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Banking, Commerce and Insurance Committee
February 07, 2017

[LB208 LB257 LB549]

The Committee on Banking, Commerce and Insurance met at 1:30 p.m. on Tuesday, February 7, 2017, in Room 1507 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB257, LB549, and LB208. Senators present: Brett Lindstrom, Chairperson; Matt Williams, Vice Chairperson; Roy Baker; Tom Brewer; Joni Craighead; Mark Kolterman; John McCollister; and Paul Schumacher. Senators absent: None.

SENATOR LINDSTROM: All right, we'll get started here. Welcome to the Banking, Commerce and Insurance Committee hearing. My name is Brett Lindstrom, and I'm from Omaha and represent 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 is posted on the chart to your left. Please silence or turn off your cell phones; move to the front of the row when you're 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 which means that the green light will be on for four minutes, at the four-minute mark the yellow light will go on, that is your one-minute warning, and at the...when the red light comes on, your time is up. If you'll 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 the 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 make copies for you. To my immediate right is committee counsel, Bill Marienau. To my far left is committee clerk, Jan Foster. And we will start on the far right with Senator Schumacher for senator introduction.

SENATOR SCHUMACHER: Paul Schumacher, District 22; that's Platte, parts of Colfax and Stanton Counties.

SENATOR BREWER: Tom Brewer, Gordon; 43rd District which is 13 counties of western Nebraska.

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

SENATOR CRAIGHEAD: Joni Craighead, District 6, Omaha.

SENATOR BAKER: Roy Baker, District 30, all of Gage County, part of Lancaster County.

SENATOR McCOLLISTER: John McCollister, District 20, central Omaha.

SENATOR LINDSTROM: And I believe Senator Kolterman will join us later. Our page today is Phillip Levos from Columbus; thank you for being here, Phillip. And we will take up the bills on the order of the agenda posted outside the doors. So, we will go LB257, LB549, and LB208. The first bill is Senator Craighead and we'll open on LB257 whenever you're ready, Senator.

SENATOR CRAIGHEAD: Good afternoon, Chairman Lindstrom and members of the Banking, Commerce and Insurance Committee. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d, and I represent Legislative District 6 in Omaha in Douglas County. I come before you today to introduce LB257 which would include the real estate profession under current statute that allows a two-year statute of limitations of professional malpractice for certain license professionals. Nebraska, generally, has a four-year statute of limitations on negligence, however for certain professionals the state has changed that limitation to two years for professional malpractice. Other professions covered by this two-year limitation are medicine, law, engineering, architecture, and accounting. Our courts have defined the term "profession" as an actor, service arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual rather than physical or manual. Real estate is now such a profession being an occupation involving mental or intellectual skill and requiring education and testing prior to obtaining a license. Additionally, those licensees are regulated by the Real Estate Commission. Real estate agents, like other professionals that are included in the two-year statute of limitations, use their skills and knowledge to help clients relying on their training, experience, and expertise to represent their clients. LB257 does not eliminate the rights of anyone to file a claim of wrongdoing, it only changes the time in which a person can bring a case against those licensed under the Nebraska Real Estate Licensure Act and there will be an amendment coming to codify this in other sections of the Professional Liability Act. In closing, this becomes simply a question of--if you believe in individual license under the Nebraska Real Estate License Act is a professional and should be protected by the same statute of limitations as other licensed professionals. I'll take any questions that you may have. [LB257]

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SENATOR LINDSTROM: Thank you, Senator. Any questions from the committee? Seeing none, thank you very much. We'll now take proponents. [LB257]

FRED HOPPE: My name is Fred Hoppe; I represent the Nebraska Realtors Association. As the senator said, Nebraska has a statute of limitations for professional malpractice of two years. Traditionally, that's been limited to medicine, law, accounting, architecture, but also abstracting, incidentally. This bill that's in front of you is modeled almost word for word from a Wisconsin statute recently enacted; it was enacted about two years ago. It's in response, in Nebraska's case, to a case law that held that real estate licensees are not professionals. That foundation case we're trying to overturn here was enacted in...was held in 1879. Back in 1879, there was no licensing, no education requirements, no regulation of the real estate profession. In that case...as said in that case, real estate was akin to any other business agency, a commission merchant, or an agent for the sale of any particular kind of personal property. Well, that's all changed. Today to sell real estate it requires a license. Real estate licensees are regulated by the Real Estate Commission, much like doctors are regulated, attorneys are regulated; architects, engineers, and abstractors are regulated. Abstractors, particularly, are similar to realtors; similar education requirements, both require a test, both have annual education requirements. The education requirements to become a real estate licensee, it's huge--60 hours of classroom study just on real estate subjects. And if you go on to become a broker, it's another 60 hours plus two years or 18 dedicated college hours; that's almost two semesters. The biennial education requirements to maintain a real estate license are huge--18 hours of education, 6 of which is in required learning courses basically about the statutes, 6 hours of broker education, and the rest is commission-approved education. Our courts have defined profession as an act or service arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor or skill. The real estate now is such a profession. It is an occupation involving mental or intellectual skill and it's definitely...requires specialized knowledge. Real estate is currently lumped with other professions when it comes to corporations or limited liability companies. A realtor that wants to do its occupation in a corporation has to do it in a professional corporation, same with an LLC, it has to be a professional LLC. We're asking to equalize the playing field here. The threat of litigation is too long as it is--memories fade, evidence is lost. This bill would push those aggrieved to get to the complaint so it could be resolved. In addition, it would reduce the cost of insurance, thus reduce the operating cost for real estate licensees. Other states have judicially recognized real estate as professionals, including but not limited to Alaska, Iowa, Arizona, California, Delaware, Idaho, Michigan, Minnesota, Montana, New Jersey, Pennsylvania, South Dakota, and Wyoming. You may hear opposition to this bill; we anticipate the only opposition will come from the trial attorneys. Well, take their opposition with a grain of salt. They've got a two-year statute of limitations. In summary, this act overturns a 138-year precedent. The times have changed. Professionalism is a theme of the National Association of Realtors, the Nebraska Realtors Association, and each local board of realtors. Being a realtor is being a professional. It is time to recognize and respect that professionalism by changing the statute of limitations for real estate

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professionals. To that, particularly, make it even with that of other professionals. I'd certainly answer any questions. [LB257]

SENATOR LINDSTROM: Thank you very much for your testimony. Questions from the committee? Senator Williams. [LB257]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. And thank you, Mr. Hoppe, for being here. That case was before you were even in law school, if I remember back. [LB257]

FRED HOPPE: Yes, sir...or you. [LB257]

