill after kind of holding our noses on some past bills we finally decided we didn't like the direction this was going and just wanted to touch on some of the points, although they've been made pretty well both from the property owner and the insurance agent point of view by the prior witnesses. This, of course, is not a problem created by insurers. This is a problem outside our bailiwick and it's dealing with a private contract between a property owner and an insurance company. The property owner has paid the premiums, the local municipality or county or whatever governmental subdivision we're dealing with has not contributed to the premiums, but there's a pot of money there and they'd like a piece of the action, and we kind of understand that. That's the nature of insurance. People see there are funds out there and various people would like to take a chunk of it from time to time. But...and in some ways, this is a little bit of a head scratcher to us from an insurance point of view. Usually we're seeing bills that are trying to make us pay out even faster. There are complaints sometimes that insurance companies don't pay out fast enough, and yet here we've got a bill that kind of goes the opposite direction and says, whoa, slow down, don't pay out the money that you're contractually obligated to pay to your policyholder. Hold it back until a local subdivision decides what it wants to do. And as previously noted, the local subdivision has up to 180 days to decide what it wants to do. And if at the end of 180 days it finally goes around to filing a lawsuit or issuing a condemnation order or something, then the holdback period continues beyond that. So it really penalizes every policyholder for the wrongs of a few. And this may sound a little dramatic, but when you boil it down, this is really a government seizure of private property for a government purpose without due process or at least the due process isn't going to happen for about six months till the local subdivision gets around to initiating some sort of condemnation action when it can then argue out what's going on. That usually seems to be a little bit of the opposite of the way things work. Normally, you have to start an action against someone before you start seizing property. In effect, you're considered guilty until proven innocent in this situation. As previously noted, it's in terms of...the holdback is in the terms of the larger of 10 percent of $10,000, so there's a minimum $10,000 holdback. As noted in a commercial situation or a larger even residential property, this could amount to $25,000, $1 million more, depending on the size of the loss. And going to what Senator Crawford asked about some of the process, as a practical matter a loss reserve is always going to be required. Once the insurance company gets notice of a significant loss, 75 percent or more, they have 15 days to notify the subdivision and basically the loss reserve goes into effect unless the subdivision notifies you it looks like within that time period that everything is taken care of. And the bill speaks in terms of receiving notice that the structure has been replaced and rebuilt or repairs have been completed or demolition has been completed. It's not started or anything like that. According to the language of the bill, it has to be basically completed so really as a practical matter, I can't see any subdivision getting back to an insurance company within 15 days--assuming they know that there's, you know, an insurance company to begin with--as to, okay, everything's hunky-dory, you can release the money. So there's, at least from an insurance company practicality point of view, I think most insurance companies will have to protect themselves, put the holdback into place. And then there is sort of a question even as to the amount of the holdback, although in one part of the bill it talks about the insurer not being liable for amounts in excess of the limits of liability. When you look about the...when you look at the holdback, it talks about 10 percent of the basic coverage limit and it doesn't seem to make an exclusion for the payment to the mortgage. It doesn't say 10 percent of the amount left after the mortgagee or the bank has been paid. It's 10 percent of the basic coverage limit. So there's a little bit of a language complication. You could possibly be required to somehow hold back more than is actually left over after you pay off the mortgage or at least there's a little bit of a worry the way the language is written there. So we would simply echo the concerns raised by the property owners and the insurance agents and, of course, I would not want to be the insurance agent or I would not want to be the person in the claims department of a company who has to call up a property owner and say, we've got your check ready except we're going to hold back $10,000 or more of your money. And they ask, when are you going to get it? Well, maybe sometime in the next six months if the subdivision decides they're ready to release it and maybe longer if they're going to file an action sometime within that period. I'm going to be holding the phone receiver at arm's-length when the policyholder responds to that. So for those reasons, we can't really be in favor of the bill under current circumstances, and I'd be happy to try and answer any questions you might have. [LB614]

SENATOR GLOOR: Any questions of Mr. Fraizer? Seeing none, thank you. [LB614]

TAD FRAIZER: Thank you. [LB614]

SENATOR GLOOR: Other opponents? Those who'd like to speak in a neutral capacity? [LB614]

COLEEN NIELSEN: Good afternoon, Chairman Gloor, members of the Banking, Commerce and Insurance Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Insurance Information Service. I thought that I would come and testify neutrally so I could explain to you our position. This bill has been before this committee for a number of years, and I did hear someone testify that it has been seven years. And in the beginning we did oppose this bill. And for a number of years we did, as Ms. Rex has testified, engage in discussions, came to some compromises, and largely due to Senator Utter who basically had said, ask the question--what's your solution? So what we did was we surveyed our companies and we heard that Iowa and Kansas had a bill, but the preference was the Iowa law. We suggested the Iowa law, thus we have the bill and thus we're neutral. But I must say that I've heard a lot of this discussion over the years as you've heard today. So I'd be happy to answer any questions. [LB614]

SENATOR GLOOR: Are there any questions? Seeing none, thank you. Anyone else in a neutral capacity? I don't see Senator Schumacher who waived closing. [LB614]

SENATOR CRAWFORD: He said he waived closing. [LB614]

SENATOR GLOOR: (Exhibit 3) He waived closing. Then we will close the hearing on LB614. And we'll take about a ten-minute break before we begin on LB312. [LB614]

BREAK:

SENATOR GLOOR: I think we'll get started. If I could ask people to take their seats we'll reconvene on LB312. Welcome, Senator Scheer, to the Banking, Commerce and Insurance Committee. [LB312]

SENATOR SCHEER: Thank you, Chairman Gloor, and welcome to the rest of the Banking Committee, my pleasure to be here. You toast this place up. We have Government here and it's never quite this warm so I don't know if it's the radiant personalities over there that are heating this up... [LB312]

SENATOR GLOOR: Yes. [LB312]

SENATOR SCHEER: ...or whatever the case might be. And as long as you think you sat in here this afternoon, I will tell you that I just walked over from Education and although you are now done with your second, we are still working on our second. So and we have five and I'm your last, and I'll quit stalling and get to the point so you can leave and I'll just go back. So having said that, my name is Jim Scheer, J-i-m

