WILLIAMS: Well, good afternoon, ladies and gentlemen. Welcome to the Banking, Commerce and Insurance Committee. My name is Matt Williams. I'm from Gothenburg and I represent Legislative District 36 and I'm privileged to 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-- to express your position on the proposed legislation before us today. The committee members may come and go during the hearing. We have bills to introduce and other committees and are sometimes called away. It is not an indication that we do not have interest in the bill being heard. It's just part of today's process. To better facilitate today's proceeding, I ask that you abide by the following rules and procedures. Please silence or turn off your cell phones. Please move to the front row when you are ready to testify. The order of testimony will be the introducer, proponents, opponents, neutral testimony, followed by the senator having an opportunity to close on his legislation. Testifiers, please sign in and hand your pink sheets to the committee clerk when you come up to testify. When you do testify, if you would please state and spell your name before you begin it will help the transcribers. Please be concise. It is my request that you limit your testimony to five minutes, and we will be using the clock. The clock will be green for four minutes, yellow for one minute, and when the red comes on, we would ask you to please conclude your testimony. If you will not be testifying at the microphone but want to go on record as having a position on a bill before us today, there are white tablets at each entrance where you may leave your name and other pertinent information. These sign-in sheets will become part of the exhibits in the permanent record at the end of today's hearing. Written materials may be distributed to committee members as exhibits only while you are testifying, 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 at this time so that our page can make copies for you. To my immediate right is committee counsel, Bill Marienau. To my left at the end of the table is committee clerk, Natalie Schunk. The committee members with us today will do self-introductions starting with Senator McCollister.

McCOLLISTER: Yeah. Thank you, Senator Williams. John McCollister, representing District 20 in central Omaha.

KOLTERMAN: Mark Kolterman, representing District 24: Seward, York, and Polk Counties.

LINDSTROM: Brett Lindstrom, District 18, northwest Omaha.

La GRONE: Andrew La Grone, District 49, Gretna and northwest Sarpy County.

HOWARD: Sara Howard, I represent District 9 in midtown Omaha.

GRAGERT: Tim Gragert, District 40: Cedar, Dixon, Knox, Holt, Boyd and Rock County.

WILLIAMS: And our pages who are helping us today are Tsehaynesh and Kylie. Thank you two for your service. Also, we would like to welcome the leadership class from the Nebraska Bankers Association that are with us in the audience today. We will now open the public hearing on LB257 introduced by Senator Kolterman to change provisions relating to loss payouts by insurance. Senator Kolterman.

KOLTERMAN: Good afternoon, Chairman Williams and fellow members of the Banking, Commerce and Insurance Committee. My name is Senator Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n, and I represent District 24 in the Nebraska Legislature which is-- which encompasses Seward, York, and Polk Counties. Today, I'm introducing LB257 on behalf of the Nebraska Bankers Association. LB257 is designed to address the practices of insurance companies in issuing checks for insurance claims relating to damages to automobiles and buildings, residential or commercial, directly to the insured thereby disregarding the provision for loss payees under the insurance policies. LB257 would require an insurer, in cases in which there is not a total loss and in which there are no-- there are one or more loss payees reflected in the insurance policy, to issue a check payable jointly to the insured and to the loss payee or business or other entity making repairs under the following circumstances: for payment of damages to an automobile when the claim involves damages in excess of $2,500, and for payment of damages to one to four family dwelling units or an owner operated commercial property when the claim involves damages in excess of $7500. For-- for background information, when an individual or business borrows money from a financial institution to acquire-- to acquire a vehicle, home, or commercial building, the asset being re-- acquired is frequently required to pledge as collateral for the loan. In addition, the lender will typically require the collateral to be insured against damages. In such cases, a lender is provided certain

protections under the insurance contract pursuant to a lender's loss-payable clause or a standard mortgage clause and is typically referred to as the loss payee. Being named as a loss payee under an insurance contract provides a lender with protection in the case of an insured loss. Protections for the lender generally come in the form of an insurer issuing claim checks for damages payable jointly to the insured and the lender. Occasionally, the claim check for damages may also include a vendor who is conducting repairs to correct the damage to the collateral. While insurers for many years followed the practice of issuing jointly payable checks to the insured and a lender when the collateral for the loan was damaged, in recent years, insurance companies have, with increasing frequency, issued claim checks directly to the insured disregarding the provisions for protection of a loss payee under the insurance policies. When insurance companies issued claim checks for damages without including a loss payee-- loss payee on a jointly payable check, the insured may cash in check-- the check and has the discretion to determine whether or not to repair the damages. Failure-- failure to repair the damages diminishes the value of the collateral. In addition, in the case of damages requiring significant repair, the vendor without input from the lender may choose a company to repair the damages without regard to the quality of the work. In either case, the value of the collateral is diminished in-- and either not repaired or not returned to its predamaged condition, and the lender is placed at risk for loss on its loan in the event of a default by the borrower. In most instances, without the protection of claim checks being made payable jointly to the insured and the loss payee, the lender only learns of the damage to its collateral upon inspection or taking possession of the collateral. With the potential for significant time to have elapsed between the date of the damages and the lender discovering that damages have occurred, in cases in which the check has been cashed by the insured and repairs not made, the funds are most likely not recoverable. Most people who understand the con-- contractual relationship between an insurance company and a lender named as loss payee under an insurance policy would be surprised to learn that claim checks for damages to collateral are not regularly and routinely-- routinely made payable jointly to the insured and the loss payee. These individuals are aware of the common practice for lenders to take control of the proceeds from a claim check to oversee the process of making repairs to damaged collateral. These activities take time and also assure that the insured collateral is properly repaired for the benefit of both the borrower and the lender by protecting and enhancing the value of the collateral securing the loan. With that, I thank you for your

consideration. I'm happy to try and answer any questions you have. If I don't have an answer, I-- I will ask you to further question the representative from the Bankers Association following me. They will also be submitting, during their testimony, a friendly amendment that removes the option for insurance companies to-- to issue claim checks above the applicable thresholds to the insurer and the business company conducting the repairs leaving only the option to make such checks jointly payable to the insured and the loss payee as well as changing references to automobiles to motor vehicles. With that, I would try and answer any questions you might have.

WILLIAMS: Questions for Senator Kolterman? Senator Kolterman, you were an insurance and real estate agent for a good portion of your professional career. Did you see experiences where this was a problem?

KOLTERMAN: I was in the insurance business for quite a while. I-- I ended my property casualty insurance in about '96, 1996, but we always-- we always had the banks listed as loss payees if they were on the-- if they were on the policies. So we didn't experience a lot of problems back then. The challenges that that brought, in some instances, was when somebody-- when a-- when a lending institution sells a loan and it maybe goes back east to some borrower-- or lender that is a distance away. At times that presented challenges in getting the check endorsed, but it-- it was never an unsurmountable problem. But apparently in today's environment there's more problems, and I think that the Bankers Association can address some of those problems.

WILLIAMS: Thank you, Senator, that's helpful. Seeing no other--

McCOLLISTER: One question.

WILLIAMS: --whoop, Senator McCollister.

McCOLLISTER: Has that practice changed, Senator Kolterman, where when you were an agent back in the 90's--

KOLTERMAN: It's my understanding--

McCOLLISTER: --that they would go--

KOLTERMAN: --yeah, it's my understanding that there has been a change since I was in the practice, and that many of the companies don't put the loss payee on there any longer. And that's why the bill was brought to me; I understand the challenge. I-- I actually understand the challenge both ways, and so I think it-- it deserves to have this

hearing. Let's talk about it and see if we can come to some consensus on how we're going to deal with it in the future.

McCOLLISTER: And that change, was that for the reason you stated, that many of the lenders sell off the loan instrument?

KOLTERMAN: I-- I don't know why that change took place, but you'll have to ask some of the-- I believe there are some insurance companies that are coming behind me as well as the Bankers Association.

McCOLLISTER: Thank you.

WILLIAMS: Seeing no other questions, thank you, Senator Kolterman.

KOLTERMAN: I'll stay for closing.

WILLIAMS: I assumed you would. We would invite the first proponent. Welcome, and if you'd please state and spell your name as you begin.

