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Banking, Commerce and Insurance Committee  
February 06, 2017

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[LB220 LB384 LB406 LB476]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Monday, February 6, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB220, LB406, LB384, and LB476. Senators present: Brett Lindstrom, Chairperson; Matt Williams, Vice Chairperson; Roy Baker; Tom Brewer; Joni Craighead; John McCollister; and Paul Schumacher. Senators absent: Mark Kolterman.

SENATOR LINDSTROM: Welcome to the Banking, Commerce and Insurance Committee hearing. My name is Brett Lindstrom. I am from Omaha and represent Legislative District 18. I serve as Chair of this committee. The committee will take up the bills in the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your position on the proposed legislation before us today. The committee members will come and go during the hearing. We have to introduce bills in other committees and are called away. It is not an indication we are not interested in the bill being heard in this committee, just part of the process. To better facilitate today's proceedings I ask that you abide by the following procedures. The information it's posted on the chart to your left. Please silence or turn off your cell phones. Move to the front of the row when you are ready to testify. The order of testimony will go introducer, proponents, opponents, neutral, and closing. Testifiers please sign in. Hand your pink sign-in sheet to the committee clerk when you come up to testify. Please spell your name for the record before you testify. Please be concise. It is my request that you limit your testimony to five minutes. We will be using the light system, which means at four minutes the green light will be on. When there's one minute left to go you'll see the yellow light. And at five minutes it will have a red light and your time is up. If you will not be testifying at the microphone but want to go on record as having a position on a bill being heard today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We will need ten copies. If you have written testimony but do not have ten copies, please raise your hand now so the page can come make copies for you. To my immediate right is committee counsel, Bill Marienau. To my far left is committee clerk, Jan Foster. And we'll start on the far right with introductions. Senator Schumacher will be here later; I believe he's introducing a bill. Senator Kolterman is out today. And we'll start with Senator Brewer.

SENATOR BREWER: Senator Tom Brewer from the 43rd District, which is 13 counties of western Nebraska.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR WILLIAMS: Matt Williams, Legislative District 36, Dawson, Custer, and the north portion of Buffalo Counties.

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

SENATOR BAKER: Senator Roy Baker, District 30, Gage County and part of southern Lancaster County.

SENATOR LINDSTROM: And I believe Senator McCollister will be joining us later. Our page today is Phillip Levos from Columbus. Thank you for being here, Phillip. And we will take the bills in order as you saw them on the agenda posted outside. Our first bill today is LB220, Senator Harr. Senator Harr, whenever you're ready. [LB220]

SENATOR HARR: Thank you, Chairman Lindstrom. Members of the Banking, Commerce and Insurance Committee, my name is Burke Harr, H-a-r-r, and I am state senator from Legislative District 8 located in Omaha. And I'm here on LB220, which amends the Homeowners Protection Act to include provisions relating to post-loss assignment of rights. As some of you may recall, I was here last year with a similar bill. This is a revision and every year a little better. And we've homed in on it on the issue. There has been, in addition, a court case. The Nebraska Supreme Court heard a case involving this very issue last year in Millard Gutter Co. v. Farm Bureau Property and Casualty Insurance Co. And what happened in that case is a homeowner with roof damage by a storm signed an assignment of claim to Millard Gutter. The homeowner's insurance policy contained a nonassignment clause. The Millard Gutter believed that the homeowner's entire roof should be replaced at a cost of nearly \$9,000. The homeowner's insurance company, in this case Farm Bureau, believed only two slopes needed to be repaired at a cost of only \$3,000. Millard went ahead and replaced the entire roof. Farm Bureau paid \$3,000 to Millard. Millard then, under the insured's name, sued for the difference and won. I'm not sure if they did it under the insured's name, but generally that's how it's done. On appeal the Nebraska Supreme Court did rule in favor of Millard because the court concluded that a post-loss assignment of a claim under a homeowner's insurance policy is valid despite the nonassignment clause. The anti-assignment clauses in insurance policies...the Court wrote, "Anti-assignment clauses in insurance policies are strictly enforced against attempted transfer of policy itself before a loss has occurred...". So we're here today on LB220 to attempt to find a middle ground. And I think what you're going to hear are roofers who are coming in in favor of this, insurance companies that are in favor of it, and hopefully some individuals who have been affected by this in favor of it. The bill recognizes the Supreme Court's decision by defining a post-loss assignment of rights, while at the same time subjecting an assignment to certain requirements. The assignment shall only authorize a residential contractor to be named as a co-payee for the payment of benefits under a property and casualty insurance policy covering residential real estate. So, again, it doesn't apply

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

to commercial. The assignment shall be provided to the insurer of the resident's real estate within five days after execution, so that the insurer can know. The assignment shall include an itemized description of the work to be done and the materials, labor, and fees for repair or replacement of the damaged residential real estate and the total itemized amount. And that is to avoid the situation of bait and switch where you have a certain amount agreed to, let's say \$7,000, and then they all of a sudden come back with a bill for \$24,000 after they quote unquote found new damages, without having a chance to talk to an insurance adjuster, because there are certain parts when you replace a roof that you can't tell unless you take pictures of it before and-or after or during the process. But when it's done you don't know if the work was actually done. So it's important that there be an itemized list so that the insurance company knows what to look for when the final item is complete, and to ask for proper proof. The assignment shall include a statement that the residential contractor has made no assurances that the claim loss will fully cover by an insurance contract. The assignment shall not impair the interest of a mortgagee listed on the declaration pages of the property and casualty insurance policy which is the subject of the assignment. And the assignment shall not prevent or inhibit an insurer from communicating with the named insured or mortgagee. Finally, LB220 requires a named insured to assign a notice before a right is assigned. The notice explains the prohibited prohibitions contained in section 44-8604, which is basically that a residential contractor can't promise to waive the deductible or to reimburse. With that, I would entertain any questions with the caveat that I am excited that Senator Schumacher is not here because he usually had the most questions for me on this bill. [LB220]

SENATOR LINDSTROM: We'll try to make up for him here. Any questions from the committee? Senator Craighead. [LB220]

SENATOR CRAIGHEAD: Thank you. Thank you, Senator Harr. Your example, I happen to have been in a situation with the very same insurance company, so I'm pretty familiar with these kind of things. Question: How many times did the insured ask the insurance company on this when they came back and said \$3,000? Did they say, you come back again or was it only one time or do you have any idea? [LB220]

SENATOR HARR: You know, I can't speak to the specifics of that case, because I wasn't involved in it. I have a case where, in my private practice, I was involved with a situation like that where you had an individual who...he contracted for \$7,000 and then the insurer went with that company. And then when the final bill came it was \$24,000 and there was not any communication really along the way. And then there was a check...a bill...invoice sent to the insurance company. But generally, once the assignment occurs, because you assign your rights there isn't much communication. Now I can't speak to every situation, but I know there are two major insurance companies in Omaha...roofers, excuse me, two roofers that do this. And I

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

believe they have a total of over a hundred lawsuits pending in district and federal court last I knew. [LB220]

SENATOR CRAIGHEAD: Okay. And I don't know if I heard this correctly. When the check is made out is it made to the repair person and the insured? [LB220]

SENATOR HARR: Yep, that way you have...yes, accountability. [LB220]

SENATOR CRAIGHEAD: Okay. Okay, thank you. [LB220]

SENATOR LINDSTROM: Other questions? Senator Brewer. [LB220]

SENATOR BREWER: Thank you, Mr. Chairman. I've been asked to fill in for Senator Schumacher today. [LB220]

SENATOR HARR: Oh, jeez. All right. [LB220]

SENATOR BREWER: Actually, just for those of us that don't have the historical information, if we were to compare last year and this year's bills, how would the verbiage have changed? [LB220]

SENATOR HARR: Well, last year it was assignments were not allowed, so the language was similar to the Millard case. Senator Schumacher had come up with many schemes as ways to avoid the nonassignment, to still allow assignments. And so it was thought the better way to protect the consumer, rather than to prevent the assignment, was to inform the consumer as far as what their rights are and that there be a process laid out so that everyone knows what should or shouldn't occur or what the norm is, I should say. [LB220]

SENATOR BREWER: Thank you, sir. [LB220]

SENATOR LINDSTROM: Senator Williams. [LB220]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Senator Harr. If...in the case that you were talking about, Senator, with Senator Craighead, if LB220 had been in place what would have changed in that process? [LB220]

SENATOR HARR: Well, there would have been a notice provision, first of all. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR WILLIAMS: On the front end? [LB220]

SENATOR HARR: On the front end. And so one, the consumer would know what is happening. Two, the insurer would know, because what happens a lot of time is there are certain companies...there are only a limited number of roofing companies and they all sub out to subcontractors. And I think they would know which ones to pay special attention to, to be more meticulous on and which ones to...you know, is there a level of trust so that when the work is done they know who they can...for instance, an ice dam. You can't tell if an ice dam has been put in on a roof once the project is done, but you can sure as heck charge for it. So technically, you should probably take photographs...roofers should take photographs of that. But if they don't, maybe you give certain contractors that you know more leeway than others. But the idea is that that way the insured knows who the roofing company is and they can be careful. And it creates a better relationship between the insurance company and the roofer. And with that, I will end. [LB220]

SENATOR WILLIAMS: You got here just in time. [LB220]

SENATOR LINDSTROM: Anything else? [LB220]

SENATOR WILLIAMS: Going down that line just a little bit further, from the protection of the company that is doing the work to be sure they are getting paid... [LB220]

SENATOR HARR: So the roofer. [LB220]

SENATOR WILLIAMS: ...how does LB220 affect that? [LB220]

SENATOR HARR: It doesn't. If they're doing the work they're going to get paid. There are certain industry norms out there. There are Xactimate, which is accepted by the industry as far as with this type of roof, this is what it should cost with this type of damages. There's another program, but Xactimate is the one that's generally accepted. And so what happens is, hey, this is what this job should cost. So if it's three times as much...and it...you know, there are always going to be outliers, right? It's...and that's part of it. And if you can prove and document why there's an outlier, that's fine. But if you start getting to 80 percent, 85 percent of the time one roofing company is an outlier from the others as far as costs, well, that raises a red flag. And I think that insurance company up front when they know, okay, we're using "Acme Roofing"--I don't know if there even is an Acme, I'm just making up a name from my childhood--if there is Acme, to be a little more careful and to watch and make sure that that project cost what it says. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR WILLIAMS: If under LB220 the person doing the work wanted to take an assignment, are they allowed to take an assignment as long as they give these notices? [LB220]

SENATOR HARR: I believe so, yes. [LB220]

SENATOR WILLIAMS: Thank you. [LB220]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, will you be around for closing? [LB220]

SENATOR HARR: Thank you. I will be here for the close, yes. [LB220]

SENATOR LINDSTROM: We'll now have proponents. Good afternoon. [LB220]

COLEEN NIELSEN: (Exhibits 1, 2, 3, 4) Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Coleen Nielsen, that's 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, also known as NIIS. I am testifying in support of LB220. First of all, I'd like to thank Senator Harr for introducing this bill. We have been working on it during the interim and we're happy that he agreed to do it. NIIS believes it to be an important piece of legislative protection for homeowners who have sustained damage to their home following a storm. I just want to give you a little background on the Homeowners Protection Act. The Homeowners Protection Act was actually passed in 2012 and its purpose was to protect homeowners against aggressive or unethical business practices that were often seen following a large catastrophic storm. Out-of-state residential contractors migrate to Nebraska following storm disasters. These contractors are often referred to as storm chasers. They send door-to-door salespersons to homes in the disaster area. And their purpose is to obtain signed contracts for the repair services as quickly as possible. Sometimes homeowners were even asked for deposits for these services before insurance companies had a chance to evaluate the damage. The current act provides that the homeowner has a cooling-off period. It provides a chance for the homeowner to think over the contract after it's signed and it allows for the cancellation of the contract within three business days or when an insured discovers that all or part of the claim is not covered. If the homeowner cancels the contract, the return of any monies that the homeowner may have given the residential contractor is required. In addition, the act prohibits a residential contractor from promising to rebate any portion of the insurance deductible as an inducement to sign a contract. So that's the law currently. In the past few years another business practice has arisen that involves residential contractors and homeowners. This practice is often seen following a storm as well. And in this practice the residential contractor convinces the homeowner to assign their benefits under their insurance contract to the residential contractor. They often do this because they say, we are the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

experts. Let us handle it. You won't have to do a thing. Once an assignment of benefits is executed the insured relinquishes their rights to the claim. This is often done without the homeowner fully understanding the consequences of signing an assignment of benefits contract. Even though this process involves the repair of their property, the homeowner is entirely excluded from the claims process. Now there will be other people following me today that will give examples as to why the unrestricted assignment of benefits by an insured to a contractor is problematic. But essentially, the assignment creates an opportunity for an unethical contractor to inflate a repair bill or charge for things that were not damaged or provided. In the end, the unrestricted assignment of benefits often leads to litigation, complaints, confusion, and frustration. Last year in response to this situation Senator Harr introduced a bill that would have prohibited the assignment of benefits entirely. Residential contractors opposed the bill indicating it would prohibit them from talking to insurance companies about the claim, an assertion that simply was not true. So during the interim NIIS began to rethink their position on the prohibition of the assignment of benefits from the insured to the residential contractor. Residential contractors had heard through the introduction of last year's bill that the insurance industry was attempting to prohibit the contractor from working and communicating with insurance adjusters during the claims process, but that was not the intent of the bill. The insurance industry enjoys an excellent working relationship with most residential contractors. Insurance companies work closely with them. Repair estimates are often revised based on a residential contractor finding additional damages; repairs are made. Good working relationships are a must in providing fast, efficient claim services to customers. It was important to NIIS to address this misunderstanding, so NIIS reached out to the residential contractors to get their input and this bill is a result of that collaboration. I'd be happy to answer any questions, if I can. [LB220]

SENATOR LINDSTROM: Thank you for your testimony. Any questions from the committee?  
Senator Williams. [LB220]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Ms. Nielsen, for being here. You talked about the unrestricted assignments have led to lawsuits. Can you tell us any numbers that are out there of the lawsuits? I think Senator Harr mentioned hundreds or something like that. Do you have any information on that? [LB220]

COLEEN NIELSEN: I do have someone following me that I think that has more specific information. But here's what I do know, I think that what happens is...I think last year I think we had testified that there were about 60, but inside of those lawsuits are numerous claims, maybe even a hundred. But I'm not sure and that would be only based on my recollection from last year, and so I think we can give you that information following me. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR WILLIAMS: Okay. Would you happen to know if those particular lawsuits deal primarily with the same roofing companies? [LB220]

COLEEN NIELSEN: I believe that to be true, yes. [LB220]

SENATOR WILLIAMS: Okay. Do you know if they will be here to testify today? [LB220]

COLEEN NIELSEN: I think that they are here to testify, yes. [LB220]

SENATOR WILLIAMS: Thank you. [LB220]

SENATOR LINDSTROM: Senator Schumacher. [LB220]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. The notice that is sent out or to be sent out according to page 4 of the bill says that basically the policyholder cannot get a kickback from the contractor and that that may be punishable by civil or criminal penalties. What are those civil or criminal penalties? [LB220]

COLEEN NIELSEN: We based that on the Insurance Fraud Act. So there's a provision of the Insurance Fraud Act, both in the criminal code as well as under insurance laws. I don't know the penalties particularly, but that's what the rebate of an insurance deductible would be...that's where it would be contemplated in either of those provisions. [LB220]

SENATOR SCHUMACHER: Would it be helpful somewhere so that somebody reading this would know to look what they're dealing with, how big or little a penalty they're dealing with, and what constitutes the elements of the civil or criminal penalty? [LB220]

COLEEN NIELSEN: That certainly might be helpful. I think that we were trying to...because this notice will be on a work order or a contract, I think that's why we just summarized it as criminal or civil penalties. [LB220]

SENATOR SCHUMACHER: I suppose they could in smaller print have the section numbers that would be affected. [LB220]

COLEEN NIELSEN: They could probably do that, yes. [LB220]

SENATOR SCHUMACHER: Thank you. [LB220]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR LINDSTROM: Senator Brewer. [LB220]

SENATOR BREWER: Thank you, Mr. Chairman. All right, so we're all on the same sheet of music here, if this bill didn't pass what bad thing would happen? What would be this end result that you're trying to avoid? [LB220]

COLEEN NIELSEN: Well, currently, if this didn't pass what happens is, is that residential contractors would be able to continue to take an assignment of benefits to the exclusion of the insured. The insured would no longer have to be in that process. And that consequently, if that contractor then, with that assignment of benefits, was unhappy with a proposed settlement by the insurance company, what they have been doing is then suing...bundling these claims and then suing the insurance companies for those repairs. And it's been the position of insurance companies that these claims are often inflated and that's why they have refused to pay and continue with litigation. All this to the cost of the consumer in the end. [LB220]

SENATOR BREWER: Very good. Thank you for your testimony. [LB220]

SENATOR LINDSTROM: Any other questions from the committee? Senator McCollister. [LB220]