S-c-h-e-e-r, and I represent the 19th District of the Nebraska Legislature. Outside of the Legislature I work as a licensed property and casualty insurance agent in Nebraska. In the last several years some policies by the various insurance companies have come to light that I'm familiar with, and I find them suspect to the extent I think they're disingenuous to the insurance industry and to the general population. There are three specific things that I'm trying to do in this bill, and if it's not doing that--I've had opportunities to speak with people from the insurance industry and as of yet, I've not been told that it's not--and I'm willing to work on language if it is not doing what it's supposed to be doing. And so I will leave that as an option because truly it's a fairly distinct bill. First of all, you have insurance companies cancelling...a type of claim...nonrenewing policies, at the end of the term from weather-related losses. To me that is something that is shown in the contract. When you buy insurance, by the way, that's a contract. You pay the insurance company X amount of dollars, the insurance company is absorbing the risk that that will not happen, and they make money on it; it's called pooling. So they get enough of you to buy house insurance, they get a large hunk of money, and they know at some point in time some of those will have hail losses or water losses or wind losses. And so they have this pool of money that they can pay the losses, not necessarily yours expressly, but the pool is large enough to pay those losses. And if it's not, then the next year they raise the rates and they try to build up that pool in reserves again. So from the vantage of when they are nonrenewing those policies from a weather-related loss the thing to remember about that is, that loss was not...has any effect or had anything to do with the insured's ability to minimize the loss. You can't move your house out of a windstorm, you can't put a dome over it to cover the shingles, you can't put, you know, towels or blankets on your roof to protect the shingles. It's impossible. That's part of the contract. When they nonrenew that, what they're really saying is: we had a contract, you gave me the money, and from the money I'm going to pay the loss, but the fact that you had a loss, then I don't want it. You know, I wasn't planning on that loss and so now I want to nonrenew the policy. It's not fair. That's what pooling is about. When you bought that policy, they knew at some point in time there were going to be X number of losses. If they underestimated the amount of losses from an insurance standpoint, then they need to recalculate and adjust whatever those rates are. But it shouldn't be at the loss of the insurance for the person that had the weather-related loss that could do nothing about it, they should not be forced to lose their coverage. And that's what's happening. Now compound that with you have had that happen to you, so now you're out looking for a new insurance carrier for your home. Find somebody that will write your policy. Well, what they're going to tell you is, well, senator, you've had two hail losses in the last five years so we're going to surcharge your policy 20 percent, 40 percent, whatever the magic number might be--every company has their own rating basis. But they're going to surcharge you because you had losses over the last five years. Now bear in mind this is a new company. They didn't pay the losses over the last five years, so why are they charging more money for losses over the last five years? They have no loss experience in those, there's no legitimate reason during pooling that you should be charging somebody more dollars as a new client to cover losses that another insurance company paid. Now we'll backtrack. Nowhere in here does it say that an insurance company cannot surcharge you if you do have a weather-related loss. I understand insurance companies are out to make money, a lot of people make a living off of that. This doesn't destroy, it doesn't impede them from charging more for that person that's had losses. It doesn't do that at all, it leaves that wide open, they can do whatever they like. But what it does do in the second part is it doesn't allow an insurance company that didn't pay the loss to charge for that loss, to surcharge the new client for that loss. How are they eligible to receive more money for a loss they didn't participate in? The third thing that I'm trying to accomplish is along the same line. Let's say for example, Senator Howard, you get a new job in Lincoln so you may have a home or you may live in an apartment, whatever, and have either a renter's insurance or a homeowner's policy. We'll call it a homeowners because that's what we're talking about. So you sell your home in Omaha and you buy a new home in Lincoln. When you get your new policy in Lincoln, the insurance company says, well, Senator Howard, you had two losses on hail in the last five years so we're going to have to surcharge your home in Lincoln. Why? That isn't anything to do with Omaha, that location that had the loss. This is a different loss. It's not even based if that location had the loss. It's based on your loss at a different address, a different community. So why are we allowing them to surcharge based on a personal database of your losses rather than the property? Insurance is per property. I mean, it's one thing to say, well, Senator Howard, we have to charge more because this house has been broken into the last, you know, four times in the last two years. Okay, that would be site specific, maybe I could buy that, but they're surcharging because you had a hail loss in a different town. This is a new location. How would that be subject to a surcharge? Now I suspect that there will be people that will testify in opposition to this that...and I'm not exactly sure, you know, what they will point as the errors and I will listen closely because, like I said, if there are some problems with this bill I'm certainly wanting to work those through. But I think these are more of a moral, ethical position. I'm not trying to imply the insurance companies are doing anything illegal right now. They're doing whatever the law allows them to do. They have spent a lot of money on their technology and their claims handling, and they know exactly where those losses are coming from. They also have the ability to change rates in fairly small, minute areas. When I started in the insurance business 25, 30 years ago, the whole state for property was maybe 6, 7, 8 districts. You know, Omaha maybe was two, might have been one. You just had these huge areas that were the rating zones. Now from their technology, I'm sure you could live on one side of the street and be paying a different rate from the person on the other side of the street based on whatever accumulation of data they use to rate that specific location, not only on you personally, but on that location. So a lot of things have changed, and they have the ability to charge per location. I'm not trying to impede that, this doesn't put any artificial controls in that. They can charge for the loss to whoever owns that property at the time. All I'm saying is, you can't not nonrenew them because you had paid a loss that they had no way to defer. And secondly, the new company, after they nonrenew you, shouldn't be able to charge you a surcharge for a loss that they had no expense in.

I think those are fairly logical arguments. Sometimes logic doesn't prevail; I understand that, but that's the premise behind this. And there's a lot of people, at least in my area and I will tell you this, I've heard from a great number of insurance agents. And you will look behind me and you will see probably none, and there's a reason for that. They are supportive, but they can't support it. We work for insurance companies. They're not going to risk their livelihood to sit up here and talk about the ills that their companies may be doing and expect to maintain that contract. I understand that, I don't expect them to be here. I appreciate the calls and the information and support, but just so you know, I'm not the lone wolf, I'm just the only wolf here. So there's other people that are fully knowledgeable of this and are very upset about it. And the things that hurt the most are...I just was home this last weekend, happened again. And this lady is an 88-year-old woman that has had insurance with this company--I looked back--since 1964, and other than the last five years--and yes, indeed, she had two hail losses these last five years--she had not had one loss; cancelled as of April 15. That's not right, and this is the only way I know of to go about it to stop these practices. I will stop now and answer any questions and let the others go behind that have whatever thoughts they would like to share. [LB312]

SENATOR GLOOR: Senator Scheer, how do we avoid people who continue to build...if this were all to go into the law... [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR GLOOR: ...how do we avoid people who continue to build in areas that are prone to forces of nature? We obviously don't have a Hurricane Sandy who rolls through here, but I certainly harbor a bit of aggravation of people who expect to be able to rebuild when they've already put themselves in harm's way. Now we don't know where tornadoes are going to land, but there are areas in the state that are prone to higher winds, especially if you decide you want to build on hilltops and bluffs and things of that sort. That's the reason that wind turbine farms go up there and whatnot. How do we keep from having to subsidize, as people who pay premiums as part of the pool, folks who continue to make bad decisions about building in areas... [LB312]

SENATOR SCHEER: Well, first of all, there's nothing that I know of that says anyone, any company has to write a policy to begin with. They can give you a price, Senator Gloor, and I think it's behooving to the insurance company to know what they're insuring. And believe me, I think now they do. I think they know those ridges that are high losses for them or an area that may be more susceptible, for example, to hail or something like that. Flood, you know, that's a whole different ball game; this has nothing to do with flood. This just has natural, weather-related losses on a property casualty. So those insurance companies now--we're not talking about 10 years ago or 20 years ago--they have a pretty good idea where those are. They can charge whatever rates they feel are appropriate for those risks that they're undertaking. That's their job. My job, as the consumer if I've got that home, is obviously to try to find the one that is the most competitive. But if it's four times as much as Senator Carlson that lives a mile down the road, but it's at the bottom of the hill, not on top of the ridge, it really is immaterial because my house is where it's at. And I either have to pay what the rate is going to be or find somebody else. But they don't have to sell it to Senator...mine at the same price as Senator Carlson if mine has more adverse risk. That's part of insurance. If it's a higher risk, it should be paying more. [LB312]

SENATOR GLOOR: Well, I'm trying to decide how to phrase this, but to be at six of one, half dozen of the other, if you don't want to cover somebody in that particular area, you raise the premium so high that you accomplish the same thing. But so your bill would allow somebody to be priced out of being able to afford the insurance, it just wouldn't allow the insurer to refuse to renew or cancel? [LB312]

SENATOR SCHEER: No, your question was specific to me, Senator Gloor, and I tried to answer the specific one. And that was somebody had built or bought a house that was in a...you know, how do we protect the general population from--we will consider--the less intelligent ones that want to go build a house of all glass on top of ridge and put 50-foot pilings in because they want it to overhang the cliff 50 feet? I understand what you're saying. And my point was, at some point in time somebody chose to insure it, they gave you that price to buy that policy. If you agreed to it, there was a meeting of the minds. The insurance company, most that I know, send out inspectors or have information available to them via your county assessor records. They know exactly what they're buying for the most part. And so when they offer that price, when company A offers you a price, company B offers you a price, and company C does, I'm assuming you're probably going to take the least expensive or maybe one of the others offer some other coverages that the lower-priced one doesn't, so you may not buy the cheapest one. But you determine which one you're going to buy. They've made the offer, you are accepting. So it is a two-way street. You know, they're putting themselves at risk for the premium that they're charging you, and it is up to them to determine that premium. [LB312]

SENATOR GLOOR: Okay. Questions for Senator Scheer? Senator Christensen. [LB312]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Senator. I guess I don't know...on your last one here, it says surcharge for an insured policy for a property casualty loss due to weather-related casualties. Well, weather trends change, and if they can't surcharge you due to that...Imperial is a particular place that... [LB312]