MIKE HALL: Good afternoon, Chairman Williams, and members of the committee. My name is Hall, H-a-l-l, Mike. I'm executive vice president of the American National Bank located in Omaha. Thank you for hearing my comments today. As a quick background, I've been a banker and in the banking business for 39 years and 29 of those years here in the state of Nebraska. Proposed legislation LB257, as indicated by Senator Kolterman, attempts to compromise the issue of collateral protection for lienholders on real property, personal property, automobiles, and other vehicles. As I'm sure you're all aware and perhaps have personally experienced the process of borrowing monies to acquire a vehicle or a home or both, you understand when money is borrowed and property is pledged as collateral, the lender will typically require that such property collateral be insured against physical damage. The lender is then granted certain protections by the insurance contract under a lender's loss-payable clause or a standard mortgage clause. The effect of this protection provided is for the lender to have both notice and protection in the case of an insured loss. This notice would typically be provided by the insurer in issuing a claim check jointly payable to the insured and the lender and, in some cases, may include a vendor who may be performing work to correct the damage. We are seeing more instances of companies, insurance companies issuing checks solely in the name of the insured. Without the lender being a joint payable on the check, the insured is free to cash the check and decide whether or not to repair the damages. Failure to repair damages diminishes the value of

the collateral. And in the case of damages where significant repair is required, the insured is borrow-- insured/borrower is free, without protection of the joint-payable check, to use any vendor or contractor without regard to the quality of work. Again, this may present potential diminished value of the collateral potentially resulting in damages that are not covered by the insurance and thus directly attributable to the quality and completion of the needed repairs to return the collateral to the pre-claim status. Without protection of joint-payable checks, the lender doesn't know what he doesn't know. In the case where default or repossession is imminent and may occur, the lender probably is only at that point made knowledgeable of the damage and the process of the insurance claim check or what happened to it. And as Senator Kolterman stated, by that point the check may have been cashed and the proceeds there are not recoverable. I'm confident you'll hear that there is some extended period of time that lenders are dealing-- endorsing over claim checks. This rings a little bit hollow to me because once the check has been issued payable to the insured and the lender, the insurance company truly is absolved. It's a contract between the payees of the check. There is-- I would suggest that complaints about delays may be due to insureds who don't wish to fix the damages and repair the collateral but retain the funds without payment or negotiation with their lender. I'm also confident that you'll hear that this is no big deal. An insurance company will pay the claim if called on. I can pretty much assure you there are very few insurance companies, if any, that are in the business of paying claims twice. If such a claim by a lender presented to the company, the insurance company will ask a series of questions like, what was the loss date? [INAUDIBLE] the bank doesn't know. And when and where did the claim occur? Bank may or may not know, parties involved don't know, and prove the damage isn't due to multiple incidents where a deductible may be applied in-- multiple times. It is obvious that as a lender, the lender is not in care custody control of the pledge collateral at the time of loss, and the lender does not have facts like these at its disposal. As lenders, we are befuddled that as a party to the insurance contract, by virtue of the lender's-- lender's loss-payable clause and the standard mortgage clause, where does the insurer draw the conclusion that it is no longer required to make the check jointly payable? I might add that paying a claim check to the insured and the vendor only, also gives rights-- rise to rights to a vendor who is not a party to the insurance contract that may be at a higher level than that of the lender who is a party. This also does not guarantee completion of the work in satisfactory form. A bit of a background, American National Bank has a very large client base of

borrowers in and across most of the states in the lower 48. We take pride in dealing with client issues such as joint-payable claim checks as soon as we are made aware. We do not hold on to or otherwise delay negotiating claim checks. We take care to make sure the insured's property is returned to its predamaged status. And this does take time and oversight. Granting the insurance claim payer the ability to cut out the lender in the transactions for some reason of claim deficiency does not seem to hold up. Thank you.

WILLIAMS: Thank you, Mr. Hall. Are there questions for the witness? Mr. Hall, you've been in-- in the banking business, I think you stated, for 39 years. Couple of questions. First of all, in the opening, there was conversation about how the procedures of insurance companies may have changed over that time. Have-- have you noticed that-- that maybe they used to put the loss payee or the-- the--

MIKE HALL: Yes.

WILLIAMS: --secured?

MIKE HALL: As Senator Kolterman indicated, and I will endorse, there seems to be an increasing frequency. And it's very difficult as a lender to put your finger on it directly because oftentimes, as I stated in my testimony, we don't know what we don't know. If the damage happens, the insured keeps the money, trades the car in before and it never goes into default, we-- we probably never know. In the case of a home-- the-- or a property damaged nonvehicle, places damaged. And let's say the roof is damaged, and the insured decides to put a tarp over it just to keep the rain out. And then at some point in the future, the proceeds have been distributed without the lender, those proceeds are gone as you can understand in the case of a default situation.

WILLIAMS: You-- you mentioned in your testimony that we might hear testimony that would say that this is no big deal. From the standpoint of American National Bank doing business in 48 states--

MIKE HALL: We have-- we have--

WILLIAMS: --how would you-- would you describe it as no big deal?

MIKE HALL: I wouldn't use that term. We have incidences where we have lost money due to uninsured collateral where we have had typically an insured vehicle or home, that upon default or abandonment or

bankruptcy, that we go into it and damage has occurred. We have had instances where we have attempted to make claim on insurance companies for those damages and have been rebuffed for the-- for the reasons that I stated in my testimony. And we've had one claim where one of the insurance companies did actually pay the claim twice. It was quite small, less than $5,000, but that's the only instance where we've been told they play-- paid the claim twice.

WILLIAMS: Any additional? Senator Gragert.

GRAGERT: Thank you, Senator Williams. Could you-- could you expand on that just a little bit as far as what was the scenario where they actually came in and paid versus they don't pay?

MIKE HALL: Give me one second. Let me consult my notes here. I've got some detail on that, Senator. The issue was it was an automobile. It had been turned into a body shop-- had been delivered to a body shop. We're not really sure why because the claim check had been cashed prior to the delivery of the vehicle to the body shop. The body shop researched the title because the customer abandoned it at the body shop. And so we investigated, contacted the insurance company, repossessed the car, and then made a claim on the, it happened to be, USAA insurance that paid the claim. According to them, they paid it twice. We don't-- we don't have any evidence to that. They-- they paid us. We also had another claim where just the opposite happened.

GRAGERT: [INAUDIBLE] Is there a time frame on that? Is-- like-- can he do that with a-- can the individual cash the check within a week or a month and they'll still-- still pay on that claim or is there-- or is there a time frame where they're not going to pay anymore?

MIKE HALL: Well, I'm not aware of any time frame other than the statutory time frames, about typically six months, to negotiate a-- an item or it's considered stale. Oftentimes, various companies put legends on their signatures that says, this-- this item not valid unless cashed within X number of months. But I'm not aware that there was a time frame. There was a fairly decent-- several-- almost a year's time frame in the example that I brought, but no check had been issued to us. So that-- that was not applicable at that-- in that instance.

GRAGERT: All right, thank you.

MIKE HALL: You're welcome.

WILLIAMS: Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Williams. And thank you for your testimony. I'm sensitive to this idea of lenders selling off their portfolio of-- of-- of debts. Twenty years ago, I took out a mortgage, and I think they sold that mortgage two or three times. And fortunately, I never had a claim, but, you know, pretty hard to document all those changes so-- when a-- when a-- when a bank or some other lending institution sells off their portfolio. Does that happen much with Nebraska institutions now where the--

MIKE HALL: I--

McCOLLISTER: --the debts are sold off?

MIKE HALL: --well, I'll do my best to expand on that. It's-- it's relatively common in the home real estate lending world, like you mentioned your experience, due to them being what-- those types of loan being long-term fixed-rate loans that banks may or may not want to keep on its-- its own balance sheet. The-- addressing where you might have a claim-- I mean, that's a customer service issue that the lender who originated the loan, let's assume it's American National Bank, should intervene on your behalf, you're still our customer, and help you navigate through the claim process that has XYZ bank out of New Jersey as the-- as the joint payable. The alternative-- I guess, I still don't see that the alternative's any better by not issuing the check joint payable. It's you can do whatever you want with the money. Now the-- the reasonable person, of course, would have the repairs completed. But if it was 2008 during a time when housing was in crisis, I'd suggest that there would be a lot of those checks that the claims would never have been addressed, the claim damages.

McCOLLISTER: Not as much of a problem with automobiles, I take it?

MIKE HALL: It's probably more common in automobiles; just the numbers are a lot-- the claim numbers are a lot smaller.

McCOLLISTER: But they don't sell the-- sell the debt instruments generally.

MIKE HALL: Well, that-- it does occur, but again, typically when a-- when an automobile portfolio is sold-- a series of-- a book of loans, the seller retains the servicing. So just the-- the loans move off the

books but not the servicing. So it would still be in the hands of the lender to negotiate the checks.

McCOLLISTER: I understand the point you're making, but I think in the partic-- my particular instance, 20 years ago with the mortgage that they sold, I think the lender went out of business. So that-- that is a problem.

MIKE HALL: That would be a unique-- that could be a unique problem. Yes.

McCOLLISTER: Yeah, thank you.

WILLIAMS: Additional questions? Seeing none--

MIKE HALL: Thank you.

WILLIAMS: --thank you for your testimony. Invite the next proponent. Welcome, Mr. Hallstrom.