SENATOR MCCOLLISTER: Yeah, thank you, Mr. Chairman. Section 4, and that starts on page 3, is all new legislation. Was it common occurrence for some of those evils to occur which necessitated this new legislation? [LB220]

COLEEN NIELSEN: The rebating provision? [LB220]

SENATOR MCCOLLISTER: Yes. [LB220]

COLEEN NIELSEN: Yes. What the residential contractors said to us that we were working with during the interim, they say that they continue to see it. And they say that sometimes they think that it just might be helpful to remind the insured person that they're not supposed to be doing that, because apparently it's as blatant as some residential contractors putting signs and saying, we'll get your insurance deductible back. And even though it's currently against the law, there hasn't been a lot of enforcement with regard to that. The thought here is, well, at least we'll tell the insureds that it's against the law. [LB220]

SENATOR MCCOLLISTER: Just by having that occurrence in statute, you think that will change the status quo? [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

COLEEN NIELSEN: Well, I think that we're hoping that if an insured becomes aware of it that perhaps they'd say, you know, I don't really want to engage in that practice. It's probably not going to stop it entirely, but it's our hope that at least people can become educated and be put on notice of the law. [LB220]

SENATOR McCOLLISTER: And it's the person making the offer that's subject to the prohibitions or the fines or legal action. Isn't that correct or is it the homeowner? [LB220]

COLEEN NIELSEN: The homeowner could be found guilty of an insurance fraudulent act, I believe. [LB220]

SENATOR McCOLLISTER: Thanks very much for your testimony. [LB220]

COLEEN NIELSEN: Sure. [LB220]

SENATOR LINDSTROM: Any final questions? Seeing none, thank you very much. Other proponents. [LB220]

KELLY CAMPBELL: Thank you, Mr. Chairman, members of the committee. My name is Kelly Campbell, that's K-e-l-l-y, last name, C-a-m-p-b-e-l-l, and I represent the Property and Casualty Insurance Association of America. The member companies of PCI write approximately 40 percent of the homeowners insurance here in Nebraska and PCI supports LB220. With the foggy, misty day that we're having outside it's kind of hard to believe that severe weather season is around the corner and that residents all across Nebraska are vulnerable to severe storms, including tornadoes and hail. And severe weather accounts for the majority of insured losses in the United States. And the trend lines for catastrophes continue to point to more frequent and costly events. However, in addition for the potential for devastating losses that drive up costs, insurers in some states are increasingly contending with activity that unnecessarily adds to losses. In states like Florida, Texas, and Colorado, states with extreme exposure to catastrophic weather events, we see contractors and lawyers abusing the legal system to drive up the cost of claims, costs that are paid for by all consumers. In Florida an influx of assignment of benefits lawsuits is putting pressure on the state's insurance system. In recent years unscrupulous trial lawyers and vendors have used assignment of benefits to inflate claims and file costly lawsuits against insurance companies, driving up the cost of insurance for homeowners. The Florida Office of Insurance Regulation report recently documented that water claims involving assignment of benefits are on average 50 percent more costly than claims without assignment of benefits. The OIR report also warns that if current AOB trends persist, consumers may face...assignment of benefit trends persist, consumers may face a rate increase of 10 percent or more annually as private insurers grapple with rising losses associated to these costly claims.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

Although here in Nebraska we see fewer water claims than they do in Florida, the trends that we're seeing in regards to hail-related roofing claims and specifically the use of the assignment of benefits are following those of Florida. One example of this is a roofing company in Nebraska that filed a single lawsuit against an insurance company using the assignment of benefits in 154 claims allegedly underpayment. So regardless of whether or not the claim has been settled to the satisfaction of the homeowner, the lawsuits are still being filed. Another example is that in the last two years two roofing companies have filed more than 60 lawsuits involving more than 850 assignment of benefit claims. And, in fact, these roofing companies are actually using a law firm out of Florida to file these claims. So, unfortunately, we are seeing in Nebraska trends that are very similar to Florida. And so when we look at the trend lines in Florida, in 2009 there were 70 assignment of benefit related claims or related lawsuits. In 2014, there were over 2,000, an increase of over 2,700 percent. And this is the kind of upward trend that we do not want to see here in Nebraska and the upward trend that LB220 is intended to protect against. And although Florida and Nebraska have very different severe weather risks, understanding what happened in Florida and how it could impact Nebraska consumers is not a bridge too far. When we look at Colorado and Texas we're also seeing an increase in third-party insurance adjusters and contractors encouraging legal action on behalf of homeowners citing underpayment claims, even though the claims were settled to the satisfaction of homeowners. And in some areas of Texas 20 percent to 30 percent of all hailstorm claims end up in litigation. Colorado is also seeing an increase in litigation by roofing companies, as the courts have allowed them to sue on behalf of insureds. Roofing companies are also allowed to sue insurance companies with no knowledge of the consumer. LB220 is a balanced approach to addressing this issue by limiting the assignment of benefits, creating key disclosures for consumers, ensuring contractors and insureds can be copayees on any check from an insurer, and protecting the rights of a mortgagee. If we look at other states such as Colorado and Texas and Florida, we can see that the trends that we are starting to see in Nebraska and where things could be headed. Nebraska consumers already pay the 16th highest homeowner insurance rates in the country. Greater upward pressure on consumer rates by increased cost trends is simply unaffordable for most consumers. And with that, that concludes my testimony. [LB220]

SENATOR LINDSTROM: Thank you very much. How many...you touched on Florida, Nebraska, Texas, Colorado. How many states are in that category and how many have taken a step like what's involved in LB220 or done the next step? I mean, is there a breakdown do you know off the top of your head? [LB220]

KELLY CAMPBELL: Mr. Chairman, this is a relatively new trend that we've been seeing over the last couple of years. And so in Florida there is currently legislation pending. There's legislation pending in Texas; Texas didn't have a session last year so this is one of the first opportunities to try and address it. In Colorado it is something that we've been trying to address. Unfortunately, politically it hasn't been very feasible to address it. But those are three of the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

states where we're seeing the most abuses. And Nebraska is quickly lining up with that. One of the other states, Montana and Wyoming were also seeing some roofing claims. They have pending legislation there to address some of these issues as well. So I can't point to a lot of states that have actually passed legislation exactly like (LB)220, but I can point to a number of states very close to us here that are looking at the same issue and trying to find ways to address it because it is such a new and concerning trend. [LB220]

SENATOR LINDSTROM: Okay, thank you. Senator McCollister. [LB220]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. The fact that Nebraska is, what did you say, 14th or 16th highest rates, is that attributable to our severe weather patterns or the regulatory climate? [LB220]

KELLY CAMPBELL: Senator, a lot of that is due to the weather risk that exists here in Nebraska and then really the costs that are associated with that weather risk. I mean, overall Nebraska has a pretty good regulatory environment for insurance overall, so it's really much more related to the risks and the costs directly associated with those claims that we see driving costs here in Nebraska. [LB220]

SENATOR McCOLLISTER: Thank you. [LB220]

SENATOR LINDSTROM: Any other questions? Senator Williams. [LB220]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Ms. Campbell, for being here. I want to go back over some of the statistics and be sure I understood what you said. I think you said that over the last few years we have now had over 2,000 claims filed or lawsuits filed. [LB220]

KELLY CAMPBELL: Yes, Senator. I want to make sure that we correct the record for that. [LB220]

SENATOR WILLIAMS: Yeah. Would you repeat that again for me? [LB220]

KELLY CAMPBELL: Yeah. So you know, really what we saw initially here in Nebraska was about 60 lawsuits in the first year when we started seeing this assignment of benefits, and that involved about 850 claims. But I wanted to make that analogous to the trend line that we started seeing in Florida, where the first year we started seeing that come up in Florida they had about 70 claims and then in about a five-year time frame that jumped to over 2,000 suits. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR WILLIAMS: That's where that comes from, okay. [LB220]

KELLY CAMPBELL: Yes. So we have not seen that dramatic of an increase yet, but we also haven't had that time frame yet here in Nebraska. So I really was intending to compare trend lines of the two states. [LB220]

SENATOR WILLIAMS: And when you stated that we have the 16th highest property casualty rates for homeowners in our state, is that trend moving or is that where we...have we been at 16 for years? [LB220]

KELLY CAMPBELL: You know, I would have to double-check that, Senator, to ensure that I give you the correct number, but my understanding is, is that rates have been increasing. But I also know that they've been increasing over the rest of the country, too. But I would be happy to double-check that so we can see where the trend line is on that as well. [LB220]

SENATOR WILLIAMS: Sure. And one other thing you mentioned, I think that one particular company has had 154 claims. Is that correct? [LB220]

KELLY CAMPBELL: That was actually a single lawsuit that involved 154 claims. [LB220]

SENATOR WILLIAMS: In one lawsuit? [LB220]

KELLY CAMPBELL: Correct. [LB220]

SENATOR WILLIAMS: Okay. Thank you. [LB220]

SENATOR LINDSTROM: Senator Schumacher. [LB220]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. Thank you for your testimony today. I guess in looking through the language I have a question similar to some of the earlier questions. Exactly how does this solve the problem? It seems that the bill...it says it only involves residential contractors covering residential real estate. Okay. It gives the insurer five-days notice of the assignment. And the assignment will include an itemization of what's to be done and how much to pay. It will give a notice that the contractor hasn't guaranteed that everything is going to be taken care of by the insurance company--in big type. It will not mess with the interest of a bank or mortgage. And it will not prevent the insurer from communicating

Transcript Prepared By the Clerk of the Legislature  
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Banking, Commerce and Insurance Committee  
February 06, 2017

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with the named insured. And then it will have this notice that there can't be a kickback and the deductible is the responsibility of the policyholder. How does that solve the problem? [LB220]

KELLY CAMPBELL: Senator, I think there are some key pieces in here and I think there are some other folks that are going to testify after me that can talk more about the technical details of how the process works, but I do think there are some key components in here. And, obviously, what we want to start with is consumer education and disclosure. And we believe that by consumers having better understanding of what they are signing then that will help eliminate some of the concerns here. And I think one of the key sections is that the assignment shall include an itemized description of the work to be done and the materials. That is a key component, because what we are finding in these cases is that, in fact, we're having these contractors come in and say, hey, just sign this assignment of benefits. And the homeowner may say, well, we want to know exactly how much this is going to cost. And the roofer says, don't worry about it, I'll take care of that. I'm going to work with your insurance company. And so, unfortunately, then the homeowner doesn't have all the information currently at the time. And that's where we're seeing a lot of these inflated claims, that's where we're seeing these claims of underpayment by the roofers without the knowledge of the consumer. And so we feel like knowledge is a key component to addressing this issue. [LB220]

SENATOR SCHUMACHER: But this is done kind of up front. If somebody looks and sees the storm blew off the gutters, sometimes you don't know what it's going to take to fix the gutters until you get up there and start pulling things apart. How itemized does this itemized have to be? [LB220]

KELLY CAMPBELL: Certainly, Senator, there is always an initial estimate. That's what we're asking for in this case, is an initial estimate. It is very common in the insurance process to have supplemental payments to go back, and once you get in there when you're actually up there on the roof you may see some additional damage you hadn't seen prior. A supplemental payment or a supplemental estimate for repairs is not uncommon. But what we are saying is that the consumer should at least have an idea of what the necessary repairs are early on in the process. [LB220]

SENATOR SCHUMACHER: Well, but that's not what the bill says. It doesn't say get some general idea of the scope of the work and the possible range of cost, it says it will set it out. And it doesn't say that there should be supplemental returns filed if things change or if this turns out to be off by more than 10 percent. I mean, if it turns out that the thing was a real mess and this number was too low, does that impair anybody's rights? [LB220]

KELLY CAMPBELL: No, Senator, it does not. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR SCHUMACHER: Okay, thank you. [LB220]

SENATOR LINDSTROM: Okay, thank you. Senator Baker, you still have a question? Senator Baker. [LB220]

SENATOR BAKER: Thank you. Thank you, Chairman Lindstrom. Ms. Campbell, I had experience with this. In my neighborhood this last May we got baseball-size hail. So many things happen. One, you're right, storm chasers show up, people from out of state. There were also some legitimate roofers that come in. I mean, they go to where the business is. So in my case I held out for a contractor that I knew. There's also subcontractors because there's more than roofs, there's downspouts and gutters, it was siding, all kinds of things. So what is the remedy right now if there is a dispute between what the adjuster says here is what the damages are and here's what we're going to pay and a contractor says, no, there's going to be more than that. What's the remedy right now in that situation? [LB220]

KELLY CAMPBELL: Senator Baker, well, first, I'm sorry for the loss of your roof. [LB220]

SENATOR BAKER: Hey, it's all fixed. I'm better than ever. [LB220]

KELLY CAMPBELL: But I'm glad it got fixed. I appreciate that's never an experience anyone wants to have. And I will say, I do think we...we actually do have some claims adjusters here as well as some roofing companies that may be able to speak more directly to exactly what the process is. And so I think I would prefer to, if it would be okay with you, to defer that question to them, because I think they can give you a better response. [LB220]

SENATOR BAKER: And that would be fine. In my case, my insurance company treated me very well. And when the roofer got up on the roof and found evidence of additional parts that are damaged, they took care of it. So I'm happy, but I just...that may not always be the case. So thank you. We'll follow up with other people coming up. Thank you. [LB220]

SENATOR LINDSTROM: Senator McCollister. [LB220]

SENATOR MCCOLLISTER: Yeah, thank you, Mr. Chairman. And thank you, Mrs. Campbell for your testimony today. When a situation or a problem goes to court, is there a pattern that emerges in terms of resolution of that court case? Who ends up being responsible? Is it the contractor, the insurance company, or the person that had the insurance policy? [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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KELLY CAMPBELL: Senator, I guess I want to make sure that I understand your question because typically, obviously, when a case goes to court some of them may settle out, some of them may go to verdict, everything is going to be very, very fact specific. And so I don't know if there's an exact trend as to what we're seeing from these different cases. I think...I believe you heard the sponsor talk about a recent case with a roofing company and that outcome which actually supported allowing the continuation of the assignment of benefits, which we think would continue to exacerbate the problem that currently exists. And so that's why we're hoping that legislation like (LB)220 will help to put some clear rails around that assignment of benefits to help protect consumers. [LB220]

SENATOR McCOLLISTER: Thank you, Mrs. Campbell. Thank you, Mr. Chair. [LB220]

SENATOR LINDSTROM: Any other questions? Seeing none, thank you very much. [LB220]

KELLY CAMPBELL: Thank you. [LB220]

SENATOR LINDSTROM: Other proponents. [LB220]

STEVE NELSON: (Exhibits 5, 6) Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee, my name is Steve Nelson, N-e-l-s-o-n, I'm an operations director for Farm Bureau Financial Services and I am testifying in support of LB220. I'm concerned about the number of insurance customers that are being subjected to the signing of assignments that roofing companies are doing. Especially right after the storm, they use what I consider not proper practices. Just a quick understanding of the process: Typically our process is a claim gets submitted by our policyholder. We get out there in a reasonable length of time, estimate the damage, write an estimate, make payment for what we owe under the contract, and then the client works with a roofer to find somebody to roof that house. They work off our estimate. There's many, many times that additional funds are needed for unseen or changed damage and those things get worked out. I've included a copy of a roofing company assignment that we've come across. I removed the names so you don't know whose it is, but it is one of our client members that had a roof replaced. There are several...there's three items that I highlighted in that assignment. One of them is the cooperation clause, which in my opinion requires that our insured deal...has to communicate anything they communicate with us to that roofing contractor. Really it takes our insured out of the claim process. The other item I highlighted was the termination of agreement. This specific termination requires that the homeowner pay 25 percent of the total claim cost plus \$150 to \$500 an hour for expert services that total approximately \$3,000. This is an example of a contract that we have to deal with. And finally, on number 13, the assignment of the contract gives the company that received that assignment the right to basically engage in other bad faith litigation against the insurance company anything that they want to...they can



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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assign that to anybody they wish to without the customer, the homeowner's knowledge. I also included just one copy of a document that we received from a roofing company that...it's just one page out of many that kind of sets the tone for what our claim adjusters have to deal with. On the backside it's got a blown up picture of the adjuster. Really we don't want our customer to be taken out of the loop in the repair. They need to be a part of it. We understand assignments are important when it comes down to payment. We're more than willing to work with those contractors, get their name on the check. We're willing to meet with them to discuss damage that is additional that was not received in the original estimate. I really think LB220 does two things to assist us. Number one, assist the customer. It requires that some type of estimate be written up front before that party...before they can get that contract to be binding. And it also allows for discussion between the homeowner and their insurance company. You know, I really support the balance that goes on between contractors and our adjusters. Our adjusters do a great job of working with a majority of the contractors here in Nebraska. Not every estimate is perfect when it's written, but we do what we have to do to get that homeowner back to the pre-loss shape. I'd be happy to address any questions. [LB220]

SENATOR LINDSTROM: Thank you. Senator Craighead. [LB220]

SENATOR CRAIGHEAD: Thank you so much. Thank you for your testimony today and for being here. What happens if you have an insurance adjuster who goes to a client and says, you only need six tiles around your chimney at \$194 and then the client calls a roofer and the roofer said, no, you need a whole new roof? How do you come to an agreement on a situation like that? [LB220]