SENATOR SCHEER: No, no. I didn't say that they couldn't surcharge you. [LB312]

SENATOR CHRISTENSEN: So what does this say? [LB312]

SENATOR SCHEER: No, no, no. Your current insurance...if your current insurance carrier has the ability to surcharge you, Senator Christensen, what I'm trying to state is that if they nonrenew you or you choose to go find somebody else to insure you, then the price that you're quoted should not be surcharged for a loss that they didn't pay. Now in your home in your hometown, if you are a very high susceptibility to hail, then those rates ought to be at a higher level than probably a community 40 miles down the road that has not had that propensity. Their records, their data systems are far and away sophisticated enough to take that into consideration. So if they have had losses in that area, they have the ability to increase their premiums on their current policies to meet that demand. And if, indeed, you have a hail loss, they certainly...I specifically mentioned, I am not taking away the ability for them to surcharge you because you had the loss. I get it. They had a loss, they need to develop more income, but you don't develop more income by simply nonrenewing you. And the frustrating part, Senator Christensen, is that time after time I've watched that same company that will cancel you, they will turn around and your neighbor, Senator Carlson, they will write a new policy on him with the two hail losses. What's the difference? Why did they cancel you? They wrote his as a new policy, and the only difference between the two is they're now surcharging him the 20 to 40 percent surcharge for his previous two losses which they had no expense for. [LB312]

SENATOR CHRISTENSEN: But I guess what I'm saying is the fact that trends change. Imperial--I lost my roof three years in a row. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR CHRISTENSEN: In fact, I know people that lost two roofs in one year. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR CHRISTENSEN: And if you didn't do it the right way, you put four roofs on in three years. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR CHRISTENSEN: I was just a little smarter than some of them, I put two roofs on because I took a look at how you're doing it. But how do they...I know you say they can surcharge. I guess I don't understand if that company wants to reduce the amount they have in the area, I would feel bad if they canceled mine and took Tom next door, but... [LB312]

SENATOR SCHEER: But that's my point, Senator, they are not... [LB312]

SENATOR CHRISTENSEN: Why can't they reduce their risk in there? They maybe have had 200 customers in Imperial... [LB312]

SENATOR SCHEER: Senator, if they... [LB312]

SENATOR CHRISTENSEN: ...for years and they decide to go to 125. [LB312]

SENATOR SCHEER: Okay. If they wanted to have a moratorium, certainly they've got the ability to do that. But when you... [LB312]

SENATOR CHRISTENSEN: What you're saying is they can't cancel you though. [LB312]

SENATOR SCHEER: No, they can't, but they can surcharge you. And what you're telling me is they should be able to cancel you and they should be able to write Tom's. Well, Tom's had the same loss that you did, and they're surcharging him, but they're nonrenewing you. And there's two terms here and they're not interchangeable: it's cancel and nonrenew. And what we're talking about is nonrenewing, not canceling, but a lot of people would consider it canceling from the general public. So I don't want to try to confuse you, but those are really two different terms. [LB312]

SENATOR CHRISTENSEN: So they...I've always been aware of nonrenewals, but I didn't know they could cancel you in the middle of a insurance. [LB312]

SENATOR SCHEER: Nonrenewals are at the end of your current term. [LB312]

SENATOR CHRISTENSEN: Correct. [LB312]

SENATOR SCHEER: Correct. [LB312]

SENATOR CHRISTENSEN: A cancellation, I have insurance that's supposed to go for 12 months and in 6 months they can just cancel me? [LB312]

SENATOR SCHEER: Technically they could if they perceived the risk to be different than what they originally had written. That's not really part of what I'm talking about. [LB312]

SENATOR CHRISTENSEN: I would have a problem with that one. The nonrenew I guess I don't have the big problem with. [LB312]

SENATOR SCHEER: I guess to answer your question, is if they want to reduce their footprint, then they put a moratorium and they don't go out and pick any more business up. And yes, some people...if my company and I'm your agent and we covered your loss for the last year and four years ago and we are surcharging your policy 30 percent, and if you can find company XYZ that will now insure your home for $148 less, chances are you're probably going to go buy it from the other guy for $148 less. So they will reduce that footprint if they want to put a moratorium on new business, but they're not doing that. They're actively soliciting new business in the same areas that they're nonrenewing clients from. So you can't...from my vantage point, you can't have it both ways. I'm not saying that they can't reduce their footprint, they can certainly do that. They don't have to write any new business, and every insurance company will lose some volume each year just through attrition. People buy a house, they sell the house. People pass away, it turns into an estate and so it's sold. Divorces...a lot of things change in any given year. So an insurance company has the ability to lessen its footprint if it so chooses. But if what you're saying, if I'm following it correctly, they do have the ability to not have an increased pattern. They can put a moratorium on sales in that area if they want to, that's happened before. [LB312]

SENATOR CHRISTENSEN: Well, I'm just going to think here a little bit. Thank you. [LB312]

SENATOR GLOOR: Senator Campbell. [LB312]

SENATOR CAMPBELL: Senator Scheer, I just want to be sure I'm following as I was taking notes. So you can say...okay, we're going to continue to use the two senators over there. [LB312]

SENATOR SCHEER: Okay. [LB312]

SENATOR CARLSON: Well, remember, he's got more speeding tickets than me. [LB312]

SENATOR CAMPBELL: I'm going to take that into account. [LB312]

SENATOR CARLSON: Okay. [LB312]

SENATOR CAMPBELL: Now at this point, the insurance company is not renewing Senator Christensen... [LB312]

SENATOR SCHEER: Nonrenewing, correct. [LB312]

SENATOR CAMPBELL: ...because he had two losses. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR CAMPBELL: Said, nope. But Senator Carlson lives... [LB312]

SENATOR SCHEER: Right next door. [LB312]

SENATOR CAMPBELL: ...right next door. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR CAMPBELL: And there has not been with that insurance company before. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR CAMPBELL: But they know that of the pattern here. [LB312]

SENATOR SCHEER: Uh-huh. They would know his exact losses. [LB312]

SENATOR CAMPBELL: Right. But Senator Carlson...why couldn't they offer him with the extra surcharge knowing that he lives in this pattern of where they've had losses before? Aren't they trying to account for that fact when they bid that? [LB312]

SENATOR SCHEER: Well, my point would be this. It may be the same amount of dollars, Senator Campbell, but the rates should be based on the risk. So if they assume that the risk of that home needs a premium that is 30 percent higher than what they're charging, they shouldn't be surcharging because of a perceived loss that they didn't cover. The rates should be 30 percent higher because that's what their perceived loss ratio...the income won't be needed for the projected losses for that upcoming year. There are two different ways to achieve the same amount. I'm not saying that they can't increase their premiums on existing customers that have losses. But what I am trying to do here is not allow a company to pick up a different exposure that literally could be next door that has had the same loss experience, write them, and then truly surcharge them above the actual going rate. Now if the going rate is 30 percent higher...in my case, if Tom was paying $1,000 and they say, Senator Carlson, we'll be glad to insure you, but it's going to be $1,300 because we're going to surcharge you $300, my point would be this. The standard rate should be $1,300 for that company because if that's what they need as a rate to make what they perceive to be a profit and to guard their reserves, that's what the rate should be. And what I perceive is if the rate now is $1,000, that's what they believe they need. And by charging an additional 30 percent because he had a loss with another company, why is the new company entitled to that additional premium when they did not pay either one of those previous losses? They're out nothing. So the answer to the question is their rates have to be changed to reflect whatever their perceived losses are going to be. And if they've underestimated that, then yeah, everybody's premiums may go up, but we shouldn't be doing it unfairly.