BOB HALLSTROM: Chairman Williams, members of the Banking, Commerce and insurance Committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB257. I believe that Senator Kolterman and Mr. Hall have probably adequately described the background of the issue and the problems associated with why we have brought this legislation. I'd like to give the committee a little bit of the background on the chronology of what's happened to bring us to this point. This is not an issue that the Bankers Association has brought lightly to this committee or to the Legislature, and in fact, it's one that in all my years I had not heard much of this issue until about 2011. In 2011, we had some bankers for the first time that had brought to our attention that they were discovering the checks in the neighborhood of $1,000 to $2,500 were being issued in cases where they were a named loss payee and they were being issued directly to the insured disregarding the loss payee provisions of the insurance contract. At that time, we convened a working group of bankers. We did meet with some of the very people that are here today to testify, no doubt, on the other side of the bill. And at that time, given the small amount, our bankers were persuaded, at the urging and encouraging of the insurance industry, that these small amounts recog-- recognized a convenience to the insured and somewhat of an accommodation to the lenders who maybe didn't want to be burdened with $75 and $100 checks that are issued in many cases and having to

endorse those checks. We brought-- bought off on that argument at that time. And now you fast forward to 2018, and we were contacted by some of those same members indicating they're now seeing $7,500 to $10,000 checks that are being issued without naming the loss payee. In the course of looking into this, I've had a number of situations where people have told me that there's checks as high as $30,000, $35,000 for which that type of treatment is being accorded. At this point, it becomes real money. And I think that's the nature and the level of the concern of the banking industry. We came forward. And I-- I can tell the committee that probably, if our bankers had our druthers, they would say why are we here doing this? They have an obligation to protect our interest and they ought to be issuing these checks without legislation indicating that they need to do so. We actually thought, by putting a threshold in with today's prevailing practices at $2,500 for motor vehicles and $7,500 for real estate, that why on earth would anybody complain? And in fact, we did meet with the insurance industry and appreciated their willingness to-- to get together. But as so often happens, it was-- it's the guy behind the tree that's causing the problems. Nobody at the table seemed to indicate that they were issuing checks above these thresholds, but yet they don't seem to want to be told that they should-- should have a threshold that's applicable. That, simply put, is what the bill would do in terms of establishing a $2,500 threshold for automobiles and $7,500 for structures, buildings, residential or commercial. Senator Kolterman referenced a friendly amendment. It's friendly from our perspective. I don't assume the insurance company is going to have much interest in-- in-- in the amendments, but I'll give you a little bit of background. The first one is, the bill in its original form, green copy form, references automobiles. I think technically that should be motor vehicles so that it covers both automobiles, trucks, and the like. And secondly, one of the issues that we raised in the green copy was to recognize that there was an option to make payment to the insured and the loss payee as should normally be the case or the option of making the payment to the insured or the repair person. In the course of having subsequent meetings with the insurance industry, one of their representatives suggested that the repair person is not a party to the contract, and that they would never issue checks to the repair person. They also identified that if the repair person is changed midstream, that you could have issues there by issuing a check to the wrong repair person. And so we took those issues to heart, and part and parcel of the amendment that's before you, AM259 to LB257, would make those two changes. And with that, I'd be happy to address any

questions that the committee may have, and would encourage the committee to advance the bill.

WILLIAMS: Thank you, Mr. Hallstrom. Is it-- are there questions of the witness? Senator [SIC] Hallstrom, I know we have dollar limits in here. Is there some rationale behind how $2,500 and $7,500 was chosen as the thresholds?

BOB HALLSTROM: Thank you for the promotion, and beyond that--

WILLIAMS: We'll get you there.

BOB HALLSTROM: --beyond that, Senator, in talking with some of the insurance company representatives, I was quite frankly a little bit surprised. But some of my lenders told me that the-- that the figures were in the ballpark. One of the insurance industry representatives indicated that the average loss claim for automobiles was $2,200. And so we-- we chose the $2,500 figure based on that representation. With regard to the housing figure, $10,000 from when we had visited 5, 6 years, 7 years ago, $10,000 was a figure that-- some of the guaranteed GSE contracts had a figure of $10,000 that we really-- the lenders are required to take certain actions. Some of those GSE contracts may actually say, if you get any proceeds, you've got to take certain steps in order to maintain that guarantee. So that-- that would-- would be of a concern if we got any higher than-- than the figure that we've chosen.

WILLIAMS: Any additional questions? Seeing none--

BOB HALLSTROM: Thank you.

WILLIAMS: --thank you for your testimony. Invite the next proponent. Welcome.

BRANDON LUETKENHAUS: Welcome, Chairman Williams, members of the Banking, Commerce and Insurance Committee. My name is Brandon Luetkenhaus, B-r-a-n-d-o-n- L-u-e-t-k-e-n-h-a-u-s. I'm here on behalf of the Nebraska Credit Union League. Our association represents Nebraska's 60 credit unions across the state and their credit union members. I appear before you today in support of LB257, and appreciate Senator Kolterman for bringing this. I also-- folks are passing out here a letter from Steve Edgerton of Centris Federal Credit Union. I hope this committee would consider accepting that as written testimony as Mr. Edgerton was unable to make it today but would like his letter

to be submitted as written testimony if that's-- if that's doable. I don't have much to add from what previous testifiers have said. I will say that credit unions are not-for-profit financial institutions and they are owned and-- owned by their members. And so they seek to protect the members' money which is brought in from members and lent out to members. And in this case, when it comes to collateral, they want to make sure that that's protected. And with regards to Senator McCollister's question, many of our credit unions in this state when they do make a mortgage loan they may sell it off, but they-- they do typically service that loan. So although it's not on their books anymore, they still service it. So if you have an issue, you can go to that financial institution and you can have remedies taken by them. So you're not working with a bank out in New York or-- or wherever it's sold off to. So with that, support the bill, hope that this committee will advance LB257 to General File.

WILLIAMS: Questions for Mr. Luetkenhaus? Senator McCollister.

McCOLLISTER: Thank you, Senator Williams. Thanks for the answer you gave me; I'm grateful. But they have no legal obligation to service that-- that loan they sold off, do they?

BRANDON LUETKENHAUS: I don't know if there is a legal obligation. I have to get back to you on that, Senator. But certainly for customer service purposes, I-- I, in fact, had a hail claim on my home in the recent last couple years and I worked with my credit union which sold that loan off. But-- but they worked with me, and actually that's where the check was deposited. And that's where payments were made through that account.

McCOLLISTER: That's great. Thank you.

WILLIAMS: Seeing no other questions, thank you, Mr. Luetkenhaus. Invite the next proponent. Seeing no one coming forward, I would invite the first propo-- opponent, excuse me. Welcome to our committee.

RICHARD SIREK: Thank you, Chairman Williams, and the rest of the members of the committee. I appreciate you listening to me today. My name is Richard Sirek, R-i-c-h-a-r-d S-i-r-e-k. I go by Rick. My business is Town and Country Insurance. I and three other partners own the agency that has been in business for 47 years in northeast Nebraska. We're in ten different communities. I'm here today on behalf of the Professional Insurance Agents of Nebraska who have 1,000 agents

across Nebraska. I am testifying in opposition to LB257. What I'm hearing here today-- I-- I've heard proponents, I'm sure I will hear some insurance companies that are against this behind me. But I think there's something that's being forgotten and that is the person caught in the mid-- in the middle. It's not the banks, they have a lot of money, or the insurance companies. It's my clients, the consumer in the state, that is caught in the middle of this legislation. I consider it to be a not-consumer-friendly bill but a bank-friendly bill. From the agent's perspective, we want a claims process that is efficient, flexible, and easy for the client to manage. LB257 complicates the claim process by mandating additional entities to be named on claim checks. Banks are already protected under property insurance policies since they have a separate contractual right to payment for their interest should the collateral in some way not be of the same value as it was prior to the loss. I and the rest of my agents have not heard of any systemic problems because banks are not always included on settlement checks. I heard from some proponents that that might be a problem for them. One of the handouts that I handed out today is one of my clients who-- their bank, I believe, was Wells Fargo if I can mention banks. But they were going to do the work themselves on their house, and this particular insured actually works for me. A lot of our insureds like to put on their own roof because it saves them some money. They have friends and stuff that can help them. Insurance companies typically send 50 percent of the estimate to fix the house from the adjuster to the client. To begin with, usually has the lienholders name on it already. They took the check to the lienholder to have him sign off so that they could buy the materials to do the house themselves. The lienholder would not sign off. So they had to use their credit card to buy the materials to fix their house, and it-- it can be a problem. I myself had hail loss to my roof in 2016. I'm insured with Farmers Mutual of Nebraska. They give you three days to fix the roof. I didn't want to fix it right away because it wasn't going to leak, but my contractor, that I always use, said there's a good sale on the shingles right now. We can buy them and hold them for three years until you want to put them on. I asked the bank, which by the way it's not my original bank, it was sold off to another bank out of state, they wouldn't sign off. They said we won't sign off until the work's done. And I don't understand that because most insurers are going to fix their roof. If they don't fix the roof on their house with the money they get, when they go to sell it that house is inspected and it will not sell with a bad roof. So they have to get it fixed sometime down the road anyway. If they've spent that money, when they go to sell it, they're going to have to come up with

money to fix that roof. And if it's not fixed, if they abscond with the money, the insurer that try-- that buys that house and wants to insure-- it doesn't get insured by the company because it has a bad roof. So it causes a problem that way. Insurance companies are going to issue the final check, the last 50 percent, when the work is done. So I'm not sure what the banks are concerned about-- about losing collateral because the work is going to get done or they don't-- the insurers don't get that last 50 percent. If we're going to impose this type of legislation on the insurance companies, there needs to be guidelines. And not just guidelines, there needs to be teeth in the guidelines in place for the banks which directs them to return the insurance checks to the clients in a timely manner, not two months down the road. Thank you for your time. I appreciate it.