STEVE NELSON: Typically, we assign those to another adjuster, somebody usually with more experience. They will go out and review the claim being made by either that homeowner or their roofing contractor and reevaluate it, do a start-over. And most of the time those are favorably found for both sides. There are times where we follow all the procedures that our policy requires and we do not find damage that a roofing contractor finds. And there are people that do have to take some issues to court; we understand that. We don't want to, but most of the time those items are worked out in the benefit of the homeowner. [LB220]

SENATOR CRAIGHEAD: Thank you. [LB220]

SENATOR LINDSTROM: Are there any other questions from the committee? Senator Williams. [LB220]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom and thank you, Mr. Nelson. In that type of situation that Senator Craighead was just asking you about, what is different if the

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Banking, Commerce and Insurance Committee  
February 06, 2017

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homeowner has signed a unrestricted, complete transfer? How does that situation change then?  
[LB220]

STEVE NELSON: Well, that typically puts us in a position where according to that document that we can only deal with that contractor. Typically, when we have that situation we like to get the contractor, the homeowner, and the adjuster together to look at that item and figure out what's the right thing to do. That assignment really, in my opinion, takes the homeowner out of it and it makes us deal just with the roofing contractor. [LB220]

SENATOR WILLIAMS: So it's...in these cases where there's the substantial damage like Senator Baker was talking about you have situations where you're talking about a roof, but you could also be talking about gutters, you could be talking about stucco, and all of these kind of things. If you have that unrestricted transfer, is the homeowner removed from the process then of deciding such things as color, where you're going to paint, how you're going to do this trim, what time period it's going to be done under, is it going to be when I'm having my daughter's wedding in the backyard? Where does the homeowner's protection come in those kind of situations. [LB220]

STEVE NELSON: Typically, in those cases we don't know because we're not...according to the agreement, we're not allowed to discuss with the client, our insured. And, again, that's...and most contractors in Nebraska will...they do a good job of working with our clients, trying to get the damage repaired as properly and as quickly as possible. But, again, our job as an insurance company is to provide the funds and determine that loss and make sure the payment is made.  
[LB220]

SENATOR WILLIAMS: And one final question. You work with a multitude of roofing contractors. How many of them are asking for these unrestricted assignments? [LB220]

STEVE NELSON: To my knowledge, talking to our claims people there's two major ones in Nebraska. [LB220]

SENATOR WILLIAMS: So out of the hundreds of roofing companies that we have, we have two that are pushing this situation. [LB220]

STEVE NELSON: Most of those lawsuits and litigation is coming from the two that I'm aware of. [LB220]

SENATOR WILLIAMS: Thank you. [LB220]

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Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR LINDSTROM: Thank you. Any questions? Senator Schumacher. [LB220]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. And thank you for your testimony today. So, basically, all this bill does to try to address what you see as a problem is that it requires an estimate and the insurance company can talk to its insured. That's how it fixes a problem? [LB220]

STEVE NELSON: Those go a long way to improving the process that's there today. [LB220]

SENATOR SCHUMACHER: If an insurance company in the face of one of these assignments went and talked to its insured anyway what would be the consequences today, before this bill? [LB220]

STEVE NELSON: We have been put on notice by, to my understanding, at least one of these companies that if we talk to our insured we are possibly acting in bad faith against their contract and would possibly be sued for bad faith. [LB220]

SENATOR SCHUMACHER: There's a lot of possibilities..."possibilities" there. But have you been sued for talking to your... [LB220]

STEVE NELSON: We have been sued for bad faith and we've had those dismissed. [LB220]

SENATOR SCHUMACHER: Okay. [LB220]

STEVE NELSON: At a cost to our... [LB220]

SENATOR SCHUMACHER: I'm having a...this is kind of a follow up of Senator Brewster's question. The very first question is, how does this fix the problem of you getting an unscrupulous contractor who's telling the person who's just been through a storm that they need a whole new roof when actually they need a shingle nail? [LB220]

STEVE NELSON: Typically, we have...there are roofers...aggressive roofing companies will go out the evening after a storm, take these contracts out and try to say, you want to get your roof done, you're going to have to sign this contract today. They're not even providing them any estimate, any sense of what the damage is, and they are getting this contract to sign and then taking the insured out of the claim. These companies will then submit the claim on behalf of their new customer. They will...and it puts our adjuster in a position where he's not able to go in

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Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

and work with that client of ours up front, work on the estimate, show them the damage, and then work with their contractor in the end. [LB220]

SENATOR SCHUMACHER: But after the assignment has been made this provision that says that the assignment will not prevent the company from talking to the insured, that's water under the bridge. The assignment has been made. And if the estimate is kind of a loose estimate like we heard an earlier witness say, that, gee, it looks like it's about a \$3,000 roof job here, but maybe we could amend it if we know more or less later on, how does this...I'm looking for the nexus how this solves the problem that you've described. [LB220]

STEVE NELSON: We hope that it gives our client member or our homeowner insured an opportunity to not feel pressured to sign something that day where they actually do get an estimate. I don't know if you can stop it. I agree. I wish there was something we could do stronger. But I think this is a good first step. [LB220]

SENATOR SCHUMACHER: Thank you. [LB220]

SENATOR LINDSTROM: Thank you. Senator McCollister. [LB220]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. I assume that we can't simply outlaw these assignment contracts. [LB220]

STEVE NELSON: Well, the Legislature in the Millard Roofing case said that...post-assignment losses are allowed, and they should be allowed. I mean, if a roofing company is working with somebody and they get assignment we should make payment to them and our policyholder. We're not disputing that. It's the...and again, I provide you with an example of one of those assignments. It is a very...I think it's a very poor consumer action to charge somebody the thousands of dollars they charge if the work is not done by them. It's a very aggressive method and I don't know how we stop that. We'd have to educate our clients that that's not the way they should do business. [LB220]

SENATOR McCOLLISTER: After the work is completed with a claimant, do you go back and check the work typically? [LB220]

STEVE NELSON: Typically not. We do...typically, we make the payment for the actual cash value up front. And then when the work is done and there's verification that the work is complete we release the replacement cost funds at that time, which does help ensure that the work is done.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

But, no, not on every house do we go back and we do not inspect to make sure the work is done. [LB220]

SENATOR McCOLLISTER: Are most of the contracts that you have with people for replacement value or do you deduct the depreciation? [LB220]

STEVE NELSON: Most are replacement cost contracts. There are...we're seeing more and more times when we're ensuring that roofing surface at actual cash value and the rest of the house at replacement cost. Due to the age of roofs and the condition the roofs are in we are insuring more properties at just actual cash value roof. [LB220]

SENATOR McCOLLISTER: Thank you. [LB220]

SENATOR LINDSTROM: Any final questions? Seeing none, thank you very much for your testimony. [LB220]

STEVE NELSON: Thank you. [LB220]

SENATOR LINDSTROM: Other proponents. [LB220]

DUSTAN BIEGLER: (Exhibit 7) My name is Dustan Biegler and I own Apple Roofing. We're the largest residential roofing company in the state of Nebraska, with offices in Lincoln, Omaha, and Kearney. I've been in the roofing industry since 2000. I am supporting this bill because I understand the average homeowner doesn't experience an insurance claim but once every ten years or so on average. That doesn't offer them the ability to become educated on the process or the prevailing tactics that contractors use to induce them into contracting work with them. They have also become increasingly unable to afford the skyrocketing deductibles. When I started in 2000 I used to see deductibles of \$250 or \$500 and now deductibles are \$1,500 or above very often. One of the reasons insurance premiums and deductibles have been forced higher is because of insurance fraud and the other is the increased litigation costs that the insurance companies are spending on some of the new tactics that are out there. One of the most under enforced laws that apply to insurance claims is the process of contractors covering the deductible. The practice is already against the law, but most homeowners aren't even aware of it. It's fair to say that it's a very common practice. And like was mentioned before, you even do, you see signs...yard signs or what have you advertising that they will cover your deductible and that's because it's not enforced. This issue is causing premiums to rise as well as deductible amounts. It also puts law abiding contractors at a disadvantages as it is not enforced. One thing to be said a certainty is, when this happens either the insurance company overpaid the claim or the contractor

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

is utilizing shortcuts. If they can do the claim for less, the insurance company should be paying less because of the provision for the deductible. Neither of those benefit the general public. I understand that to enforce the law would have considerable cost. If the general public was aware of what the law was, however, they would be less inclined to break it in collusion with the contractor. I think that this would help with the cost of insurance and deductibles. Secondly, about the provision regarding the assignment of claim, there isn't anything wrong with this practice if used correctly. However, utilized improperly it can be a tool to tip the scales in the favor of the contractor and force unnecessary litigation between the contractor and the insurance company. And being in the roofing industry, I get advertised to from the same types of firms that are advertising to these other roofing contractors. And the common term is, maximize your claim. And that's what they go to the homeowner and advertise to them is, we're going to maximize your claim. They really set the homeowner up as at odds with their insurance company and a lot of people seem to...it makes sense to them that the insurance company would screw them because who wants to pay out a fair price. Right? So that's how they get a lot of these people to sign the assignment of benefit. And to answer your question of how would this stop that, it won't stop it. But it will make the environment less friendly to those tactics, because if a contractor actually has to go out and give a bid, it's a completely different story than having a bunch of guys that don't know anything except for how to get this assignment of benefits signed. It would actually have an impact. I respectfully ask that you advance LB220 and I'm happy to answer any questions the committee may have. [LB220]

SENATOR LINDSTROM: Thank you very much. Senator Baker. [LB220]

SENATOR BAKER: Thank you. Mr. Biegler, in a situation of if there's been no assignment made, will you describe how you work with the insurance company? [LB220]

DUSTAN BIEGLER: Okay, yes. So typically, in a insurance claim the insurance does provide an estimate of what they think the claim should cost. [LB220]

SENATOR BAKER: Are you there when that estimate is being made? [LB220]

DUSTAN BIEGLER: It is possible that we may be. If the homeowner wants us there when that happens, if we can be we will. Otherwise, the insurance company will send their adjuster and they will create that estimate and the homeowner may or may not share that with the contractor. [LB220]

SENATOR BAKER: So if I hire you as my contractor, I'm not assigned to you, I'm hiring you as my contractor I think I want you to maximize my benefit. [LB220]

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Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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DUSTAN BIEGLER: Well, ethically a contractor has a responsibility to make sure that all the codes are met and all of that. But when I talk about maximizing your benefit some of the tactics you might see is, a contractor is going to turn around and say, Senator Baker, I'll tell you what. I'll cover your \$1,000 deductible, but I'm going to charge the insurance company \$1,000 to set up my gutter machine. Does that...which they wouldn't charge in a competitive bid situation. Does that make sense? [LB220]

SENATOR BAKER: It does. I just want to make sure...if you're my contractor I want to make sure things are fixed right, I'd want you talking to the adjuster. [LB220]

DUSTAN BIEGLER: Correct. So as was mentioned prior, I would say 50 percent of the time there is something that may be missed on a claim. And generally speaking, we're able to work it out with the adjuster. And I'm not saying there aren't cases where you might run into an adjuster that's very tough to work with and you come at odds and you butt heads, but there are processes in place for that. And one of them is the process of appraisal, where a third party will come out and be the referee, if you will. Most everybody, as mentioned before, adheres to Xactimate pricing, which is set by a third party. And I guess if all else fails you can sue. I think that what this bill provides isn't going to stop any of that, but it sets the right environment for it to reduce the amount of that that's going on and the trend. [LB220]

SENATOR BAKER: So that is the remedy right now for a third party to be brought in to get the result? [LB220]

DUSTAN BIEGLER: That is, yes. [LB220]

SENATOR BAKER: Okay. Thank you. [LB220]

SENATOR LINDSTROM: Thank you. Any other questions? Senator Williams. [LB220]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Mr. Biegler. I think you said that your roofing company is one of the largest in the state... [LB220]

DUSTAN BIEGLER: Correct. [LB220]

SENATOR WILLIAMS: ...and you're working Lincoln, Omaha, and Kearney, so several areas. How would you describe your general working relationship with the insurance companies? [LB220]

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Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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DUSTAN BIEGLER: You know, some are tougher to deal with than others. We seem to work through most things. I'm not going to say that I've never had a disagreement that we couldn't solve on the phone, but 99.9 percent of the time, yes, you can. [LB220]

SENATOR WILLIAMS: Does your company as a practice generally use an unrestricted assignment? [LB220]

DUSTAN BIEGLER: No, we do not. [LB220]

SENATOR WILLIAMS: Do you ever use an unrestricted assignment? [LB220]

DUSTAN BIEGLER: No. [LB220]

SENATOR WILLIAMS: Okay. You mentioned in your testimony new tactics and one of those was covering a deductible in yard signs. Have you personally seen those yard signs? [LB220]

DUSTAN BIEGLER: Yes. [LB220]

SENATOR WILLIAMS: Do they have the name of a company on them that provides that service? [LB220]

DUSTAN BIEGLER: Yes, they did. [LB220]

SENATOR WILLIAMS: What is that name? [LB220]

DUSTAN BIEGLER: I can't recall but I remember in 2011, I believe, was in Omaha I saw two or three different companies. I don't know if they were out-of-staters or locals, but there were several companies. [LB220]

SENATOR WILLIAMS: Had the actual name though? [LB220]

SENATOR LINDSTROM: It had the name of the company and said, we'll cover...I've heard it on the radio. [LB220]

SENATOR WILLIAMS: That's all. Thank you. [LB220]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR LINDSTROM: Senator McCollister. [LB220]

SENATOR McCOLLISTER: Yeah. Thank you, Chairman Lindstrom. After a big storm like the first testifier talked about a bunch of out-of-towners will come in. Are they more typically...do they more typically use these assignment contracts than the folks that are located in Nebraska? [LB220]

DUSTAN BIEGLER: I wouldn't necessarily say that. However, I think that Nebraska has a limited amount of companies that do that and we would have seen more of that this year had Texas not gotten hit so hard. Most of the very large contractors that utilize that method were busy in Texas, so we really honestly got spared from what could have happened here. You would have seen a lot more of that had Texas not been hit so hard this year. [LB220]

SENATOR McCOLLISTER: Do those very same companies we're speaking of assign the contract, the repair contract to another company? [LB220]

DUSTAN BIEGLER: I don't know that. I'm not sure I understand the question, to be honest. [LB220]

SENATOR McCOLLISTER: Well, that person that comes and talks to the homeowner and gets that assignment policy may not actually...his company may not actually do the work. They would go out and contract with another company to do the work. [LB220]

DUSTAN BIEGLER: Okay, so the prevalent set up that I see of these types of companies is most of their people--I wouldn't call...they're not employees because they're not W-2, but most of them are 1099, so a subcontractor is how they're normally employed--and they, basically, each one of them is their own business. So typically they are paid on commission as to how many claims they bring in... [LB220]

SENATOR McCOLLISTER: I see. Lastly,... [LB220]

DUSTAN BIEGLER: ..or the amount of. [LB220]

SENATOR McCOLLISTER: Do those 1099 companies typically have workers compensation insurance for their roofers? [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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DUSTAN BIEGLER: For their roofers? That would be...if I answered that I would probably be speaking out without knowing for sure, but I will say that whereas all of the estimators at a W-2 company has will be covered. And if they fall off a roof they would be covered by workmen's compensation. All of the 1099 guys would not normally be covered by workmen's comp, although Nebraska has taken some better steps towards enforcing that. [LB220]

SENATOR McCOLLISTER: Thank you very much. [LB220]

SENATOR LINDSTROM: Thank you. Other questions? Seeing none, thank you very much. [LB220]

DUSTAN BIEGLER: Okay. Thank you. [LB220]

SENATOR LINDSTROM: Other proponents. [LB220]

JUSTIN BRADY: (Exhibit 8) Senator Lindstrom and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Property Casualty Insurers Association of America, mainly to share my experience. I live in an area close to Senator Baker, who was hit with the storms this summer, and went through the process not once, but twice. We happened to own two homes at the time, one that was for sale and one we were living in. And so we had the process twice. What I'm passing out is at least an example of an assignment that one of the companies provided us when they showed up at our house. And I have no doubt I was probably sleeping in law school when they went through assignments, so that asking for the assignment it didn't trigger me, nor did the fact that we represent the insurance companies trigger in my head that, hey, this might be something I want to look into. It really was the fact that I have a father-in-law who for 40 years has built homes. And I knew if I didn't show up with a estimate I was going to be in trouble anyway. So when I started asking this company to give me...very nice people. They were very...I have no doubt do good work. But when I started asking, can you give me an estimate, it was, oh, yeah, soon as you sign this form. And that was the part that then kind of set up, like I said, more so because of my father-in-law of not wanting to go back and say I didn't get an estimate, I just went ahead and hired a company. And so then that's, like I said, what set off with me, but hey, maybe I should stop and see what else is out there and then did contact other companies who were willing and happy to give an estimate. And I think that, Senator Baker, in the one case there was a difference between what the insurance company adjuster had said and what the roofing company who we selected said. But we then got all three of us there together and said, okay, now explain. I'm not going to get up on the roof, but you guys get up there and explain to me what's the difference and what's going on here. And it was worked out and it was worked out ahead of time. It wasn't a matter of, let's get through this process and then figure out who's going to pay the difference at