[LB312]

SENATOR GLOOR: Senator Carlson. [LB312]

SENATOR CARLSON: Thank you, Senator Gloor. Now I'm having a little trouble tracking here, Senator Scheer, because there can be additional considerations that go into determining a rate between Senator Christensen and me... [LB312]

SENATOR SCHEER: Sure. [LB312]

SENATOR CARLSON: ...that really don't have a whole lot to do with the loss. [LB312]

SENATOR SCHEER: Uh-huh, that's correct. [LB312]

SENATOR CARLSON: And let's put it the other way that Senator Christensen has a better...well, I don't want to talk about credit ratings. But he has a history of...there's nothing you can see in there that's questionable in his bank accounts or anything and the way that he's made payments and so forth. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR CARLSON: Maybe I had a little something in my past a time or two that I wasn't very good. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR CARLSON: And that may be the basis of the difference in premium, not the fact that we both had the same loss. And that's fair enough, isn't it? [LB312]

SENATOR SCHEER: I'm not objecting to changes to difference in premiums to different individuals, that's not the point of this at all. The point of this legislation is to stop companies nonrenewing because of a weather-related loss. Generating the premiums upcoming for the...if they hold the carrier...if that carrier does not nonrenew them, there's nothing in here that prohibits them from changing the premium if there are differences in your lifestyles or your credit or the internal structures that perhaps you have a masonry facade and his is frame, perhaps you have shake shingles which would be more expensive than an asphalt shingle. All those things are certainly taken into consideration when they do the rating. This just has to do with the losses, just at the time of the loss and who would be...and when a surcharge is permitted for a weather-related loss. [LB312]

SENATOR CARLSON: But if I'm on a renewal and I think I'm unfairly priced here on my renewal... [LB312]

SENATOR SCHEER: Uh-huh. Uh-huh. [LB312]

SENATOR CARLSON: ...then I'll just go someplace else or at least I'll try to. And nothing restricts me from doing that. [LB312]

SENATOR SCHEER: That's right. [LB312]

SENATOR CARLSON: It would seem like if a company has a history in a community and it becomes known that their renewals are unfair, they won't be doing business there very long. [LB312]

SENATOR SCHEER: Maybe not. I don't know, but certainly you have that ability. But my point is not...my concern is not that you that are not nonrenewed can go find another carrier. Once you're nonrenewed it is more difficult to find another carrier because I'm going to tell you right now, one of the things that is on an application for homeowners--have you ever been one, cancelled; two, nonrenewed at your present location? Why do they ask that? They ask it because they perceive it to be a red flag. It's a bad deal. Why is a...is two hail losses for an 88-year-old woman in 60 years of coverage, why is that an illness that they cannot live with? [LB312]

SENATOR CARLSON: Did she fix her roof between the two? [LB312]

SENATOR SCHEER: Absolutely. [LB312]

SENATOR CARLSON: Okay. [LB312]

SENATOR GLOOR: Question, Senator Scheer. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR GLOOR: We certainly could influence legislation or, excuse me, we can influence insurance through legislation... [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR GLOOR: ...establishing statutes that insurers have to live by. We have a Department of Insurance... [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR GLOOR: ...that on a day in and day out basis is charged with, believe it or not, consumer issues like this very thing. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR GLOOR: Have you had...I mean, gone to the Department of Insurance to find out how many consumers call and complain about this happening? Do we have any numbers that show... [LB312]

SENATOR SCHEER: Senator Gloor, there would be nothing to complain about because what they're doing--as I stated before, I'm not trying to cast aspersions on the industry--what they're doing is perfectly legal. There is nothing that...by nonrenewing a policy, there is nothing illegal about that at all. So if you are my client and you'd say, well, I want to get a hold of the insurance department, what I would tell you is you can go ahead, but it's not going to do you a lot of good because everything they've done they've done per their statutes and they've protected themselves. They have to give you so many days' notice when they nonrenew, and I guarantee you that notice will come before that date of requirement. [LB312]

SENATOR GLOOR: Well, I don't think consumers are going to be complaining about the illegality. I don't think they're going to understand the scope of what insurers can and can't do. It's no different than Senator Christensen talking about his speeding tickets. He admits that he was speeding, but he talks about getting speeding tickets. [LB312]

SENATOR SCHEER: Uh-huh. Uh-huh. [LB312]

SENATOR GLOOR: I think people who...doesn't complain, just talks about speeding tickets. [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR GLOOR: People who have their insurance nonrenewed... [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR GLOOR: ...I don't think are necessarily going to understand. I'm just trying to get a sense of whether the Department of Insurance sees this as a problem. [LB312]

SENATOR SCHEER: But...evidently not, because I know that there have been people that I'm familiar with that have sent in notes. But in fairness, again, they're not doing anything wrong. And thus the reason for my bill is to make that...those items nonpermissible anymore. So that if that does happen, if they sent that letter in at that point in time to the Department of Insurance, the department would send a letter back to the insurance company and say, hey look, you can't do that. That's illegal based on the statute. Reinstate the policy. Withdraw that nonrenewal. That's what would happen. [LB312]

SENATOR GLOOR: Okay. Senator Campbell. [LB312]

SENATOR CAMPBELL: I have to say that I think that the phone call that might go to the insurance department is really from Senator Howard in the example you used where she's moving to a whole new location... [LB312]

SENATOR SCHEER: Uh-huh. Uh-huh. [LB312]

SENATOR CAMPBELL: ...and she's going to have a new house and they say, well, because you had those two losses in Omaha... [LB312]

SENATOR SCHEER: Uh-huh. [LB312]

SENATOR CAMPBELL: I mean, that to me...not that Senator Christensen or Senator Carlson couldn't complain, but I have to say that that's a question I don't quite understand. That's where...did the Department of Insurance...and maybe I just need more background. But boy, that's a question. [LB312]

SENATOR SCHEER: You know, I think some of what we are seeing in this industry is no different than probably a number of other industries that you start assimilating and developing these huge databases and looking at ways that it could make you more profitable and looking at ways that you can increase your revenue. And honestly, that probably was never thought of before. But the fact that it wasn't thought of doesn't mean that even right now, again as I said, is against any statute or anything that is on the books of the Department of Insurance. It's mute on that. So what I'm trying to do is put some provisions in law that will stop some of these things from transpiring again. And you know, sometimes you know, our statutes are behind technology. And I think this is truly what has sort of happened here is we found ways to generate additional revenue via new technology, and God bless them. I mean, you know, that's their job is to create more income for their companies. I don't dispute that. They have every right and every privilege to do that. But as legislators, we do not have to allow them to utilize practices that we may find unfair. And in these three specific instances, I do find them unfair. [LB312]

SENATOR GLOOR: Other questions? Thank you, Senator Scheer. Are you going to stay to close? [LB312]

SENATOR SCHEER: Thank you. Oh, I've got plenty of time. We've still have three left, so... [LB312]

SENATOR GLOOR: (Exhibit 1) Many bills left, all right. I'm also going to ask the pages to hand out a letter of support from Hinn's Homes in Chadron, Rushville and Scottsbluff, Nebraska. That's a letter in support. We'll start with those individuals who are in support of this legislation. And then we'll start with those in opposition. [LB312]