SENATOR WILLIAMS: Or me. Tell me about...we're comparing some different professions that different people would look at differently because of their experiences. [LB257]

FRED HOPPE: Correct. [LB257]

SENATOR WILLIAMS: And you talked about the licensing and the continuing ed that realtors are into; would you describe that in a little more detail to me. [LB257]

FRED HOPPE: Well, the education...first of all, it takes considerable amount of education just to get the license. It takes...I think it's 60 straight hours of education dedicated solely to real estate. And then for a broker's license, it takes 60 hours dedicated further beyond the initial 60 for a broker's license or 18 class hours which are shrunk hours, if you will, at college or education higher...institution of higher education. Does that answer your question? [LB257]

SENATOR WILLIAMS: Would those continuing ed hours be similar, if you know, to the other professions that are listed under the law? [LB257]

FRED HOPPE: Well, it... [LB257]

SENATOR WILLIAMS: For instance, in particular, the abstractors. [LB257]

FRED HOPPE: The abstractors, very similar education requirements for the abstractors. The abstractor's requirements are focused toward the changes in title a lot more. And as you may well know, title law doesn't change very fast. As a matter of fact, it changes extremely slowly as opposed to different aspects of what might be happening in the real estate community...the other real estate community. I've taught both classes for realtors, as well as taught classes for lawyers

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for instance. And the coverage of those classes is a very similar. Of course it depends, sometimes in real estate things are focused a little bit more toward marketing, but...as opposed to, for instance, law classes that are not very often. [LB257]

SENATOR WILLIAMS: When you compare this licensing requirement and the education...the continuing education, you don't have any trouble calling these people "professionals?" [LB257]

FRED HOPPE: I do not, Senator. [LB257]

SENATOR WILLIAMS: And one last thing, you have practiced law for many years and also been in the real estate portion for many years. Have you seen cases that you can think of where shortening this time frame from four years to two years would have made a difference? [LB257]

FRED HOPPE: Well, certainly made a difference to the outcome of the case because people forgot things, for instance. One of the big issues is, if somebody is going to bring an action, bring it, let's get it on the table, let's get it dealt with. You know, to let things string out to four or five years. Another concern that...the negligence rules are a four-year statute of limitations. But many actions and ones that would be, potentially, protected underneath this agreement are contractual; they involve listing agreements that have certain obligations in them. And those would have a five-year statute of limitations. This drops those from five down to two as well. It's not just negligence. [LB257]

SENATOR WILLIAMS: Thank you. [LB257]

SENATOR LINDSTROM: Thank you. Senator Schumacher. [LB257]

SENATOR SCHUMACHER: Thank you, Chairman Lindstrom; and thank you, Mr. Hoppe, for your testimony. [LB257]

FRED HOPPE: Yes, sir. [LB257]

SENATOR SCHUMACHER: If...the list of series of occupations and you tell me which ones are professions and which ones are not, which ones should have a two-year statute or the regular four-year statute. We have farming, we have banking, airline pilots, public administrators, insurance agents, stock brokers, which of those should be treated differently from real estate agents? [LB257]

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FRED HOPPE: Well, I'm having trouble putting farmers in the same category because their activities are just a little bit differently. The traditional... [LB257]

SENATOR SCHUMACHER: How is that? [LB257]

FRED HOPPE: In the traditional definitions of profession stay a little bit away from the physical. [LB257]

SENATOR SCHUMACHER: But many farmers hire their help to run the machines, they rarely leave an office, certainly many of the older ones. How is that not a profession? [LB257]

FRED HOPPE: Well, it probably does not meet the test for descriptions of professions that have been used in other areas. Farmers don't have to...if they're going to practice farming, they don't do it in a professional corporation by definition. There are a number of different ways in which they... [LB257]

SENATOR SCHUMACHER: Airline pilots? [LB257]

FRED HOPPE: Airline pilots certainly take a lot of...they would meet the definitions that I would call a profession, yes. [LB257]

SENATOR SCHUMACHER: So should we make this more expansive? Bankers? [LB257]

FRED HOPPE: You know, I would not object to having it more expansive. [LB257]

SENATOR SCHUMACHER: I mean, what I'm getting at, traditionally, we maybe encroached upon that language already of "profession" has been something in which there is substantial postsecondary graduate education along with the normal continuing legal and medical or whatever education. At what point do we say there's a line and on this side of it you're a professional and on that side of it you're not. [LB257]

FRED HOPPE: Well, one of the drawn lines might be the regulation of the industry. In the professional categories we've been discussing, they're all regulated activities. [LB257]

SENATOR SCHUMACHER: Farmers aren't regulated? [LB257]

FRED HOPPE: Well, they're not regulated by a farming commission. [LB257]

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SENATOR SCHUMACHER: No, but they're regulated by the EPA, (inaudible)... [LB257]

FRED HOPPE: Well, as is everybody. [LB257]

SENATOR SCHUMACHER: Okay. Let's...how broad is this? The language says: "Notwithstanding any other statute of limitations." Notwithstanding, so all other statutes of limitations go away. "An action concerning an act or omission of a firm or any licensee associated with the firm relating to brokerage services shall be commenced within two years." What if a real estate person showing somebody a house and there was sexual molestation had occurred, is that covered by this? [LB257]

FRED HOPPE: I don't believe so, because I think it's restricted to the real estate activities that are involved. If you go on beyond that... [LB257]

SENATOR SCHUMACHER: I mean this is part of showing a house. [LB257]

FRED HOPPE: Pardon me? [LB257]

SENATOR SCHUMACHER: I mean, assume in the course of showing the house, this allegation of sexual misconduct occurred. Still a two-year statute of limitations? [LB257]

FRED HOPPE: Well, it would be a two-year statute of limitations if it sustained the motion to dismiss based on the fact that it wasn't related to the real estate activities. It would have to be...the allegation under your assumption would have to be that the real estate agent failed in its duties as a real estate agent by allowing the molestation, whatever you're... [LB257]

SENATOR SCHUMACHER: What if they were negligent in hiring the realtor who did the molestation and their obligation to supervise the people under them? [LB257]

FRED HOPPE: Well, that would seem to me to be outside the scope of this. [LB257]

SENATOR SCHUMACHER: You can see where I coming...this is really broad language. When you start out a sentence notwithstanding anything else, that's pretty big umbrella that's been cast out. So, maybe...how would you suggest we fix that problem? [LB257]

FRED HOPPE: Well, first of all...well, first of all this is language that came out of a Wisconsin statute. So (inaudible)... [LB257]

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SENATOR SCHUMACHER: Wisconsin has made some mistakes in its life just like we have. [LB257]

FRED HOPPE: Okay. The issue doesn't stop...the lawsuit doesn't stop an action. [LB257]