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Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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the end. Senator Schumacher, I understand that, no, this isn't going to stop...I mean...but I do think it will at least give homeowners hopefully pause enough with some notice to say, okay, what is going on here as opposed to, let me just sign it. Is it going to stop it? No. I know the Legislature...I know there was a bill last year that would have prohibited this, but that wasn't what the will of this committee or the body wanted to take that big a step. And so I think this is a step back to say, okay, what can we take without taking that giant leap? But you talk about moving onto rebates. We had companies say, yes, if we put this sign up in your yard, depending on how long you put the sign in your yard we can give you...pay you X. We had companies say, well, if we can put a big roll-off dumpster in your driveway instead of having to use smaller trash cans we can give you X dollars back at the end. And so that practice does happen. And, yeah, from a homeowner's standpoint it's kind of going, hey, this is a pretty good deal. I don't pay anything or I pay less, but knowing that that's not how the law is written that you're...was stuff we stayed away from. So with that, why don't I see if there are any questions, like I said, more so about our experience through this process? [LB220]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Senator Schumacher. [LB220]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. Thank you for your testimony today. What if the law had a back-out period? Right now you sign the assignment, you're locked in basically and then your insurance company gets notice within five days. I mean, if this was really a problem then why not have after you sign one of these assignments, you can back out within ten days. Give the insurance company or the father-in-law the chance to come in and say, you dummy. [LB220]

JUSTIN BRADY: Well, I think that would be great, because, yeah, I mean, to hold people out that they have to understand all of this when they're happening they're just fearful, nervous, whatever you want to call it, because their roof is leaking or they need a new roof. To give them some time to take a step back I think would be something to consider, yes. [LB220]

SENATOR SCHUMACHER: And there was no other document, no other contract that says, we'll have the work done in... [LB220]

JUSTIN BRADY: No. [LB220]

SENATOR SCHUMACHER: Just this? [LB220]

JUSTON BRADY: Sign that and then we can move forward. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR SCHUMACHER: Okay. Thank you. [LB220]

SENATOR LINDSTROM: Any other questions? Seeing none, thank you. [LB220]

JUSTIN BRADY: Thank you. [LB220]

SENATOR LINDSTROM: Other proponents. [LB220]

JIM DOBLER: Senator Lindstrom, members of the committee, my name is Jim Dobler, that's J-i-m D-o-b-l-e-r, I'm a registered lobbyist and I am appearing today on behalf of the Professional Insurance Agents of Nebraska and I am appearing in favor of LB220. On the whole, the agents believe that this bill will foster or promote a more informed decision-making process on the part of the homeowner. At least, if nothing else, it might cause them to step back and think a little bit more before they decide to enter into an assignment agreement. The agents have said that part of the deepest frustration they have is that people will come in at some point to talk to them and they have no idea what they've gotten into. So the thrust of this, obviously, it's not going to do away with assignments, but the thought was and the hope was that people would at least be more informed about what they were getting into ultimately. And with that, I'd be happy to try to answer any questions. [LB220]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you very much. [LB220]

JIM DOBLER: Thank you. [LB220]

JAN McKENZIE: Senator Lindstrom, members of the committee, for the record, my name is Jan McKenzie, spelled J-a-n M-c-K-e-n-z-i-e. I am executive director and registered lobbyist for the Nebraska Insurance Federation and my legislative committee has asked me to testify in support of LB220. I have all kinds of insurers in the Nebraska Insurance Federation, including property and casualty insurers who we share with several of the groups that you have heard testify in more detail earlier this afternoon. And we wanted to be on the record in support of the bill and encourage its advancement. [LB220]

SENATOR LINDSTROM: Thank you. Any questions? Seeing none, thank you very much. [LB220]

JAN McKENZIE: Thank you. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

TAD FRAIZER: Good afternoon, Chairman Lindstrom, members of the committee. 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 insurance companies. I believe the previous testifiers have pretty well touched on the high points. We would just add our voice to support of this bill, thinking this strikes a balance between the interests of the contractors, the roofers who could still get an assignment, but providing additional disclosures to homeowners and consumers who hopefully that way can exercise a little more control over their choices of contractor or roofer and have a little more control over the entire claim situation. And I'd be happy to try to answer any questions you might have. [LB220]

SENATOR LINDSTROM: Thank you, Mr. Fraizer. Any questions? Seeing none, thank you very much. Any other proponents. Seeing none, we'll now move to opponents. [LB220]

SCOTT VYSKOCIL: Good afternoon, Mr. Chairman, Senators. My name is Scott Vyskocil, S-c-o-t-t, and it's Vyskocil, V-y-s-k-o-c-i-l, and you can just call me Scott. I'm here on behalf of NACPO, which is the Nebraska Association of Commercial Property Owners and the ENDC, which is the Eastern Nebraska Developers Management Council (sic: Eastern Nebraska Development Council). I also happen to be a licensed real estate agent in the state of Nebraska. I work for a private firm here and I mostly practice commercial real estate, which I understand that this has not affected. However, like Senator Baker, last May I had to go through a hailstorm, if you will, and whatever else you want to call it. And I was fortunate enough, through the process I had the choice of assigning that contract or that claim. And that is one of the things that we really feel is important here is taking the right away from the consumer as being able to have their right to assign it and have somebody on their behalf. I'm an agent. My clients trust me each and every day on what I do. And they...like an attorney, if you were in trouble you'd hire and attorney. If you were...whatever it would happen to be, if you were going to sell your house you hire a real estate agent. I've bought two houses, I've never done it myself. I've always hired a residential agent. And so in this case, assigning it--and I agree with Senator Schumacher--it does not solve...it will not solve the issue. Calling the Better Business Bureau, there's other ways to do this and from unscrupulous contractors. I've seen that. I happen to sit on the Better Business Bureau board as well--however, I'm not representing them here today--so we deal with that on a regular basis. But I wanted to be concise, but just when you're considering this, just consider the choice. And so that it doesn't lead to other things, being able to take away assignment of these things, we don't know what it will do down the road. If this becomes a predicated case or legislation, then what else will it lead to? Other than that, questions? [LB220]

SENATOR LINDSTROM: Senator McCollister. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR McCOLLISTER: Yeah. Thank you, Mr. Chairman. Wouldn't you agree there are unscrupulous roofers that use this assignment technique to cause problems for the homeowners and the insurance companies? [LB220]

SCOTT VYSKOCIL: There probably are. I'm not aware of which ones or who they are, but there probably are. [LB220]

SENATOR McCOLLISTER: Is there a better way for us to deal with this problem than what you're seeing now? [LB220]

SCOTT VYSKOCIL: I feel that there is. [LB220]

SENATOR McCOLLISTER: Can you make some suggestions? [LB220]

SCOTT VYSKOCIL: Like I said, I would promote the Better Business Bureau strongly in that behalf. When I was going through this process I had day after day knocking on the door, the phone calls, and that type of thing. I think most people are aware that they've got that choice to do that. And I don't know...again, I don't know how many were unscrupulous. There very may well be, but I think that the choice needs to be there to let them make that decision. [LB220]

SENATOR McCOLLISTER: Thank you. [LB220]

SCOTT VYSKOCIL: Thank you. [LB220]

SENATOR LINDSTROM: Thank you. Senator Williams. [LB220]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. I just want to make one thing sure. You said that taking away their right to have an assignment. This, as I read LB220, it does not take away the ability to have an assignment. Correct? [LB220]

SCOTT VYSKOCIL: Well, correct. But what I... [LB220]

SENATOR WILLIAMS: Correct? [LB220]

SCOTT VYSKOCIL: Correct. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR WILLIAMS: Second thing, in your testimony you've indicated there is a problem. [LB220]

SCOTT VYSKOCIL: Well, there probably very well could be. I mean, in general, I don't know how much it is directly a problem. [LB220]

SENATOR WILLIAMS: Well, in your testimony you started out by saying, there's a problem, I just don't think this is the way to fix it. [LB220]

SCOTT VYSKOCIL: Oh, correct. [LB220]

SENATOR WILLIAMS: So you're...in your testimony you're suggesting this problem does exist. [LB220]

SCOTT VYSKOCIL: There is...and I think there is...it goes beyond that as well. [LB220]

SENATOR WILLIAMS: Thank you. [LB220]

SENATOR LINDSTROM: Senator Schumacher. [LB220]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. What about if, as an approach to this problem and consumers getting tied up and sign what they don't want to, that if there's an outstanding mortgage the person who holds the mortgage has to consent to the assignment before it's effective? That would bring independent eyes of the banker or whoever is holding the mortgage and say, listen, don't assign this without knowing more about what the charges are going to be. [LB220]

SCOTT VYSKOCIL: That's my understanding. The process that I went through was that they would only give you partial check until the work was completed and then it had to go to the mortgage company and so forth. I was fortunate enough that I had a contractor that met with my adjuster. We were all there at the same time and the insurance company cut the check at the same time. However, my adjuster was from Texas and didn't understand the local municipal codes. [LB220]

SENATOR SCHUMACHER: But what about on the front end? Before an assignment is effective, in those cases where there's a bank involved the bank has got to review or consent or ditto off on the assignment, otherwise it's not effective. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SCOTT VYSKOCIL: Correct. [LB220]

SENATOR SCHUMACHER: Okay. Thank you. [LB220]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. [LB220]

SCOTT VYSKOCIL: Thank you. [LB220]

SENATOR LINDSTROM: Other opponents? [LB220]

SAGE ROSENFELS: Hello. My name is Sage Rosenfels, that's S-a-g-e, last name R-o-s-e-n-f-e-l-s. I currently live in Elkhorn, Nebraska. I retired to Elkhorn, strange as it may seem at 38 years old. I played in the NFL for 12 years. With that I had an agent and when I was with the NFL that represented me against...with teams, obviously, general managers and things like that. I played for the Miami Dolphins for four years, lived through two or three hurricanes and saw many roofing issues, insurance issues, things like that. I had roofing damage from a hurricane. Last spring when I was doing some of my spring clean up I noticed some damage up near my roof and on my siding. And it looked like some water was working its way into behind my siding. So I called up my contractor and they came out and they inspected my house and said, you've got some damage up here. You need to make a claim. So I called my insurance company, made a claim. They came out the next day and they refused to look at my roof. They refused to look at my siding. They said that I had stated that I have internal damage in my house, which there was none. As the gentleman and I were discussing this another insurance adjuster walked up that was partnered with this man and had a 30-foot ladder. He was there to, obviously, inspect the roof. But they refused to and so they left without ever looking at my roof, looking at my siding, looking at my gutters, looking at anything. I then talked with my contractor, ended up I guess hiring them as an agent to help me deal with this issue. And I'm no roofing expert, I don't know much about houses, though I've owned five or six in my life. So sure enough after multiple e-mails back and forth with my insurance company, phone calls with my insurance agent, they finally sent another adjuster out. And very easily my contractor and the adjuster walked around my house, got up on my roof, and found all sorts of damage. Without being represented really by my contractor, I'd probably still have damage on my roof, which could have possibly lead to many more things. I ended up having some window damage, I am having gutter damage and roofing damage. None of this I would have known. None of this I would have known the severity of what can happen if you don't replace a window or a gutter or a roof or something like that. It's not my expertise. And so I am really just here to share my story. I understand the value of representation. I understand the value of sometimes insurance companies are on your side, sometimes they're not. Sometimes a general manager of an NFL team is on your side, most of



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

the time they're not. They're trying to get the best deal. And so I hired an agent out of college, it worked out well for me, and I was very happy that I could hire somebody to represent me because I'm no expert. One, I'm not an expert in insurance and I'm not an expert in roofing and housing and gutters and things like that. And without that...now I have a new roof and new gutters and things are fine. But it was a very confusing and difficult process to finally get somebody over the course of a few months to actually come out and look at my damage. It seemed like the situation, they try to stall as much as possible. I was also probably the first one in my neighborhood to file a claim. My assumption was that that insurance company did not want...you know, once one person gets a roof redone, next thing you know a lot of roofs need to be checked and looked at and redone. So it seemed like to me that the insurance company was stalling from that aspect. So again, I am just here really to tell my story and having somebody represent me was extremely important and now I have things fixed at my house which needed to be done. [LB220]

SENATOR LINDSTROM: Thank you. Thank you very much. Any questions from the committee? Senator Baker. [LB220]

SENATOR BAKER: Thank you. Mr. Rosenfels, you're not the guy that quarterbacked Iowa State to a victory over Nebraska, are you? [LB220]

SAGE ROSENFELS: I am not that guy. I wish I was. [LB220]

SENATOR BAKER: Okay. [LB220]

SAGE ROSENFELS: But, no that would have been somebody after me. I was 0 and 5 against the Huskers. [LB220]

SENATOR BAKER: Oh, okay. [LB220]

SAGE ROSENFELS: We almost beat them once, that was about as close as we got. [LB220]

SENATOR BAKER: Then you're welcome here. Thank you. [LB220]

SENATOR LINDSTROM: Thank you, Senator Baker. Any other questions? Seeing none, thank you for your testimony. [LB220]

SAGE ROSENFELS: Thank you. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR LINDSTROM: Other opponents. [LB220]

CHRISTOPHER BOBER: Good afternoon. Thanks for having me today. My name is Chris Bober, C-h-r-i-s B-o-b-e-r. I was asked to come here and share my story today about how I dealt with my insurance company and how important it is to have someone represent you. I'm a licensed real estate broker, I've been licensed in Nebraska for about seven years. I'm also licensed in Iowa. I know what it's like to represent people, to have a fiduciary duty to look out for their best interest. And I'm very bound by license law at what I do, always to put my client first. I am also an NFL veteran. I played eight years in the NFL. I relied on my agent to act on my behalf several times through several contracts and I trusted him to do so because I'm not an expert at negotiating contracts in the NFL. So really quick, I want to tell my story of what happened to me and how my contractor was very instrumental in protecting me. Last year on May 11 we had a substantial hailstorm. I live in the Indian Creek in Elkhorn and I sustained a lot of damage. I immediately called my insurance agent, told him about it. They told me to call an 800 number, which I did. I called my contractor, told him about it as well. They came out I think the next week and a gentleman from Des Moines came, not a resident here. Apparently they had a lot of claims so they needed help. Guy comes out to my house, I had my contractor present or one of their people there, they walk around, he goes up on the roof, he measures stuff, looks around. And mind you my house at this point, the roof is in shambles, pieces are falling off, several pieces of trim board and siding are ruined, cracked, eaten away. And the gentleman comes off my roof, looks me right in the eye and says, I don't see any damage. He says, I don't believe there's damage. He gives me an explanation about the type of depreciation and deterioration on a cedar roof. Says that I have wood rot; they don't cover wood rot. And really basically said there's nothing they can do for me. So he leaves. Obviously, I was not very happy. Questioned me...I didn't really get into it with him because I had my contractor there, he was just kind of was okay. So what I had to do was, we ended up turning it in that there was hardly any damage. And my wife is upset, I'm upset. My insurance company was American Family, by the way, and they really didn't help us out at all. So my contractor, what they did is they flew in their own engineer, looked at the house, submitted a form--and I'm going off my best memory here--but submitted something to them. The insurance company comes out, says, okay, we'll bring our engineer out. They all go through it together and say, yeah, you need a new roof and they go ahead and get it done. Now I am also continuing to deal with them because I also...if you can imagine a storm that is going to trash your roof, there's lots of damage everywhere else. The insurance company has given me five different adjusters for five different people to tell the story over and over again to. They refused to cover a lot. They basically said that, we don't see any damage. I'm like, well, you gave me a new roof. And your first adjuster came out, in my opinion, lied to my face so I don't have a lot of trust in my insurance company. So I believe it's super important to have someone on your side to go to bat for you. And that's what my contractor did, they went to bat for me. I'm still in the process of trying to get windows and siding done on my house and my house looks horrible. I can't sell it if I want to. If I tried to sell my house I would

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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get tens of thousand dollars less because of the damage. And I'm incurring damage continuously because of the water that continues to get in. Yet, I can't get my insurance company to agree that there's any problems. And I did an assignment, like we're talking about here, my insurance company just goes right around it, calls me all the time. So I am a big, big, big supporter of being able to assign your rights to people who are experts. I'm an expert in the real estate field. I have tons of people call me about their assessments. I'm going to help them with the valuations so that they can be represented correctly and their house is assessed correctly. I think it's the same thing with insurance. When it comes to filing a claim and those processes, I'm not that expert. I'm an expert in real estate, but I'm not an expert in the insurance field. So at this point I wanted to share my story, I wanted to tell how important it is to have someone on your side and the ability to do that. And I'm against any way of restricting that, because I think people need to be represented by experts when the time needs. Thank you. [LB220]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Senator McCollister. [LB220]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. Your insurance policy, was it replacement value or depreciated value? [LB220]