SCOTT GUSTAFSON: (Exhibit 2) Good afternoon, Chairman Gloor, members of the committee. My name is Scott Gustafson, spelled S-c-o-t-t G-u-s-t-a-f-s-o-n. Appreciate the opportunity to visit with you today. I'm a member of the Nebraska Insurance Information Service and here testifying on their behalf. Also, I am employed by State Farm Insurance here in Lincoln, and I've given you a copy of some information so I won't read to you, but appreciate the opportunity to visit today about LB312. We have some significant concerns with that bill. There's some flaws that we feel will adversely impact the citizens of Nebraska. It has what we're sure is unintended consequences, but those could be that they'll reduce the availability of insurance in Nebraska along with impacting the potential affordability for all of our citizens of the state of Nebraska, and thus we have concerns. You know, I think that one of the questions that came up maybe I'll hit quickly was to where is the insurance department as it relates to this? We did visit with the insurance department and in 2012 there was about 670 complaints that they had on property and casualty insurance companies of all types of situations, and less than 20 of those were due to nonrenewal of insurance because of weather-related claims. We're not saying it doesn't impact some individuals, but is a very small segment of our population of the state. LB312's first prohibition restricts the use of weather-related claims. This is what we feel a unilateral-contract decision, and it removes the ability of an insurance company to choose to continue to do business with that customer. We just don't feel that that's appropriate policy law. Currently, Nebraska decisions on whether an insurance company renews the policy can include those weather-related claims does not happen significantly. Maybe another point would be less than 1 percent of the typical homeowners customers in the state of Nebraska would be nonrenewed in a year. That could include reasons from they've had vacancy where they've foreclosed on their property with a mortgage company, that can include they're not maintaining their property, have a dog that bit somebody and they're not willing to do anything to deal with that, many, many reasons, least of which oftentimes is their claims activity. We also feel that the weather-related claims are very predictive of future loss potential, and I think that's really what this boils down to. We are looking at what's the potential for a future claim. And we do have information that shows that the customers that have had a weather-related claim are more likely to file a claim in the future, and when they file that claim it will be a more expensive claim than someone that's not had a weather-related claim. If that same customer has two weather-related claims, they are even more likely to file a future claim. And again, when that claim does occur, it will be much more expensive than the customer that's never had a claim. Insurance is based on future productivity not past loss potential, so we're not surcharging someone to get our money back for a claim we've paid. We've paid a claim, it's a legitimate claim, insurance is meant to take care of that catastrophic situation and that's exactly what it should do. So we're not trying to recoup dollars from past claims. When we set our rates, we're trying to predict the future chance for a loss. If an insurance company is not able to use a weather claim in their decision making what will likely happen is, it will drive up costs for all people in Nebraska. The cost will go up for those that do not file claims, and we just don't think that's inherently fair. We're trying to match price to risk, so we're looking at each individual and their future propensity for losses. And we think that's an important way to differentiate it. The second portion of LB312 prohibits the elimination of claim payments or using claims where no payment was made, and I can give you a few examples of those. Somebody submits a claim and it turns out to be under their deductible. They submit a claim and it turns out that it's not a covered loss for whatever reason, so many reasons that could be. Again, our information shows us that a customer that's willing to submit those claims is more likely to submit another claim in the future. And again, when they do, it will be a more expensive claim situation. So we're really looking at the predictivity of future loss potential, and that's why we think that's an important element that we should retain. The last portion of (LB)312 is a very, very fair question, Senator Campbell, and I think you spoke to that with the example of Senator Howard's situation where if you had a claim at a prior structure or home that you insure, whatever it might be, why should that impact your future insurability? Again, it really goes to speak to what's that future claiming behavior for that individual. We have a different rate potentially between where the home is based on what the loss propensity is community to community. So that's not the factor, but it's that individual that's had a claim is more likely to have another claim at their new residence that they purchased. And again, we feel that if we're going to insure that, we should be able to set a price that's fair based on the risks that we're being presented. We really see that what we've got here is a situation where we're creating a bill for a few individuals that were impacted. We have a very healthy insurance climate in Nebraska. Over 900 companies are registered to do business here. Our citizens are able to find their insurance. We understand that when they are nonrenewed, that that's something that is concerning to them, but they are able to go out and seek other insurance in the state and find that. We do see that the question I think that Senator Scheer mentioned is the moral and ethical treatment that we have. We feel we're very highly moral and ethical about how we look at the insurance. We have an obligation to our customers. Without customers, we won't be in business. We're here to take care of them, so we operate completely from a 100 percent moral point of view every transaction we take in. And I think the question of can the current insurer surcharge them, but the future insurer cannot, again, I don't think that's inherently fair in a rating mechanism. Senator Scheer mentioned that it's fine that the current company can charge whatever, raise their rates, but if that other company is taking them on, they can't consider that. We just don't see that as fair and practical. It would be a situation where the current insurance company, you know, is operating on a basis that's different from the future insurance company that might have an opportunity to compete for that business. And we just don't think that's appropriate. We think all insurance companies should play by those same provisions and we shouldn't have different treatment between one company to another. With that, I'll ask if you have any questions. [LB312]

SENATOR GLOOR: Mr. Gustafson, your answer to Senator Campbell's question appears to be: weather-related claims are predictive of future claims activity, and the future claims, any kind of claim, not just weather-related? [LB312]

SCOTT GUSTAFSON: They are. In fact, nonweather claims, correct. So they're... [LB312]

SENATOR GLOOR: So the majority are nonweather claims. So there's a predictive model out there shows that there's a, I mean, a strong, strong statistical possibility that these people are going to file claims for something else. I mean, are we at a point where we would say, you know, people who are participants in social networks are more likely to file claims? I mean, I'm...and I'm being serious when I ask that. If we're looking at those kinds of predictive models, I'm just curious if State Farm, as an example, has gone back and said, and why is this? Is it because, well, that was fun? I enjoyed that, let me do it again. I mean, clearly that's...I'm being facetious, it isn't fun, but I don't doubt that that's the case. I just am trying to understand why would that be. Why would that be? [LB312]

SCOTT GUSTAFSON: Sure. Well, from State Farm's perspective, we're a mutual insurance company. We are owned by our customers, we're not a for-profit business. I mean, we need to make money to stay in business and pay our claims and obligations, but we don't have a quarterly stock dividend that we return on Wall Street. You know, we're taking care of our customers because they own the company. We're making decisions on things that are truly related to insurance, and filing an insurance claim is specifically related to insurance. We feel that's predictive and it has value. Looking at Facebook or other things that may come along, that really doesn't correlate to insurance. It might be interesting information, but it doesn't have a direct correlation to insurance, so not something we're seeking. [LB312]

SENATOR GLOOR: But let me put it a different way then, and I understand that. But if a third of my customers who file weather-related claims are going to file a claim again very soon, I'm interested in trying to figure out why that is to see if I can't do something about that or increase the moral hazard or do something so that I'm not put in a position of having to nonrenew them. I'm just trying...it's an amazing number of one third are going to file a claim again, and that's a pretty strong statistical challenge to deal with. No one seems to know why that's the case, it just does. [LB312]

SCOTT GUSTAFSON: Well, and I think the point you're making is an excellent one. That's why we're here in opposition to this bill. If this bill moves forward, it will change how insurance companies are able to make pricing decisions, and it will impact the availability, customers will pay more for their insurance, some companies may choose not to do business in certain areas. You know, I think that's what we're concerned about as well. To your point on what causes them to have additional claims, if we knew the answer to that we'd figure it out and figure out which ones aren't going to have more claims in the future and continue their insurance and go with that direction alone. And I think a lot of it has to do with the claiming behavior. They've found a mechanism to reimburse them for something that might occur. It also might speak to what they do to try and prevent future claims. Maybe they don't take the measures to prevent a claim whether it's changing their roof structure to put on a better roof, as Senator Christensen said he did. You know, there's many things that play into that. So if we had that all figured out, we'd be a lot smarter. [LB312]

SENATOR GLOOR: Okay. Senator Carlson. [LB312]

SENATOR CARLSON: Thank you, Senator Gloor. And you've answered a little bit of the question that I had. You talked about legitimate claims. And if you...if State Farm paid a legitimate claim and it's a legitimate claim, why wouldn't you want to renew? [LB312]

SCOTT GUSTAFSON: Well, I think first of all, we're going to pay all the claims that are covered under our policy. That's...we have a contractual obligation to do that. The choice of whether we choose to renew someone that's had a past claim, I think we feel that's a decision that we have the opportunity to make currently using all of the claims whether they be a theft claim, a weather claim, a liability claim, whatever the case may be. And we feel that gives the best accurate pricing for all of our customers, not just the ones that have a claim. If we're forced to continue those customers without being able to take action, it will change our pricing structure going forward. So it isn't a question of a legitimate claim. If I construed that or, you know, made it appear that's the case, not at all. [LB312]

SENATOR CARLSON: No, but it sounds like you may have a lot of policyholders who have legitimate claims, but don't turn them in, and that's what you're kind of hoping for. Now it seems to me by what you said that if I was to be covered by State Farm, I may like your rates and I probably should stay there until I have a claim and then I'd better look elsewhere. [LB312]

SCOTT GUSTAFSON: Well, like I say, we nonrenew less than 1 percent of our customers. So... [LB312]

SENATOR CARLSON: You nonrenew less than 1 percent? [LB312]