WILLIAMS: Thank you for your testimony. Questions? Seeing none, thank you for your testimony.

RICHARD SIREK: Thank you.

WILLIAMS: Invite the next opponent. Welcome, Miss Parr.

ANN PARR: Good afternoon. Thank you. My name is Ann Parr, that's A-n-n P-a-r-r. I am with Farmers Mutual of Nebraska, which is a property casualty insurance company headquartered here in Nebraska. I also serve as the president of the Nebraska Insurance Information Service which is a state trade association. We have about 21 member companies now, I believe, all of whom write property casualty insurance in the state of Nebraska. And I am hearing-- appearing here today in opposition to LB257. When a loss occurs to a car or to property that is insured under a policy, the primary concern of the insurance company is to provide good service to our policyholder by settling the loss in the quickest, most hassle-free manner we can come up with. Rates and premiums are important, of course, but really that's how we prove our value to the customer, is by making sure that when they have a loss to their property, they get their claim paid quickly and with a minimum of headaches. This often requires the insurance company to make some business decisions, to use their discretion in making decisions about how to get that loss paid quickly and with a minimum of headaches-- headaches, to get that policyholder put back together as quickly as possible after the loss. We oppose this bill because it would restrict our ability to make those discretionary business decisions in settling a loss because it sets out very specifically whom we have to put on the loss checks and in what circumstances. It would remove the flexibility that we currently enjoy to decide how to

handle claims in the manner that best helps our policyholders. Now it's true that every policy does contain language about making payment to lienholders and mortgagees. The intent of that policy language is to make sure that any entity that has a financial interest in that insured property is going to be protected in the event of loss to that property. So insurers make decisions all the time about how to protect that financial interest while making sure that the delays and the inconvenience for the insured are kept to a minimum. It's a balance that we have to work with. The exact procedures and processes and internal policies vary greatly from company to company. And I'm sure you can appreciate that I won't speak to those individual differences today, but it doesn't matter because I think the theme is the same throughout the insurance industry. The focus is on the convenience to the insureds, good customer service, prompt claims handling. Mr. Sirek gave some great examples of how frustrating it can be for the consumer if the insurance company is or, yes, if the insurance company is forced to put the lienholder on every check. It can really slow things down and frustrate-- frustrate the process. The point is that insurance companies do what they can to follow the spirit of that policy which is to protect those with a financial interest in the damaged property while retaining the flexibility to handle the claim in the quickest way they can. The other point that must be made is that insurers do sometimes make the business decision to leave a lienholder or a mortgagee off of a loss check for the sake of the customers. But it's really a rare set of circumstances in which a bank would be hurt by this. For the bank to be harmed, it would have to be a situation in which the insured property's damaged, repairs are not made and then the bank subsequently takes that property back in a damaged condition through default on a loan or repossession of a car or whatever, and they suffer a financial loss as a result. That is a rare set of circumstances. But moreover, even if that does happen, if the bank comes to the insurer and says you left us off the check and now we have suffered a financial loss as a result, the insurer will say you're right and issue them a check. Mr. Hall suggested that we're not in the business of paying losses twice. That's true, but we will on occasion do that. We don't like to and we try not to get in that situation, but it happens and we will do that. Insurers know that they are taking a risk by leaving the bank off the check. It's a gamble we are willing to take, frankly, to handle the loss efficiently for our customer. It's a-- it's a customer service issue. If we gamble wrong, we will make it right with the bank. In summary, the current procedures work well. They allow the insurers to do what they deem best to protect those with financial interest in the property while

retaining the flexibility to handle the claim for their customers in the best manner, the most efficient manner possible. Furthermore, current procedures provide adequate re-- recourse for the mortgagees or lienholders in the rare situations in which they feel they've been damaged by the insurer's decision on how to settle the loss. Therefore, we would respectfully ask that you leave the current structure in place and do not advance LB257. Thank you.

WILLIAMS: Thank you, Miss Parr. Questions for the witness? Miss Parr, I've got a couple questions.

ANN PARR: OK.

WILLIAMS: I understand your not wanting to talk about other companies' policies and procedures, but what is the general policy of Farmers Mutual as far as putting a bank's name on the check or the lienholder's name on a check--

ANN PARR: I can--

WILLIAMS: --on specifically vehicles--

ANN PARR: Yeah.

WILLIAMS: --and specifically homes?

ANN PARR: I can tell you generally. Some companies have dollar thresholds, you know, below which they won't bother with putting the bank on because it's not worth the hassle. Some companies have an internal list of banks. You know, if it's this bank, you always have to put them on the check. If it's this bank, you'd never put them on the check. You know, some companies handle it that way. Some companies based-- base their decision on how the loss itself is unfolding. Is the insured-- if they know the insured is in the process of getting those repairs made, we're not as worried about it because we know the damage will be repaired. You know, so there's a lot of different policies. Our company has some dollar thresholds, but they're very loose, and we may or may not follow them depending on the circumstances. I think other companies are a lot stricter. They've got some dollar limits in mind that they abide by. So, you know, I know that's a vague answer, but I think--

WILLIAMS: Do you mind sharing your company's dollar limits?

ANN PARR: I do because I'm not sure what they are.

WILLIAMS: OK.

ANN PARR: Yeah, yeah, I don't want to misspeak.

WILLIAMS: We heard testimony from the prior witness about withholding on a home, maybe a roof repair on a home, 50 percent of the proceeds. Is that the policy that is generally the policy that insurance companies follow when paying those claims?

ANN PARR: Yeah, yeah, we will pay some money upfront and then when the repairs are made, we'll pay the remainder of that. That's a very common way for that to happen. Yeah.

WILLIAMS: So you suggested that your company and others may have some thresholds, some other things. Is there a threshold in legislation that you would agree to?

ANN PARR: I would say--

WILLIAMS: If the threshold on homes was $100,000, would you have a problem with that?

ANN PARR: Right. Well, if it was $100,000, we might have to talk. But I would say in general--

WILLIAMS: So you're not opposed totally to thresholds?

ANN PARR: I was going to say, I think, in general, I would say conceptually we are opposed to that, yes, because it does just tie our hands. It removes that flexibility. Sometimes we want the bank on there as much as the bank wants to be on there for a variety of reasons. So we would like to just, in general, retain the flexibility to handle it the best way under the circumstances.

WILLIAMS: Thank you. Any additional questions? Seeing none--

ANN PARR: Thank you very much.

WILLIAMS: --thank you, Miss Parr. Invite the next opponent. Welcome, Miss Nielsen.

COLEEN NIELSEN: Good afternoon, Chairman Williams, 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'm the registered

lobbyist for State Farm Insurance Companies testifying in opposition to LB257. We oppose this legislation because we think that it will negatively impact our customers. We believe that our claims process works well, and that banks are and will always be protected in that process. Claims handling has changed over the years. Insureds expect quick service and payment for losses that they incur. State Farm works hard to accommodate that expectation. Losses can be difficult for customers, and so the goal is to get their claim handled as quickly as possible. Policy provisions provide that State Farm will protect the interest of the bank. They do that by putting both the insured and the bank on the claim payment checks. But there are instances, in cases of smaller losses, when the claim payment is made directly to the insured keeping in mind that the bank interest must be protected. If the bank's interest is not protected, say, for instance, the insured does not pay the roof or-- or car and the bank has foreclosed or repossessed the property, the insurance company must pay again. Insurance companies take such a risk in these situations because customers often experience delay in getting some banks to sign off on their claim payment checks. This can cause customers to experience additional loss and time and money. Insurance companies take the risk for the customer, so the customer can do what is needed to move forward. So really in summary, what we're saying is-- is that first of all, it's our customer that's going to suffer as a result of putting these thresholds in statute because it takes away the flexibility, and they will suffer delay in certain circumstances. We also believe that there-- we don't believe that there really is a problem in this process because it's a rare case that an insurance company owes a bank for a second payment on a claim. They don't do this lightly. I think they look-- they-- they-- they evaluate the situation before moving forward. The practice of not placing banks on small payments is closely monitored by companies. If second payments occurred more frequently than in rare cases, the practice would be adjusted because I did agree they are not in the business to pay claims twice, but they know that they'll have to if they make a mistake. We think that the fear and concern contemplated in this bill doesn't give rise to a statutory response. I hear that they're saying that this has happened where they've asked the banks-- or asked the insurance companies for payment. I haven't seen when that-- when that's occurred or how often that's occurred. If that has occurred, that's certainly something we'd really like to sit down and talk about because-- at least I-- I was in-- I handled claims for a short period of time with State Farm Insurance, but I never heard of a--- of a second payment. And I-- I certainly was warned that the bank's interest was-- was-- needed to be

protected and never used so. Finally, companies want the flexibility of the payment into their customers' hands as quickly as possible so that the interruption in their life is as minimal as possible. Placing these thresholds in statute will only make the process more restrictive.