CHRISTOPHER BOBER: To the best of my knowledge, I believe it was replacement value, because the way it worked...again, I'm trying to remember the words correctly. I can't say I'm 100 percent correct, but they gave a check, they sent it to us. We had to send it to our mortgage company to be signed. And then that was for part of it, like half of it. And then they released the rest of it...I think they called...the depreciation, I'm not sure, I don't remember the exact words, but then they released the rest of it afterward. So I believe it was for replacement cost. [LB220]

SENATOR McCOLLISTER: Okay, thank you. [LB220]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. Other opponents? [LB220]

JAMES EGGERS: Good afternoon, Senator Lindstrom and committee members. My name is James Eggers, E-g-g-e-r-s, my wife and I own Millard Roofing and Gutter Company in Omaha, Nebraska. That was a tough hour of listening to testimony by the opponents. For me, owning a very large roofing company here in Omaha--I don't know how you would gauge whether you're the largest or not--but to listen to the insurance industry act as though they're a victim to a small business like mine was very difficult. I also noticed that they didn't bring any homeowners that were upset. They didn't bring anybody that said, hey, these contractors are bad. I didn't hear anybody say, you know, Millard Roofing took advantage of us. If you look at our assignment...I

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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believe someone brought you something that looked like our agreement. If you look at it, it's very clear. And what it does is it creates an exchange between two parties. And the exchange is, in exchange for their claim and the proceeds that are allowable under the policy we're going to take on the scope of work that we find. That means if Senator Williams' house has a damaged roof that's totaled, windows that are bad from damage of gutters, whatnot, we've taken on that liability. And the exchange is, all he has to pay is his deductible. It's verbatim in our agreement. He pays his deductible, we take it on, we go after the insurance company to make sure that they do the right thing. There's no prejudice. The Supreme Court ruled in our favor saying, absolutely, there's no prejudice whether I sue them or the homeowner sues them. What's being lost here is the insurance company wants to gut the right to assign the benefits of an insurance claim under the property loss. If you look at LB220 and you looked at the first line, they talk about all the rights of an assignment. If you go and look on page 2 under the assignment and then you look at what rights the contractor will be given, it's basically all that we're given is the right to be a copayee. How does that work? I'm going to take on all the risks for Senator Williams' house, the tens of thousands of dollars in costs to have all this work done so that I can be a copayee? That's already a right by a homeowner. Who's going to look at these roofs? Who's going to look at the siding? Who's going to look at the gutters on these houses, because I can tell you companies like Apple Roofing, they get leads from insurance companies. Matter of fact, I have customers right now that have told me firsthand that companies like Apple Roofing don't upset the insurance companies because they want to maintain the business that they get led to. I hate to say it, but that's a fact, that's the truth. And at the end of the day insurance companies are the big boy in the room. We're the little guys. Why haven't we lost in court? I've been to court over and over again. Why have I never lost in an insurance claim? Why has a judge never said to us, hey, you acted inappropriately here. You lose. Not only do we win--and, by the way, in the Supreme Court--the Supreme Court ruled that not only did we win, but they said that we deserved the attorneys fees throughout the whole process. Thankful to have this opportunity to communicate my frustration and I'm open to any questions. [LB220]

SENATOR LINDSTROM: Thank you for your testimony. Any questions from the committee?  
Senator Schumacher. [LB220]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. Thank you for testimony. The document that you said you thought somebody handed out, did it look like that? [LB220]

JAMES EGGERS: That looks like our... [LB220]

SENATOR SCHUMACHER: Okay. When you get this signed, do you get anything else signed?  
[LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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JAMES EGGERS: Do I get anything else signed? [LB220]

SENATOR SCHUMACHER: Right. Do you make any commitments to do any work? Do you...? [LB220]

JAMES EGGERS: If you look at that page, there are boxes which we identify as being a loss on the property: roofing, guttering. [LB220]

SENATOR SCHUMACHER: Yeah. I don't see anything on here that says you're going to do anything about those boxes. [LB220]

JAMES EGGERS: Okay. [LB220]

SENATOR SCHUMACHER: Where, if this is the only thing that says... [LB220]

JAMES EGGERS: It says agreement to proceed, correct, Senator? [LB220]

SENATOR SCHUMACHER: Right, but then when I read the print, there's no agreement at all. It doesn't say you're going to do anything. It doesn't quote a price. You're not bound at all. You could run this through a shredder and not have any liability if you wanted to, if this is the only agreement. [LB220]

JAMES EGGERS: I hear where you're coming from. Senator, if you think about it, this is a widely practiced process in an insurance loss. This is a post-loss claim. There's no additional damage that I can create to the property to create additional loss to the insurance company, just like you would if you got in an accident in your car. I just got in an accident, went to the local dealership, dropped off the car. They called me and said, hey, we got the go ahead for you to sign off your benefits. I sign the benefit sheet. I don't get an estimate up front. They then work with the insurance company on all the things that are required to replace the car back to its condition prior to the accident. Very similar, I have a dentist that does the exact same thing. Walk into his dentist office, he has an assignment of rights form. It's very similar to that other than talking about a property loss, it's identical. [LB220]

SENATOR SCHUMACHER: But I'm still reading through this and I took some time to highlight it. I don't find a single phrase in here that says: we, Millard Roofing, agree to do thus and so in exchange for the promises made by the consumer herein. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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JAMES EGGERS: The only way I'm going to get paid is if I do work. So that's the assumption on any contract that we would provide to a homeowner. [LB220]

SENATOR SCHUMACHER: The essence of a contract is mutual promises. Where is your mutual promise in this agreement? [LB220]

JAMES EGGERS: Without having the contract in my hand to verify it, would it be okay to? [LB220]

SENATOR SCHUMACHER: The page hand him the contract? [LB220]

JAMES EGGERS: I can grab it. [LB220]

SENATOR LINDSTROM: Mr. Eggers, please sit in the seat. Page. [LB220]

JAMES EGGERS: Sorry. Thank you. Could you restate your question, Senator? [LB220]

SENATOR SCHUMACHER: Where is your mutual promise? Where is it in there that you say we promise to do something? [LB220]

JAMES EGGERS: One second, please. [LB220]

SENATOR SCHUMACHER: Okay. [LB220]

JAMES EGGERS: If you look at line 3: The undersigned agrees to cooperate in the insurance claim submittal process in order to obtain reimbursement for payment or reimbursement of such work and services, subject to any deductible the undersigned may owe as a homeowner. [LB220]

SENATOR SCHUMACHER: The undersigned refers to the consumer. [LB220]

JAMES EGGERS: The homeowner. [LB220]

SENATOR SCHUMACHER: The homeowner, yeah. So where is your promise? [LB220]

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Banking, Commerce and Insurance Committee  
February 06, 2017

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JAMES EGGERS: Well, my promise is we outline the cause of damage, what materials were damaged, the date of the incident, the claim number. We're there to do repair work. [LB220]

SENATOR SCHUMACHER: Where does it say you're there to do repair work and you'll do that repair work? [LB220]

JAMES EGGERS: Okay. Well, this agreement has been upheld by the courts as a binding agreement. I don't want to get into the minutia of the agreement. I understand where you're coming from and I appreciate that. [LB220]

SENATOR SCHUMACHER: Okay. Thank you. [LB220]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Senator Williams. [LB220]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. Thank you, Mr. Eggers, for being here. [LB220]

JAMES EGGERS: Thank you. [LB220]

SENATOR WILLIAMS: A couple of things that I just want to testify...clarify in the testimony. You talked about it was difficult to be here with the testimony that was heard for the first hour. So let's talk about that and see if you can dispel that. I think one of the testifiers talked about that they deal with hundreds of roofing companies, but there's only two of which--I assume you are one of them--that uses these unrestrictive assignments. Is that the case? [LB220]

JAMES EGGERS: I know that to be not true, Senator. [LB220]

SENATOR WILLIAMS: Okay. But you did hear testimony from the testifier from Apple Roofing that they don't use it and don't use it at all. Why do you find it necessary to use this? [LB220]

JAMES EGGERS: Well, there's different types of contractors and why it's necessary, there's so much time and energy that goes into a claim. This is one file for roof, windows, and gutters. There's so much correspondence required, so many code requirements required. The minute...we have administrative staff that all they do is fax information to the insurance company so we can give them the information that they need to recognize their duty under the policy. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR WILLIAMS: So are you going to get paid more with the assignment? [LB220]

JAMES EGGERS: No, no. [LB220]

SENATOR WILLIAMS: So I'm still...if you're going to get the same...paid the same amount by the insurance company either way, tell me why you need it again. [LB220]

JAMES EGGERS: Because if I don't have a voice at the job, if we don't have a voice with the adjuster, they will literally bring a contract or they'll do it for whatever price the insurance company wants. They love storm chasers. Do you know why they love storm chasers? Storm chasers only do roofs, maybe gutters. They don't look at the windows, they don't look at the deck. They don't look at anything. All they do is go up there, do it for whatever the insurance company writes up, maybe fight about a code requirement for ice and water shield, but that's about it. They don't look at the flashing. They don't look at the skylight. They don't look at the chimney. They don't look at all of the things necessary to tie it all together so it's back to its condition prior to the storm. [LB220]

SENATOR WILLIAMS: So you feel you have to have the assignment to have that voice? [LB220]

JAMES EGGERS: What ends up happening is they put so much pressure on the homeowner when we're pointing these things out, they will literally say--and I have this documented--I literally have an insurance company telling a homeowner if they fire us--this is with an assignment--if they fire us they'll approve the roof. This happens on a daily basis. This isn't something that is just random. [LB220]

SENATOR WILLIAMS: Do you agree with the first opponent that there is a problem? [LB220]

JAMES EGGERS: No. I think the real problem lies with the way the insurance companies are held accountable. I don't think in my industry...unfortunately, I've got an industry with owners that will take whatever they can get and they leave the homeowner with something less than what they had prior to the storm. And what that does is that breeds a funnel for the insurance industry to minimize loss. You know, I heard the insurance industry talk about how much money this is costing them. Go look. They make billions of dollars every year. They make three...two, three, billions. It's nonstop how much money they make. I don't think they've ever really had a loss. [LB220]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR WILLIAMS: Just a couple more questions. And you do understand that LB220 does not remove your ability to take an assignment. [LB220]

JAMES EGGERS: The only right it leaves you with is making us a copayee. It removes all the representation rights. If you read it, it clearly says will only, will only allow us, the contractor, be a copayee. [LB220]

SENATOR WILLIAMS: And my last questions have to do with the rebates. Have you, like the other roofers, seen signs in yards that rebates on the deductibles? [LB220]

JAMES EGGERS: No, that's against the law to offer a rebate. [LB220]

SENATOR WILLIAMS: You haven't ever seen a sign like that that would indicate... [LB220]

JAMES EGGERS: I've never seen a sign with a deductible...we will pay deductible. I know that to be illegal. [LB220]

SENATOR WILLIAMS: Okay. Thank you. [LB220]

SENATOR LINDSTROM: Senator Baker. [LB220]

SENATOR BAKER: Thank you. Mr. Eggers, I'll go back to my own experience. I had damage. I reported it to my insurance company and they suggested some local roofers. I said, no, I know who I want to do this. So at that time when the adjuster was coming he said, I want your contractor there. Do you do that? [LB220]

JAMES EGGERS: Absolutely, we... [LB220]

SENATOR BAKER: Are you there when the... [LB220]

JAMES EGGERS: Absolutely, we actually...sorry to interrupt, Senator Baker. We absolutely tell the homeowner we really, really need to be there or this process is going to slow down. We don't want to go back and start over. [LB220]

SENATOR BAKER: But do you find the insurance companies ask you to be there also?  
[LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

JAMES EGGERS: No. State Farm will ask up front depending on if it's a cat team or a local, just kind of depends who you get. And it depends on the work load of the adjusters. These guys are getting 15 claims in a day and I don't know how they do it to be honest with you. So they need to get their claims in, in a certain time frame. In the state of Nebraska they have 15 days to get that in, otherwise they're in default of doing it the right way. We rarely see it across the board within 15 days. Does that help? [LB220]

SENATOR BAKER: Thank you. [LB220]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you for your testimony. Other opponents. [LB220]

THEODORE BOECKER: Ted Boecker, Jr., speaking on behalf of opponents. [LB220]

SENATOR LINDSTROM: Would you please spell your name for the record. [LB220]

THEODORE BOECKER: Full name is Theodore, T-h-e-o-d-o-r-e, Boecker, B-o-e-c-k-e-r, Jr. I have the perspective as both an attorney that litigated the Farm Bureau case that's the most recent precedent on this issue, as well as a person that's a homeowner that's gone through this process. And I think there are a number of misleading statements by the insurance companies that reflect what this really is. This is not for the benefit of homeowners. You've probably heard this before, but rather than the homeowner's insurance protection act, this should be called the insurance company protection act because all this bill is doing is taking the rights away from homeowners. There have been three prior committee hearings on some variation of the bill, back in 2011, 2015, and 2016. On not a single occasion has a homeowner come and testified and said this has been disastrous. And what's really ironic, if you go back to Senator McCoy's bill--and Senator McCoy, with all due respect, was a roofing contractor that had the process of working with the insurance company so he didn't take the assignment notion--but back in the committee hearing transcript for that legislation, the origination of the Nebraska homeowners insurance act, the testimony from the insurance company was not that there were one or two contractors doing this, that it was the industry standard and norm and that the suggestion to committee members was that this is how storm chasers operate. Now the reality--and this is what's shocking to a layperson not involved in the legislative process--none of the contractor clients I work with even knew about the bill or the law. Last year when the bill came up, you know how we found out about it was because I was doing research in connection with the Supreme Court brief and saw that the attorney for the insurance company was arguing before a committee that assignments are invalid...excuse me, assignments are valid under Nebraska law and that's why we need some regulation. And in a brief to the Supreme Court, he was saying that they're invalid. And we stumbled on upon it and contractors learned about it and it's not just two contractors, it's multiple

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

contractors. Since the decision I've been contacted personally by not only other lawyers but other contractors that wish to pursue it. The reality is, is that contractors--and I know one, for example, that wants to proceed forward--were sitting on the sidelines because they didn't want to invest the time and effort in litigating these type cases until they knew how the Supreme Court was going to rule on the assignment notion. And so that's a little bit misleading by the insurance company. Why are there two contractors they referenced? Because that's the two that have taken the lead. There are a multitude other contractors that use the same process and that's what they said to induce this legislation at the very outset, by telling that committee that it was the industry standard. The other alarming thing about this bill is that the introducer in response to a direct question suggested that assignments can still occur. I don't know if he doesn't know the import of the language and it was drafted by the insurance industry or if it's being a little coy. But the bottom line is, if this bill was adopted the Farm Bureau case that recently was before the Supreme Court, we could have never proceeded with. Because the bill unambiguously states: "The assignment shall only authorize a residential contractor to be named as a copayee for the payment of benefits under a property and casualty insurance policy covering residential real estate", that means we can't sue. And it goes back to precisely what the Supreme Court was saying. And I know you're busy people, but I would ask or suggest that one of your legislative aides look at the Supreme Court oral argument. And I have a transcript of it, but listen to it. The Supreme Court was asking, what's the prejudice? If these contractors are in the wrong, a judge or jury will decide it. We haven't lost a single case. The cases have been brought, and we've gotten 100 cents on the dollar or they've gone away for five- and six-figure payments by the insurance companies. Not a single occasion has the insurance company won one of these cases. And that's the ultimate protection. No homeowners are getting duped or misled and that's just a complete red herring. The other...there are several other fallacies in this law that are just traps, one of which is the suggestion to homeowners that they face criminal or civil penalties by agreeing to the deductible reimbursement notion. That's false. If you look at an insurance policy, what the deductible language says is, we pay over the deductible amount of X. It doesn't say you have to pay it. It just says, we pay over X. There is no violation of any criminal law if a homeowner entered into such an agreement. Also, the other thing they attempted to sneak in here is... [LB220]

SENATOR LINDSTROM: That's your time, sir. We'll see if there's questions for you. Are there questions from the committee? Senator Williams. [LB220]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. Would you like to make your last point so we get that on the record, please? [LB220]

THEODORE BOECKER: The other misleading portion of the bill, among others, is the suggestion that the insurer has the right to pay only for the cost to repair or replace damaged property caused by a covered peril. That's snuck in there because this is what the continual fight

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

is in these litigation cases and that's what the Farm Bureau case is about. Farm Bureau, the whole roof needed to be replaced, the insurance company said only two sides sustained hail damage. Contractor said, you got to replace the whole thing because even though the two sides weren't damaged, you can't tear off two sides and leave the other two damaged. It just didn't work. And so what the insurance company was saying in that case is, we're not paying for those two sides because you can't show there was hail impact. There wasn't direct damage. And we were saying, but it's indirect damage and the judge agreed with us. And the Supreme Court affirmed and I personally had that same thing on my home, the same issue of indirect damage, that again, I went through the same process. Five adjusters around, they went from \$1,900 to tens of thousands where they're only going to replace shingles to the entire roof. [LB220]

SENATOR WILLIAMS: Thank you. [LB220]