SENATOR SCHUMACHER: Right. [LB257]

FRED HOPPE: It limits the time in which you bring the action. [LB257]

SENATOR SCHUMACHER: And we know from the old guy who is now in all kinds of trouble, I can't remember his name, the old comedian, that sometimes these things take years to percolate to the top. Yes, Cosby, yes...years to percolate to the top. And two years might not be enough for the word to get out and people to get strong and come forward and testify. [LB257]

FRED HOPPE: Perhaps. [LB257]

SENATOR SCHUMACHER: Okay. Finally, a lot of times when there's a statute of limitations, things don't come to the surface until more than two years out. And this says that the bewitching hour starts with..."a transaction is completed or closed." Well, if there's something that was left undone, some survivability provision in a contract that maybe was left unattended to, you might not know that within two years after the closing of the transaction because contracts that do have provisions that survive the closing...and...real estate contracts. And so shouldn't there be some requirement that the defendant knew or should have known of the cause...excuse me, the plaintiff knew or should have known of the cause of action if it's one of these things that might legitimately linger past the closing? [LB257]

FRED HOPPE: I think the concept you're raising is dealt with under the professional malpractice statute that is there now. And a known or should have known concept could be tolerated in this. [LB257]

SENATOR SCHUMACHER: It could because this is a statute of limitations regardless of professional malpractice policies or whatever, this says--boom, two years and you're out. [LB257]

FRED HOPPE: That's what it says. [LB257]

SENATOR SCHUMACHER: Okay, thank you. [LB257]

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SENATOR LINDSTROM: Thank you. Any other questions from the committee? Seeing none, thank you for your testimony. [LB257]

FRED HOPPE: Thank you. [LB257]

SENATOR LINDSTROM: Other proponents? Seeing none, we will now move to opponents. Welcome. [LB257]

CAMERON GUENZEL: Members of the committee, my name is Cameron Guenzel, that's C-a-m-e-r-o-n, last name G-u-e-n-z-e-l. I am a civil litigation attorney practicing here in Nebraska. As you can see, I'm quite a bit younger than my colleague who just testified to you. Nevertheless, as I sit here, I didn't hear, and I've never heard in my life, any compelling reason that professions, any professionals, ought to have a shorter limitation than anyone else. You heard about how memories fail. Well, that happens to business owners as well; how it takes forever to get these things going, that happens for taxi drivers, that happens for motorists. Why is it that there ought to be something different as far as professionals go? There's not a compelling reason there. And the complaint that I commonly hear, even though I haven't been practicing law as long, I still hear this complaint frequently and that's the law isn't uniform and it's not predictable. And as we carve out special exceptions for lawyers, for doctors, for real estate professionals, whomever else, we make the law less uniform, less predictable; we decrease the public's trust in the law because now we see that, well, if the body is sufficiently powerful and lower presented they're going to get an exclusion, but farmers, for example, won't. And so this kind of bill moves in the wrong direction. And as Mr. Hoppe indicated, yeah, I sit here and I've got a two-year statute of limitations against me, and I'm saying I don't see a purpose for that. If I would be supportive, and I suspect the Nebraska Association of Trial Attorneys, whom I represent here, I suspect that organization would also be supportive of a lengthening of that statute of limitations because this state has determined that four years is the correct balancing between protecting the rights of the injured party who have a chance to identify the loss, retain counsel, etcetera, balancing that interest with the interest of finality and limited insurance costs and such for everyone else. There's no reason that for a business owner it's going to be different than anyone else. And another significant complaint that I hear from clients is technicalities. Right? The murderer who goes free because of an evidence question or something like that. There's probably no single factor that decreases...for the common person, decreases faith and belief in justice of our laws than folks getting off on technicalities. Well, this is exactly that sort of thing. We have real wrongs, and Mr. Hoppe agreed, we'd have real wrongs that would not be able to be adjudicated because of, what I consider to be a technicality, not having anything to do with the individual who allegedly caused the harm, not having anything to do with the individual who suffered the harm, but because of the Legislature or someone else, or a lawyer's failure to act. That individual...that harm never gets adjudicated because of that technicality, that statute of limitations, regardless of whether it was a good claim or a bad claim. If we are going to have

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laws that allow injured parties to seek redress with the courts, we ought to give all those individuals a fair and equal opportunity to do so, not limiting some people the time that some folks have to bring their claim because they were injured by certain types of conduct versus others. We have nearly across the board a four-year statute of limitations for the vast majority of types of conduct. We ought to have four-year statute of limitations regardless of the type of actor as well. And even though there's currently a professional statute that is two years, this change goes in the wrong direction. What this body ought to be considering...what the Legislature ought to be concerned with is making everything uniform across the board and getting rid of these special carve outs for groups that have no compelling interest that can be cited. If there's no other questions, I'll submit. [LB257]

SENATOR LINDSTROM: Thank you. Questions from the committee? Senator Williams. [LB257]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. You seem to throw some blame on the Legislature for creating carve outs. It appears to me that the current situation is the statute we have of professional liability, but the statute does not define what those professions are. That's done by court case law. [LB257]

CAMERON GUENZEL: Correct. [LB257]

SENATOR WILLIAMS: Correct? So do you think that's something you'd like to argue in Nebraska to change that? [LB257]

CAMERON GUENZEL: Well, whether it...absolutely, I think that's the sort of thing that...as I mentioned at the beginning... [LB257]

SENATOR WILLIAMS: I suggest you do it. [LB257]

CAMERON GUENZEL: Very good. [LB257]

SENATOR WILLIAMS: But not at the Legislature. [LB257]

CAMERON GUENZEL: Well, but... [LB257]

SENATOR WILLIAMS: So let me ask you another question then. Those...and I'll use your term, "carve outs" that have been done by the judicial system through case law have done so because

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they've compared one profession to another based on some criteria that might include licensing and education. Would you agree that there is similar licensing and continuing education requirements for realtors as with abstractors and some of the others that the judicial system has carved out? [LB257]

CAMERON GUENZEL: I think there's...you know, I really can't say. I think there's certainly the possibility of that. But I guess what I'm here to say... [LB257]

SENATOR WILLIAMS: So if we're looking for consistency, that might be our consistency if those are consistent then with what case law would be. [LB257]

CAMERON GUENZEL: Well, that would be consistent extending only to realtors. But what about consistent extending to other individuals with similar licensing? [LB257]

SENATOR WILLIAMS: You know, the nice thing about being here is I get to ask the questions. [LB257]

CAMERON GUENZEL: Very good. [LB257]

SENATOR WILLIAMS: Thank you. [LB257]

CAMERON GUENZEL: Thank you. [LB257]