WILLIAMS: Thank you, Miss Nielson.

COLEEN NIELSEN: [INAUDIBLE]

WILLIAMS: Questions? I have a couple of questions.

COLEEN NIELSEN: Sure.

WILLIAMS: I guess I'm the question asker-- asker today. You talked about State Farm and small payments that they're making,--

COLEEN NIELSEN: Right.

WILLIAMS: --but does State Farm currently have a threshold that they do use when looking at losses on vehicles and losses on homes?

COLEEN NIELSEN: I am not aware of any thresholds.

WILLIAMS: OK. You heard testimony from Mr. Hall from American National Bank about sometimes the problem of determining-- the bank may not even know that there has been a loss and then somewhere down the road, have a circumstance to repossess a vehicle that may have been damaged or something. How hard would it be in a case like that for a bank to come back to State Farm and attempt to prove that their name should have been on a check and that they had suffered loss?

COLEEN NIELSEN: You know, Senator, I think-- I think that's a very good question. I-- I can't imagine that it would be that difficult. I would imagine that in-- I imagine that there are State Farm agents all over the state of Nebraska. And if a State Farm agent was contacted by a bank or if there was maybe some process that we could come to an agreement where banks could contact insurance companies at certain places so that if this does occur, there would be some notice to the insurance companies so that they could pay the claim. But I-- I don't think it would be that difficult to contact insurance companies doing business in the state of Nebraska if they felt like they had not.

WILLIAMS: Did you recognize that part of the difficulty would be just simply the lack of information to try to explain to the insurance company what had happened?

COLEEN NIELSEN: Well, the insurance company certainly is going to have a record of whether or not there was a payment made on that particular--

WILLIAMS: Right.

COLEEN NIELSEN: --insured's vehicle, they will have that. So-- so if the bank inquired, the insurance company certainly would have-- have that information.

WILLIAMS: Thank you, Miss Nielson. Any additional questions? Seeing none, thank you for your testimony. Invite the next opponent. Welcome, Mr. Bell.

ROBERT BELL: Thank you, Chairman Williams. Banks versus insurance, it's so exciting. Chairman Williams, and members of the Banking, Commerce and Insurance Committee, my name is Robert M. Bell. My last name is spelled B-e-l-l. I am the executive director and registered lobbyist for the Nebraska Insurance Federation, and I am here to testify in opposition to LB257. And I'm not going to read my testimony, except I'm going to point out one provision of it, related to one of my member companies which is Great West Casualty out of South Sioux City, Nebraska. They write-- or they provide insurance to charters. That's-- that's their niche, and they're a pretty big insurer up in northeast Nebraska. They have a pretty good economic presence in South Sioux City. When they took a look at this bill, what they pride themselves on is customer service. That's how they-- they built their business. And getting truckers back on the road as quickly as possible is important to them. Adding banks to basically every check, if you're involving these large, you know, motor vehicles, commercial motor vehicles would, without a doubt, delay the truck from being repaired. And if you're a small trucking firm, my understanding is, I'm not a trucker, but my understanding is, every day that you're not on the road, you're losing revenue. And it's-- it's an economic-- it's an economic issue for them. And so the insurer makes that decision. You know, they're-- they're basing themselves off-- they're basing their decision off what the customer needs because that contract is between the insured and the insurance company. Now it may mention the loss payee, but it is not part of that contractual obligation. So simply stated, my insurers-- my member companies that

are in this type of business, the P&C business, are opposed to any kind of statutory impediment to timely paying their insured. I mean, you see the marketing all the time. It's, you know, how fast you can get paid. Those things are very important to customers out there, to insurance. And-- and so they want the flexibility to-- to make those decisions. So with that, thank you.

WILLIAMS: Thank you, Mr. Bell. Questions for the witness? Seeing none, thank you for your testimony. Invite the next opponent. Welcome, Mr. Lindsay.

JOHN LINDSAY: Thank you, Senator Williams, members of the committee. For the record, my name is John Lindsay, J-o-h-n L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the Nebraska Association of Trial Attorneys. First, I'd comment that it's-- it's kind of interesting here in Banking Committee. I usually fight with Bob Hallstrom over in Business and Labor, but I-- I've noticed this committee has brought together on one side the bankers and the credit unions, and on the other side the insurance companies, the trial lawyers. And it's-- and then we've elevated Mr. Hallstrom to a senator position [LAUGHTER], so it's been a very interesting day in committee. I wanted to talk about, I think the first testifier in opposition, insurance agent mentioned that we can't forget somebody in this dispute between a couple of industries, and that is the consumer. Trial lawyers interest in this is making sure that the consumer, in those cases involving a collision, aren't-- aren't weakened in their-- in their position. As far as loss payee, whether they're included on a check, that's a contractual obligation between the-- the insured and insurance company that's named in the policy. That we don't have an objection to. But when we start adding in repair shops for automobiles, when we start adding in the-- the-- whoever is doing the repair in the house, then that causes problems for the consumer. Our lawyers, in dealing with personal injury claims-- and they don't-- they don't make any money on-- on the property side. That's-- it's the injury claims is where they would put most of their time, but they have to put in time on property damage claims if there is an issue. And the issue that will come up is repair shop may do the work but do it in a faulty manner. But if the check is made out to the repair shop, regardless of the workmanship, if it's made out to the repair shop, then you've transferred the leverage over to the repair shop to say, I don't care what kind of a job I did, you're not getting any of that until-- until you agree to sign the whole thing over. So there's a change in leverage that can take place that allows the consumer to

just make sure that the job is done, and that's where our attorneys are called in to help out is if there is an issue with-- with the workmanship. And like I say, just think about if they have complete control of the proceeds, then it does transfer. So that is our concern. Like I said, we don't have any issue with the loss payee side of the-- the bill. We do with the adding these third parties who may not even know who those third parties are, but adding them is of concern.

WILLIAMS: Thank you, Mr. Lindsay, and I will not elevate you to governor. [LAUGHTER]

JOHN LINDSAY: Thank you.

WILLIAMS: Are there questions? One question, there is an amendment that has been offered that would remove the repair people out of the discussion that the checks would on-- at the threshold would only be made to the financial institution having a lien. Would that remove your objection to the [INAUDIBLE]?

JOHN LINDSAY: I have not seen the amendment, but I suspect that it would remove our objection.

WILLIAMS: Thank you, Mr. Lindsay. Any further questions? Seeing none, thank you for your testimony. Next opponent. Welcome, Miss Gilbertson.

KORBY GILBERTSON: Good afternoon, Chairman Williams, 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. I'm appearing today as a registered lobbyist on behalf of the American Property Casualty Insurance Association, long one there for you. I'm not going to go through what I had prepared for testimony, but I wanted to point out a few things that hadn't been discussed yet, or one thing that was kind of touched on but not discussed a lot. When Mr. Hallstrom talked about the average cost of a claim for an automobile accident or damage is $2,200, so if you look at the threshold that said $2,500, you can think of the thousands of checks that will now be required to get signed by the banks that aren't being done right now. This-- when we looked at it, the volume of checks that would have to be signed seems enormous to us. And to expect them to be able to turn them around; I know the bill says 10 days, most consumers, if you get into a car accident or if you have damage to your vehicle, you've already taken a few days to getting your car into the shop. Then you're going to have to wait another 10 days to get the check signed to pay for any damages. That just puts

you further back from being able to get back into the vehicle and have it fixed in the way it should be. Another part of the bill that I wanted to point out that hasn't been discussed is on page 3 at the end of the bill. And this part of the bill allows the bank to hold the check that has been written by the insurance company and instead of applying it to the damages, apply it to any amount that the lender-- that is in arrears on the loan. And then at the end it says, and then hold the balance for the payment of cost of repairs. So if you have someone that is in a car accident, needs to have their car repaired, the check is written to the bank. They're a month behind on their car payment. That money is then taken out to make the payment on their car payment when the contract was for the repair of the vehicle. And then the bank uses that money to make the payment. Then the person with the loan does not have the money to make the car repairs which compounds their issues to begin with. So I just wanted to point that out, and I'd be happy to answer any questions.

WILLIAMS: Questions for Miss Gilbertson? Seeing none, thank you--

KORBY GILBERTSON: Thank you.

WILLIAMS: --for your testimony. Invite the next opponent. Seeing no one coming forward, is there anyone here to testify in a neutral capacity? Seeing no one, Senator Kolterman, you're invited to close.

KOLTERMAN: Thank you very much, Senator Williams, and committee members. It's been an interesting afternoon of listening to both sides of this issue. I expected some opposition. I-- I expected some support. I didn't know if John Lindsay would go the way he went, but it happens. And John and I have a history of opposing each other. But it's obvious to me that there's still some work that needs to be done on this bill. We've tried to address most of the issues, and I think that we're getting there. We're-- we're going to talk about this in committee, I'm sure, discuss the pros and the cons. I'd like to see the bill move, but we'll just have to see where that takes us. I can try and answer questions as we move forward, or I can take some more questions at this time.