THEODORE BOECKER: And it comes down to the notion of the direct or indirect damage. And that is a loophole they're trying to sneak through and it's very dangerous. [LB220]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Senator Schumacher. [LB220]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. You seem to draw meaning from the sentence at the bottom of page 2: "The assignment shall only authorize a residential contractor to be named as a copayee for the payment of benefits." I don't see that, at least in my reading of it, that that limits your assignment. It's they can be only a copayee, not the payee, that there can be other provisions of the assignment. [LB220]

THEODORE BOECKER: The principles of exclusion...I can't remember the Latin phrase but *expressio unius alterius*, the state identification of one thing is the exclusion of others. I guarantee you the insurance company is going to come back...and the purpose of this is to defeat the Farm Bureau case. That's the reality. That's the real purpose of it. And what they're going to say is, you only have the right to be named as a copayee. You don't have the right to sue. In the Farm Bureau case, the Nebraska Supreme Court said, the vast majority of jurisdictions throughout the country recognize the right to sue based on the assignment. And why, because that's the people that hold the insurance company accountable. You're not going to have an 85-year-old widow incur tens of--and that's literally from the Supreme Court transcript--she's not going to incur tens of thousands of dollars and fight her insurance company over getting all of her roof approved, but a residential contractor would. And just if I may, Senator Schumacher, your question about the consideration, if you look at the assignment that's part of a process because I'm familiar with that contract. It's the same contract that underlies the Farm Bureau case. That's the initial contract. After, if the contractor comes out, goes over with the homeowner

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

the Xactimate, this is what we're going to do, etcetera, etcetera. What the contractor, their consideration is, if you look at it says, we're going to perform all insurance repair work. It is enforceable. If they walk out and they fail to live up to their end of the bargain, they can be held liable for failing to perform the insurance repair work. But what that initial document does is allows the assignment and the authorization received forward. So then a contractor like Millard Roofing, they go in do the Xactimate, we're going to do your roof, we're going to do your gutters, we're going to do your siding. That gets submitted to the homeowner and the insurance company. Then there's that whole back and forth of the process. That's the same exact document frankly that I signed to get my home approved when the insurance company gave us \$1,900 on a claim that ended up being tens of thousands that they denied everything on. And what they are obligating themselves to do is to do the insurance repair work. And if they don't, the homeowner can sue them and hold accountable. And frankly, judges have said that that's an enforceable agreement. That's the agreement that underlies the Farm Bureau case. But the bottom line is, nothing about this bill is getting to the protections that they suggest that they're combating. You want to combat these issues? Have a registration process, have an insurance process. There's already a three-day notice process where homeowners can back out. Affect that process. Taking away this right to assignment and the incentivization is not the appropriate method to correct these issues and it's very one sided. [LB220]

SENATOR LINDSTROM: Any other questions? Senator McCollister. [LB220]

SENATOR MCCOLLISTER: Thank you, Chairman Lindstrom. Could we extend the three-day period to ten days or more? [LB220]

THEODORE BOECKER: Sure. I mean, that's one way. It gives the homeowner, if they have second thoughts, to back out. But that's not the issue that I see arising in these cases. No one wants to back out because think about it, if you're the homeowner I'm basically saying...and I had this problem. I don't...I mean I've litigated this case and as I said in front of the Supreme Court, I don't know anything about siding or gutters. I say, talk to these guys. I don't even want to be involved. Even though I showed up at meetings and nothing about the assignment excluded me from the meetings, I was there, but I didn't know what I'm talking. I need a voice and someone to hold them accountable. And here's the reality, this is what they do: They do the replacement of the entire roof. That's the risk then on them. And same with me and same with the Farm Bureau case. They do the entire roof. If they end up being wrong, they eat that expense. I would have gotten a \$30,000 roof and they would have gotten the \$1,900 from the insurance company and risked the other \$28,000 for replacement of the whole thing. I was...I got a windfall. I got a benefit out of it because I shifted that risk to them and I don't have to take the fight and I don't have to undertake the risk, just as Howard Hunter in the Farm Bureau case, he got to shift on to them. Okay, you say the roof needs to be replaced? Replace all four sides. And if you only get two, that's on you. There's no downside. [LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

SENATOR McCOLLISTER: I understand that, but you'd agree that there's a couple of different kinds of insurance policies that the full replacement value and only cover the depreciated amount, correct? [LB220]

THEODORE BOECKER: Sure, and that's up to the contractor to explain at the start because the replacement cost value, that's what typically I see in all these disputes are always replacement policies because contractors are wary. If you're a contractor, think about it logically, you're not going to step into a depreciated value policy because you then can't recover, because if you're taking the assignment of the proceeds from the insurance company you're stuck if you take that depreciated policy. Now maybe something could be added to a bill with other regulatory requirements about drawing that distinction or having, you know, something spelled out to consumers. But really a contractor is only going to take the assignment on a replacement policy because it's foolish to do it on a depreciation. And if they do take it on a depreciation and they don't realize it or know about it, then they should be stuck with it. [LB220]

SENATOR McCOLLISTER: The State Farm case was full replacement value? [LB220]

THEODORE BOECKER: The Farm Bureau...there's two cases: Farm Bureau was full replacement. And we also have a State Farm case where that's another judgment that didn't go to the Supreme Court where we also won where the insurance company, after putting us through tens of thousands of expense on a \$2,800 claim, confessed judgment before trial. And we were paid the full \$2,800. [LB220]

SENATOR McCOLLISTER: What kinds of policies do most homeowners have? [LB220]

THEODORE BOECKER: Most that I see in this context, because the contractor has to be foolish if they're going to do the depreciated value, they're replacement because unless the contractor spells out with the insurance company...with the homeowner on the depreciated value, it's too much risk for the contractor. So when I see the cases in litigation, they're all replacement. And just one other thing, on this number of cases, one reason you see the number of cases, a couple of the judges we tried to consolidate cases. We tried to bring 40 or 50 at once because they all are about certain things: ice and water shield or gutters or what they will approve. And some judges have said, nope, you can't consolidate them. You have to sever them so they all have to be separate. And so that's why there's somewhat this misnomer of these hundreds of cases because there's a lot of these, like, \$2,000 or \$3,000 cases where you try to consolidate them because they're a common issue and a judge says, no, you have to separate those out. So you have to refile a bunch of them. And so that's why there are some of these big numbers and you'll see a lot...and ask some of the following roofing companies, there's common themes about things they deny that are contrary to Xactimate. They suggest they follow Xactimate. These contractors

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

that do the assignment, I've seen them, they follow Xactimate. It's where the insurance companies depart from the Xactimate and say we're not...even though Xactimate has overhead and profit, we're not going to pay it. Even though Xactimate has starter shingle, we're not going to pay it because...I literally heard this, you can flip over a regular shingle and not use starter shingle and it's cheaper. It's the insurance companies cutting away from Xactimate that start these fights. And the other thing about this notion of inflated costs, the insurance companies have not paid on these claims except for a few that they voluntarily settled or had a few thousands of judgments. [LB220]

SENATOR McCOLLISTER: Thank you. [LB220]

THEODORE BOECKER: That hasn't caused any increase. [LB220]

SENATOR McCOLLISTER: Thank you. One more question. Don't you agree there are some roofing contractors that use these assignment contracts to the detriment of insurance companies to take advantage of insurance companies? [LB220]

THEODORE BOECKER: I have not seen that and here's why, because the insurance company can always say, no, we're just not going to pay it. And then the contractor can come in and say, okay, they can try to recover. And that's the ultimate remedy. And that's what the Supreme Court talked about. If there's a dispute over whether something is a valid charge, then fight it out in court and that's the remedy. And if it's an invalid charge, the contractor is not going to win. But I've not seen a single case where a contractor hasn't won. And that I think is a telltale sign. [LB220]

SENATOR McCOLLISTER: Well, point of fact, going door to door three years ago I talked to a woman that she's the one who ended up paying the bill. Neither the insurance agent or the contractor ended up being on the hook, she was. So I think...she talked about the contractor she used being unscrupulous. [LB220]

THEODORE BOECKER: But that's why there can be other remedies and that's why I would wholeheartedly suggest that there are other remedies. That's...the assignment issue is not going to correct that. Where you correct those storm chasers and the bad actors, the people that don't honor their warranties or take an upfront payment, that's what I've seen homeowners complain about is when you have an upfront payment, a nonassignment contractor who says, give me \$10,000 to get started, as opposed to waiting for the insurance company to pay the proceeds. Those are the scoundrels and those are the guys that take advantage of people. And I agree there should be a process. Have a bond process, have a registration process, have a minimum insurance requirement process to weed out those unscrupulous people and hold them

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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accountable. But if you're going to do that, then there also should be the reciprocal, some method to hold these insurance companies accountable when they drag your claim out for two or three years and they send five different adjusters and they have that time value of money of holding on to all that money. I think we're just suggesting there should be some sort of balance and this isn't a balance. All this is doing is taking a right and remedy away from a homeowner. [LB220]

SENATOR McCOLLISTER: Thank you. [LB220]

SENATOR LINDSTROM: Thank you. Senator Schumacher. [LB220]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. When you sue an insurance company because they've wrongfully denied coverage, the courts allow attorney fees, don't they? [LB220]

THEODORE BOECKER: Yes. [LB220]

SENATOR SCHUMACHER: And is that one of the reasons that the insurance companies will settle in many cases, because they want to avoid the insurance fees and it's just cheaper to pay the bill? [LB220]

THEODORE BOECKER: I've never found that because none of the settlements have been of the magnitude of what attorneys know as basically settlement value where they're offering, you know, \$10,000, \$20,000. Rather, they're six figures. And here's the reality. This \$2,800 claim against...judgment we took against State Farm, they brought in an attorney from Chicago and one of the top attorneys here from Lincoln, did four depositions, multiple hearings, briefs, etcetera. Their bill was probably \$30,000 to \$40,000. And at the end of the day, they confessed judgment on the \$2,800 and that's what we were stuck with because we couldn't recover attorney fees because they confessed for the entire balance that we were claiming. And so we were out of luck. No individual homeowner is going to assume that risk. So we've not had any of these, oh, just go away. We'll pay you some sort of nominal value. They've all been...the ones I'm aware of, we've either gotten judgments for the full amount or they've been of such significance that it's more than a nuisance value. [LB220]

SENATOR SCHUMACHER: And the ones you've gotten judgments, you've also gotten attorney fees. [LB220]

THEODORE BOECKER: Yes. [LB220]



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR SCHUMACHER: Thank you. [LB220]

SENATOR LINDSTROM: Any other questions? Seeing none, thank you very much. [LB220]

THEODORE BOECKER: Thank you. [LB220]

SENATOR LINDSTROM: Other opponents. [LB220]

STEVE SHANNON: (Exhibit 9) Thank you, Chairman, committee. My name is Steve Shannon, S-t-e-v-e S-h-a-n-n-o-n, and I am opposing the current bill, LB220. I provided you guys some information there, I wanted to pass that out. On the top page is a copy...I just took a quick sampling of claims that I have worked, personally worked, in 2016 under the company, Disaster Response Group. I am an owner of that or a managing director. I also have included a copy of my resume which I'll go over here briefly after this. Now this quick sampling just to kind of show, I excluded the homeowners names and just inserted a A-B-C, alphabet; the year the assignment was made; the initial carrier's adjuster estimate prior to the assignment; and then the agreed amount that the insurance company agreed to pay after the assignment was issued. I also included in there the change in the scope of damage in favor of the homeowner because of the assignment, and our involvement. And then I also put a carrier scope of damage increased by and then the number of times that it increased. The reason why I prepared this sampling is to show that there is a problem. And the problem isn't necessarily the contractors; and I would agree there are contractors that are probably doing the wrong thing and aren't the best contractors. However, just with this small sampling I think we could all agree that it's pretty alarming that when you look at the average, that the average scope in the sampling tripled. So what does that mean? That means when we go out and get involved, the initial adjuster is not thoroughly investigating these claims. They're certainly not properly estimating these claims either. We use Xactimate. We use Xactimate exclusively. If Xactimate...which is an industry standard, by the way; it's used by 95 percent of the industry. Xactimate looks at 400,000 estimates a day to come up with the median price for the market. So I believe some of the proponents talked about inflation of estimates. That's just simply not true. The insurance company is going to pay what they know they owe...or eventually are going to pay what they know they owe under the policy. Also I think an issue, too, when we look at this is the inadequate training and experience. I believe the Farm Bureau rep--I believe his name was Steve--talked about if the initial adjuster didn't get it right the first time and the contractor has an issue, they send a more experienced adjuster out the second time. So that is alarming to me, because that tells me that if the homeowners or the insured's, policyholders are not getting a contractor to do a thorough investigation, that the insurance company is getting away with sending inexperienced people out. And these people are not getting a fair shake. As far as my resume, I do own Disaster Response Group which I believe you guys have copies of the contract and our assignment which I'd be happy to discuss with you if...with any questions.

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Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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Also, I own Valley Boys Roofing, which in 2013 and 2014 is what these guys were talking about as far as some of the cases in litigation. I'm also a construction expert. I went out and received a...went out and pursued my all-lines adjuster...independent adjuster license. Nebraska unfortunately does not have any adjusting laws, no licensing requirements. So I went and designated Texas as my home state to get my independent adjuster license. What does an independent adjuster do? They represent insurance companies. I also went out and got my public insurance adjusters license: also, again, Texas. Nebraska does have an insurance consultant license, which I have on application right now. I had a conference call with Mr. Range, lead counsel (sic: Director) for the Nebraska Department (of Insurance), is my understanding, and then one of their licensing officers as well. Be happy to discuss that. I've also been a certified insurance appraiser. I belong to Windstorm Insurance Network, which both has policyholder advocates as well as insurance company representation. We meet at a conference and discuss these very issues. As far...I've also included in this packet...I know we don't have enough time today to go through everything, I know somebody...there's a couple of e-mails that you guys will see in there that I've attached. I've also again blanked out the names. The first one is about American Family. The second one, I know Farm Bureau, again, talked about their process. It's outlined clearly by this. [LB220]

SENATOR LINDSTROM: That's time. Thank you very much. Questions from the committee?  
Senator McCollister. [LB220]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. Who do you work for now?  
[LB220]

STEVE SHANNON: I work for...I own Disaster Response Group and Valley Boys Roofing.  
[LB220]

SENATOR McCOLLISTER: And that's...I think you probably indicated that you saw...that one of your agreements was handed out earlier. [LB220]

STEVE SHANNON: Yes, sir. [LB220]

SENATOR McCOLLISTER: Okay. So that is your company. [LB220]

STEVE SHANNON: Yes, sir. [LB220]

SENATOR McCOLLISTER: And so you've represented both insurance companies and homeowners? [LB220]

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Banking, Commerce and Insurance Committee  
February 06, 2017

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STEVE SHANNON: From 2006 to 2010 under Valley Boys, I was a State Farm preferred service provider. So State Farm sent me out directly to insureds' homes or their insureds' homes where I wrote the claim, typically by myself without an adjuster, submitted it to State Farm and then performed the work. But, yes, I have worked on both sides. [LB220]

SENATOR McCOLLISTER: So you're not a contractor yourself. [LB220]

STEVE SHANNON: I am today, yes, sir. I'm both a contractor and licensed insurance adjuster. [LB220]

SENATOR McCOLLISTER: So State Farm would send you out to these homes, ask you for a price, and then you'd do the work? [LB220]

STEVE SHANNON: As far as going out and adjusting the loss for them? If they wanted to do so they absolutely could hire me, yes. [LB220]

SENATOR McCOLLISTER: Okay. Thank you very much. [LB220]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you very much. Other opponents. [LB220]

PATRICK MUHS: Senator Lindstrom and the committee, thank you. My name is Patrick Muhs, P-a-t-r-i-c-k M-u-h-s. I am the owner of Roofing Moose, a company out of Omaha, Nebraska. And I have also spent years of my life as an insurance adjuster and working on the inside of insurance companies as an auditor. I'm currently a contractor, which I've been for several years. One of the things that I wanted to talk about today that I have listened to the testimony for the last couple hours, both from the insurance side and from the contractor side and there's been much discussion about what the insured knows about what they're buying. And I would have to admit unfortunately that I bought an insurance policy that I have on my home that I've never read...shouldn't say have never read, didn't read it until I had a loss, right? So I didn't know what my deductible was, for instance. There is many occasions where insureds, when we are sitting down to have a conversation about what their loss is, that they don't know the details about what their policy are...what the policy is until that loss occurs. And then they find out that they've got a \$1,500 or a 1 percent or a 2 percent wind and hail deductible while the rest of their house is covered under a \$500 or a \$1,000 deductible. I don't currently take assignment, but I'm going to start doing so. I'm a competitor to Millard Roofing and to Valley Boys. And one of the things that I have found, I didn't have permission to talk about this last year, but this year that I did I'm just going to share a story with you that illustrates this point very well. A homeowner in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