SENATOR LINDSTROM: Hold on one sec. [LB257]

CAMERON GUENZEL: I'm sorry. [LB257]

SENATOR LINDSTROM: Any other questions? Senator Schumacher. [LB257]

SENATOR SCHUMACHER: What in...if adopted, extend...forget about the two year, we apply four year to doctors, to lawyers, to all the other people who are now considered accountants, what impact would you think that would have on malpractice insurance? [LB257]

CAMERON GUENZEL: Well, I think it would have...it certainly might have an impact. But this is an impact that everyone across the board deals with. This is an impact that business owners deal with; this is an impact that regular automobile drivers...everyone who pays insurance who drives an automobile deals with the fact that we have to maintain insurance that covers a

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potential four-year extension...a potential four-year statute of limitations and a potentially increase in cost as far as that goes, in my mind, is appropriate if it results in an increase in fairness and justice which I think that arbitrarily limiting the statute of limitations for some professions versus others results in an injustice. So some savings is not worth it in that case. [LB257]

SENATOR SCHUMACHER: Well, the argument was just made a minute ago that, wait a minute, it doesn't promote justice to have foggy memories, have a chance that papers might be misplaced, computer discs erased accidentally or when you buy a new computer the data not getting transferred to a new one, the cloud raining and losing your data, and therefore, it isn't an increase in justice, but an increase in the cost of litigation and the unfairness of the information that might be presented to a trier of fact because of lost information. I mean, that argument seemed pretty good. [LB257]

CAMERON GUENZEL: Well, I appreciate that argument. As a litigator, I don't...doesn't hold a lot of weight with me because very few really significant cases are going to make it to trial within...virtually no cases are going to make to trial within two years of the date of the injury. If it's significant, it involves a complicated set of facts. In many, many cases, they don't see their final trial until five, six, eight years sometimes. So the idea that we need to de...cut the statute of limitations in half so that we save a year or two or three, in some cases, of saving evidence isn't terribly compelling to me. The other problem is, and I see this regularly, if you have a wrong, let's say you have a dispute with a realtor, you think the realtor did something wrong, and then you try to work it out over the next couple of years. And what always happens is the realtor is going to say, don't worry, we're going to work on this, we're going to take care of it. I'm not blaming realtors, this is a case for everybody. Right? They try to work at it...work it out informally and after a year or two of trying to work it out informally, then they start to realize, well, this is going to turn poorly, we need to turn to litigation. If the legislation before this committee is enacted, they don't get a year or two of trying to work things out. They got to file suit right away. When, for instance, in a case against a lawyer or a doctor, it's really too bad, a lot of times that this is the case, because plaintiff attorneys like me are forced to file suit when we might have gotten things resolved without litigation otherwise. But we don't have a lot of choice because of that statute of limitations. [LB257]

SENATOR SCHUMACHER: So just moving on, I just want to clarify one thing: today, you're going on record on behalf of the trial attorneys to say that the malpractice, a statute of limitation for attorneys in Nebraska should be extended to four years. [LB257]

CAMERON GUENZEL: I am going on record as saying that I'm...I...(inaudible) that. [LB257]

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SENATOR SCHUMACHER: Yes or no. [LB257]

CAMERON GUENZEL: I don't have the... [LB257]

SENATOR SCHUMACHER: Yes or no. [LB257]

CAMERON GUENZEL: I can't say yes or no to that question. [LB257]

SENATOR SCHUMACHER: Okay, thank you. [LB257]

CAMERON GUENZEL: Thank you. [LB257]

SENATOR LINDSTROM: Well, that...wait one second. [LB257]

CAMERON GUENZEL: Oh, I'm sorry; I keep trying to do that. I'm just anxious to get out of here. (Laughter) [LB257]

SENATOR LINDSTROM: Understandably. Any final questions? Seeing none, thank you very much. [LB257]

CAMERON GUENZEL: Thank you very much. [LB257]

SENATOR LINDSTROM: Other opponents? Seeing none, any neutral testifiers? Good afternoon. [LB257]

BUB WINDLE: Senator Lindstrom, 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 a neutral capacity simply to express we do not have a position on this particular statute of limitation, but believe that it should not be in the Real Estate License Act, that it should be codified. And I believe Senator Craighead alluded to this that it should be codified with the other statutes of limitations in Chapter 25 of the code. That's where our members go to look; I think that's where lawyers look to see if there are such statutes of limitations. That's where they're codified and we would hope that this would be codified there if passed. [LB257]

SENATOR LINDSTROM: Okay, thank you. Any questions? Senator Schumacher. [LB257]

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SENATOR SCHUMACHER: Thank you, Chairman Lindstrom. So, four or two years for real estate, what's the bar's position? [LB257]

BUB WINDLE: No position. [LB257]

SENATOR SCHUMACHER: Okay. [LB257]

BUB WINDLE: As you can imagine, we have...our membership, we have members on both the defense and the plaintiff's bar, so they could disagree on that. [LB257]

SENATOR SCHUMACHER: Do you think...do you think we should specify somewhere in the statutes real estate folks are either two or four or six or some other years? Is that the bar's position then? [LB257]

BUB WINDLE: We are in neutral on whether this particular statute of limitations for real estate professionals is included in the statutes. [LB257]

SENATOR SCHUMACHER: So, I thought I understood your testimony that you thought somewhere it should be codified? [LB257]

BUB WINDLE: I'm sorry, if passed, that it would be codified with those other statutes of limitations, so if there were...if they were to be included with the two-year statute of limitations, that that instead of being, I believe in the bill, it's part of the Nebraska Real Estate License Act; that instead of being in the Real Estate License Act, that the statute of limitations, if passed, would be codified with the other statutes of limitations in Chapter 25 governing civil procedure. [LB257]

SENATOR SCHUMACHER: Okay. Thank you for that clarification. [LB257]

SENATOR LINDSTROM: Thank you. Any other questions? Seeing none, thank you very much. Other neutral testifiers? Seeing none, Senator Craighead, would you like to close? [LB257]

SENATOR CRAIGHEAD: Thank you. Thank you to the committee for listening to the testimony; and to Mr. Hoppe, Mr. Guenzel, and Mr. Windle for testifying. I just want to set the record straight here. Real estate brokers and agents do not wear white patent leather shoes. Okay? Realtors also...no, they're not, see? Realtors also carry errors and omission insurance and it's pretty high in values. And as far as time frames, realtors don't mess around, they don't have