WILLIAMS: Any questions at this time for Senator Kolterman? Seeing none, thank you. And that will close the public hearing on LB257. Senator Kolterman, before we move on, we did have letters in support of LB257 that I failed to read into the record, but I would do that now. These are proponents of LB257: Kurt Pickrel from First National Bank and Trust of Fullerton; Rex Haskell, First Northeast Bank of

Nebraska; Jake Noonan, Community Bank; Bart Gotch, Siouxland Bank; Ken Niedan, Hershey State Bank; and George Howard from Five Points Bank of Hastings. And with that, we will open the public hearing on LB116 to authorize electronic delivery of insurance policies and billing information to insurers. Senator Kolterman.

KOLTERMAN: Thank you, Chairman Williams, fellow members of the Banking, Commerce and Insurance Committee. My name is Senator Mark Kolterman, representative of Legislative District 24, M-a-r-k K-o-l-t-e-r-m-a-n. This afternoon, I am pleased to bring LB116 to the committee for your consideration. LB116 will modernize the state's insurance laws and allow insurers to respond to changing consumer preferences for electronic communication over traditional mail services. In today's day and age, consumers are-- are conducting more and more business on-line, everything from shopping, to banking, to paying bills. This applies to the business of insurance as well, as policyholders are increasingly opting to receive policyholder documents from their insurer electronically via e-mail. There are questions, however, about what insurers are allowed to electronically deliver to policyholders, who content-- who consent to such delivery. Generally speaking, the federal Electronic Signatures in Global and National Commerce Act, E-S-I-G-N or ESIGN, and state Uniform Electronic Transactions Act, E-- UETA laws allow businesses and consumers to conduct such business on-line so long as parties consent and certain disclosure language is provided to the consumer. However, insurance is highly regulated and governed by laws with detailed specifications about when and how certain notices must be provided. There is a question as to whether or not insurers may electronically deliver all legally required documents to consumers who consent to-- to receive those documents electronically. That's why LB116 is necessary. Electronic commerce laws make it clear that the decision to receive policyholder documents electronically is the choice of the policyholder. Policyholders must give prior approval to their insurer to opt-in to electronic delivery of policy information, bills, and notices and can opt-out if they choose. Similarly, an insurer who chooses to post generic policies on-line must provide policies directly to the policyholder if the policyholder requests it. Under these laws, statutory notice time frames still apply to electronic delivery. For example, if insurers are required to mail a document 30 days in advance, they are still required to electronically deliver the same document 30 days in advance. E-delivery and e-posting are similar but they're different. E-delivery refers broadly to the electronic transmission of any and all insurance documents including the policy,

notices, and including cancellation or nonrenewal, and the billing to policyholders who consent, i.e. the people that opt-in to receive such materials electronically. E-posting or posting policies to the Internet refers to the posting of generic policy forms and endorsements that do not contain personally identifiable information to the Internet and sending a link to the materials via e-mail to the policyholder in lieu of mailing paper copies to the policyholder. Under this legislation, policyholders who wish to receive all communication from their insurer electronically may elect to do so while those who do not will continue to receive physical copies. I'm submitting AM266 for your consideration. AM266 is a technical amendment that will align LB116 with agreed upon industry model legislation that was adopted a few years ago, and will also allow life insurance policies and annuity contracts to be delivered via electronic means. Thank you, and I'm willing to answer any questions that you might have.

WILLIAMS: Thank you, Senator Kolterman. Questions? Senator Quick.

QUICK: Thank you, Chairman Williams. And thank you, Senator Kolterman. Just one question like on the-- so if there's-- happens to be changes to a policy, does it deal with something like that like e-notifications or something like that, too?

KOLTERMAN: Yeah. The way it's worked in-- in-- that I'm familiar with it because I've had this where people can opt-in in the past, and it's primarily after the policy was written. But when you make a change to a policy, if you once elected to have it electronically, they will mail them to you electronically whether it's an endorsement or whether it's a change.

QUICK: OK.

KOLTERMAN: At the same time, if you then decide I want to-- I want to go back to paper, you always have that option available to you. In the past, it's always been they had to mail everything to you.

QUICK: Hmm.

KOLTERMAN: And in the-- in the effort to streamline the process, and there are many consumers that would prefer not to have all those documents mailed to them, this is to take that place.

QUICK: Yeah.

KOLTERMAN: And so does that answer your question?

QUICK: Yeah, and I get that, but if there was something like if you needed an acknowledgment then does that-- how does that work? If there was like if they needed an acknowledgement that you received it or--

KOLTERMAN: Typically-- it's my understanding, I'm going to let them talk to that when they come, that if you-- if they need an acknowledgment, they can have you sign for it on-line--

QUICK: OK.

KOLTERMAN: --or they could-- they can have a return receipt on the e-mail or the electronic document.

QUICK: Yeah. Thank you.

KOLTERMAN: But I'll let the person that brought the bill to me answer that question.

WILLIAMS: Senator Kolterman, two things, I want to be certain you used the term consent numerous times in your testimony. The customer would have to consent to electronic delivery.

KOLTERMAN: Yes.

WILLIAMS: So they have the option under this.

KOLTERMAN: What-- what this does is it creates the option.

WILLIAMS: Creates the option.

KOLTERMAN: They don't have to do it. It's a-- it's a consent issue that allows them to do it. And again, it's-- it's primarily for the sake-- I mean, as an example, if you write a-- a life insurance policy and-- and it's-- what-- what an agent could do at the time that the policies is written and ask them if they want to have the paper documents or if they want to have them all electronically delivered. They can consent to have that done.

WILLIAMS: I have one--

KOLTERMAN: But it is a consent issue.

WILLIAMS: --one additional question then, and this could be something that whoever's coming up could answer, is on the-- the issue of-- that

can happen with various policies, is cancellation for nonpayment when that happens. If a person is receiving notices electronically, I'm assuming they'll be receiving their billing notices electronically, people change e-mails, different things like that, is-- are there any protections that would happen before a policy would be canceled for nonpayment?

KOLTERMAN: I'll let Miss Gilbertson address that issue, but I believe that there are-- there are provisions in the bill that allow for that to happen.

WILLIAMS: OK. Thank you, Senator Kolterman.

KOLTERMAN: Follow ups.

WILLIAMS: Any additional questions? Seeing none, and I'm assuming you'll be staying to close. And I would invite the first proponent. Welcome again, Miss Gilbertson.

KORBY GILBERTSON: Thank you. Good afternoon, Chairman Williams, members of the Committee. For the record, my name is Korby Gilbertson, that's spelled 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 American Property Casualty Insurance Association in support of LB116. I'll jump right to answer your question, so I don't forget or run out of time. But on page 4, lines 8 through 11, there's language that says-- so currently if there is a notice-- if notice is required or an acknowledgment is currently required, then one has to be received via the electronic means, also. And then there is also a second backup provision on that. So if they've tried to send someone something twice and it's not going there, they have to revert back to the old mailing method. And at any time, I believe it's at the very end of the bill, if a consumer wants to have a paper copy of any changes to their policy or things like that, they-- the company needs-- it has to mail them one free of charge, it states in there. Now I'm going to back up and start over a little bit. This-- this legislation has been around for a little while. We first came to the Legislature in 2014 with a bill that allowed for electronic delivery and then also electronic proof-of-insurance cards. And so a lot of you probably have the electronic proof-of-insurance cards because we went ahead and that part-- portion of the bill passed that year. But it was decided by the Banking Committee that maybe the rest of the bill-- they weren't quite ready to have things sent electronically to consumers. I think now that five years have passed, and I can tell you, I am-- I don't know

if everybody does this, but every time I get something from the insurance company, I barely open it. I-- it goes in the recycling bin. I would much rather get things via e-mail, and be able to put them in an electronic file and keep a hold of them instead of trying to figure out what to do with those envelopes all the time. And I think especially as-- as younger people are growing-- coming into the system, buying insurance, they are not used to it, all having to do everything via paper. And this just makes sense. And as Senator Kolterman said, the bottom line is it is an opt-in service. It's not something that will be automatically handed to consumers, but they would have to request it. So with that, I'd be happy to answer any questions.

WILLIAMS: Questions for Miss Gilbertson?

McCOLLISTER: I have one.

WILLIAMS: Senator McCollister.

McCOLLISTER: Sorry about that. Now electronic proof of delivery, is that the equivalent of receiving something back from the post office--

KORBY GILBERTSON: Um-hum.

McCOLLISTER: --that you've re-- actually receive the communication?

KORBY GILBERTSON: Yes.

McCOLLISTER: OK. And just to follow up on Senator Williams' question, before you terminate somebody and you don't get any response electronically or you get-- get no delivery-- delivery response via e-mail, you'll actually send it?

KORBY GILBERTSON: Yes, that's required in the legislation. They would have to do that. And that there's-- right now there is no requirement in law that if I receive a certified letter from ABC Insurance Company, that I have to sign for it and accept it. So, you know, that's-- that problem can't ever get rid of. So if people don't want to receive it or don't want to sign the or-- send the receipt to sign a red-- read receipt, I think is what it's called, they don't have to do that, but that-- if they don't do it two times, then we have to mail it just like currently.