Norfolk--who now currently lives in Senator Scheer's old home--in 2014 experienced a hailstorm where they had baseball sized hail and one of those hailstones went through a window in their bedroom and shattered it, you know, got glass all over the place. They called their insurance company who sent out an adjuster. The adjuster came and took a look. There was \$3,500 in damage to a Pella window at the home. And the adjuster said, well, fortunately you didn't sustain much other damage other than this broken window, but unfortunately you have a \$5,000 deductible and so this is going to be out-of-pocket expense. Fast forward a while and a whole lot of roofing starts going on in their neighborhood and so the insured called...the homeowner called my business partner and asked for a second opinion. I went out and looked at the roof and found that it was indeed damaged severely. I looked at a lot of the other elements of the house, the windows, gutters. You know, the insurance adjuster had already identified that one window was broken. But to make a long story short, in the end there was between \$100,000 and \$200,000 worth of damage to this house. And the fight was on with the insurance company. Their immediate response when they were notified about whether or not they would have to pay for more damage on the house was to send an engineer out. They did not assign another adjuster. They told the homeowner that there was nothing that they could do, that the roof...after the engineer looked he wrote an 86-page report that said there was no damage. Talked about all the damage that was on the roof and blamed it on other things. We got involved with that case and got the...fortunately, the homeowner stuck with us all the way through and this is the part where the assignment is such an important role for a guy like me because the homeowner stayed with us all the way through the end and was willing to and did get an attorney using the expertise of our company to know what to say in the lawsuit or the proposal to the insurance company. I have had other situations where I've put out countless time, countless hours and resources of my own without an assignment of claim and the homeowner gave up because the insurance company got to them. They told them they had cheaper people and because of that there was no way they were going to get any more money out of the insurance company. They've told them that I'm a crook and that I go after too much money and I falsely inflate all my claims. They put pressure on a homeowner, and I'm not naming any specific insurance company, but I've experienced it on a number of occasions with several of them, where they tell them you just can't use that guy because he's too expensive. Thank you for your time and I'd gladly answer questions very specifically about any case or in general about my experiences. [LB220]

SENATOR LINDSTROM: Thank you. Any questions from the committee? Seeing none, thank you for your testimony. Other opponents. [LB220]

TODD TEVELDE: Hello. My name is Todd Tevelde, T-o-d-d T-e-v-e-l-d-e. I'm a homeowner in southwest Omaha and also work for a local contractor. I'm here today to oppose LB220. I resigned from the Omaha Fire Department after ten years. I'm taking my current employment at Millard Roofing and Gutter where I've been for the last four years as a salesman and estimator. In my four years, I've overseen over 600 insurance claims, both residential and commercial. And

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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it's my honest opinion that not one of the 600 claims would have been reconciled without my knowledge, the assignment, and code documentation we provide to the insurance companies. As a matter of fact, the majority of the claims I've worked over the last four years were either denied or an adjuster had approved only a portion of the damage to be repaired leaving the homeowners frustrated and discouraged. If LB220 is passed, it will leave homeowners helpless against an industry that will take advantage of their lack of knowledge. How many homeowners can attend a class to learn how to document hail damage or find necessary documentation in the 710-page 2009 International Residential Code. How many homeowners know how much ice and water shield they need, where a gutter apron goes, or that we have uniform appearance law in Nebraska. Homeowners pay for replacement coverage to bring their home back to where it was before the storm. If this bill passes it will give the insurance company an opportunity to take advantage of the lack of knowledge of the customers they serve. I'm out in the community every day looking at roofs, gutters, siding, windows, etcetera, and recently I went to a home that was referred by a previous customer. And this homeowner had a leaky skylight. His roof was replaced two years prior and the insurance company told him the skylight wasn't damaged. He didn't know the skylight should have been replaced per code. The homeowner had to pay out of pocket for something that should have been paid in his hail claim. I could tell you many more stories of cost homeowners pay because the claim wasn't handled by a reputable contractor, but time doesn't permit. Please vote no on this bill and give the homeowners of Nebraska the right to hire a contractor and fight for the right to bring their home back to where it was before the storm. Any questions? [LB220]

SENATOR LINDSTROM: Thank you very much. Any questions from the committee? Seeing none, thank you for your testimony. Other opponents? Seeing none, any neutral testifiers? Seeing none, Senator Harr, you're welcome to close. [LB220]

SENATOR HARR: (Exhibits 10 and 11) Thank you, Mr. Chairman, members of the Banking, Commerce and Insurance Committee. I think there is one thing we can all agree on coming out of this hearing and that is if you are an insurance company, you probably should not insure a former NFL football player. This...first of all, I want to address...and I'm trying to figure out how to start on this, but I'll start with the Supreme Court case here. You want to hand this out? This case was about assignability. It was not about whether the price was right or incorrect, but rather whether assignability is allowed. And when you look at it, I'd asked that you look at note number 8 which states...and I'll read it into the record: "...in the absence of a statute to the contrary, a post-loss assignment of a claim under a homeowner's insurance policy for the homeowner's property damage casualty clause is valid, despite a nonassignment clause." So what we say here is absent statute, they're valid. Well, this isn't even bringing a statute to make it invalid. What we're doing is...and you heard one of the last testifiers talk about he hadn't even read his own homeowner's policy. This is about knowledge. This is about informing the homeowner as to what their rights and responsibilities are as a homeowner. What are the damages? You know, I don't

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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think any insurance company wants a damaged roof out there. I don't think they want to spend \$7,000 repairing a roof and find out there's something else because, guess what, it's going to come back again, right? They want to make sure the job is done properly and the job is done right. But they don't want to pay for something that didn't exist and/or that its cost is charged more than the actual cost. I find it strange that everyone says Xactimate, Xactimate, Xactimate, it's the industry standard. And it is. This is a fine line that I balance, that I walk in that I represent a roofing company in my personal life, okay? I also have represented an individual who was sued. So contrary to the testimony, I know of an individual who was sued by his insurance company. What happened was he assigned it to a third party, didn't like that and took it back, and he was sued individually, okay? The original contract was for \$7,000. He ended up being sued for the difference. They said it was \$21,000. He was sued for the difference--approximate numbers. So I see both sides. I work with insurance companies. My client works with insurance adjusters and has a great relationship with them and says, hey, I got us the job. There's something that I didn't estimate for. He will stop his work. He will call the adjuster or one of his employees or in some cases it's a 1099. And they will call the insurance adjuster out and they'll look. And either the insurance adjuster agrees or disagrees. He doesn't take assignments. He takes risks, I guess. I'm not really sure. Any time you do work you're taking a risk. I mean, I don't take a...but. So this is an important bill. This is, I think, in my six years of working with Senator McCoy, this was the only bill he and I worked on together. He and I saw a problem in this area. We tried to figure something out. Unfortunately, it was a short session; we ran out of time. But by and large, folks, there are good actors. You heard Apple. There are other roofers out there. There is a process. They know the insurance company. They know the expectations. They know what's right. If you have certain types of roofs, you will need a new roof in 14 years to 15 years. It's just...if you live in Regency, right, you got to have cedar roofs or tile if you're lucky, but you can't have composite. And they do have problems and every 15 to 20 years you need to redo them. That roofer wants to do a good job by you because they want you next time. If you have composite, they last a short period of time and then you go...you can roof over. They are starter roof, right? So the first one is starter and then you can roof twice over. Unlike Mr. Boecker, I know my clients' business. That's what I do. All right. If my client wants, I'm going to learn their business so I can help them. But you can put composite tile...roofing over twice and it's cheaper that way. Now it's just luck of the draw who was first and who's second, but there is a cheaper way of doing it. And you don't have to have a starter each time. You don't have to rip it off and bring it back. Where I represented an individual, he had originally assigned his insurance policy. He didn't like what was going on so he called the insurance company. You know what they told him? They told him, I can't talk to you. I know it's your house, but you assigned your rights over on this issue. That's a real problem when it's your home and you're not even allowed to talk to your insurance company about it. That's why there's a clause in here that says that the two parties can...insured and insurer can talk to each other, because when you assign your rights you're not privy to that contract anymore, you have no rights. That's a problem. I have another handout here that talks about there weren't any homeowners brought. This is an article in which

Transcript Prepared By the Clerk of the Legislature  
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Banking, Commerce and Insurance Committee  
February 06, 2017

---

one of the roofers out there sued on behalf of over 300 homeowners. They didn't know about it. They didn't know they were suing their own insurance company until news contacted them. Again, that's a problem. And you know what happens is you say, well, who's responsible? What's the harm, right? So a roofer gets a little extra money. Well, that's our deductible...I mean that's our insurance policy. The costs go up then. You have to pay more if you have a larger cost. So yes, we want, everyone in this room wants that roof repaired. The question is, what's the proper price? There are good actors out there, there are bad actors out there. Better Business Bureau, guess what? One of these companies out there had an A-plus rating even though they were suing multiple times. And then eventually they just disappeared off Better Business Bureau. And the way the Better Business Bureau works is if you're the company, you pay to be on that site, so it's a good indicator, but it's not the fail safe. This is about homeowner protection. This is about making sure homeowners know what they're rights are, what they can and what they can't do. I think that's about all I have. Like I said...and here's the other thing. Senator Schumacher, your issue about assignability, maybe we can amend the language a little bit. But to kill it overall doesn't really make sense to me just because there's a question of whether it may or may not allow for assignments. We can clarify that language. I wouldn't kill the whole bill just because there's an ambiguity in it. I'd work to fix that ambiguity and I'd work with you and I'd work with legal counsel and with the Chair of this committee to make sure we do know that if there is confusion on the language that we can clarify it. With that, I would entertain any questions you may have. [LB220]

SENATOR LINDSTROM: Thank you, Senator Harr. Senator McCollister. [LB220]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. All of the opponents indicate...and even the supporters, proponents indicate that these assignable contracts can still be used, isn't that correct? [LB220]

SENATOR HARR: That is correct. [LB220]

SENATOR McCOLLISTER: Okay. Both opponents and proponents indicate there are bad actors in that business, correct? [LB220]

SENATOR HARR: There are bad actors, yes. [LB220]

SENATOR McCOLLISTER: But I don't think this bill addresses those kinds of issues. [LB220]

SENATOR HARR: Not directly. And I thought the individual from Apple Roofing said it best. It creates an atmosphere where both...all parties are properly informed of their rights and

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

responsibilities so that they are more careful. You can never eliminate all fraud. You know, Senator Schumacher asked why don't we just eliminate assignments. I had that bill last year that eliminated all assignments, and you know what Senator Schumacher said then? Well, I got a way around that. The guy is a genius. So instead of figuring out ways around the law, what we want to do is create an atmosphere where all parties are informed, where they know their rights and responsibilities, and to make it easy to do the right thing and hard to do the wrong thing. You're never going to stop everybody. [LB220]

SENATOR McCOLLISTER: Well, we also discussed the extension of the time limit going from three days to ten. So that told me that the opponents or the proponents probably could work together and come up with a common bill that they all could support. Do you disagree? [LB220]

SENATOR HARR: So could the Hatfields and McCoys. There are some lines there. You know, going from three to ten days, I don't know if that solves the problem either, to be honest with you, because the issues that both sides talked about, that wouldn't be addressed by going from three to ten days. [LB220]

SENATOR McCOLLISTER: Well, that was just an indication to me that there's some flexibility in the opponents' opposition. [LB220]

SENATOR HARR: Sometimes it's easy to give away something when it doesn't mean anything to you, but when it means something to you you're going to fight a little harder. And I think that's what that situation was. [LB220]

SENATOR McCOLLISTER: Thank you, Senator. [LB220]

SENATOR HARR: Thank you. [LB220]

SENATOR LINDSTROM: Thank you. Any final questions? Senator Schumacher. [LB220]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Thank you, Senator Harr, for bringing this. On the ambiguity that you referred to...that I referred to, on the bottom of page 2: The assignment shall only authorize a residential contractor to be named as a copayee for the payment of benefits under a property and casualty policy. There are, as I gather it, two ways you can read that. You can read it to say that the only thing an assignment can do is name the contractor as a copayee and cannot assign any other right or benefit. Or the other way to read it is, the...if the assignment addresses the issue of copayee or payee, the contractor must be just a



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

copayee and not the payee, and the assignment can cover a whole bunch of other stuff, too.  
[LB220]

SENATOR HARR: Right. [LB220]

SENATOR SCHUMACHER: Which one is right? [LB220]

SENATOR HARR: Well, and I'll work with you to clarify that. But I'll tell you, the idea is for the situation that I talked about where my client at the time was told you can't, because you signed all your rights, even including payment, you can't...we can't talk to you. So this keeps them as an interested party. [LB220]

SENATOR SCHUMACHER: Right, but this bill also says, yeah, you can talk regardless of what the paperwork says. So I guess... [LB220]

SENATOR HARR: Right, we call that belt and suspenders. [LB220]

SENATOR SCHUMACHER: ...just narrowing it down, what's your intent on this? Does this...is the only thing an assignment...if this bill were to pass, is the only thing you can say is, we hereby...the contractor can be a copayee, period? Can't do anything else? [LB220]

SENATOR HARR: No, no. [LB220]

SENATOR SCHUMACHER: Or is it... [LB220]

SENATOR HARR: And that's where I'll work with you on the language because it's, as you so shrewdly pointed out last year, there are...the loophole or a way around restricting any kind of assignment, I mean that's easy to come around. And so I'm not sure that's where we should be putting our effort. Instead, where the intent of this legislation is, is to putting on informing the homeowner who is a party and privy to this...and to ensure they're still privy to this contract. So we can work on that language. [LB220]

SENATOR SCHUMACHER: Thank you, Senator. [LB220]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much.  
[LB220]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR HARR: Thank you. [LB220]

SENATOR LINDSTROM: And that will close the hearing on LB220. We'll take a quick five-minute break and come back. [LB220]

BREAK

SENATOR LINDSTROM: We will now open on LB406 and Speaker Scheer will be introducing LB406 on behalf of Senator Kolterman. [LB406]

SENATOR SCHEER: Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. [LB406]

SENATOR WILLIAMS: I want to see an I.D. [LB406]

SENATOR SCHEER: We thought it might work, but if that's the case, I'm going to let it go. I'm Jim Scheer, J-i-m S-c-h-e-e-r, representing the 19th District, here on behalf of Senator Kolterman to introduce LB406. LB406 is a bill that adds the use of intelligent mail barcodes as an acceptable method of mailing notice of cancellation, nonrenewal, or nonpayment of premium for automobile liability policies. Intelligent mail barcode is a 65 barcode, Postal Service barcode used to sort and track letters in flats. It allows mailers to use a single barcode to participate in the multiple Postal Service program simultaneously, expands mailer's ability to track individual pieces of mail, and provides greater mail-stream visibility. Intelligent mail barcodes must be generated by the USPS approved barcode label software. Intelligent mail barcodes adds a more effective, exact method of tracking for mail pieces. It also helps to eliminate any issues of proof of delivery when receivers may refuse to pick up or fail to sign for a piece of certified or registered mail. The bill shows that it is changing only three spots, three different statutes, (sections) 44-516, 44-522, and 44-523 all adding the same exact language, just adding this as another appropriate signification of mail delivery. And I would be happy to answer any questions in regards to that. If not, there will probably be at least one other that will be testifying in support of this bill. [LB406]

SENATOR LINDSTROM: Thank you, Speaker Scheer. Any questions from the committee? Seeing none, thank you. [LB406]

SENATOR SCHEER: All right. [LB406]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR LINDSTROM: We'll now have proponents. Good afternoon. [LB406]

KELLY CAMPBELL: (Exhibit 1) Good afternoon. Thank you Chairman and members of the committee. My name is Kelly Campbell, and I represent the Property and Casualty Insurers Association of America. My name is spelled K-e-l-l-y, last name, C-a-m-p-b-e-l-l. The Property and Casualty Insurers Association of America and its member companies write approximately 43 percent of all the property and casualty insurance of Nebraska and PCIA supports house bill 406...excuse me, LB406. This bill tries to provide consistency among the various different statutes on acceptable methods of mailing or cancellation in nonrenewal notifications. Current law allows for different methods of mailing for different notifications and this bill is intended to provide consistency for all property and casualty lines and for all notifications, while also being able to take advantage of new tracking methods such as the United States Postal Services' intelligent mail barcode. The majority of states allow for the use of intelligent mail barcodes and we believe this change in statute will retain existing tracking information necessary if consumers questions...consumer questions arise about the notification of these changes while allowing insurers to take advantage of new technologies employed by the United States Postal Service. [LB406]

SENATOR LINDSTROM: Thank you very much. Any questions from the committee? Senator Schumacher. [LB406]

SENATOR SCHUMACHER: Thank you, Senator Lindstrom. Thank you for your testimony. Is this this little tiny string of barcodes on the bottom of an envelope that you sometimes see? [LB406]

KELLY CAMPBELL: Senator, yes. And there is a handout as far as what all is included in that barcode and what all it tracks. But, yes, it is that, like 64 barcode that's at the bottom of letters, and it is the ability to track actually down to the individual house number in the mailing process. [LB406]

SENATOR SCHUMACHER: So the mailman or mailwoman puts this in your mailbox, do they scan it then to know that it's got to your mailbox or is it scanned at the post office before it leaves in the mailman's bag? [LB406]