SCOTT GUSTAFSON: Correct. So we like our customers, we want to continue to do business with them. We have a much higher retention rate than other insurance companies do because I think our customers do find we do take care of them in a time of need and provide a fair price for their insurance. [LB312]

SENATOR CARLSON: Okay. All right, thank you. [LB312]

SENATOR GLOOR: Senator Campbell. [LB312]

SENATOR CAMPBELL: I'm going to go back to Senator Howard because I'm still worried about Senator Howard. [LB312]

SCOTT GUSTAFSON: Okay, we all are. [LB312]

SENATOR CAMPBELL: I'm going to go back because is there a way in the system that would say--or through an agent of yours--that would say, you know, Senator Howard's two claims were very legitimate. I mean, she did put on a little better roof and she did do those things. But, you know, another windstorm came through Omaha and the first one was hail, and she really did do that. Or are we just looking at a system that just goes check, check, no, no matter how valid the two checks were? And that's my concern in bringing that question up. [LB312]

SCOTT GUSTAFSON: Sure. Well, and I can see your concern. We don't look at it as checks, we look at each one is a person, you know, and we look at that carefully and consider that. We also feel we have an obligation to all of our other customers as well. So if we know someone is more likely to have future claims, is that fair to our current customer base who doesn't have claims, to bring that individual in and insure them because subsequently it will increase their cost for insurance? And is that fair to those customers that aren't turning in claims? So I think that's the point we're looking at. We understand yours as well. Each one is an individual, but we do need to make some of those decisions. You know, I think another one of the concerns we had with the bill the way it's structured is it's extremely broad. And if you've got a copy of the bill, on page 8 it talks about "refusing to issue, refusing to renew, canceling, or limiting the amount of coverage on a property and casualty risk due to weather-related casualties." We're quite concerned with how that's written, it's very, very broad. Could even take it to the extreme, potentially, and say someone that had a property that was flooded. Flood is because of weather, the rain causes flood. While that might not be covered under an insurance policy, we would not be able to nonrenew that policy if they don't repair the property. We're going to be forced to continue to insure property that's not being maintained. So there's many elements that we're concerned about in this particular bill. You know, if there was simply some wording that we could tweak and fix, we would certainly try and do that, but we feel that there's much more concern to us and to all of our customers that we're representing. [LB312]

SENATOR GLOOR: Senator Schumacher. [LB312]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you for your testimony today. Simply because somebody makes a claim doesn't mean you have to pay it if it's not covered by the policy. [LB312]

SCOTT GUSTAFSON: Correct. [LB312]

SENATOR SCHUMACHER: Are you paying claims then that aren't covered by the policy because of some nuisance value? [LB312]

SCOTT GUSTAFSON: Not that I'm aware of, sir. [LB312]

SENATOR SCHUMACHER: Okay. So the people that are making a claim and you're sitting down reading the policy saying, my gosh you know, I've got a good claim. It's covered by our policy, we insured it. They're not getting anything they're not entitled to under the policy then. [LB312]

SCOTT GUSTAFSON: They are not. [LB312]

SENATOR SCHUMACHER: And then basically what I think you're saying or at least what I'm hearing you say is, yeah, but if they make a second claim and force their rights under the rules of the game with us, they're more likely to make a third claim and this person is becoming a nuisance because they're enforcing their rights under our policy. Therefore, we don't want them around. Is that what's going on? [LB312]

SCOTT GUSTAFSON: I wouldn't call them a nuisance at all. You know... [LB312]

SENATOR SCHUMACHER: Well, they just aren't as good to us as the guy who doesn't make claims. [LB312]

SCOTT GUSTAFSON: Sure. Yeah. Well, and we're in the business where we know we're going to pay claims, so I'm not trying to come across like insurance companies don't want to pay any claims. That's not the case at all. If there was nothing covered, we wouldn't have jobs. So however, what we're concerned about with the language in this bill is it would significantly limit our ability and it would make it a very much a unilateral decision where the customer chooses whether they can stay with us. We would have very limited rights on who we could insure for new business and who we can continue to do business with. And if a customer continues to have repeated claims activity, we have no option, if they're a weather-related claim, other than to continue their contract. And we just don't think that's fair on the behalf of the vast majority of our customers who have no claims in three years. I mean, it is a very, very high statistic. Seventy-plus percent of our folks don't turn in any claims so if somebody is having two, that's quite out of the ordinary--or more. [LB312]

SENATOR SCHUMACHER: So you're really not insuring against the weather, you're insuring against somebody who will make a claim under the policy that they paid for. [LB312]

SCOTT GUSTAFSON: We insure for all of the perils that are covered properly under the policy, weather included, and there are some weather claims that are not included like flood. But, you know, I think our position is that the customers that continue to have claims should be accountable for that eventually as well. The insurance companies have a choice of who we continue to insure, and we feel that that is in the best interest of all of our customers. [LB312]

SENATOR SCHUMACHER: And just because they're unlucky enough to get hit by lightning twice. [LB312]

SCOTT GUSTAFSON: A lot of time it isn't lightning. We'll go back to the example... [LB312]

SENATOR SCHUMACHER: Well, I mean just...I mean, lightning, storms, whatever. I mean, it's assuming that they just really haven't ticked off the man upstairs, it's a random event. [LB312]

SCOTT GUSTAFSON: Yeah. Sure. Sure. [LB312]

SENATOR SCHUMACHER: Or the woman upstairs, I'm sorry. [LB312]

SCOTT GUSTAFSON: You know, a lot of it boils down to what preventative measures do they take between claims, do they make repairs? And that's concerning to us as well with this bill. If somebody didn't make repairs to a property that was damaged by weather, it would appear that we would not be able to nonrenew that property. [LB312]

SENATOR SCHUMACHER: Thank you for your testimony. [LB312]

SENATOR GLOOR: Senator Christensen. [LB312]

SENATOR CHRISTENSEN: Thank you, Chairman. In reading this where it says "households where $0 paid claim occurred are 55 percent more likely to have a claim over the next 3 years compared to households with no claims." [LB312]

SCOTT GUSTAFSON: Correct. [LB312]

SENATOR CHRISTENSEN: Well, I just had an apartment on third floor--I'm on first--hot water heater went out, she was gone, damaged my apartment. Well, I turned in a claim. Now I have cancelled the claim because she's getting it taken care of. So now you're saying I'm 55 percent more likely to turn in a claim even though I haven't had one the last 6 years I lived here? [LB312]

SCOTT GUSTAFSON: Well, I think that's the key thing to think through. And I know everybody tries to individualize it because it's about me, and I respect that because I feel it's about me when I'm involved as well. We can't tell you which person out of that group is going to have a claim and which isn't. You know, we don't have the crystal ball to be able to figure that out. We just know the claiming behavior for the folks that turn in a claim for $0 paid is higher than the customers that haven't turned in a claim. That's what we're basing our pricing on. It's not whether we would insure you, that's what we would potentially look at from a pricing perspective according to this bill. That's all I'm going by is what's in the bill. [LB312]

SENATOR CHRISTENSEN: I guess I just...I waited over a month before I turned it in making sure she was going to get it done and started because she didn't even have insurance. Doesn't make any difference, she's made it right, it's almost done, so I zeroed my claim. I guess I don't see that as a predictor, but I guess it's just interesting. Thank you. [LB312]

SCOTT GUSTAFSON: Yeah. [LB312]

SENATOR GLOOR: Seeing no other questions, thank you, Mr. Gustafson. [LB312]

SCOTT GUSTAFSON: Thank you. [LB312]

SENATOR GLOOR: Next opponent. Good afternoon. [LB312]

JIM DOBLER: (Exhibit 3) Good afternoon, Senator. Senator Gloor, members of the committee, my name is Jim Dobler, that's J-i-m D-o-b-l-e-r. I'm executive vice president with Farmers Mutual Insurance Company of Nebraska. Farmers Mutual is a domestic company, home office located here in Lincoln, Nebraska. And I appear today in opposition to LB312. My comments will focus on the language in the bill and how it would impact the insurance process. The bill provides that there is a prohibition essentially for, or on the part of, an insurer from limiting the amount of coverage on a risk due to weather-related casualties. So an insurance company cannot limit the amount of coverage. It's very broad language, it affects the claims process, it will affect the underwriting process, it applies before a loss has happened and it applies after a loss has happened. With regard to underwriting, again, we can't limit the amount of coverage on a risk due to weather-related casualties. When it comes to underwriting, if a home has sustained a hail loss and they choose not to repair that that's a risk we would probably not want to issue a policy for, but under this bill, we are unable to refuse to issue because of that weather-related risk that occurred on that property. As I see it, we have to take all comers for whatever weather-related risk that property might have.