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time to. Senator Williams, as far as your information, you're asking about qualifications in education--just so you know, half of the people who take a real estate exam fail the first time, many have to take it three times, it's that difficult to get your license. Senator Schumacher, you talked about the education of realtors and things like that--many come from other professions. Many come from the teaching profession, healthcare professions, but this may be a second career. So they're very high-level...there's a high level of education--bachelor's degrees, master's degrees there too. We also talked about sexual molestation. If this happens, it is usually from the client, not the realtor. In fact, there have been several situations where real estate agents have been killed by clients they have met at homes. So it's usually not the realtor that's doing the bad stuff, it's the client. Mr. Guenzel's comment--I would say, if we're going to have real estate agents have a four-year...four years on statute negligence, I'd agree, let's put all the other ones in there too: the accountants, the attorney, physicians, abstractors, engineers, and architects. I would say if realtors need to have the four years for negligence, I would say let's put them all in there, otherwise let's make it all two. I think that's all I have to say. I just want to say thank you very much for...this was a very lively discussion today and I thank you very much. [LB257]

SENATOR LINDSTROM: Thank you, Senator Craighead. Any final...Senator Craighead, one second...Senator Craighead, we have some questions. Any final questions for the senator? Seeing none, thank you, Senator Craighead. And that will close the hearing on LB257. And I will turn the committee over to Vice Chairman Williams; I have the next two bills. [LB257]

SENATOR WILLIAMS: Thank you, Chairman Lindstrom. We'll now open the hearing on LB549 and ask Senator Lindstrom to open. [LB549]

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, northwest Omaha. This bill would repeal a sunset of the Nebraska Real Estate License Act requires real estate brokers to maintain trust accounts for down payments and earnest money deposits. These accounts may be either interest-bearing or non-interest bearing, however on and after July 1, 2017, all of these trust accounts must be non-interest-bearing. That is the sunset and LB549 would repeal it. Also, because the sunset is July 1 of this year, the bill carries the emergency clause. The idea of non-interest-bearing trust accounts first appeared in our law in 2011. That year, LB347, introduced by Senator Beau McCoy, provided for the option of interest-bearing or non-interest-bearing trust accounts. That bill also required that interest could be...could only be distributed to tax-exempt, nonprofit organizations. A sunset of July 1, 2014, on interest-bearing accounts was included. In 2013, LB72, also introduced by Senator McCoy, provided that tax exempt, nonprofit organizations receiving interest distributions must promote housing in Nebraska. That bill further provided that a broker must use an interest-bearing account for a transaction only if the use of the account for purposes of promoting housing in Nebraska has been approved by all parties whose money will be deposited into the account. Finally, that bill moved the sunset from July 1,

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2014, to the current July 1, 2017. That brings us to the present. Testimony will follow me to explain why we should eliminate the sunset and continue the option of interest-bearing, as well as non-interest-bearing broker trust accounts. Thank you. [LB549]

SENATOR WILLIAMS: Questions for Senator Lindstrom? Seeing none, thank you. We would entertain the first proponent. [LB549]

JULIE JOECKEL: Good afternoon. I'm Julie Joeckel, J-u-l-i-e J-o-e-c-k-e-l, and I'm here to speak in favor of removing the sunset provision for July 1, 2017. These funds for the non-interest-bearing accounts or the interest-bearing accounts are used with consumers and it is used to promote housing in Nebraska. The funds are...we've not had a lot of time to build up the funds for that account and we would like to have time to continue to work on that. I'm a new member of the Home Buyer's Assistance Foundation that distributes those funds. And there's no cost to the state to continue this program. And we would like to have the opportunity to do that. [LB549]

SENATOR WILLIAMS: Questions for Ms. Joeckel? Senator Schumacher. [LB549]

SENATOR SCHUMACHER: Thank you, Senator Williams. Thank you for your testimony today. Is this home fund, is that set up in another statute someplace? [LB549]

JULIE JOECKEL: It's a separate foundation within the...it's just a total separate foundation under the Nebraska Realtors Association. [LB549]

SENATOR SCHUMACHER: So, basically, the big interest that the banks pay these days... [LB549]

JULIE JOECKEL: Yes. [LB549]

SENATOR SCHUMACHER: ...it goes into this fund and it just take a long, long time to get any amount of money built up considering that rate of interest. [LB549]

JULIE JOECKEL: Correct. [LB549]

SENATOR SCHUMACHER: And so what you want to do is build up this fund and then put it into some type of an assistance fund that's voluntary that wants to help people buy houses or advertises or what does it do? [LB549]

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JULIE JOECKEL: It helps first-time homebuyers that are buying a home; and after they've closed on a house, then they can apply for the funds. It's \$250 that they get as a check after closing to use for whichever things they would like to use. We find that they use it for landscaping, for blinds for their windows, things that they didn't have funding for. And so it's just a nice little extra to help first-time homebuyers. [LB549]

SENATOR SCHUMACHER: Let's pretend that sometime in the future, the distant future, banks, again, start paying interest. And there's quite a bit of money there because there's a large principal that's held for short periods of time in those accounts. Any supervision on that...the disbursement on that program or is that...who would supervise that rather large amount of money under those... [LB549]

JULIE JOECKEL: The foundation monitors that and they look at all the applicants that come in and they have to meet the criteria, and they are the ones that monitor the funds that go out. So there's a foundation that's...you have to be nominated to that foundation. There's someone from the banking industry that is on that foundation, and there are some brokers. And the AE of the Nebraska Realtors Association are all involved in that. [LB549]

SENATOR SCHUMACHER: And it would have to be through this fund? Is that how it's...mandatory set up, or could the individual broker say we'll keep the money, the interest will buy a bottle of wine for the purchaser? [LB549]

JULIE JOECKEL: No, we won't buy any wine. (Laugh) It's monitored totally through the foundation; it's not monitored by a broker at all. And in fact, the brokers are not involved other than they can sign up their accounts to be interest-bearing for the money to go in there. But they don't have anything to do with it. The homeowner that just closed on a house is the one that applies for the assistance. [LB549]

SENATOR SCHUMACHER: Okay, thank you. [LB549]

JULIE JOECKEL: You're welcome. [LB549]

SENATOR WILLIAMS: Any additional questions? Senator Baker. [LB549]

SENATOR BAKER: Thank you, Senator Williams. I'm new on this committee. Speculate for me, why was there ever a requirement that a broker trust account be in a non-interest-bearing account? Why would that ever have been put in there? [LB549]

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JULIE JOECKEL: That is way before my time also. And that would be...that was through the Real Estate Commission and they are the ones that established those rules. So we had gone forward with trying to get the interest-bearing through. [LB549]

SENATOR BAKER: And I agree with that. I just...looks like that would be to the advantage of a depository to have money you don't pay any interest on so...thank you. [LB549]