KELLY CAMPBELL: Yes, both with certified mail, registered mail, and also with the intelligent mail barcode, it is the actual proof of mailing and that's what's required by law. That's the element that exists in those three different types of mailings. [LB406]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR SCHUMACHER: So it's not proof of delivery? [LB406]

KELLY CAMPBELL: That is correct. [LB406]

SENATOR SCHUMACHER: And where certified mail, is it when you pick it up at the post office you've got to sign or you've got to sign some slip, that's the difference between...that's what we're doing differently here? [LB406]

KELLY CAMPBELL: No, Senator, because actually the bill does not require certified...it does not require the return receipt on certified mail. So it really is just the proof of the mailing under current law. And that is also allowed under the intelligent mail barcode. So it's just a new tracking method that the Postal Service didn't have prior to 2014. This is just a new technology for 2013, excuse me. [LB406]

SENATOR SCHUMACHER: So with ordinary certified mail, when you sign for it at the post office, that's...this doesn't require that, but had that been required up to this time? When you get a certified letter, normally you've got to sign something at the post office before they give it to you...even if there isn't the green card. [LB406]

KELLY CAMPBELL: Well, Senator, under the current statute, it's only...the only thing that's required is the proof that you actually mailed it. So whether or not a policyholder actually goes in and signs for it does not make the notification ...does not change the impact of the notification. So if a consumer chooses to never go and sign for the notification, it doesn't actually change that the notification goes into effect. So the only thing an insurer has to prove is the actual proof of mailing just by having the certified mail listing there. And so whether it be registered, certified, or with this intelligent mail barcode, all three of those methods provide the same proof of mailing that is required under current law. [LB406]

SENATOR SCHUMACHER: Okay. Thank you. [LB406]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you very much. [LB406]

KELLY CAMPBELL: Thank you. [LB406]

SENATOR LINDSTROM: Other proponents? [LB406]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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KORBY GILBERTSON: (Exhibit 2) Good afternoon, Chairman Lindstrom and members of the committee. For the record, my name is Korby Gilbertson. It's K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property and Casualty Insurers Association of America. My job today is to better explain a little change that we think we need in the bill based on...when we originally had the bill drafted, I went through all three sections that deal with notification and attempted to just add the intelligent mail barcode language. Unfortunately, when we got (LB)406 introduced, we then noticed that in one of the sections, specifically (section) 44-522, the bill drafter I think was trying to help us by making everything read the same way, but in doing that they took out some language that we think probably needs to be added back in. In existing statute, (section) 44-522 states that you can already use first-class mail and you'll see on the second page of this typed-out version, it says "first-class mail, or first class mail using intelligent mail barcode", that language was accidentally or intentionally, with not knowing what was happening, taken out of (LB)406 when it was...came down from the bill drafters. So we would like to see if we could get that language reinstated. And I will be happy to work with your legal counsel to do so, but we thought it might be best if I explained it to you before we tried to do it. I'd be happy to answer any questions. [LB406]

SENATOR LINDSTROM: All right. Thank you. Any questions from the committee? Seeing none, thank you very much. [LB406]

KORBY GILBERTSON: Okay. Thank you. [LB406]

SENATOR LINDSTROM: Other proponents? [LB406]

TAD FRAIZER: Good afternoon, Chairman Lindstrom, members of the committee. 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. I confess that I do not know the mysteries of the post office's domestic mail manual, but our organization is in favor of use of the modern technologies afforded by intelligent barcoding and would support the bill, and would try to answer any questions you might have. [LB406]

SENATOR LINDSTROM: Thank you, Mr. Fraizer. Any questions? Seeing none, thank you very much. Any other proponents? Seeing none, any opponents? Seeing none, any neutral testifiers? Also seeing none, Speaker Scheer would you like to close? [LB406]

SENATOR SCHEER: Thank you, Chairman Lindstrom. I might be able to shed a little light on your question, Senator Schumacher, that is a business that I'm engaged in right now. The laws require that it be...we have to be able to track it to know that it was mailed, not necessarily received. And the reason they were all sent certified is that up until this point in time, that was

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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the only way that they could certify that that one letter did indeed get mailed to Paul Schumacher. And now with this barcode, they can virtually guarantee...they can guarantee the same thing via that barcode that when they get scanned in the computer, when it hits Columbus, it knows that that piece of mail did end up in Columbus and it is going to be delivered to Paul Schumacher. The difference is you don't have to refuse it and I will tell you that I probably get no less than ten to fifteen letters, billings, cancellations a week because what insurance companies do now, they don't put their name as the return mail, they put the agents so they don't have to go pick up the mail every day with all the returns. That gets to be the obligation of the agent. I'm not here to complain about that, but it doesn't impede the fact because sometimes consumers will think, well, I never signed for it, so, you know, I never got service. You got service because they know it was mailed to you. That's all that's required by law. So the fact that it is certified as before, because that was the only way they knew that the letter was mailed because they had the little barcode underneath that you get when you certify something, but to my knowledge, insurance billings, and cancellations have never had to have a return receipt attached to it. And that would be the little postcard they're talking about. I think a lot of times attorneys in some cases have to have proof of delivery and that's how you get the proof of delivery which is different than the proof of mailing. And that's the two differences that we're talking about here. And that barcode does guarantee that it is that letter that was addressed to your address and that the post office attempted to deliver it. That simple. [LB406]

SENATOR LINDSTROM: Any other questions from the committee? Seeing none, thank you, Speaker Scheer. [LB406]

SENATOR SCHEER: Sayonara. Thank you. (Laughter) [LB406]

SENATOR LINDSTROM: And that will close the hearing on LB406. I'll turn the committee over to Vice Chairman Williams. I have the next bill. [LB406]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. We will now open the hearing on LB384. Chairman Lindstrom. [LB384]

SENATOR LINDSTROM: Thank you, Vice Chairman Williams. My name is Senator Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 in northwest Omaha. LB384 comes to us from the small loan industry. The bill would amend the Nebraska Installment Loan Act. That act caps the amount of interest a lender may charge a borrower. Our act now says that the rate may not exceed 24 percent per annum on the first \$1,000 of unpaid balance, and 21 percent per annum on the remainder of unpaid balance. This bill simply would change the cap to a single rate of 29 percent per annum. There will be testimony behind me explaining why this bill is a good idea. Thank you. [LB384]

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Banking, Commerce and Insurance Committee  
February 06, 2017

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SENATOR WILLIAMS: Questions for Senator Lindstrom? Seeing none, first opponent...or proponent, excuse me. We'll get this right. [LB384]

ASHLEY KRINGS: (Exhibit 1 and 2) Good afternoon, Senators. My name is Ashley Krings, spelled A-s-h-l-e-y K-r-i-n-g-s. I'm the district manager for OneMain Financial here in Nebraska. I would like to thank you for the opportunity to testify today in support of LB384, and I would like to thank Chairman Lindstrom for sponsoring it. I'm a native Nebraskan, born and raised on a farm outside of Humphrey. Today, my husband and I are proud to be living, working, and raising our three children in Platte County. I started with OneMain in 2003 as a customer service representative in our Norfolk branch, and I've worked as a district manager for more than three years with the company. OneMain is the surviving name after combining Springleaf, formerly known as American General Finance, and OneMain Finance, formerly known as Citifinancial, which Springleaf acquired from Citigroup in 2015. We have been in business for about 100 years and in Nebraska for at least 75 years. Today, we have eight branches in Nebraska. Unfortunately, the two companies have closed 11 branches in Nebraska in the past decade. I am proud to work for OneMain. Our employees, myself included, live, work, and volunteer in the communities we serve. Here in Nebraska we assist nearly 8,800 hardworking residents with their financial needs. Our average FICO score of consumers in Nebraska is 640. Our average personal loan is around \$9,000 with an average term of 58 months. Nationwide our average borrower's age is 49 years old with an approximate income of \$48,000 annually. I believe that LB384 is needed to allow Nebraskans additional access to credit. It's my understanding that the Nebraska Loan Act has not been updated since at least 1964. Every day our employees help Nebraskans with their financial needs. I want to be able to help more consumers, like Natalie, from right here in Lincoln. Recently, Natalie obtained a loan from our local branch to consolidate some of her debt and she said, the loan helped me in my time of need and gave me peace of mind. Our personal and auto installment loans amortize and are fully underwritten. We help our customer's budget, only lend with those with the ability to pay, and still turn down a vast majority of applicants at nearly 70 percent. In just my time with OneMain, the consumer finance industry in Nebraska has changed significantly. For example, in 2005, there were 39 installment loan company locations with licenses in Nebraska. In 2016, there were ten, including our eight locations. We have seen tremendous growth of on-line out-of-state unlicensed lenders in Nebraska. Unlike OneMain, these lenders do not have licenses with the Department of Banking so I'm not sure if they're examined like we are. They also charge higher rates than are currently allowed by the statute. The financial needs of those who cannot get loans from banks and credit unions has not gone away. Nebraskans visit four on-line websites about 300,000 times a month and last year alone, received 2.5 million pieces of mail from four out-of-state lenders. I believe we offer a better alternative for Nebraskans who are unable to get a loan from a bank or credit union than on-line lenders. Nebraskans need access to credit via installment lenders in the state who are licensed and examined by the Department of Banking. LB384 would allow instate licensed lenders to help more consumers. Thank you again, Senator Lindstrom for sponsoring LB384. If the law is

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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updated, I am confident that we can help additional consumers in Nebraska and grow our business. I respectfully ask you, Senators, to support the bill and pass it into law this year. Thank you for the opportunity to speak today and I'd be happy to try and answer any questions. [LB384]

SENATOR WILLIAMS: Questions for Ms. Krings? Senator McCollister. [LB384]

SENATOR McCOLLISTER: Thank you, Senator Williams. From your testimony I'm inferring that the poor interest rates in Nebraska has driven some of those...some of the suppliers out of business, is that correct? [LB384]

ASHLEY KRINGS: Yes. Thank you, Senator, that would be correct. [LB384]

SENATOR McCOLLISTER: Okay. And by raising the rates a little bit, do you think you'll end up with more competitors coming back in the state? [LB384]

ASHLEY KRINGS: Senator, that's a, you know, a very true statement that could happen, but, you know, as a Nebraskan, I believe that we should have access to credit and to be able to make a decision based on, you know, multiple options and not be limited. [LB384]

SENATOR McCOLLISTER: The out-of-state vendors, are they under any controls at all? [LB384]

ASHLEY KRINGS: Not that I'm aware of. From what we've been able to see, they are coming in and offering products at a higher rate than what we're offering and I haven't been able to find anything that says that they are. [LB384]

SENATOR McCOLLISTER: Thank you very much. [LB384]

SENATOR WILLIAMS: Other questions? Ms. Krings, just a couple of questions from me. First of all, counsel has informed me that the last time these rates were amended were in 1984. So it's a little later, not a problem, just wanted to get that into the record. In the other areas that your company...other states that your company deals with, what are the rates there that they generally suggest? Or are you...whoever is going to answer that. [LB384]

ASHLEY KRINGS: Okay. So, I can speak to a couple of states that are near us. For example, Wisconsin and Missouri are deregulated, but where our company operates in those states we



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

---

impose a self-imposed cap at 36 percent. We have South Dakota that was deregulated. They did just introduce and pass a ballot initiative capping it up the 36 percent which does include some insurance and fees in that APR cap. We have worked with six other states and been able to have the rate structure updated in those states in recent years. [LB384]

SENATOR WILLIAMS: And have they been updated along the lines of LB384? [LB384]

ASHLEY KRINGS: Yes. [LB384]

SENATOR WILLIAMS: Thank you. Any further questions for the witness? If not, thank you for your testimony. Next proponent. Opponents? Anybody to testify in the neutral? Senator Lindstrom, waives closing. We will close the hearing on LB384. [LB384]

SENATOR LINDSTROM: Senator Hilgers will now open the hearing on LB476. Senator Hilgers, whenever you're ready. [LB476]

SENATOR HILGERS: (Exhibit 1) Thank you, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Senator Mike Hilgers, M-i-k-e H-i-l-g-e-r-s. I'm here today to open on LB476. There will be a representative of the state bar of Nebraska which brought this bill to me, to speak behind me, but I would like to at least give an overview of what this bill does. It's fairly technical, but I think in common sense and also minor. So the technical change that LB476 intends to accomplish is to amend the Nebraska Nonprofit Corporations Act to make clear that a nonprofit corporation that intends to change its domicile to Nebraska from a foreign jurisdiction, wherever that jurisdiction may be, will take...will not actually change the character of the corporation, will take advantage of the previous incorporation date. Why would we want to make this change? Well, the reason why we've brought the bill and why this change would have an impact is that without the change, the law is ambiguous as to whether or not the nonprofit corporation moving to Nebraska creates a new corporation. And the reason why that's important is that the IRS has given its guidance as to 501(c)(3) applications, which as the committee I'm sure is aware, but for the record a 501(c)(3) designation from the IRS gives nonprofit the ability to be tax exempt. It's an extensive process. It can be very costly process. Usually it's undertaken at the beginning when a corporate nonprofit is formed. If a nonprofit intends to move to Nebraska and under our current law, it likely will have to refile for the 501(c)(3) application again. So it would undertake an additional application process, additional attorney fees, additional costs, and the like. Now the IRS has given its guidance, and I think we should be passing that around if we haven't already. You should all have copies which I've given you, which is a very detailed memo 201446025. It's November 14, 2014 memo giving guidance from the IRS. Essentially, and the bill tracks the language, tracks the guidance here pretty closely, essentially saying that if nonprofit corporation changes it's

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Banking, Commerce and Insurance Committee  
February 06, 2017

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domicile, but doesn't become a new corporation in a new state, it does not...it can rely on it's previous 501(c)(3) application, doesn't have to apply again. The current law in Nebraska is ambiguous as to this point and so the language in LB476 is intended to make clear that nonprofit changing its domicile from a foreign jurisdiction to Nebraska will be able to take advantage of the previous corporation date giving it clearance not to file a new 501(c)(3) application. We do know at least of one instance. The data is hard to come by as you could imagine. We're not aware of...nonprofits are not coming to us and saying, they're not coming to Nebraska because of this. However, we are...the state bar is aware of at least one nonprofit from other jurisdiction that has decided not to move to Nebraska because of this ambiguity in the law. So, we think it's common sense in the sense that these nonprofits come to Nebraska. They're not creating new companies. They ought to be able to take...they're nonprofit, they ought to be able to take advantage of the previous 501(c)(3). Lowers the paperwork for these nonprofits, makes it slightly more or maybe much more likely for a nonprofit to come to Nebraska or at least removes an impediment for such a move while saving costs, attorney fees, and the like in that process. So, I'm happy to take any questions. As I mentioned, some will be behind me, but I'm happy to take any questions on LB476. [LB476]

SENATOR LINDSTROM: Thank you, Senator. Any questions from the committee? Seeing none, thank you very much. We will now have proponents. Good afternoon. [LB476]

BUB WINDLE: Chairman Lindstrom and members of the committee, my name is Bub Windle, that's B-u-b W-i-n-d-l-e. I'm here on behalf of the Nebraska State Bar Association in support of LB476. Senator Hilgers did a very good job and its late in the afternoon, so I'll keep this brief. Like he said, this actually came to us from an attorney, a member of the State Bar Association who was working with an Idaho nonprofit, who wanted to come here, ultimately decided they couldn't after looking at the law, the cost, and in particular the delay, potentially losing that tax exempt status which would mean that they for a period could not receive tax deductible contributions. They would not be eligible for the many foundation and government grants that require formal tax exempt status. They decided not to do it. That attorney found this private letter ruling and saw that we could make this more explicit in Nebraska law. That we could make it explicit that a new entity is not created upon domestication. And because a new entity is not created, they do not need to reapply formally to the IRS for recognition of their tax exempt status. The bar association supports this change and I'd be happy to answer any questions. [LB476]

SENATOR LINDSTROM: Thank you very much. Senator Brewer. [LB476]

SENATOR BREWER: Thank you, Chairman. I guess more than anything I wanted to share with you that I was on a board of directors for a 501(c)(3), a wounded veteran organization that was in

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Banking, Commerce and Insurance Committee  
February 06, 2017

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the exact same situation with looking...we were going to bring it here for other reasons, but that was the deciding factor why we let it stay in Montana and did not bring it here. So, Mike, well done. [LB476]

SENATOR HILGERS: Thank you. [LB476]

SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you very much. Other proponents? Seeing none, any opponents? Seeing none, any neutral testifiers? Seeing none, Senator Hilgers, would you like to close? [LB476]

SENATOR HILGERS: Thank you, Chairman, and members of the committee. Normally I waive closing, but I'd ask Senator Brewer, maybe he'd like to cosponsor with me? [LB476]

SENATOR BREWER: I would, and you did get a smiley face. [LB476]

SENATOR HILGERS: Thank you. [LB476]

SENATOR LINDSTROM: Thank you, Senator Hilgers. And that ends the hearing on LB476 and that ends the hearings for today. See you tomorrow. [LB476]