McCOLLISTER: You say two times. Does that--

KORBY GILBERTSON: There's--

McCOLLISTER: --mean over 60 days?

KORBY GILBERTSON: No, I think it-- it depends. It's the same-- whatever time line is required in statute right now, they have to apply that for the e-delivery as well.

McCOLLISTER: I see. Thank you.

KORBY GILBERTSON: Um-hum.

WILLIAMS: Additional questions? Seeing none, thank you--

KORBY GILBERTSON: Thank you.

WILLIAMS: --for your testimony. I would invite the next proponent. Miss Nielsen, welcome.

COLEEN NIELSEN: Thank you, Chairman Williams, and members of the Banking, Commerce and Insurance Committee. My name's Coleen Nielsen, that's spelled C-o-l-e-e-n N-i-e-l-s-e-n, and I'm the registered lobbyist for the Nebraska Insurance Information Service and State Farm Insurance Companies testifying in support of LB116. I think that the Senator Kolterman really set out the substance of this bill. What I'll reiterate, I guess, are the safeguards that are-- are in this bill. They include: before giving con-- consent the customers must-- the customer must be provided a clear and conspicuous statement informing them that-- informing them that they have the right to withdraw consent at any time; any conditions or consequences if consent is withdrawn; the types and notices and documents to which the consent applies; the right of the party to have a notice or document delivered by mail after consent is given and the means by which the party can obtain a paper copy; the procedure by which a party must follow to withdraw consent or update-- update an e-mail address; and, in addition, they're even provided a statement of hardware and software requirements for access and retention of the notice or document. And if those software or hardware requirements ever change, then-- then the insurance company must inform them of any necessary changes so that they receive that e-mail. The idea is they want to make sure that when these people or the customers do opt-in to this delivery system, that they actually get the documents that they're-- that's needed. I think the neat part of this bill is the posting part. I mean, I've gotten to the point where I Google everything. And it would be very

nice to see my insurance policy and what it covers, to be able to do that on my phone or tablet or my computer. And-- and this bill provides for that. And in-- in terms of, if there's any returned messages, again, it does re-- provide that if two or more electronic communications are returned in a 30-day period, then you've got to send everything by mail to that party. So with that, I'd be happy to answer any questions.

WILLIAMS: Questions? Senator McCollister.

McCOLLISTER: Just to follow up on your comment. Thank you for your testimony.

COLEEN NIELSEN: Sure.

McCOLLISTER: Is that registered? That last comment you made.

COLEEN NIELSEN: About any communication I think that is returned twice in a 30-day period, that they have to start mailing. That's the way that I read the bill.

McCOLLISTER: Right--

COLEEN NIELSEN: Right.

McCOLLISTER: --but does it have to be registered though?

COLEEN NIELSEN: I think it says anything required by statute. So if the statute requires it to be registered or certified, then it has to be registered or certified.

McCOLLISTER: OK. Thank you.

COLEEN NIELSEN: Um-hum.

WILLIAMS: Any additional questions? Thank you for your testimony. Invite the next proponent. Mr. Bell.

ROBERT BELL: Chairman Williams. Chairman Williams, and members of the Banking, Commerce and Insurance Committee, my name is Robert M. Bell, last name is spelled B-e-l-l. I am the executive director and registered lobbyist for the Nebraska Insurance Federation. I'm here today to testify in support of LB116. Insurance, like most other areas of business and the economy, is in the midst of a transformation. Technology is fundamentally changing how consumers interact with

insurance. The expectation, especially from younger generations, is that insurance will seamlessly interact with technology. In the insurance world, the term for technological innovation in insurance is insurtech. Similar to fintech in the banking world, insurtech is one of the most powerful forces in transforming the consumer experience. As more and more people rely on their mobile devices and more young people enter the work force and have their first experiencing-- experiences purchasing insurance, the expectation of consumers is changing. The insurtech movement is embracing this change, and both as startups look to disrupt traditional insurance ideas and incumbents, i.e. the existing insurers look to exploit technology to revolutionize the policyholder experience. The problem is that for numerous good reasons, insurance is one of the most heavily regulated industries in the United States. The insurance codes in the various states have numerous consumer protections in place to protect policyholders from unfair trade practices. As a result, new technologies that emerge to benefit consumers are often met with antiquated statutory roadblocks. LB116 addresses one of the major hurdles to innovation in the property casualty world in Nebraska, and that is the e-delivery of notices and documents. LB116, while outlining many consumer protections, places the option into the policyholder's hands, the ability to have those notices and documents sent electronically. I would submit to the committee that many consumers not only want e-delivery policies and notices, but, in fact, expect it. LB116 and electronic delivery of notices and documents is important in this age of insurtech innovation and removes a roadblock to deployment of insurtech innovations in Nebraska. You know, I think that some-- simply put, you put the choice in the policyholder's hands. This is what consumers want. And if they don't want e-delivery, they do not have to opt-in. I imagine the opponents, if anything, are going to object specifically to the cancellation notices being sent electronically. I'm here to tell you, as an attorney who has sent out numerous notices electronically via first class mail and via certified mail, that the United States mail is not always reliable. Of course, in our neighborhood as an example, we oftentimes exchange mail with our neighbors because it ends up in our-- in our mailbox including insurance notices sometimes. Of course, electronic mail has similar challenges, but it also has many advantages. It can be archived and searched for in a program. It is instantaneous, and LB116 requires the insurer to maintain that record for 5 years. Regardless of whether or not the mail is traditional or electronic, it's still up to the consumer to actually read the notice. And whether or not the mail is traditional or electronic, it is up to the insurer to be able to prove that it satisfactorily provided the

notice. A personal example, a couple of summers ago, my escrow company failed to send in my homeowner's insurance premium in a timely manner. As a result, I received a notice of cancellation from my insurance, my insurer. Unfortunately, I was on vacation and my mail was being picked up by a friend. When I returned home, it took me a few days to actually read the notice. Had I, as a policyholder, had the option to choose electronic delivery, I would have had received the notice sooner on my phone and been able to solve it with a simple phone call. Unfortunately, that option is not available to me right now. One of the change-- one change that the Insurance Federation suggested and Senator Kolterman has accepted is the addition of life insurance policies and annuity contracts to the bill, specifically to subsection 14 of Section 1. I have mentioned this change to the-- to Senator Kolterman, and he is supportive. Though current law currently does not prohibit delivery of notices and documents in life and annuities, member companies reviewed the legislation and felt the addition would benefit the legislation and-- felt the addition would benefit the legislation and would clarify the current practice should issues arise in the future. Other lines of insurance outside of P&C life and annuities already have other guidance allowing e-delivery or are not well suited for e-delivery, so the suggestion is limited to life annuities and P&C. The members of the Federation would like to thank, Senator Kolterman, for introducing the legislation and to the original drafters for agreeing to let life and annuities tag along. Thank you.

WILLIAMS: Thank you, Mr. Bell. Questions? Seeing none, thank you for your testimony. Additional proponents? Seeing no one coming forward, is there anyone here to testify in opposition? Seeing no one, is there anyone here to testify in a neutral capacity? Seeing none, Senator Kolterman.

KOLTERMAN: Thank you for allowing me to present this bill. The only comment I would have is, where were all my friends on the last bill? [LAUGHTER] Anyway, thank you, it's been a pleasure. I would answer any questions you might have.

WILLIAMS: Questions for Senator Kolterman? Seeing none, and we don't have any letters? OK. Thank you. That will close the public hearing on LB116, and we're going to take a short five-minute break before we start our final hearing.

[BREAK]

WILLIAMS: We are back. We will open the public hearing on LB145, Senator Matt Hansen, to change the power of attorney provisions related to banks and other financial institutions. Welcome, Senator Hansen.

M. HANSEN: Thank you. Good afternoon, Chairman Williams, and members of the Banking, Commerce and Insurance Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. I'm here today to introduce LB145 which changes provisions to the Nebraska Uniform Power of Attorney Act relating to banks and other financial institutions. LB145 helps address a problem that sometimes arises when a financial institution requires its own form for a power of attorney. Often, this is simply a matter of timing or relates to some other issue that does not affect the val-- validity of the underlying power of attorney but rather the form it takes to execute an existing power of attorney. Nebraska adopted the Uniform Power of Attorney Act in 2-- 2012. Following the passage of that Uniform Act, financial institutions changed power of attorney forms to comply with the Act. Now parties occasionally encounter situations in which a financial institution will refuse a power of attorney, usually one executed before the Uniform Act, because it is not on the financial institution's approved form which has been updated to conform to the Uniform Act. This is a style-over-substance problem because it's not about the validity of the underlying authority but about the exact form that is used. LB145 addresses this problem by adding that an-- an agent's authority to the authority to execute powers of attorney required-- required and necessary for interacting with the financial institution. This bill streamlines the process and bridges the gap by allowing agents to execute the bank's own form. I know when this bill was-- been introduced previously, there were questions about letting agents essentially grant him or herself a power of attorney. That's why this bill specifically states that the terms and conditions in those financial institution's power of attorney must be similar in scope to those in the power of attorney granting authority in the statute. In other words, someone with a healthcare power of attorney is not going to be able to order unrelated financial transactions with the financial institution. The bill authorizes the agent to do what they have already been authorized to do which is, in this case, would be inter-- interact with the financial institution. I've also brought today, and I'll have the pages help hand-- hand out, a technical amendment that would add a reference to the existing statutes for this new section. This bill was brought to me by the real estate probate and trust section of the

Nebraska State Bar Association and they'll be coming behind me to testify. With that, I'd ask the committee to advance LB145, and be happy to take any questions you have.