Sometimes people choose not to repair their roof when they have a hail claim and that's fine, they can do that if they want. And we will even continue to insure them when they've done that, but we put a roof exclusion on that particular homeowners policy. Again, under this bill because of the weather-related risk that they had, hail damage to the roof, we could not limit the amount of coverage by putting a roof exclusion on that home. Flood--here again, we cannot refuse to issue a policy on a risk due to a weather-related casualty. Well, flood, if it's a result of the weather, rain and everything, here again, that risk could be located in a flood plain, could be near a river. As I read this, I don't think we could refuse to issue the policy to that individual. Now we don't have any experience with flood insurance, it's a federal program. It's certainly something we wouldn't want to have to underwrite. Let's look at the claims side. The handout that I have I highlighted some portions of a homeowners policy, and these are exclusions in the policy and they relate to weather situations. And essentially, they limit the amount of coverage because if you have that weather-related situation we're not going to pay it. So you can see in part, for example, frozen pipes. If the house is vacant and you don't maintain heat and the pipes freeze, it's weather related and we're limiting the amount of coverage there for that risk by saying we're not going to cover that. I won't go through all of them, but in addition to frozen pipes I think we have situations where we cover windstorm and we...and that extends to personal property in your house. However, we say that in order for the windstorm coverage to apply and for it to apply to something inside your house, there first must be some kind of opening that's made in your home that then allows the weather forces to get into it. What it's getting at here is if it's a rainstorm and there's a strong wind and you don't close your windows, we're not going to cover that. So there's got to be some way that there's damage to the home so that something gets in there and causes further damage. Again, I don't know how you apply that exclusion if we can't limit coverage for weather-related risk. There was a comment about cancellation and, well, if you've had a claim then we'll just cancel the policy. You know, you can't do that. There are specific cancellation laws for property insurance and there's a specific law for automobile insurance and you can cancel only for certain reasons and that's all. So you cannot go in there in the middle of a term and tell somebody to take a hike. One of the reasons that you can cancel is nonpayment of premium. But on the issue of cancellation which involves termination before the end of the policy term, already there are things in place to take care of that. You look at the situation of not surcharging where no claim has been paid. Well, we don't do very much experience rating at our company. We have no experience rating in our homeowners line or our farm owners insurance so, you know, it doesn't matter to us what you've had and what your claims are. We do experience rate in auto liability and we will surcharge in the case of an auto accident where your percentage of fault in that accident is say, 50 percent. Now under Nebraska law, if you have an accident where both parties are a full 50 percent at fault, there's no payment. But at the same time, I think you can say that our policyholder played a pretty significant role in that accident and in that situation we would surcharge. We haven't paid any claim, but we would surcharge it in that situation. One last point--there's been talk about, again, surcharges, rates, what does one person get, what does the other person get? Do we treat...to what extent do we treat people differently? I think there is quite a bit of current law and regulation that applies in this area. The insurance department reviews everyone's rates. Anything you want to surcharge and whatever rate you want to charge on whatever basis you want to figure it, it all goes to the insurance department. They look at all that. They also have on file our rating manual and our agents' manual. Now the manual sets out how we treat different exposures, the exclusions we use, the kinds of ways that we might want to distinguish one group of risks from another, all that's on file with the department. Now if somebody came in there and said, well, you know, we think we actually want to surcharge somebody that had a claim on a home in Scottsbluff, but now goes to Omaha and lives, we want to make them pay more, you've got to take that to the department. You just can't go out and do that, all of that is regulated. So I don't know...I'm not that familiar with the extent to what other companies might slice and dice their underwriting and rating programs, but it's not like there's just a complete absence of any review of this stuff. I think with that, I'll conclude my remarks and try to answer any questions you might have. [LB312]

SENATOR GLOOR: Questions for Mr. Dobler? Senator Carlson. [LB312]

SENATOR CARLSON: Thank you, Senator Gloor. You know, on the comment you just made, so you're saying that if your company wanted to...somebody moved from Omaha to Lincoln and wanted to put a surcharge on for that individual person, you'd have to go through the Department of Insurance? [LB312]

JIM DOBLER: You would file your surcharge program. It wouldn't be for that individual person. So your rating plan would say, okay, we're going to surcharge this class of risk this way. And it would set out how you're going to do it, what criteria you use for it, and you would explain how your surcharge program works and they would see that. [LB312]

SENATOR CARLSON: Yeah. Thank you, Jim. [LB312]

SENATOR GLOOR: Senator Howard. [LB312]

SENATOR HOWARD: Thank you, Senator Gloor. You mentioned that you feel that the language of weather related is too broad. Is it defined anywhere in statute? [LB312]

JIM DOBLER: Not in the insurance statutes, not that I know of anyway, no. [LB312]

SENATOR HOWARD: Okay, because it sounds like flood insurance is separate and maybe not included in the intent of this bill. [LB312]

JIM DOBLER: Right. [LB312]

SENATOR HOWARD: Okay. But you're saying that there are other methods that could be construed as weather related, say, by a court? [LB312]

JIM DOBLER: Well, that's one way it could happen, yes. [LB312]

SENATOR HOWARD: Uh-huh. [LB312]

JIM DOBLER: You know, when you're looking at weather related, again, it could be temperature, it could be rain or flood. There are a lot of different ways to look at that, but primarily I think what we've focused on today is more wind and hail, and that's certainly a lot more specific way to address this issue than to use the term weather related. [LB312]

SENATOR HOWARD: And just to clarify, that's not a term of art for the insurance industry? [LB312]

JIM DOBLER: Oh, no, no. [LB312]

SENATOR HOWARD: Okay. Thank you. Thank you. [LB312]

SENATOR GLOOR: Senator Schumacher. [LB312]

SENATOR SCHUMACHER: Thank you, Senator Gloor. Thank you Mr. Dobler for your testimony today. You said that you file your surcharge program with the department. [LB312]

JIM DOBLER: Yes. [LB312]

SENATOR SCHUMACHER: Once it's filed is there notice of the filing or a protest period, a hearing on it? [LB312]

JIM DOBLER: No. It's a public record so anybody can go look at it. There can be a hearing if the department decides that they don't like what you're proposing. [LB312]

SENATOR SCHUMACHER: So do you get a letter saying, okay, we are in receipt of your proposal and it's good or is it one of these administrative things like a phone company tariff, you file it and that's the word unless somebody raises heck about it? [LB312]

JIM DOBLER: Our process is what's called file-and-use ratings. So you file your plan and then the department has 30 days to review it. But once you've filed it, you can start using it even though you haven't heard from the department yet. But if the department looks at it and they don't like something in there, then typically what they'll do is they'll call you and tell you, you can't do it. And so you change it and move on. [LB312]

SENATOR SCHUMACHER: What percentage of the filings receive any more than a file folder in the department's thing? I mean, do they...there's a protest on or the department says, back off? [LB312]

JIM DOBLER: Well, I wouldn't want to speak for the department, I worked there for a while as a staff attorney. By and large, you're not going to...most companies know what the department...what their requirements are and so it's not like you just go in with anything and expect them to not already have their ideas about what's good and bad. So generally, you know, it's all pretty customary kind of work. Very...it's things in the property lines anyway that have been done for years and years. It's just...so you're not going to get a lot of hearings on that kind of thing. The department will from time to time call you and say they don't like the language that you've put in here. Maybe the kind of other insurance clause you've put in, they don't want you to use that type, they want you to use a different type. And we'll go along with that. [LB312]