JULIE JOECKEL: I would suggest that maybe it came from the fact that the transaction is short-lived and therefore if the money goes back to somebody, then you don't have the argument of the interest also, it's just the earnest money goes back to whomever both parties agree to. [LB549]

SENATOR BAKER: Sure. Thank you. [LB549]

SENATOR WILLIAMS: Ms. Joeckel, can you tell me how much money we're talking about? [LB549]

JULIE JOECKEL: In the account? [LB549]

SENATOR WILLIAMS: Yes, in the account. [LB549]

JULIE JOECKEL: Right now, I believe...I don't have the updated...I don't have...I've not sat on the foundation except for a month and I don't have the updated financials on that, but someone else might be able to answer that more accurately than I do. [LB549]

SENATOR WILLIAMS: Okay. Any further questions for the witness? If not, thank you. [LB549]

JULIE JOECKEL: Thank you. [LB549]

SENATOR WILLIAMS: Are there additional proponents? Any opponents? Anyone speaking in the neutral? Senator Lindstrom. [LB549]

SENATOR LINDSTROM: Thank you, Vice Chairman Williams. Just to point out, in the statute that's already on-line, let's see, it's page 3, line 12, the Real Estate Commission would define the policies and procedures for processing and any distributions of the interest-bearing trust...trust account. Does that answer your question on who does it...I think...yeah, okay. And again, I'll...I just want to clarify that. I'll be happy to answer any questions that you have. [LB549]

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SENATOR WILLIAMS: Senator Lindstrom, do you have any idea how many dollars we're talking? [LB549]

SENATOR LINDSTROM: Not much. I think the interest we're talking about \$25 a year, annually on the interest. [LB549]

SENATOR WILLIAMS: So we're talking...I wanted to be sure everybody heard that--\$25 in interest per year we're talking about. [LB549]

SENATOR LINDSTROM: Thereabouts. Don't have exact numbers, but... [LB549]

SENATOR WILLIAMS: Thank you. Any further questions? Thank you. Do we have any letters on this one? We do not. Okay. We will close the hearing on LB549 and move right on to LB208 and Senator Lindstrom, you're up again. [LB549]

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. LB208 would expand opportunities for financial institutions. The Nebraska Real Estate License Act requires brokers to maintain trust accounts in which down payments and earnest money deposits are to remain until the transition is closed. Our law further requires that the accounts must be maintained in a bank, savings bank, building and loan association, savings and loan association. LB208 would remove this list of specific institutions and instead would require that the accounts must be maintained in a federally insured financial institution. Banks, savings banks, building and loan associations, and savings and loan associations are insured by the FDIC, or the Federal Deposit Insurance Corporation. Obviously, we would immediately recognize that the bill would benefit financial institutions insured by the NCUA, the National Credit Union Administration. The Nebraska Credit Union League sought introduction of LB208. Testimony will be following me to explain why now this is the time to allow real estate broker trust accounts to be maintained in credit unions as well as in banks, savings banks, building and loan associations, and savings and loan associations. Thank you. [LB208]

SENATOR WILLIAMS: Questions for Chairman Lindstrom? Seeing none, proponents? [LB208]

BRANDON LUETKENHAUS: (Exhibit 1) Good afternoon, Vice Chairman; good afternoon, members. My name is Brandon Luetkenhaus, it's spelled B-r-a-n-d-o-n, that last name is L-u-e-t-k-e-n-h-a-u-s, and I'm here on behalf of the Nebraska Credit Union League. Our association represents the 61 credit unions in Nebraska. I appear before you today in support...to offer our

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association's support of LB208. I want to first thank Senator Lindstrom for introducing this bill. He went through and described well what LB208 does, it simply adds "credit unions" on the list of permissible depositories for realtors to open up real estate trust accounts. But as a way of background, until recently, credit unions have not had the ability to offer real estate trust accounts to brokers who are members of the credit union because the National Credit Union Administration, the NCUA, the prudential regulator of credit unions, did not extend federal insurance to such accounts because not all the owners that...the funds in the account may be members of the credit union. Therefore, those folks who aren't members were not extended that insurance. However, on May 6, 2014, the United States House of Representatives passed H.R.3468, the Credit Union Share Insurance Fund Parity Act by voice vote. Following the House's lead, the United States Senate then passed the bill by unanimous consent on December 11, 2014, and President Obama signed the bill into law days later on December 18, 2014. H.R.3468 directed the NCUA, the prudential regulator, to provide pass-through share insurance for the deposits of shares of any Interest on Lawyer Trust Accounts, or IOLTAs as they're known, or other similar escrow accounts held in trust at the nation's credit unions. As directed by H.R.3468, the NCUA then promulgated Rule 12 CFR Part 745 to extend pass-through insurance for IOLTA and other similar accounts. The rule was published in the Federal Register on December 28, 2015. In this rule, the prudential regulator requires that the attorney administering the IOLTA account or the agent administering the escrow account be a member of the insured credit union in which the funds are held. In the handout I provided you, you will find the rule, the official rule. In section 745.14(2b), it clarifies that "the membership status of the clients or the principals is irrelevant." In the final rule, the NCUA determined that other similar accounts include accounts where "a licensed professional or other individual serving in a fiduciary capacity holds funds for the benefit of a client or principal as part of a transaction or business relationship." They went on to say: "Examples of such accounts include, but not limited to, real estate escrow accounts and prepaid funeral accounts." Similar to the intent of LB208, it was necessary that the Nebraska Credit Union League, on behalf of credit unions, work with the Nebraska's Lawyers Trust Account Foundation, in late 2015, to ensure that Nebraska's attorneys understood that they too could open IOLTA accounts in a local credit union they're a member of. So we sought a rule change through that organization and that rule was granted by the Nebraska Supreme Court in December of 2015. All Nebraska credit unions are federally insured and required to be so in the state of Nebraska. The issue that LB208 addresses is that it updates and clarifies the Nebraska Real Estate License Act to ensure that realtors, real estate brokers in this state know that they consider...can consider federally insured credit unions, of which they are a member, when opening a real estate trust account. We urge this committee to support LB208 and I would be happy to try to answer any questions you might have. [LB208]

SENATOR WILLIAMS: Questions for Mr. Luetkenhaus? Senator Schumacher. [LB208]

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SENATOR SCHUMACHER: Thank you, Senator Williams. A couple of items: Is the credit union federally insured or are the accounts of the credit union federally insured? [LB208]

BRANDON LUETKENHAUS: The accounts are federally insured. [LB208]

SENATOR SCHUMACHER: So the language in the bill then is...needs to be tinkered with if we move ahead with it because it speaks in terms of a federally insured financial institution. [LB208]