WILLIAMS: Thank you, Senator Matt Hansen. Are there questions for the Senator? Seeing none, will you be staying to close?

M. HANSEN: Yes.

WILLIAMS: Thank you. We'd invite the first proponent. Welcome.

KARA BROSTROM: Thank you. Good afternoon, Chairman Williams, and members of the Banking, Commerce and Insurance Committee. My name is Kara Brostrom, K-a-r-a B-r-o-s-t-r-o-m, and I'm an-- an attorney at the law firm of Baylor Evnen here in Lincoln, Nebraska, specializing in estate planning and estate administration. And I'm also currently the vice chair of the real estate probate and trust section of the Nebraska State Bar Association. The problem to be solved by LB145 was identified by the real estate probate and trust section of the Nebraska State Bar Assoc-- Association at our yearly meeting the past two years. This section is comprised of professionals and practitioners, those who draft power of attorney and counsel clients on a daily basis when a financial institution refuses to accept a power of attorney that a principal has executed. As a member of the group and now as vice chair, I would like to provide you with insight into the problem we encounter every day. It's a typical scenario that a principal is incapacitated and their agent acts on their behalf according to the terms and provisions of the valid power of attorney the principal signed when they possessed legal capacity and understood the significance of their grant of authority to the agents named. In contacting a financial institution to handle a principal's financial matters, the agent is informed by the financial institution that they are requiring the agent to execute the institution's own internal power of attorney document. This is problematic because the agent may not have such authority under the original power of attorney, and the principal is now incapacitated. The agent is unable to act on the principal's behalf. LB145 is the solution to the problem. The proposed legislation is an additional provision to the Nebraska Uniform Power of Attorney Act enacted in Nebraska in 2012 with language-- language granting authority for this particular dilemma. This provision clarifies that an agent is able to execute those powers of attorneys required by the particular financial institutions in order to act on behalf of the principal. The important language I would like to highlight today is as follows: the power of attorney is required and

necessary to interact with the financial institution with similar terms and conditions to that of the original power of attorney also identifying the acting agent as well as the successors identified in the original power of attorney document and it does not revoke the power of attorney that's existing. This is a proactive solution to allow agents to legally execute such powers of attorney financial institutions may require. LB145 protects the principal and ensures their intentions are carried out by allowing the agent to exercise specific authority regarding financial institutions as previously granted in the original power of attorney. This is a proactive solution designed to address a practical problem identified by practitioners here in the state of Nebraska. I urge you to advance LB145, and I'd be happy to take any questions.

WILLIAMS: Thank you. Questions? You indicated in your testimony that this is a problem only with some banks, not all banks are requiring this?

KARA BROSTROM: This is a problem that, and speaking on behalf of our section of the bar, that we're seeing from larger financial institutions so not your small town banks or local banks, more of the larger financial institutions. And they just have typically a double-sided sheet, and it's specific to their accounts. I believe, now I don't know if this is correct, it just makes it a little bit easier for them, so then they don't have to send it to in-house counsel, etcetera. But it becomes an issue either if authority is not granted in the original power of attorney or if the principal is executed and then the agent is no longer able to act on behalf of the principal--

WILLIAMS: And this--

KARA BROSTROM: --specific to those accounts.

WILLIAMS: --would give the agent the authority to sign that form.

KARA BROSTROM: Correct.

WILLIAMS: Yep.

KARA BROSTROM: Correct.

WILLIAMS: Senator Kolterman.

KOLTERMAN: Thank you, Senator Williams. Appreciate you coming today.

KARA BROSTROM: Thank you.

KOLTERMAN: As a-- as a practitioner, I used to see insurance companies that would request their own power of--

KARA BROSTROM: Um-hum.

KOLTERMAN: --attorney or ask for an updated power of attorney. Will this take care of that problem?

KARA BROSTROM: The specific statutory provision that we're looking to because we've seen it more with the larger financial institutions, it's specific to banks and other financial institutions. So at the begin-- beginning of the statute, of 30-4031, it currently says "Unless the power of attorney otherwise provides, language in a power of attorney granting authority with respect to banks and other financial institutions." So I do not believe that that's inclusive of insurance companies, but I would have to go back to the statute and the other powers that are granted pursuant to the Uniform Act.

KOLTERMAN: What about securities, do you think that would be?

KARA BROSTROM: I'm not sure if there's a specific stand-alone provision. I know this is just specific to banks and other financial institutions so I did--

KOLTERMAN: And credit unions.

KARA BROSTROM: Right. Right. So for example, I brought our power of attorney document, kind of our boilerplate form. And we give, you know, there's a paragraph specific to banking. And so then if you had any powers specific to banking, then this would authorize agents to then engage with that financial institution if the situation arises.

KOLTERMAN: OK. Thank you.

KARA BROSTROM: Thank you.

WILLIAMS: Any additional questions? Seeing none, thank you for your testimony. Invite the next proponent.

KARA BROSTROM: Thank you.

WILLIAMS: Welcome, Mr. Hallstrom.

BOB HALLSTROM: Thank you, Senator Chairman Williams. Chairman Williams, members of the committee, my name is Bob Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB145. I'll be relatively brief. I was not aware of the nature and scope of the problem, but it seems to be a reasonable solution that if these types of issues are coming about, that they provide express statutory authority, there is currently a provision in the Uniform Power of Attorney Act that indicates that you are not to substitute powers of attorney or-- or refuse to accept them on this basis. This will resolve the problem. I think Miss Brostrom probably identified what some of the issue is in terms of financial institutions perhaps not wanting to see a power of attorney that they may have to send to their own attorney to incur cost to review or certify that power of attorney if they have an in-house power of attorney that applies to their specific accounts which seems to be a reasonable addressing of that issue. Be happy to address any questions.

WILLIAMS: Any questions for Mr. Hallstrom? Seeing none, thank you--

BOB HALLSTROM: Thank you.

WILLIAMS: --for your testimony. Invite the next proponent. Seeing no one coming forward, is there anyone here to testify in opposition? Seeing no one, is there anyone here to testify in a neutral capacity? Seeing none, Senator Matt Hansen, you're invited to close.

M. HANSEN: Thank you, Chairman Williams, members of the Banking, Commerce and Insurance Committee. I will close just kind of by appreciating all the stakeholders that worked on this issue. You know, fundamentally, we're at an issue where it's kind of a paperwork issue in the-- in the-- and if someone's dragging their feet in the form, I would say currently the practitioner has an opportunity to go to court, get a court order, and compel them to accept the previous power of attorney. And it seems much simpler to just let them fill out the second form. This is a way that's kind of keeps issues out of the courts. It kind of satisfies all parties, and I think it's a really sensible way of moving forward to make sure we have efficient powers of attorney. And with that, I'll close and be happy to take questions.

WILLIAMS: Questions for the senator? Senator McCollister.

McCOLLISTER: Yeah, thank you, Senator Williams. And thank you, Senator Hansen, for bringing this bill. As I listened to the dialogue going on this afternoon, I got the impression that the bill was limited in scope just to financial institutions. Would we be better off expanding the scope of this bill to include more powers of attorney that may not necessarily be related to financial institutions?

M. HANSEN: That's probably something where we should be aware of in the future. To-- to my understanding, the problem, or kind of the sticking point is often, has been with banks. And this section only does reference banks. And-- and to my understanding, it's-- oftentimes kind of the situation kind of drags on where, you know, if you don't have it in the bank's form, the bank wants the original, and they want you to, you know, FedEx it overnight to their headquarters in Ohio. And it just becomes this much more cumbersome process. I don't know if we've necessarily encountered that in the same-- in other fields where you use power of attorneys in the same way.

McCOLLISTER: So a health power of attorney, that's clearly outside the scope of this--

M. HANSEN: Right.

McCOLLISTER: --proposed legislation, but you know, I'm wondering if that needs to be revised as well. I'll leave that.

M. HANSEN: Sure, it's-- it's-- that has not been brought to me by practitioners in the field the same way that specifically banks and financial institutions has been brought to me by the Bar Association, but I'd be happy to look at it and keep an eye out for it.

McCOLLISTER: Thanks, Senator.

WILLIAMS: Additional questions? Seeing none, I don't believe we have any letters, so thank you.

M. HANSEN: Thank you.

WILLIAMS: That will close our public hearing on LB145. The Banking Committee does intend to go into Executive Session.