SENATOR SCHUMACHER: So if you were to file a piece of paper with the department saying, our statistical analysis indicates that he who files twice is likely to file thrice, and in that case it's going to be our policy to surcharge them X percent. And that letter goes in, it goes into somebody's file, and it's file-and-use, and that's the way it is? [LB312]

JIM DOBLER: It could very well work that way. [LB312]

SENATOR SCHUMACHER: Okay. [LB312]

JIM DOBLER: Yeah. On that end of things, there is so much financial--I guess I'd call it--financial engineering or actuarial and algorithm processes in place anymore that...here again, when somebody would make a filing like that, everybody is already going to be aware of that statistical relationship. They will have looked at what the actuaries have put together. The Nebraska department will see that other departments in other states have looked at this issue. The Nebraska department participates in the NAIC so all of these things as they come together in new ways of assessing risk develop, everybody in the industry becomes familiar with it really pretty quick. [LB312]

SENATOR SCHUMACHER: Thank you. [LB312]

SENATOR GLOOR: Other questions for Mr. Dobler? Seeing none, thank you. [LB312]

JIM DOBLER: Okay. Thank you. [LB312]

SENATOR GLOOR: Continue with opponents. [LB312]

COLEEN NIELSEN: (Exhibit 4) Good afternoon, Chairman Gloor and members of the Banking, Commerce and Insurance Committee. My name is Coleen Nielsen, spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Insurance Information Service. But my purpose here on LB312 is to hand you a letter on behalf of Janis McKenzie, the executive director of the Nebraska Insurance Federation. She could not be here today. And I'd be happy to answer any questions. [LB312]

SENATOR GLOOR: Any questions for Ms. Nielsen? Seeing none, thank you. [LB312]

COLEEN NIELSEN: Uh-huh. [LB312]

TAD FRAIZER: Good afternoon, Chairman Gloor, members of the committee. My name is Tad, T-a-d, Fraizer, F-r-a-i-z-e-r, representing the American Insurance Association, a national trade association of property and casualty firms. Given the late hour, I won't try to elaborate too much upon what you've already heard. But I think our...obviously, we're appearing in opposition. The bill, as far as we're concerned, really usurps the underwriting function of a private insurer. It really goes to...as we see it, it goes to the essence of determining risk. Loss has a certain relation to risk. As I read the policy...excuse me, as I read the bill, it speaks in terms of refusing to even issue or refusing to renew in addition to canceling or limiting the amount of coverage on a property and casualty risk due to weather-related casualties. I mean, to a certain extent the first thing you look at when you're looking at a policy is--of any sort of insurance--is have you ever suffered any sort of loss of the nature we're insuring against. But here it looks like you can't even consider it when you're looking to issue a policy in the first place. You can't refuse to issue and it looks like once you're on the risk, you can't ever get off the risk based on any sort of weather-related casualties. Basically, you're married forever at least until the policy owner wants to try to find someone else new, and that just seems to run counter to the nature of an insurance contract. Admittedly, insurance is an industry that's very much affected with the public interest, but it is still a private contract between a private company and a private individual or private organization. And this seems to go a little far in terms of interfering with the decision of an insurer if they're willing to take on or continue a risk. Admittedly, that's part of the nature of the insurance business, but at some point you've got to decide if you wish to take on a risk in the first place or if you wish to continue it going forward. And we just, from a philosophical point of view, think this goes a little far into interfering with that private contractual relationship. And I'd be happy to attempt to answer any questions you might have. [LB312]

SENATOR GLOOR: Are there questions for Mr. Fraizer? Seeing none, thank you. Other opponents? Anyone in a neutral capacity? Senator Scheer, you're opportunity to close. [LB312]

SENATOR SCHEER: Thank you, and I will try to make it as brief as possible, but did want to go through a few things that you've heard since I last sat in this chair. Our friend from the State Farm office made the point that there are only 20 out of 670 claims that were in relation to nonrenewal; not a bad deal. That's 4 percent. I think that's pretty high. I think what is probably as disconcerting to me as anything is this afternoon you have heard four different people talk about the language in the bill; too broad, abates this, it prohibits them from doing this. Well folks, I met with these people not once, but twice. On both occasions I said, I want this to be a good bill. I'm not trying to get in your pockets, I'm just trying to correct something that I think is inappropriate. If there's something I can do differently, if there's wording that you find offensive or could be an unintended consequence, let me know. I'll be glad to change it. I'm not here to, you know, slay Goliath. I'm just trying to do a job. Met with them a month ago. In here from, again, till last Friday. Sat down with them a half hour and I said, what do we want to do? Well, let's do a study. Well, you know, I don't really know that a study is going to solve the problem, I'd like to do something. Well, we just can't do anything else. Let's just do a study. I said, well, you know, I really don't want to do a study, but you know, if you find something as far as language, let me know because I've got till Monday afternoon till I testify to get some things changed. Just let me know. That was Friday at 11 o'clock. Now call me skeptical, but I'm thinking they didn't come up with all the information they just presented to you, by the way, which they never presented to me, to justify anything they're doing. And secondly, never told me about one item as far as language being too broad, specifically. Got a whole page full of notes here now. So it seems to me that perhaps our friends in the insurance industry were not as genuine as I would have hoped they would be. And I will say with the exception of my friends at Farmers Mutual, and I don't represent Farmers Mutual and I never have, that I think if you stop and look at the presentation they made, the first two were very stark in difference. State Farm told you, you were a percentage, you are a calculated risk, that if you had one loss you were going to have a second loss. You know, as an insurance man, I always assumed that when I sold a product it was going to be there if the person had a loss. That's what you tell somebody when they buy it. What State Farm is telling you is we want to sell it to you, but if you ever have a loss, you're gone, you're history because we know you're going to have another loss and another loss. Well, using their techniques...I got news for you. I just counted up here and about 70 percent of us are brunettes in here so we're going to get our insurance rate hiked. We got a 70...you know, more than a double percent of change of we're going to have a loss versus a blond, using some of their statistics. It's correct statistics. I think sometimes we can go a little too far with technology. And as you recall, when I sat down I told you I think this was a case where technology had outstripped legislation, and it is truly apparent to me that that is the case. We in the Legislature have not caught up and as you will recall, I told you what they are doing is not illegal. I have not accused them of doing anything illegal. In fact, the...Mr. Dobler from Farmers Mutual gave you a very good example of how rates were changed. Nothing they're doing hasn't gone through the insurance department and I told you when you said...well, Senator Gloor, when you asked me, why wouldn't you send a note? Because they haven't done anything wrong. Until we would pass legislation similar to this, there would be nothing to complain about because everything they've done is perfectly legal and applicable. So if you want the system to continue on and have these type of what I consider abuses, kill the bill, don't bring it out. If you think there has some logic, if there's some language problems, I would tell my friends in the insurance business I still would like to work on this bill to make it less offensive to them. They may never support it, but I'm more than willing to make this a work in progress, a work to try to develop something that in the long term will serve the state and our citizens as best we can. There are abuses going on out there. And when an insurance company can determine that you're going to have another loss based on your first loss, that's really sort of scary to me. Just remember the lady, the 88-year-old lady that's had 2 losses in the last 60, 60 years. They just both happened to be in the last five years. Could she have stopped either one? Absolutely not. Couldn't have done a thing, but she no longer will have insurance on April 15. Isn't that coincidental, on tax day she no longer has insurance? I never thought of that until just now. So I understand now from listening to the testifiers that perhaps some of the language is a little vague. Didn't know that before because no one told us that. Willing to work on that, but I'm not willing to be stonewalled. I think there's a legitimate problem here and would like to try to rectify it, but I don't just want to go away, I think there is a problem. And it has to do with because what's going on is permitted within the insurance department because there's nothing that prohibits it and that's what we need to do. That's what this statute is doing, is looking at prohibiting some of these things. That's all I'm asking. Give it a fair shot. Any questions? [LB312]

SENATOR GLOOR: Are there any questions for Senator Scheer? Seeing none, thank you. [LB312]

SENATOR SCHEER: Thank you, Senators. Have a good evening. [LB312]

SENATOR GLOOR: (Exhibit 5) And that ends the hearing on LB312. And we won't Exec today. [LB312]