BRANDON LUETKENHAUS: Well, I'm sorry. Yes, it would...all credit unions are federally insured financial institutions, as are banks through the FDIC. [LB208]

SENATOR SCHUMACHER: So the federal government insures the institution or the accounts? Who is the insured party? Is it me who has an account in a bank or a credit union? [LB208]

BRANDON LUETKENHAUS: The institution. And then your account, up to \$250,000, whether you're in a bank or a credit union, would be insured. [LB208]

SENATOR SCHUMACHER: And how is the institution insured if it, indeed, is an institutional insurance instead of an account insurance? [LB208]

BRANDON LUETKENHAUS: I guess I'll have to get back to you on that. I mean,... [LB208]

SENATOR SCHUMACHER: So are you basically saying because of this federal act and the federal regulators that this extends to...has to extend now to all deposits in a credit union? [LB208]

BRANDON LUETKENHAUS: It extends...what H.R.3468 did was it instructed the prudential regulator to write a rule that would ensure that when a realtor would come and open up a real estate trust account, or an IOLTA account on a...for a lawyer, that those folks who are their clients, those folks may not even be members of the credit union. But this pass-through insurance would ensure that those funds are protected so long as the lawyer, when it comes to IOLTAs, or the real estate agent when it comes to escrow accounts for real estate is a member. [LB208]

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SENATOR SCHUMACHER: So if it is a non-interest-bearing account, so no money could be taken out to go to some do-good fund, is that mandated then to also...is that covered also by this ruling, a non-interest-bearing account? [LB208]

BRANDON LUETKENHAUS: No. [LB208]

SENATOR SCHUMACHER: So if the account is non-interest-bearing, then you're not asking for that particular part of it. Just if it's an interest-bearing account and the proceeds of the interest are going to the do-good fund. That's what this is limited to? [LB208]

BRANDON LUETKENHAUS: LB208, I don't know that it has anything to do with...I mean, it simply adds...it's adding credit unions to the list of permissible depositories by making the change of financial institution and striking the specific language about banks, savings banks, and so on. [LB208]

SENATOR SCHUMACHER: Right, but this regulation that you're alluding to that requires this is requiring it because they're similar to an IOLTA account which is something that players have when they throw money in a bank account that used to draw interest. And then they took the money from that and did something with the bar foundation or something...something good with that money. So, but this is not that, this isn't restricted to these interest-bearing accounts. This is just saying whatever a real estate agent...or real estate broker can deposit in a credit union. [LB208]

BRANDON LUETKENHAUS: Absolutely. I mean, what this says is...whether it's interest-bearing or non-interest-bearing really has no bearing, pardon the pun, but what is relevant in this is that both IOLTAs and real estate trust accounts, considered by the NCUA and Congress, to be similar accounts, both have an agent or someone who has a fiduciary duty to see that those funds are protected, and they are protected through the insurance. [LB208]

SENATOR SCHUMACHER: Well, then did this federal...or this national regulatory agency overstep the scope of the Congressional act when the Congressional act said--IOLTA, which is the "do-gooder interest" or similar accounts, because if it doesn't draw interest and has no "do-gooder foundation" for lack of better word, associated with it, it's not similar then, is it? [LB208]

BRANDON LUETKENHAUS: Yes, I think the crux of the account is extremely similar. You have an account where you have a lawyer for an IOLTA account; you have a real estate agent broker for real estate trust accounts; both have clients coming from all different directions,

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different clients coming into one account. Both accounts are federally insured according to the rule by the NCUA and H.R.3468. So from that perspective, they're very similar. But even in Nebraska, I believe IOLTA accounts have to be in an interest-bearing account. Real estate trust accounts don't have to be. But they're still very similar. [LB208]

SENATOR SCHUMACHER: Well, IOLTA, by its very nature, is a interest on trust accounts, I think is what that means. [LB208]

BRANDON LUETKENHAUS: Yeah. [LB208]

SENATOR SCHUMACHER: So, obviously, that would have to be interest bearing it it's an IOLTA account. Okay, thank you for your testimony. [LB208]

SENATOR WILLIAMS: Any additional questions? Mr. Luetkenhaus, I've got a couple of questions. Just help me here. Right now, credit unions can hold IOLTA accounts. [LB208]

BRANDON LUETKENHAUS: They can. Correct. [LB208]

SENATOR WILLIAMS: Federally chartered and state-chartered in the state. [LB208]

BRANDON LUETKENHAUS: Correct. [LB208]

SENATOR WILLIAMS: And following the parity act, federally chartered credit unions located in Nebraska can now hold real estate brokered trust accounts. [LB208]

BRANDON LUETKENHAUS: Correct. [LB208]

SENATOR WILLIAMS: Is that correct? [LB208]

BRANDON LUETKENHAUS: And state-chartered because of the wild-card or parity bill. [LB208]

SENATOR WILLIAMS: You answered my next question--why do we need this legislation? [LB208]

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BRANDON LUETKENHAUS: We need this legislation because if you...if a realtor goes to our state statutes and looks at this particular section, credit union is not on there. They may be a member of a credit union, but if they look at that; they are the ones that are prohibited, not the credit union. The credit union...we've had members actually come to the credit union to open the account. The credit union says--well, although we could open this account, you, as a realtor, don't have us as an option according to state statute. That is what the...when you get down to it, that's what this bill is aimed at doing. [LB208]

SENATOR WILLIAMS: So right now, you...a state-chartered credit union, which I do appreciate the fact you pay the same deposit tax in Nebraska that the banks do, for those young bankers that are sitting here in the room today, where the federally chartered credit unions don't pay that tax, but you do, thank you. So the reason for passing the legislation is to create a marketing tool for the credit unions. [LB208]

BRANDON LUETKENHAUS: I don't think that's the case. I think it's...when our members come to a credit union, Senator, and they ask for...to open up a real estate trust account, they want to serve that member however best they can. And if they're a realtor, they would like to open up that trust account for them if they could. And so this, I don't think, is a marketing...I don't know that the credit unions will be flooded with realtors coming in to open up these real estate trust accounts. However, if there is a member that's a realtor and they do business with a credit union, I think it makes a lot of sense since Congress passed a law in 2014 and then the prudential regulator wrote a rule that they should have that opportunity. Whether they decide to do that or not, that's, of course, up to the realtor. But I do think it makes sense for this state to recognize that credit unions do have this ability and the realtors should understand that they also should be able to open up such an account. [LB208]

SENATOR WILLIAMS: Any additional questions? Thank you, Mr. Luetkenhaus. [LB208]

BRANDON LUETKENHAUS: Thank you, Senator. [LB208]

SENATOR WILLIAMS: Any other proponents? Seeing none, opponents? [LB208]

ROBERT J. HALLSTROM: (Exhibit 2) Mr. Vice Chairman, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you as registered lobbyist today on behalf of the Nebraska Bankers Association in opposition to LB208. Senator Williams, as you noticed...noted, the NBA Leadership class is in attendance today. I had instructed them that there would be no public displays of emotion during my testimony. And one of the members suggested he heard me testify before and that probably wasn't going to become an issue. But nonetheless, we are opposed to the legislation. Just by way of background, the Nebraska Bankers Association

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has traditionally opposed this type of legislation on the basis that the accounts were not subject to pass-through deposit insurance coverage under prior NCUA rulings. We would submit that the case has not changed in that respect for many of the reasons that Senator Schumacher has noted in his line of questioning. We, furthermore, have some concerns with the real estate broker who in placing an account with a credit union is getting ownership interest--voting rights, dividends on accounts that don't represent any of that individual member's monies. So that is another basis upon which we have traditionally been opposed. Now, I would suggest for the record that most of what the credit union representative suggested to the committee with regard to the federal legislation and the regulation that's been adopted by the NCUA were accurate as far as they go. But we believe strongly that federal law was written with a specific purpose intended. The fence post, or the hitching post, if you will, to which the federal law is tied is the definition of the IOLTA account: interest on lawyer trust accounts. And specifically in the federal legislation that Congress drafted, it does indicate, Senator Schumacher, that the account has some component parts that are significant for the reason that they, again, are the hitching post to which other similar type of escrow accounts are ultimately to be hitched. And so for example, the federal law says that the IOLTA is an interest- or dividend-bearing account expressly and explicitly requires the account to be interest- or dividend-bearing. In addition, it indicates that the interest or dividends earned on that account must be used in generalized terms by a third party or a third party organization for beneficial purposes. And the example in the IOLTA is that the foundation gets the interest that's earned on these interest on lawyer trust accounts and uses them to provide legal services for clients in need or individuals in need. When you look at that issue, the regulation went a little bit too far because it has determined that other similar escrow accounts include real estate broker trust accounts without limitation. I found it interesting to note when Mr. Luetkenhaus read from the NCUA regulation he described the escrow funds as those that are holding funds for a client or a principal. That is directly in contrast to the IOLTA account which is not specifically not held for a client or a principal, it's held to go into a pool for use on behalf of clients in need. So on that basis, we think clearly and distinctly that the NCUA has exceeded its authority in allowing pass-through coverage for the real estate broker trust accounts. Now I would note that under state law, and you just heard about LB549 in extending the provisions of law that we have for the nonprofit organizations that use the interest earned on real estate broker trust accounts for housing purposes that that is probably a narrow exception under Nebraska law to which a real estate escrow or broker trust account could apply. Because in that very limited situation, you have an interest-bearing account that is used for that beneficial third...purpose by a third-party organization. Outside of that, clearly as defined under Nebraska law, these accounts are non-interest-bearing, therefore there's nothing to use for the benefit of a third party. For those reasons we would suggest that the NCUA, again, has overstepped its bounds as a regulator and that the Nebraska law should not be changed to recognize these types of accounts to be held and maintained at credit unions. We further would suggest that realtors, based on that, should be very cautious in putting these types of accounts in credit unions, perhaps under the wild-card authority, as Mr. Luetkenhaus has suggested, because at the end of the day, I would suggest

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they're still not eligible for pass-through deposit insurance coverage. And with that I'd be happy to address any questions of the committee. [LB208]

SENATOR WILLIAMS: Questions for Mr. Hallstrom? Senator Schumacher. [LB208]

SENATOR SCHUMACHER: Thank you, Senator Williams; thank you for your testimony, Mr. Hallstrom. A term that you tossed out, and I think earlier witnesses also tossed out, is pass-through coverage. What is that? [LB208]

ROBERT J. HALLSTROM: What pass-through insurance coverage is, Senator, and a lot of times you'll find it in a retirement or pension plan setting where you have a single account into which multiple ownership interest have been placed. And as a result, rather than that account only having a single \$250,000 FDIC or NCUA insurance coverage, special rules apply so that they can segment each of the individual owners in that multiple or aggregate account as individually having \$250,000 in deposited insurance coverage. [LB208]

SENATOR SCHUMACHER: And then one other question, the bill seeks to permit...or accounts in federally insured financial institution. It may be nitpicking, but is there a difference between a...is that accurate terminology? Is it the account that's insured by either the FDIC or this credit union insurer, or is it the institution that is insured? [LB208]

ROBERT J. HALLSTROM: To your questions, yes and yes. The common usage of the term is a federally insured financial institution, but the FDIC insurance or the NCUA insurance applies to the account based on the manner in which...you can have more than one \$250,000 insurance coverage based on the way that the accounts are structured. But the common terminology is an account in a federally insured financial institution. But the FDIC insurance runs to the owner of the account. [LB208]

SENATOR SCHUMACHER: So do we need to define then...if we were assuming we were going to pass this, federally insured financial institution or is that so common that we don't need to concern ourselves in such trivia? [LB208]

ROBERT J. HALLSTROM: I think it's so common you don't need to consider it, but again, I'd prefer that you not do it at all. So thank you. [LB208]

SENATOR SCHUMACHER: Thank you. [LB208]

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SENATOR WILLIAMS: Further questions for Mr. Hallstrom? Seeing none, thank you for your testimony. [LB208]

ROBERT J. HALLSTROM: Thank you, Senator. [LB208]

SENATOR WILLIAMS: Any other opponents? Anybody here to testify in the neutral? Senator Lindstrom. [LB208]

SENATOR LINDSTROM: Thank you, Vice Chairman Williams. I thought that was good discussion, good back and forth with the two representatives. Simply put, this is...was passed at the federal level. We're simply seeking to have it recognized and added into financial institution on a basis that's similar to the IOLTA trust. And if the American Bankers Association would like to take it a step further and sue on that, they could. They haven't done that yet and there might be a reason why. But with that I'll open up to any questions. Again, I think that this is clarification. [LB208]

SENATOR WILLIAMS: Any questions? Senator Schumacher. [LB208]

SENATOR SCHUMACHER: Thank you, Senator Williams. Are you suggesting then that Bankers Association talk to the Trial Attorneys Association? (Laughter) I withdraw that question. [LB208]

SENATOR WILLIAMS: (Exhibit 3) They're opposed to it. I'll just tell you. Any questions for Senator Lindstrom? If not, before we close the hearing we do have a letter of support from Chuck Wilhelm, Associate Broker at RE/MAX. And with that we'll close the hearing on LB208. [LB208]